

Case No. 80009

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

Electronically Filed
Nov 19 2019 10:40 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF WASHOE; AND THE
HONORABLE KATHLEEN DRAKULICH, DISTRICT JUDGE,

Respondents.

ON APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT
CASE No. CV19-01912

AMICUS CURIAE THE STATE OF NEVADA'S APPENDIX

AARON D. FORD
Attorney General
THERESA M. HAAR
Special Assistant Attorney General
Bar No. 12158

Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

*Attorneys for Amicus Curiae
The State of Nevada*

INDEX

AB 327 “As Introduced” 1-16

AB 327 Amendment 345 17-30

AB 327 “As Enrolled” 31-42

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on November 19, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Kenneth A. Stover, Esq.

I further certify that on this date, a copy of this document was mailed via U.S. Mail to the Chambers of the Honorable Kathleen Drakulich of the Second Judicial District Court.

/s/ Traci Plotnick
Traci Plotnick, an employee of the
Office of the Nevada Attorney General

ASSEMBLY BILL NO. 327—ASSEMBLYMEN MCCURDY II,
FUMO, YEAGER, FRIERSON AND CARRILLO

MARCH 20, 2017

JOINT SPONSOR: SENATOR SEGERBLOM

Referred to Committee on Corrections,
Parole, and Probation

SUMMARY—Revises provisions relating to records of criminal history. (BDR 14-658)

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

~

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

AN ACT relating to criminal procedure; authorizing a person who was dishonorably discharged from probation to apply to a court for the sealing of records of criminal history relating to the conviction; revising various provisions relating to the filing of petitions for the sealing of records of criminal history; requiring an agency of criminal justice to remove certain records from a record of criminal history before dissemination of the record in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes a person who is granted an honorable discharge from
2 probation to apply to the court for the sealing of records relating to the conviction.
3 (NRS 176A.850) Existing law also provides that a person who is given a
4 dishonorable discharge from probation is not entitled to such a privilege. (NRS
5 176A.870) **Section 1** of this bill authorizes a person who is given a dishonorable
6 discharge from probation to apply to the court for the sealing of records relating to
7 the conviction if he or she is otherwise eligible to have the records sealed.
8 Existing law authorizes a person who was convicted of certain offenses or who
9 was arrested for alleged criminal conduct but the charges against the person were
10 dismissed, the prosecuting attorney declined prosecution of the charges or the
11 person was acquitted of the charges to petition the court in which the person was
12 convicted or in which the charges were dismissed or declined for prosecution or the
13 acquittal was entered for the sealing of all records relating to the conviction or the



AC APP0001

14 arrest and proceedings leading to the dismissal, declination or acquittal, as
 15 applicable. Existing law also: (1) generally requires a person to wait a specified
 16 number of years, depending on the offense, until he or she may petition the court
 17 for the sealing of such records; and (2) requires a petition to be accompanied by the
 18 person's current, verified records received from the Central Repository for Nevada
 19 Records of Criminal History and all agencies of criminal justice which maintain
 20 such records within the city or county in which the petitioner appeared in court.
 21 (NRS 179.245, 179.255) **Sections 7 and 8** of this bill: (1) reduce the length of
 22 certain periods that a person is required to wait before petitioning a court for the
 23 sealing of records; and (2) remove the requirement that a petition be accompanied
 24 by the petitioner's current, verified records received from local agencies of criminal
 25 justice. **Sections 7 and 8** also provide that if the prosecuting attorney stipulates to
 26 the sealing of the records and the court makes certain findings, the court is
 27 authorized to order the records sealed without a hearing.

28 Existing law also authorizes the sealing of the records of a person who
 29 completes a correctional or judicial program for reentry into the community 5 years
 30 after the completion of the program. (NRS 179.259) **Section 9** of this bill reduces
 31 such a period to 4 years.

32 **Section 4** of this bill provides that upon the filing of a petition for the sealing of
 33 records: (1) there is a presumption that the records should be sealed if the applicant
 34 satisfies all statutory requirements for the sealing of the records; and (2) if a hearing
 35 is conducted, the prosecuting attorney or the Division of Parole and Probation of
 36 the Department of Public Safety, as applicable, must prove by clear and convincing
 37 evidence that the records should not be sealed.

38 **Section 5** of this bill authorizes a person to file a petition for the sealing of
 39 records in district court if the person wishes to have more than one record sealed
 40 and would otherwise need to file a petition in more than one court. **Section 5** also
 41 authorizes the district court to order the sealing of any records in the justice or
 42 municipal courts in certain circumstances.

