

Amendment No. 84

Senate Amendment to Senate Bill No. 45 (BDR 14-345)

Proposed by: Senate Committee on Judiciary

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

| 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.

MNM/BAW



Date: 4/8/2013

S.B. No. 45—Revises provisions governing the sealing and removal of certain records of criminal history. (BDR 14-345)



SENATE BILL NO. 45—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE RECORDS AND TECHNOLOGY DIVISION)

PREFILED DECEMBER 20, 2012

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the sealing ~~and removal~~ of certain records of criminal history. (BDR 14-345)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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 of criminal history; revising provisions governing the sealing ~~and removal~~ of certain records of criminal history; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a person to petition the court in certain circumstances for the sealing of all records of criminal history relating to a conviction of a crime, the dismissal or acquittal of charges or the setting aside of a conviction of a crime. (NRS 179.245, 179.255) **Sections 6 and 7** of this bill revise provisions governing the information that such a petition must include and generally expand the applicability of certain provisions relating to the sealing of such records to all agencies of criminal justice which maintain the records.

~~Existing law also authorizes a person who is acquitted of a charge or to whom the disposition of a charge is favorable to apply in writing to the Central Repository for Nevada Records of Criminal History and the agency which maintains a record of criminal history relating to such a charge to have the record removed. (NRS 179A.160) Section 11 of this bill revises this requirement and specifies that a person must apply to the Central Repository and all agencies of criminal justice which maintain the record. Section 11 also requires such an application to include certain information similar to the information required in a petition to the court pursuant to sections 6 and 7, and requires, with certain exceptions, the Central Repository and all agencies of criminal justice which maintain the record to remove the record without a court order upon receipt of a complete written application and verification of the information contained in the application.~~

Section 8 of this bill provides that each agency of criminal justice named in an order for the sealing of records must be provided a copy of the order. **Section 10** of this bill revises the definition of "agency of criminal justice" by specifying that the term also includes a subunit of any governmental agency which performs a function in the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its budget to a function in the administration of criminal justice.

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

1 **Section 1.** Chapter 179 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 2 to 5, inclusive, of this act.

3 **Sec. 2.** *As used in this section and NRS 179.245 to 179.301, inclusive,*
4 *unless the context otherwise requires, the words and terms defined in sections 3,*
5 *4 and 5 of this act have the meanings ascribed to them in those sections.*

6 **Sec. 3.** *“Agency of criminal justice” has the meaning ascribed to it in NRS*
7 *179A.030.*

8 **Sec. 4.** *“Disposition” has the meaning ascribed to it in NRS 179A.050.*

9 **Sec. 5.** *“Record” has the meaning ascribed to “record of criminal history”*
10 *in NRS 179A.070.*

11 **Sec. 6.** NRS 179.245 is hereby amended to read as follows:

12 179.245 1. Except as otherwise provided in subsection 5 and NRS
13 176A.265, 176A.295, 179.259, 453.3365 and 458.330, a person may petition the
14 court in which the person was convicted for the sealing of all records relating to a
15 conviction of:

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

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

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

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

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

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

31 2. A petition filed pursuant to subsection 1 must:

32 (a) Be accompanied by *the petitioner’s* current, verified records ~~of the~~
33 ~~petitioner’s criminal history~~ received from:

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

35 (2) ~~The local law enforcement agency~~ *All agencies of criminal justice*
36 *which maintain such records within* the city or county in which the conviction was
37 entered;

38 (b) *If the petition references NRS 453.3365 or 458.330, include a certificate*
39 *of acknowledgment or the disposition of the proceedings for the records to be*
40 *sealed from all agencies of criminal justice which maintain such records;*

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

45 ~~(e)~~ (d) Include information that, to the best knowledge and belief of the
46 petitioner, accurately and completely identifies the records to be sealed ~~†~~ ,
47 *including, without limitation, the:*

48 (1) *Date of birth of the petitioner;*

49 (2) *Specific conviction to which the records to be sealed pertain; and*

(3) Date of arrest relating to the specific conviction to which the records to be sealed pertain.

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}~~ *any agency of criminal justice* or ~~{of a}~~ *any* public or private agency, company, ~~{or}~~ official *or other custodian of records* 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,}~~ *without limitation*, the Federal Bureau of Investigation, the California Bureau of Criminal Identification and Information ~~{, sheriffs' offices}~~ and all ~~{other law enforcement}~~ *agencies of criminal justice which maintain such records and which are* 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 a crime against a child or a sexual offense.

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

7. As used in this section:

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

(b) "Sexual offense" means:

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

(2) Sexual assault pursuant to NRS 200.366.

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

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

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

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

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

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

(9) Incest pursuant to NRS 201.180.

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

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

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

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

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

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

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

Sec. 7. NRS 179.255 is hereby amended to read as follows:

179.255 1. If a person has been arrested for alleged criminal conduct and the charges are dismissed or such person is acquitted of the charges, the person may petition:

(a) The court in which the charges were dismissed, at any time after the date the charges were dismissed; or

(b) 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 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 ~~the~~ *the petitioner's* current, verified ~~record of the criminal history of the petitioner~~ *records* received from ~~the local law enforcement agency~~ :

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

(2) All agencies of criminal justice which maintain such records within the city or county in which the petitioner appeared in court;

(b) Except as otherwise provided in paragraph (c), include the disposition of the proceedings for the records to be sealed;

(c) If the petition references NRS 453.3365 or 458.330, include a certificate of acknowledgment or the disposition of the proceedings for the records to be sealed from all agencies of criminal justice which maintain such records;

(d) 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 or acquittal and to whom the order to seal records, if issued, will be directed; and

~~(e)~~ *(e) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed* ~~H~~ , *including, without limitation, the:*

(1) Date of birth of the petitioner;

(2) Specific charges that were dismissed or of which the petitioner was acquitted; and

(3) Date of arrest relating to the specific charges that were dismissed or of which the petitioner was acquitted.

