

ASSEMBLY BILL NO. 243—COMMITTEE ON JUDICIARY

FEBRUARY 27, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to criminal convictions of victims of sex trafficking and involuntary servitude. (BDR 14-444)

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 criminal procedure; providing for the vacating of a judgment of conviction and sealing of records of a victim of sex trafficking or involuntary servitude; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows a court to grant a motion to vacate a judgment if the defendant was convicted of certain offenses and the defendant's participation in the offense was the result of having been a victim of sex trafficking or involuntary servitude. (NRS 176.515) Existing law also establishes a process for sealing certain records of criminal proceedings. (NRS 179.245-179.301) With certain limited exceptions, if the court orders a person's record of criminal history sealed, all proceedings recounted in the record are deemed never to have occurred. (NRS 179.285)

Section 1.2 of this bill authorizes a person convicted of certain offenses who was a victim of sex trafficking or involuntary servitude to petition the court to vacate the judgment and seal all documents relating to the case. **Section 1.2** generally sets forth the procedure established in existing law for the vacating of a judgment of conviction of such a person, but additionally requires the court to notify the Central Repository for Nevada Records of Criminal History, the Office of the Attorney General and each office of the district attorney and law enforcement agency in this State and to allow any person to testify and present evidence on behalf of such an entity before the court decides whether to grant a petition. **Section 1.2** also authorizes a court to enter an interim order to vacate a judgment of conviction if the petitioner satisfies all requirements necessary for the judgment to be vacated but the petition is deficient with respect to the sealing of the petitioner's record. **Section 1.2** provides that if the court enters such an interim order, the court is also required to order sealed the records of the petitioner which relate to the



23 judgment being vacated. Sections 1 and 1.3-1.7 of this bill make conforming
24 changes.

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

1 **Section 1.** NRS 176.515 is hereby amended to read as follows:

2 176.515 1. The court may grant a new trial to a defendant if
3 required as a matter of law or on the ground of newly discovered
4 evidence.

5 2. If trial was by the court without a jury, the court may vacate
6 the judgment if entered, take additional testimony and direct the
7 entry of a new judgment.

8 3. Except as otherwise provided in NRS 176.09187, a motion
9 for a new trial based on the ground of newly discovered evidence
10 may be made only within 2 years after the verdict or finding of guilt.

11 4. A motion for a new trial based on any other grounds must be
12 made within 7 days after the verdict or finding of guilt or within
13 such further time as the court may fix during the 7-day period.

14 ~~5. The court may grant a motion to vacate a judgment if:~~

15 ~~— (a) The judgment is a conviction for a violation of:~~

16 ~~— (1) NRS 201.354, for engaging in prostitution or solicitation~~
17 ~~for prostitution, provided that the defendant was not alleged to be a~~
18 ~~customer of a prostitute;~~

19 ~~— (2) NRS 207.200, for unlawful trespass;~~

20 ~~— (3) Paragraph (b) of subsection 1 of NRS 463.350, for~~
21 ~~loitering; or~~

22 ~~— (4) A county, city or town ordinance, for loitering for the~~
23 ~~purpose of solicitation or prostitution;~~

24 ~~— (b) The participation of the defendant in the offense was the~~
25 ~~result of the defendant having been a victim of:~~

26 ~~— (1) Trafficking in persons as described in the Trafficking~~
27 ~~Victims Protection Act of 2000, 22 U.S.C. §§ 7101 et seq.; or~~

28 ~~— (2) Involuntary servitude as described in NRS 200.463 or~~
29 ~~200.4631; and~~

30 ~~— (c) The defendant makes a motion under this subsection with~~
31 ~~due diligence after the defendant has ceased being a victim of~~
32 ~~trafficking or involuntary servitude or has sought services for~~
33 ~~victims of such trafficking or involuntary servitude.~~

34 ~~6. In deciding whether to grant a motion made pursuant to~~
35 ~~subsection 5, the court shall take into consideration any reasonable~~
36 ~~concerns for the safety of the defendant, family members of the~~
37 ~~defendant or other victims that may be jeopardized by the bringing~~
38 ~~of such a motion.~~



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~~7. If the court grants a motion made pursuant to subsection 5, the court:~~

~~(a) Shall vacate the judgment and dismiss the accusatory pleading; and~~

~~(b) May take any additional action that the court deems appropriate under the circumstances.~~

Sec. 1.2. Chapter 179 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a person has been convicted of any offense listed in subsection 2, the person may petition the court in which he or she was convicted or, if the person wishes to file more than one petition and would otherwise need to file a petition in more than one court, the district court, for an order:

(a) Vacating the judgment; and

(b) Sealing all documents, papers and exhibits in the person's record, minute book entries and entries on dockets, and other documents relating to the case in the custody of such other agencies and officers as are named in the court's order.