43 Existing law provides for the dissemination of records of criminal history by
 44 agencies of criminal justice in certain circumstances. (NRS 179A.090, 179A.100)
 45 **Section 11** of this bill requires that before an agency of criminal justice
 46 disseminates any record to a person or entity other than another agency of criminal
 47 justice, the agency of criminal justice must remove any record of a conviction of a
 48 category E felony, gross misdemeanor or misdemeanor if a certain amount of time
 49 has passed since the person was released from actual custody, discharged from
 50 parole or probation or was no longer under a suspended sentence, whichever
 51 occurred later.

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

1 **Section 1.** NRS 176A.870 is hereby amended to read as
 2 follows:

3 176A.870 *1.* A defendant whose term of probation has
 4 expired and:

- 5 ~~1-1~~ (a) Whose whereabouts are unknown;
- 6 ~~1-2~~ (b) Who has failed to make restitution in full as ordered by
 7 the court, without a verified showing of economic hardship; or
- 8 ~~1-3~~ (c) Who has otherwise failed to qualify for an honorable
 9 discharge as provided in NRS 176A.850,



1 ↪ is not eligible for an honorable discharge and must be given a
2 dishonorable discharge.

3 2. A dishonorable discharge releases the probationer from any
4 further obligation, except a civil liability arising on the date of
5 discharge for any unpaid restitution which is enforceable pursuant to
6 NRS 176.275. †

7 3. *A defendant who is given a dishonorable discharge*
8 *pursuant to this section may, if he or she meets the requirements*
9 *of NRS 179.245, apply to the court for the sealing of records*
10 *relating to the conviction but ~~does~~ is otherwise not ~~entitle the~~*
11 *probationer† entitled to any privilege conferred by NRS 176A.850.*

12 **Sec. 2.** Chapter 179 of NRS is hereby amended by adding
13 thereto the provisions set forth as sections 3, 4 and 5 of this act.

14 **Sec. 3.** *The Legislature hereby declares that the public policy*
15 *of this State is to favor the giving of second chances to offenders*
16 *who are rehabilitated and the sealing of the records of such*
17 *persons in accordance with NRS 179.241 to 179.301, inclusive,*
18 *and sections 3, 4 and 5 of this act.*

19 **Sec. 4.** *Upon the filing of a petition for the sealing of records*
20 *pursuant to NRS 179.245, 179.255 or 179.259:*

21 1. *There is a presumption that the records should be sealed if*
22 *the applicant satisfies all statutory requirements for the sealing of*
23 *the records; and*

24 2. *If a hearing on the petition is conducted, the prosecuting*
25 *attorney with jurisdiction or the Division of Parole and Probation*
26 *of the Department of Public Safety, as applicable, must prove by*
27 *clear and convincing evidence that the records should not be*
28 *sealed.*

29 **Sec. 5.** *Notwithstanding the procedure established in NRS*
30 *179.245, 179.255 or 179.259 for the filing of a petition for the*
31 *sealing of records:*

32 1. *If a person wishes to have more than one record sealed*
33 *and would otherwise need to file a petition in more than one court*
34 *for the sealing of the records, the person may, instead of filing a*
35 *petition in each court, file a petition in district court for the*
36 *sealing of all such records.*

37 2. *If a person files a petition for the sealing of records in*
38 *district court pursuant to subsection 1 or NRS 179.245, 179.255 or*
39 *179.259, the district court may order the sealing of any other*
40 *records in the justice or municipal courts in accordance with the*
41 *provisions of NRS 179.241 to 179.301, inclusive, and sections 3, 4*
42 *and 5 of this act.*

43 **Sec. 6.** NRS 179.241 is hereby amended to read as follows:

44 179.241 As used in NRS 179.241 to 179.301, inclusive, *and*
45 *sections 3, 4 and 5 of this act*, unless the context otherwise requires,



1 the words and terms defined in NRS 179.242, 179.243 and 179.244
2 have the meanings ascribed to them in those sections.