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 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 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 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 or dismissal which are in the custody of ~~the court, of another court in the State of Nevada~~ *any agency of criminal justice* or ~~of a~~ *any* public or private company, agency, ~~or~~ *official or other custodian of records* 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~~ *any agency of criminal justice* or ~~of a~~ *any* public or private company, agency, ~~or~~ *official or other custodian of records* in the State of Nevada.

Sec. 8. NRS 179.275 is hereby amended to read as follows:

179.275 Where the court orders the sealing of a record pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330, a copy of the order must be sent to:

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

2. Each *agency of criminal justice and each* public or private company, agency, ~~or~~ *official or other custodian of records* named in the order, and that person shall seal the records in his or her custody which relate to the matters contained in the order, shall advise the court of compliance and shall then seal the order.

Sec. 9. NRS 179.301 is hereby amended to read as follows:

179.301 1. The State Gaming Control Board and the Nevada Gaming Commission and their employees, agents and representatives may inquire into and inspect any records sealed pursuant to NRS 179.245 or 179.255, if the event or conviction was related to gaming, to determine the suitability or qualifications of any person to hold a state gaming license, manufacturer's, seller's or distributor's license or registration as a gaming employee pursuant to chapter 463 of NRS. Events and convictions, if any, which are the subject of an order sealing records:

(a) May form the basis for recommendation, denial or revocation of those licenses.

(b) Must not form the basis for denial or rejection of a gaming work permit unless the event or conviction relates to the applicant's suitability or qualifications to hold the work permit.

2. A prosecuting attorney may inquire into and inspect any records sealed pursuant to NRS 179.245 or 179.255 if:

(a) The records relate to a violation or alleged violation of NRS 202.575; and

(b) The person who is the subject of the records has been arrested or issued a citation for violating NRS 202.575.

3. The Central Repository for Nevada Records of Criminal History and its employees may inquire into and inspect any records sealed pursuant to NRS 179.245 or 179.255 that constitute information relating to sexual offenses, and may notify employers of the information in accordance with NRS 179A.180 to 179A.240, inclusive.

4. Records which have been sealed pursuant to NRS 179.245 or 179.255 and which are retained in the statewide registry established pursuant to NRS 179B.200 may be inspected pursuant to chapter 179B of NRS by an officer or employee of the Central Repository for Nevada Records of Criminal History or a law enforcement officer in the regular course of his or her duties.

5. The State Board of Pardons Commissioners and its agents and representatives may inquire into and inspect any records sealed pursuant to NRS 179.245 or 179.255 if the person who is the subject of the records has applied for a pardon from the Board.

6. As used in this section:

(a) "Information relating to sexual offenses" means information contained in or concerning a record ~~of criminal history, or the records of criminal history of the United States or another state,~~ relating in any way to a sexual offense.

(b) "Sexual offense" has the meaning ascribed to it in NRS 179A.073.

Sec. 10. NRS 179A.030 is hereby amended to read as follows:

179A.030 "Agency of criminal justice" means:

1. Any court; and

2. Any governmental agency *or subunit of any governmental agency* which performs a function in the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its budget to a function in the administration of criminal justice.

Sec. 11. ~~NRS 179A.160 is hereby amended to read as follows:~~

~~179A.160 1. If a person has been arrested or issued a citation, or has been the subject of a warrant for alleged criminal conduct and the person is acquitted of the charge or the disposition of the charge is favorable to the person, at any time after the charge is dismissed, acquittal is entered or disposition of the charge in favor of the person is final, the person who is the subject of a record of criminal history relating to the arrest, citation or warrant may apply in writing to the Central Repository and [the agency] all agencies of criminal justice which [maintains] maintain the record to have it removed from the files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a person:~~

~~2. A written application submitted pursuant to subsection 1 must:~~

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

~~(1) The Central Repository; and~~

~~(2) All agencies of criminal justice which maintain the record within the city or county in which the charge was dismissed, the acquittal was entered or the disposition of the charge in favor of the person was finalized; and~~

~~(b) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the record to be removed, including, without limitation, the:~~

~~(1) Date of birth of the petitioner;~~

~~(2) Specific charge to be removed; and~~

~~(3) Date of arrest relating to the specific charge to be removed.~~

~~3. The Central Repository and [the agency] all agencies of criminal justice which maintain the record shall remove the record without a court order, upon~~

~~receipt of a written application that satisfies all requirements set forth in this section and verification of the information contained in the application, unless:~~

~~(a) The [defendant] person who is the subject of the record is a fugitive;~~

~~(b) The case is under active prosecution according to a current certificate of a prosecuting attorney;~~

~~(c) The disposition of the case was a deferred prosecution, plea bargain or other similar disposition;~~

~~(d) The person who is the subject of the record has a prior conviction for a felony or gross misdemeanor in any jurisdiction in the United States; or~~

~~(e) The person who is the subject of the record has been arrested for or charged with another crime, other than a minor traffic violation, since the arrest, citation or warrant which the person seeks to have removed from the record.~~

~~[2.] 4. This section does not restrict the authority of a court to order the deletion or modification of a record in a particular cause or concerning a particular person or event.] (Deleted by amendment.)~~

Sec. 12. This act becomes effective on July 1, 2013.