

Amendment No. 448

Senate Amendment to Senate Bill No. 265	(BDR 14-1042)
<b>Proposed by:</b> Senate Committee on Judiciary	
<b>Amends:</b> 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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.





SENATE BILL NO. 265—SENATORS SEEVERS GANSERT, HARDY; CANCELA, GOICOECHEA, HAMMOND, HANSEN, KIECKHEFER, OHRENSCHALL, PICKARD AND SETTELMAYER

MARCH 12, 2019

JOINT SPONSORS: ASSEMBLYMEN TITUS, KRAMER; ASSEFA, DALY, HAFEN, HARDY, LEAVITT, NGUYEN, PETERS, SPRINKLE, TOLLES AND WATTS

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to certain **information and** records ~~of mental health,~~ **concerning public safety.** (BDR 14-1042)

FISCAL NOTE: Effect on Local Government: No.  
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 mental health; providing for coordination between the Central Repository for Nevada Records of Criminal History and the courts relating to the transmission of certain records of mental health;~~ **public safety;** requiring the Central Repository **for Nevada Records of Criminal History** to prepare an annual report relating to ~~such~~ **the transmission of certain information and** records ~~of~~ **concerning public safety; providing for coordination between the Central Repository and the courts relating to such information and records;** and providing other matters properly relating thereto.

#### Legislative Counsel's Digest:

Existing law requires a court, within 5 business days, to transmit to the Central Repository for Nevada Records of Criminal History a record concerning the appointment of a guardian for a person with a mental defect, a plea or finding of guilty but mentally ill, a verdict acquitting a person by reason of insanity, a finding that a person is incompetent to stand trial or the involuntary admission of a person to a mental health facility, along with a statement that the record is being transmitted for inclusion in all appropriate databases of the National Instant Criminal Background Check System. (NRS 159.0593, 174.035, 175.533, 175.539, 178.425, 433A.310) Existing law also provides that, upon receiving such a record, the Central Repository: (1) must take reasonable steps to ensure that the information reported in the record is included in each appropriate database of the National Instant Criminal Background Check System; and (2) may take reasonable steps to ensure that the information reported in the record is included in each appropriate database of the National Crime Information Center. (NRS 179A.163)

~~Section 2 of this bill requires the Central Repository to coordinate its efforts with the courts to ensure that such mental health records are timely submitted to the Central Repository. Section 1 of this~~

Existing law further requires a person to transmit certain information to the Central Repository any time a court issues a temporary or extended order for protection against domestic violence and any time that a person serves such an order, registers such an order, registers a Canadian domestic-violence protection order or receives certain information or takes certain other actions relating to such orders. (NRS 33.095) Finally, existing law requires each agency of criminal justice to submit information to the Central Repository relating to records of criminal history that it creates, issues or collects, and certain information in the agency's possession relating to the DNA profile of certain persons. (NRS 179A.075)

This bill requires the Central Repository to prepare an annual report to be submitted to the Governor, the Nevada Supreme Court and the Director of the Legislative Counsel Bureau for transmittal to the Legislature regarding each instance in which ~~such a mental health record was~~ certain information relating to orders for protection against domestic violence, records of criminal history, information relating to DNA profiles and mental health records were not timely submitted during the previous fiscal year. This bill also requires the Central Repository to coordinate its efforts with the courts to ensure that such information and records are timely submitted to the Central Repository.

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

**Section 1.** Chapter 179A of NRS is hereby amended by adding thereto a new section to read as follows:

*1. On or before September 1 of each year, the Central Repository shall prepare and submit to the Governor, the Nevada Supreme Court and the Director of the Legislative Counsel Bureau for transmittal to the Legislature a report identifying each instance in which information or a record is required to be transmitted ~~(by a court)~~ to the Central Repository pursuant to NRS 33.095, 159.0593, 174.035, 175.533, 175.539, 178.425, subsection 3 of NRS 179A.075 or NRS 433A.310 and such information or record was not timely submitted during the previous fiscal year. ~~and providing the~~ The report must include the reason, if known, for the untimely submission of the information or record.*