3 **Sec. 7.** NRS 179.245 is hereby amended to read as follows:

4 179.245 1. Except as otherwise provided in subsection ~~15~~ **6**
5 and NRS 176A.265, 176A.295, 179.259, 453.3365 and 458.330, a
6 person may petition the court in which the person was convicted for
7 the sealing of all records relating to a conviction of:

8 (a) A category A or B felony after ~~11~~ **11** years from the date of
9 release from actual custody or discharge from parole or probation,
10 whichever occurs later;

11 (b) A category C or D felony after ~~9~~ **9** years from the date of
12 release from actual custody or discharge from parole or probation,
13 whichever occurs later;

14 (c) A category E felony after ~~5~~ **5** years from the date of release
15 from actual custody or discharge from parole or probation,
16 whichever occurs later;

17 (d) Except as otherwise provided in paragraph (e), any gross
18 misdemeanor after ~~4~~ **4** years from the date of release from actual
19 custody or discharge from probation, whichever occurs later;

20 (e) A violation of NRS 422.540 to 422.570, inclusive, other than
21 a felony, a violation of NRS 484C.110 or 484C.120 other than a
22 felony, or a battery which constitutes domestic violence pursuant to
23 NRS 33.018 other than a felony, after ~~5~~ **5** years from the date of
24 release from actual custody or from the date when the person is no
25 longer under a suspended sentence, whichever occurs later; or

26 (f) Any other misdemeanor after ~~2 years~~ **18 months** from the
27 date of release from actual custody or from the date when the person
28 is no longer under a suspended sentence, whichever occurs later.

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

30 (a) Be accompanied by the petitioner's current, verified records
31 received from ~~the~~:

32 ~~(1) The~~ **the** Central Repository for Nevada Records of
33 Criminal History; ~~and~~

34 ~~(2) All agencies of criminal justice which maintain such~~
35 ~~records within the city or county in which the conviction was~~
36 ~~entered;~~

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

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



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

4 (1) Date of birth of the petitioner;

5 (2) Specific conviction to which the records to be sealed
6 pertain; and

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

9 3. Upon receiving a petition pursuant to this section, the court
10 shall notify the law enforcement agency that arrested the petitioner
11 for the crime and the prosecuting attorney, including, without
12 limitation, the Attorney General, who prosecuted the petitioner for
13 the crime. The prosecuting attorney and any person having relevant
14 evidence may testify and present evidence at ~~the~~ any hearing on
15 the petition.

16 4. *If the prosecuting attorney who prosecuted the petitioner*
17 *for the crime stipulates to the sealing of the records after receiving*
18 *notification pursuant to subsection 3 and the court makes the*
19 *findings set forth in subsection 5, the court may order the sealing*
20 *of the records in accordance with subsection 5 without a hearing.*
21 *If the prosecuting attorney does not stipulate to the sealing of the*
22 *records, a hearing on the petition must be conducted.*

23 5. If ~~;~~ ~~after the hearing,~~ the court finds that, in the period
24 prescribed in subsection 1, the petitioner has not been charged with
25 any offense for which the charges are pending or convicted of any
26 offense, except for minor moving or standing traffic violations, the
27 court may order sealed all records of the conviction which are in the
28 custody of any agency of criminal justice or any public or private
29 agency, company, official or other custodian of records in the State
30 of Nevada, and may also order all such records of the petitioner
31 returned to the file of the court where the proceeding was
32 commenced from, including, without limitation, the Federal Bureau
33 of Investigation, the California Bureau of Criminal Identification
34 and Information and all other agencies of criminal justice which
35 maintain such records and which are reasonably known by either the
36 petitioner or the court to have possession of such records.

37 ~~§~~ 6. A person may not petition the court to seal records
38 relating to a conviction of:

39 (a) A crime against a child;

40 (b) A sexual offense;

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

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



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

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

7 (g) A violation of NRS 488.420 or 488.425.

8 ~~16~~ 7. If the court grants a petition for the sealing of records
9 pursuant to this section, upon the request of the person whose
10 records are sealed, the court may order sealed all records of the civil
11 proceeding in which the records were sealed.

12 ~~17~~ 8. As used in this section:

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

15 (b) "Sexual offense" means:

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

20 (2) Sexual assault pursuant to NRS 200.366.

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

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

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

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

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

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

37 (9) Incest pursuant to NRS 201.180.

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

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

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

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



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

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

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

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

9 **Sec. 8.** NRS 179.255 is hereby amended to read as follows:

10 179.255 1. If a person has been arrested for alleged criminal
11 conduct and the charges are dismissed, the prosecuting attorney
12 having jurisdiction declined prosecution of the charges or such
13 person is acquitted of the charges, the person may petition:

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

16 (b) The court having jurisdiction in which the charges were
17 declined for prosecution:

18 (1) Any time after the applicable statute of limitations has
19 run;

20 (2) Any time ~~10~~ 8 years after the arrest; or

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

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

24 ↪ for the sealing of all records relating to the arrest and the
25 proceedings leading to the dismissal, declination or acquittal.