2. A person may file a petition pursuant to subsection 1 if the person was convicted of a violation of:

(a) NRS 201.354, for engaging in prostitution or solicitation for prostitution, provided that the person was not alleged to be a customer of a prostitute;

(b) NRS 207.200, for unlawful trespass;

(c) Paragraph (b) of subsection 1 of NRS 463.350, for loitering; or

(d) A county, city or town ordinance, for loitering for the purpose of solicitation or prostitution.

3. A petition filed pursuant to subsection 1 must satisfy the requirements of subsection 2 of NRS 179.245.

4. The court may grant a petition filed pursuant to subsection 1 if:

(a) The petitioner was convicted of a violation of an offense described in subsection 2;

(b) The participation of the petitioner in the offense was the result of the petitioner having been a victim of:

(1) Trafficking in persons as described in the Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101 et seq.; or

(2) Involuntary servitude as described in NRS 200.463 or 200.4631; and

(c) The petitioner files a petition pursuant to subsection 1 with due diligence after the petitioner has ceased being a victim of trafficking or involuntary servitude or has sought services for victims of such trafficking or involuntary servitude.



1 5. *Before the court decides whether to grant a petition filed*
2 *pursuant to subsection 1, the court shall:*

3 (a) *Notify the Central Repository for Nevada Records of*
4 *Criminal History, the Office of the Attorney General and each*
5 *office of the district attorney and law enforcement agency in this*
6 *State and allow any person to testify and present evidence on*
7 *behalf of any such entity; and*

8 (b) *Take into consideration any reasonable concerns for the*
9 *safety of the defendant, family members of the defendant or other*
10 *victims that may be jeopardized by the granting of the petition.*

11 6. *If the court grants a petition filed pursuant to subsection 1,*
12 *the court:*

13 (a) *Shall vacate the judgment and dismiss the accusatory*
14 *pleading;*

15 (b) *Shall order sealed all documents, papers and exhibits in*
16 *the petitioner's record, minute book entries and entries on dockets,*
17 *and other documents relating to the case in the custody of such*
18 *other agencies and officers as are named in the court's order; and*

19 (c) *May take any additional action that the court deems*
20 *appropriate under the circumstances.*

21 7. *If a petition filed pursuant to subsection 1 does not satisfy*
22 *the requirements of subsection 2 of NRS 179.245 or the court*
23 *determines that the petition is otherwise deficient with respect to*
24 *the sealing of the petitioner's record, the court may enter an*
25 *interim order to vacate the judgment and dismiss the accusatory*
26 *pleading if the petitioner satisfies all requirements necessary for*
27 *the judgment to be vacated.*

28 8. *If the court enters an interim order pursuant to subsection*
29 *7, the court shall also order sealed the records of the petitioner*
30 *which relate to the judgment being vacated in accordance with*
31 *paragraph (b) of subsection 6, regardless of whether any records*
32 *relating to other convictions are ineligible for sealing either by*
33 *operation of law or because of a deficiency in the petition.*

34 **Sec. 1.3.** NRS 179.241 is hereby amended to read as follows:

35 179.241 As used in NRS 179.241 to 179.301, inclusive, *and*
36 *section 1.2 of this act*, unless the context otherwise requires, the
37 words and terms defined in NRS 179.242, 179.243 and 179.244
38 have the meanings ascribed to them in those sections.