*2. The Central Repository shall, according to a schedule established by the Director of the Department, contact the courts in this State to coordinate efforts to ensure the timely submission of information or records transmitted pursuant to NRS 33.095, 159.0593, 174.035, 175.533, 175.539, 178.425, subsection 3 of NRS 179A.075 or NRS 433A.310.*

**Sec. 2.** ~~[NRS 179A.163 is hereby amended to read as follows:~~

~~179A.163 1. Upon receiving a record transmitted pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310, the Central Repository:~~

~~(a) Shall take reasonable steps to ensure that the information reported in the record is included in each appropriate database of the National Instant Criminal Background Check System; and~~

~~(b) May take reasonable steps to ensure that the information reported in the record is included in each appropriate database of the National Crime Information Center.~~

~~2. The Central Repository shall, according to a schedule established by the Director, contact the courts in this State to coordinate efforts to ensure the timely submission of records transmitted pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 and 433A.310.~~

~~3. Except as otherwise provided in subsection [2.] 4, if the Central Repository receives a record described in subsection 1, the person who is the subject of the record may petition the court for an order declaring that:~~

~~(a) The basis for the adjudication reported in the record no longer exists;~~

~~(b) The adjudication reported in the record is deemed not to have occurred for purposes of 18 U.S.C. § 922(d)(4) and (g)(4) and NRS 202.360; and~~

~~(c) The information reported in the record must be removed from the National Instant Criminal Background Check System and the National Crime Information Center.~~

~~[3.] 4. To the extent authorized by federal law, if the record concerning the petitioner was transmitted to the Central Repository pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310, the petitioner may not file a petition pursuant to subsection [2.] 3 until 2 years after the date of the order transmitting the record to the Central Repository.~~

~~[4.] 5. A petition filed pursuant to subsection [2.] 3 must be:~~

~~(a) Filed in the court which made the adjudication or finding pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310; and~~

~~(b) Served upon the district attorney for the county in which the court described in paragraph (a) is located.~~

~~[5.] 6. The Nevada Rules of Civil Procedure govern all proceedings concerning a petition filed pursuant to subsection [2.] 3.~~

~~[6.] 7. The court shall grant the petition and issue the order described in subsection [2.] 3 if the court finds that the petitioner has established that:~~

~~(a) The basis for the adjudication or finding made pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310 concerning the petitioner no longer exists;~~

~~(b) The petitioner's record and reputation indicate that the petitioner is not likely to act in a manner dangerous to public safety; and~~

~~(c) Granting the relief requested by the petitioner pursuant to subsection [2.] 3 is not contrary to the public interest.~~

~~[7.] 8. Except as otherwise provided in this subsection, the petitioner must establish the provisions of subsection [6.] 7 by a preponderance of the evidence. If the adjudication or finding concerning the petitioner was made pursuant to NRS 159.0593 or 433A.310, the petitioner must establish the provisions of subsection [6.] 7 by clear and convincing evidence.~~

~~[8.] 9. The court, upon entering an order pursuant to this section, shall cause, on a form proscribed by the Department of Public Safety, a record of the order to be transmitted to the Central Repository.~~

~~[9.] 10. Within 5 business days after receiving a record of an order transmitted pursuant to subsection [8.] 9, the Central Repository shall take reasonable steps to ensure that information concerning the adjudication or finding made pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310 is removed from the National Instant Criminal Background Check System and the National Crime Information Center, if applicable.~~

~~[10.] 11. If the Central Repository fails to remove a record as provided in subsection [9.] 10, the petitioner may bring an action to compel the removal of the record. If the petitioner prevails in the action, the court may award the petitioner reasonable attorney's fees and costs incurred in bringing the action.~~

~~[11.] 12. If a petition brought pursuant to subsection [2.] 3 is denied, the person who is the subject of the record may petition for a rehearing not sooner than 2 years after the date of the denial of the petition.] (Deleted by amendment.)~~

1       **Sec. 3.** The provisions of subsection 1 of NRS 218D.380 do not apply to any  
2 provision of this act which adds or revises a requirement to submit a report to the  
3 Legislature.

4       **Sec. 4.** This act becomes effective on July 1, 2019.