26 2. If the conviction of a person is set aside pursuant to NRS
27 458A.240, the person may petition the court that set aside the
28 conviction, at any time after the conviction has been set aside, for
29 the sealing of all records relating to the setting aside of the
30 conviction.

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

32 (a) Be accompanied by the petitioner's current, verified records
33 received from ~~f~~:

34 ~~—(1) The~~ *the* Central Repository for Nevada Records of
35 Criminal History; ~~and~~

36 ~~—(2) All agencies of criminal justice which maintain such~~
37 ~~records within the city or county in which the petitioner appeared in~~
38 ~~court.~~

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

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



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

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

10 (1) Date of birth of the petitioner;

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

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

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

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

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

24 ➤ The prosecuting attorney and any person having relevant
25 evidence may testify and present evidence at ~~the~~ *any* hearing on
26 the petition.

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

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

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

33 ➤ The prosecuting attorney and any person having relevant
34 evidence may testify and present evidence at ~~the~~ *any* hearing on
35 the petition.

36 6. *If the prosecuting attorney stipulates to the sealing of the*
37 *records after receiving notification pursuant to subsection 4 or 5*
38 *and the court makes the findings set forth in subsection 7 or 8, as*
39 *applicable, the court may order the sealing of the records in*
40 *accordance with subsection 7 or 8, as applicable, without a*
41 *hearing. If the prosecuting attorney does not stipulate to the*
42 *sealing of the records, a hearing on the petition must be*
43 *conducted.*

44 7. If ~~the~~ *after the hearing on a petition submitted pursuant to*
45 *subsection 1,* the court finds that there has been an acquittal, that



1 the prosecution was declined or that the charges were dismissed and
2 there is no evidence that further action will be brought against the
3 person, the court may order sealed all records of the arrest and of the
4 proceedings leading to the acquittal, declination or dismissal which
5 are in the custody of any agency of criminal justice or any public or
6 private company, agency, official or other custodian of records in
7 the State of Nevada.

8 ~~[7.]~~ 8. If ~~[, after the hearing on a petition submitted pursuant to~~
9 ~~subsection 2,]~~ the court finds that the conviction of the petitioner
10 was set aside pursuant to NRS 458A.240, the court may order sealed
11 all records relating to the setting aside of the conviction which are in
12 the custody of any agency of criminal justice or any public or
13 private company, agency, official or other custodian of records in
14 the State of Nevada.

15 ~~[8.]~~ 9. If the prosecuting attorney having jurisdiction
16 previously declined prosecution of the charges and the records of
17 the arrest have been sealed pursuant to subsection ~~[6.]~~ 7, the
18 prosecuting attorney may subsequently file the charges at any time
19 before the running of the statute of limitations for those charges. If
20 such charges are filed with the court, the court shall order the
21 inspection of the records without the prosecuting attorney having to
22 petition the court pursuant to NRS 179.295.

23 **Sec. 9.** NRS 179.259 is hereby amended to read as follows:

24 179.259 1. Except as otherwise provided in subsections 3, 4
25 and 5, ~~[5.]~~ 4 years after an eligible person completes a program for
26 reentry, the court may order sealed all documents, papers and
27 exhibits in the eligible person's record, minute book entries and
28 entries on dockets, and other documents relating to the case in the
29 custody of such other agencies and officers as are named in the
30 court's order. The court may order those records sealed without a
31 hearing unless the Division of Parole and Probation of the
32 Department of Public Safety petitions the court, for good cause
33 shown, not to seal the records and requests a hearing thereon.

34 2. If the court orders sealed the record of an eligible person, the
35 court shall send a copy of the order to each agency or officer named
36 in the order. Each such agency or officer shall notify the court in
37 writing of its compliance with the order.

38 3. A professional licensing board is entitled, for the purpose of
39 determining suitability for a license or liability to discipline for
40 misconduct, to inspect and to copy from a record sealed pursuant to
41 this section.

42 4. The Division of Insurance of the Department of Business
43 and Industry is entitled, for the purpose of determining suitability
44 for a license or liability to discipline for misconduct, to inspect and
45 to copy from a record sealed pursuant to this section.