39 **Sec. 1.4.** NRS 179.245 is hereby amended to read as follows:

40 179.245 1. Except as otherwise provided in subsection 5 and
41 NRS 176A.265, 176A.295, 179.259, 453.3365 and 458.330, *and*
42 *section 1.2 of this act*, a person may petition the court in which the
43 person was convicted for the sealing of all records relating to a
44 conviction of:



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

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

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

10 (d) Except as otherwise provided in paragraph (e), any gross
11 misdemeanor after 5 years from the date of release from actual
12 custody or discharge from probation, whichever occurs later;

13 (e) A violation of NRS 422.540 to 422.570, inclusive, other than
14 a felony, a violation of NRS 484C.110 or 484C.120 other than a
15 felony, or a battery which constitutes domestic violence pursuant to
16 NRS 33.018 other than a felony, after 7 years from the date of
17 release from actual custody or from the date when the person is no
18 longer under a suspended sentence, whichever occurs later; or

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

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

23 (a) Be accompanied by the petitioner's current, verified records
24 received from:

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

27 (2) All agencies of criminal justice which maintain such
28 records within the city or county in which the conviction was
29 entered;

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

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

38 (d) Include information that, to the best knowledge and belief of
39 the petitioner, accurately and completely identifies the records to be
40 sealed, including, without limitation, the:

41 (1) Date of birth of the petitioner;

42 (2) Specific conviction to which the records to be sealed
43 pertain; and

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



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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 the prosecuting attorney, including, without limitation, the Attorney General, who prosecuted the petitioner for the crime. 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 any agency of criminal justice or any public or private agency, company, official or other custodian of records in the State of Nevada, and may also order all such records of the petitioner returned to the file of the court where the proceeding was commenced from, including, without limitation, the Federal Bureau of Investigation, the California Bureau of Criminal Identification and Information and all other 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) A crime against a child;

(b) A sexual offense;

(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;

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

(g) A violation of NRS 488.420 or 488.425.

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:



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

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

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

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

(14) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.

(15) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.

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

(17) An attempt to commit an offense listed in this paragraph.

Sec. 1.5. 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, *or section 1.2 of this act*, a copy of the order must be sent to:

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



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2. Each agency of criminal justice and each public or private company, agency, 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. 1.6. NRS 179.285 is hereby amended to read as follows:

179.285 Except as otherwise provided in NRS 179.301:

1. If the court orders a record sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 ~~H~~ *or section 1.2 of this act:*

(a) All proceedings recounted in the record are deemed never to have occurred, and the person to whom the order pertains may properly answer accordingly to any inquiry, including, without limitation, an inquiry relating to an application for employment, concerning the arrest, conviction, dismissal or acquittal and the events and proceedings relating to the arrest, conviction, dismissal or acquittal.

(b) The person is immediately restored to the following civil rights if the person's civil rights previously have not been restored:

- (1) The right to vote;
- (2) The right to hold office; and
- (3) The right to serve on a jury.

2. Upon the sealing of the person's records, a person who is restored to his or her civil rights pursuant to subsection 1 must be given:

(a) An official document which demonstrates that the person has been restored to the civil rights set forth in paragraph (b) of subsection 1; and

(b) A written notice informing the person that he or she has not been restored to the right to bear arms, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms.

3. A person who has had his or her records sealed in this State or any other state and whose official documentation of the restoration of civil rights is lost, damaged or destroyed may file a written request with a court of competent jurisdiction to restore his or her civil rights pursuant to this section. Upon verification that the person has had his or her records sealed, the court shall issue an order restoring the person to the civil rights to vote, to hold office and to serve on a jury. A person must not be required to pay a fee to receive such an order.

4. A person who has had his or her records sealed in this State or any other state may present official documentation that the person has been restored to his or her civil rights or a court order restoring



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1 civil rights as proof that the person has been restored to the right to
2 vote, to hold office and to serve as a juror.

3 **Sec. 1.7.** NRS 179.295 is hereby amended to read as follows:

4 179.295 1. The person who is the subject of the records that
5 are sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255,
6 179.259, 453.3365 or 458.330 *or section 1.2 of this act* may petition
7 the court that ordered the records sealed to permit inspection of the
8 records by a person named in the petition, and the court may order
9 such inspection. Except as otherwise provided in this section,
10 subsection 8 of NRS 179.255 and NRS 179.259 and 179.301, the
11 court may not order the inspection of the records under any other
12 circumstances.

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

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

25 4. This section does not prohibit a court from considering a
26 conviction for which records have been sealed pursuant to NRS
27 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
28 458.330 *or section 1.2 of this act* in determining whether to grant a
29 petition pursuant to NRS 176A.265, 176A.295, 179.245, 179.255,
30 179.259, 453.3365 or 458.330 for a conviction of another offense.

31 **Sec. 2.** (Deleted by amendment.)

