

Amendment No. 638

Senate Amendment to Assembly Bill No. 156 First Reprint (BDR 14-590)

Proposed by: Senate Committee on Judiciary

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

NCA/BAW



Date: 5/17/2013

A.B. No. 156—Revises provisions relating to the sealing of certain records.
(BDR 14-590)



ASSEMBLY BILL NO. 156—ASSEMBLYMAN OHRENSCHALL

FEBRUARY 20, 2013

JOINT SPONSOR: SENATOR SEGERBLOM

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the sealing of certain records.
(BDR 14-590)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to records; revising provisions governing the sealing of certain records; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a person to petition the court in which the person was convicted for the sealing of all records relating to certain convictions. (NRS 179.245) **Section 1** of this bill prohibits a person from petitioning the court to seal records relating to certain offenses related to driving, operating or controlling a vehicle or vessel while under the influence of intoxicating liquor or a controlled substance.

Existing law authorizes a person arrested for alleged criminal conduct to petition for the sealing of all records relating to the arrest if the charges were dismissed or the person was acquitted of the charges. (NRS 179.255) **Section 2** of this bill authorizes such a person to petition for the sealing of all records relating to an arrest if the prosecuting attorney declines to prosecute the charges.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 179.245 is hereby amended to read as follows:

179.245 1. Except as otherwise provided in subsection 5 and NRS 176A.265, 176A.295, 179.259, 453.3365 and 458.330, a person may petition the court in which the person was convicted for the sealing of all records relating to a conviction of:

(a) A category A or B felony after 15 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(b) A category C or D felony after 12 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(c) A category E felony after 7 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(d) Any gross misdemeanor after 7 years from the date of release from actual custody or discharge from probation, whichever occurs later;

(e) A violation of NRS 484C.110 or 484C.120 other than a felony, or a battery which constitutes domestic violence pursuant to NRS 33.018 other than a felony, after 7 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later; or

(f) Any other misdemeanor after 2 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later.

2. A petition filed pursuant to subsection 1 must:

(a) Be accompanied by current, verified records of the petitioner's criminal history received from:

(1) The Central Repository for Nevada Records of Criminal History; and

(2) The local law enforcement agency of the city or county in which the conviction was entered;

(b) Include a list of any other public or private agency, company, official or other custodian of records that is reasonably known to the petitioner to have possession of records of the conviction and to whom the order to seal records, if issued, will be directed; and

(c) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.

3. Upon receiving a petition pursuant to this section, the court shall notify the law enforcement agency that arrested the petitioner for the crime and:

(a) If the person was convicted in a district court or justice court, the prosecuting attorney for the county; or

(b) If the person was convicted in a municipal court, the prosecuting attorney for the city.

➤ The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

4. If, after the hearing, the court finds that, in the period prescribed in subsection 1, the petitioner has not been charged with any offense for which the charges are pending or convicted of any offense, except for minor moving or standing traffic violations, the court may order sealed all records of the conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private agency, company or official in the State of Nevada, and may also order all such criminal identification records of the petitioner returned to the file of the court where the proceeding was commenced from, including, but not limited to, the Federal Bureau of Investigation, the California Bureau of Criminal Identification and Information, sheriffs' offices and all other law enforcement agencies reasonably known by either the petitioner or the court to have possession of such records.

5. A person may not petition the court to seal records relating to a conviction of ~~fel~~:

(a) A crime against a child ~~fel~~;

(b) A sexual offense ~~fel~~;

(c) A violation of NRS 484C.110 or 484C.120 that is punishable as a felony pursuant to paragraph (c) of subsection 1 of NRS 484C.400;

(d) A violation of NRS 484C.430;

(e) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430;

1 *(f) A violation of NRS 488.410 that is punishable as a felony pursuant to*
2 *NRS 488.427; or*

3 *(g) A violation of NRS 488.420 or 488.425.*

4 6. If the court grants a petition for the sealing of records pursuant to this
5 section, upon the request of the person whose records are sealed, the court may
6 order sealed all records of the civil proceeding in which the records were sealed.

7 7. As used in this section:

8 (a) "Crime against a child" has the meaning ascribed to it in NRS 179D.0357.

9 (b) "Sexual offense" means:

10 (1) Murder of the first degree committed in the perpetration or attempted
11 perpetration of sexual assault or of sexual abuse or sexual molestation of a child
12 less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.

13 (2) Sexual assault pursuant to NRS 200.366.

14 (3) Statutory sexual seduction pursuant to NRS 200.368, if punishable as a
15 felony.

16 (4) Battery with intent to commit sexual assault pursuant to NRS 200.400.

17 (5) An offense involving the administration of a drug to another person
18 with the intent to enable or assist the commission of a felony pursuant to NRS
19 200.405, if the felony is an offense listed in this paragraph.

20 (6) An offense involving the administration of a controlled substance to
21 another person with the intent to enable or assist the commission of a crime of
22 violence pursuant to NRS 200.408, if the crime of violence is an offense listed in
23 this paragraph.

24 (7) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual
25 abuse or sexual exploitation.

26 (8) An offense involving pornography and a minor pursuant to NRS
27 200.710 to 200.730, inclusive.

28 (9) Incest pursuant to NRS 201.180.