1 5. A person may not petition the court to seal records relating
2 to a conviction of a crime against a child or a sexual offense.

3 6. As used in this section:

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

6 (b) "Eligible person" means a person who has:

7 (1) Successfully completed a program for reentry, which the
8 person participated in pursuant to NRS 209.4886, 209.4888,
9 213.625 or 213.632; and

10 (2) Been convicted of a single offense which was punishable
11 as a felony and which did not involve the use or threatened use of
12 force or violence against the victim. For the purposes of this
13 subparagraph, multiple convictions for an offense punishable as a
14 felony shall be deemed to constitute a single offense if those
15 offenses arose out of the same transaction or occurrence.

16 (c) "Program for reentry" means:

17 (1) A correctional program for reentry of offenders and
18 parolees into the community that is established by the Director of
19 the Department of Corrections pursuant to NRS 209.4887; or

20 (2) A judicial program for reentry of offenders and parolees
21 into the community that is established in a judicial district pursuant
22 to NRS 209.4883.

23 (d) "Sexual offense" has the meaning ascribed to it in paragraph
24 (b) of subsection ~~7~~ 8 of NRS 179.245.

25 **Sec. 10.** NRS 179.295 is hereby amended to read as follows:

26 179.295 1. The person who is the subject of the records that
27 are sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255,
28 179.259, 453.3365 or 458.330 may petition the court that ordered
29 the records sealed to permit inspection of the records by a person
30 named in the petition, and the court may order such inspection.
31 Except as otherwise provided in this section, subsection ~~8~~ 9 of
32 NRS 179.255 and NRS 179.259 and 179.301, the court may not
33 order the inspection of the records under any other circumstances.

34 2. If a person has been arrested, the charges have been
35 dismissed and the records of the arrest have been sealed, the court
36 may order the inspection of the records by a prosecuting attorney
37 upon a showing that as a result of newly discovered evidence, the
38 person has been arrested for the same or a similar offense and that
39 there is sufficient evidence reasonably to conclude that the person
40 will stand trial for the offense.

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



1 4. This section does not prohibit a court from considering a
2 conviction for which records have been sealed pursuant to NRS
3 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
4 458.330 in determining whether to grant a petition pursuant to NRS
5 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
6 458.330 for a conviction of another offense.

7 **Sec. 11.** Chapter 179A of NRS is hereby amended by adding
8 thereto a new section to read as follows:

9 *Before an agency of criminal justice disseminates any record of*
10 *criminal history to a person or entity other than another agency of*
11 *criminal justice pursuant to the provisions of this chapter, the*
12 *agency of criminal justice must remove any record of:*

13 1. *A conviction of a category E felony or gross misdemeanor*
14 *for which the date of release from actual custody or discharge*
15 *from parole or probation, whichever occurred later, was 10 or*
16 *more years before the date of dissemination.*

17 2. *A conviction of a misdemeanor for which the date of*
18 *release from actual custody or the date on which the person was*
19 *no longer under a suspended sentence, whichever occurred later,*
20 *was 5 or more years before the date of dissemination.*

21 **Sec. 12.** NRS 179A.030 is hereby amended to read as follows:

22 179A.030 "Agency of criminal justice" means:

23 1. Any court; and

24 2. Any governmental agency or subunit of any governmental
25 agency which performs a function in the administration of criminal
26 justice pursuant to a statute or executive order, and which allocates a
27 substantial part of its budget to a function in the administration of
28 criminal justice **H**, *including, without limitation, a local law*
29 *enforcement agency, the Nevada Highway Patrol, the Division of*
30 *Parole and Probation of the Department of Public Safety and the*
31 *Department of Corrections.*

32 **Sec. 13.** NRS 179A.100 is hereby amended to read as follows:

33 179A.100 *Subject to the requirements set forth in section 11*
34 *of this act:*

35 1. The following records of criminal history may be
36 disseminated by an agency of criminal justice without any
37 restriction pursuant to this chapter:

38 (a) Any which reflect records of conviction only; and

39 (b) Any which pertain to an incident for which a person is
40 currently within the system of criminal justice, including parole or
41 probation.

42 2. Without any restriction pursuant to this chapter, a record of
43 criminal history or the absence of such a record may be:

44 (a) Disclosed among agencies which maintain a system for the
45 mutual exchange of criminal records.



1 (b) Furnished by one agency to another to administer the system
2 of criminal justice, including the furnishing of information by a
3 police department to a district attorney.

4 (c) Reported to the Central Repository.

5 3. An agency of criminal justice shall disseminate to a
6 prospective employer, upon request, records of criminal history
7 concerning a prospective employee or volunteer which are the result
8 of a name-based inquiry and which:

9 (a) Reflect convictions only; or

10 (b) Pertain to an incident for which the prospective employee or
11 volunteer is currently within the system of criminal justice,
12 including parole or probation.

13 4. In addition to any other information to which an employer is
14 entitled or authorized to receive from a name-based inquiry, the
15 Central Repository shall disseminate to a prospective or current
16 employer, or a person or entity designated to receive the information
17 on behalf of such an employer, the information contained in a record
18 of registration concerning an employee, prospective employee,
19 volunteer or prospective volunteer who is a sex offender or an
20 offender convicted of a crime against a child, regardless of whether
21 the employee, prospective employee, volunteer or prospective
22 volunteer gives written consent to the release of that information.
23 The Central Repository shall disseminate such information in a
24 manner that does not reveal the name of an individual victim of an
25 offense or the information described in subsection 7 of NRS
26 179B.250. A request for information pursuant to this subsection
27 must conform to the requirements of the Central Repository and
28 must include:

29 (a) The name and address of the employer, and the name and
30 signature of the person or entity requesting the information on
31 behalf of the employer;

32 (b) The name and address of the employer's facility in which the
33 employee, prospective employee, volunteer or prospective volunteer
34 is employed or volunteers or is seeking to become employed or
35 volunteer; and

36 (c) The name and other identifying information of the employee,
37 prospective employee, volunteer or prospective volunteer.

38 5. In addition to any other information to which an employer is
39 entitled or authorized to receive, the Central Repository shall
40 disseminate to a prospective or current employer, or a person or
41 entity designated to receive the information on behalf of such an
42 employer, the information described in subsection 4 of NRS
43 179A.190 concerning an employee, prospective employee, volunteer
44 or prospective volunteer who gives written consent to the release of
45 that information if the employer submits a request in the manner set



1 forth in NRS 179A.200 for obtaining a notice of information. The
2 Central Repository shall search for and disseminate such
3 information in the manner set forth in NRS 179A.210 for the
4 dissemination of a notice of information.

5 6. Except as otherwise provided in subsection 5, the provisions
6 of NRS 179A.180 to 179A.240, inclusive, do not apply to an
7 employer who requests information and to whom such information
8 is disseminated pursuant to subsections 4 and 5.

9 7. Records of criminal history must be disseminated by an
10 agency of criminal justice, upon request, to the following persons or
11 governmental entities:

12 (a) The person who is the subject of the record of criminal
13 history for the purposes of NRS 179A.150.

14 (b) The person who is the subject of the record of criminal
15 history when the subject is a party in a judicial, administrative,
16 licensing, disciplinary or other proceeding to which the information
17 is relevant.

18 (c) The Nevada Gaming Control Board.

19 (d) The State Board of Nursing.

20 (e) The Private Investigator's Licensing Board to investigate an
21 applicant for a license.

22 (f) A public administrator to carry out the duties as prescribed in
23 chapter 253 of NRS.

24 (g) A public guardian to investigate a ward or proposed ward or
25 persons who may have knowledge of assets belonging to a ward or
26 proposed ward.

27 (h) Any agency of criminal justice of the United States or of
28 another state or the District of Columbia.

29 (i) Any public utility subject to the jurisdiction of the Public
30 Utilities Commission of Nevada when the information is necessary
31 to conduct a security investigation of an employee or prospective
32 employee or to protect the public health, safety or welfare.

33 (j) Persons and agencies authorized by statute, ordinance,
34 executive order, court rule, court decision or court order as
35 construed by appropriate state or local officers or agencies.

36 (k) Any person or governmental entity which has entered into a
37 contract to provide services to an agency of criminal justice relating
38 to the administration of criminal justice, if authorized by the
39 contract, and if the contract also specifies that the information will
40 be used only for stated purposes and that it will be otherwise
41 confidential in accordance with state and federal law and regulation.

42 (l) Any reporter for the electronic or printed media in a
43 professional capacity for communication to the public.



1 (m) Prospective employers if the person who is the subject of
2 the information has given written consent to the release of that
3 information by the agency which maintains it.

4 (n) For the express purpose of research, evaluative or statistical
5 programs pursuant to an agreement with an agency of criminal
6 justice.