29 (10) Solicitation of a minor to engage in acts constituting the infamous
30 crime against nature pursuant to NRS 201.195.

31 (11) Open or gross lewdness pursuant to NRS 201.210, if punishable as a
32 felony.

33 (12) Indecent or obscene exposure pursuant to NRS 201.220, if punishable
34 as a felony.

35 (13) Lewdness with a child pursuant to NRS 201.230.

36 (14) Sexual penetration of a dead human body pursuant to NRS 201.450.

37 (15) Luring a child or a person with mental illness pursuant to NRS
38 201.560, if punishable as a felony.

39 (16) An attempt to commit an offense listed in subparagraphs (1) to (15),
40 inclusive.

41 **Sec. 2.** NRS 179.255 is hereby amended to read as follows:

42 179.255 1. If a person has been arrested for alleged criminal conduct and
43 the charges are dismissed, *the prosecuting attorney having jurisdiction declined*
44 *prosecution of the charges* or such person is acquitted of the charges, the person
45 may petition:

46 (a) The court in which the charges were dismissed, at any time after the date
47 the charges were dismissed; ~~for~~

48 (b) *The court having jurisdiction in which the charges were declined for*
49 *prosecution, ~~at any~~ :*

50 *(1) Any time after the applicable statute of limitations has run ;*

51 *(2) Any time 10 years after the arrest; or ~~(pursuant)~~*

52 *(3) Pursuant to a stipulation between the parties; or*

(c) The court in which the acquittal was entered, at any time after the date of the acquittal,

↳ for the sealing of all records relating to the arrest and the proceedings leading to the dismissal, *declination* or acquittal.

2. If the conviction of a person is set aside pursuant to NRS 458A.240, the person may petition the court that set aside the conviction, at any time after the conviction has been set aside, for the sealing of all records relating to the setting aside of the conviction.

3. A petition filed pursuant to subsection 1 or 2 must:

(a) Be accompanied by a current, verified record of the criminal history of the petitioner received from the local law enforcement agency of the city or county in which the petitioner appeared in court;

(b) Include a list of any other public or private agency, company, official and other custodian of records that is reasonably known to the petitioner to have possession of records of the arrest and of the proceedings leading to the dismissal, *declination* or acquittal and to whom the order to seal records, if issued, will be directed; and

(c) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.

4. Upon receiving a petition pursuant to subsection 1, the court shall notify the law enforcement agency that arrested the petitioner for the crime and:

(a) If the charges were dismissed, *declined for prosecution* or the acquittal was entered in a district court or justice court, the prosecuting attorney for the county; or

(b) If the charges were dismissed, *declined for prosecution* or the acquittal was entered in a municipal court, the prosecuting attorney for the city.

↳ The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

5. Upon receiving a petition pursuant to subsection 2, the court shall notify:

(a) If the conviction was set aside in a district court or justice court, the prosecuting attorney for the county; or

(b) If the conviction was set aside in a municipal court, the prosecuting attorney for the city.

↳ The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

6. If, after the hearing on a petition submitted pursuant to subsection 1, the court finds that there has been an acquittal, *that the prosecution was declined* or that the charges were dismissed and there is no evidence that further action will be brought against the person, the court may order sealed all records of the arrest and of the proceedings leading to the acquittal, *declination* or dismissal which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

7. If, after the hearing on a petition submitted pursuant to subsection 2, the court finds that the conviction of the petitioner was set aside pursuant to NRS 458A.240, the court may order sealed all records relating to the setting aside of the conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

8. If the prosecuting attorney having jurisdiction previously declined prosecution of the charges and the records of the arrest have been sealed pursuant to subsection 6, the prosecuting attorney may subsequently file the charges at any time before the running of the statute of limitations for those charges. If such charges are filed with the court, the court shall order the

1 *inspection of the records without the prosecuting attorney having to petition the*
2 *court pursuant to NRS 179.295.*

3 **Sec. 3.** NRS 179.295 is hereby amended to read as follows:

4 179.295 1. The person who is the subject of the records that are sealed
5 pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
6 458.330 may petition the court that ordered the records sealed to permit inspection
7 of the records by a person named in the petition, and the court may order such
8 inspection. Except as otherwise provided in this section, *subsection 8 of NRS*
9 *179.255* and NRS 179.259 and 179.301, the court may not order the inspection of
10 the records under any other circumstances.

11 2. If a person has been arrested, the charges have been dismissed and the
12 records of the arrest have been sealed, the court may order the inspection of the
13 records by a prosecuting attorney upon a showing that as a result of newly
14 discovered evidence, the person has been arrested for the same or a similar offense
15 and that there is sufficient evidence reasonably to conclude that the person will
16 stand trial for the offense.

17 3. The court may, upon the application of a prosecuting attorney or an
18 attorney representing a defendant in a criminal action, order an inspection of such
19 records for the purpose of obtaining information relating to persons who were
20 involved in the incident recorded.

21 4. This section does not prohibit a court from considering a conviction for
22 which records have been sealed pursuant to NRS 176A.265, 176A.295, 179.245,
23 179.255, 179.259, 453.3365 or 458.330 in determining whether to grant a petition
24 pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
25 458.330 for a conviction of another offense.

26 **Sec. 4.** This act becomes effective on January 1, 2014.