7 (o) An agency which provides child welfare services, as defined
8 in NRS 432B.030.

9 (p) The Division of Welfare and Supportive Services of the
10 Department of Health and Human Services or its designated
11 representative, as needed to ensure the safety of investigators and
12 caseworkers.

13 (q) The Aging and Disability Services Division of the
14 Department of Health and Human Services or its designated
15 representative, as needed to ensure the safety of investigators and
16 caseworkers.

17 (r) An agency of this or any other state or the Federal
18 Government that is conducting activities pursuant to Part D of
19 Subchapter IV of Chapter 7 of Title 42 of the Social Security Act,
20 42 U.S.C. §§ 651 et seq.

21 (s) The State Disaster Identification Team of the Division of
22 Emergency Management of the Department.

23 (t) The Commissioner of Insurance.

24 (u) The Board of Medical Examiners.

25 (v) The State Board of Osteopathic Medicine.

26 (w) The Board of Massage Therapists and its Executive
27 Director.

28 (x) The Board of Examiners for Social Workers.

29 (y) A multidisciplinary team to review the death of the victim of
30 a crime that constitutes domestic violence organized or sponsored
31 by the Attorney General pursuant to NRS 228.495.

32 8. Agencies of criminal justice in this State which receive
33 information from sources outside this State concerning transactions
34 involving criminal justice which occur outside Nevada shall treat the
35 information as confidentially as is required by the provisions of this
36 chapter.

37 **Sec. 14.** The amendatory provisions of sections 7 and 8 of this
38 act apply to a petition for the sealing of a record of criminal history
39 that is filed on or after October 1, 2017. As used in this section,
40 "record of criminal history" has the meaning ascribed to it in
41 NRS 179A.070.



Amendment No. 345

Assembly Amendment to Assembly Bill No. 327	(BDR 14-658)
Proposed by: Assembly Committee on Corrections, Parole, and Probation	
Amends: Summary: No 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"/>
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	Concurred In	<input type="checkbox"/>
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	Receded	<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.

MNM/BAW



Date: 4/17/2017

A.B. No. 327—Revises provisions relating to records of criminal history.
(BDR 14-658)



ASSEMBLY BILL NO. 327—ASSEMBLYMEN MCCURDY II,
FUMO, YEAGER, FRIERSON AND CARRILLO

MARCH 20, 2017

JOINT SPONSOR: SENATOR SEGERBLOM

Referred to Committee on Corrections,
Parole, and Probation

SUMMARY—Revises provisions relating to records of criminal history.
(BDR 14-658)

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

~

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

AN ACT relating to criminal procedure; authorizing a person who was dishonorably discharged from probation to apply to a court for the sealing of records of criminal history relating to the conviction; establishing a rebuttable presumption that records of criminal history should be sealed in certain circumstances; revising various provisions relating to the filing of petitions for the sealing of records of criminal history; ~~requiring an agency of criminal justice to remove certain records from a record of criminal history before dissemination of the record in certain circumstances;~~ and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes a person who is granted an honorable discharge from probation to
2 apply to the court for the sealing of records relating to the conviction. (NRS 176A.850)
3 Existing law also provides that a person who is given a dishonorable discharge from probation
4 is not entitled to such a privilege. (NRS 176A.870) **Section 1** of this bill authorizes a person
5 who is given a dishonorable discharge from probation to apply to the court for the sealing of
6 records relating to the conviction if he or she is otherwise eligible to have the records sealed.
7 Existing law authorizes a person who was convicted of certain offenses or who was
8 arrested for alleged criminal conduct but the charges against the person were dismissed, the
9 prosecuting attorney declined prosecution of the charges or the person was acquitted of the
10 charges to petition the court in which the person was convicted or in which the charges were
11 dismissed or declined for prosecution or the acquittal was entered for the sealing of all records
12 relating to the conviction or the arrest and proceedings leading to the dismissal, declination or
13 acquittal, as applicable. Existing law also: (1) generally requires a person to wait a specified
14 number of years, depending on the offense, until he or she may petition the court for the
15 sealing of such records; and (2) requires a petition to be accompanied by the person’s current,
16 verified records received from the Central Repository for Nevada Records of Criminal History

17 and all agencies of criminal justice which maintain such records within the city or county in
 18 which the petitioner appeared in court. (NRS 179.245, 179.255) **Sections 7 and 8** of this bill:
 19 (1) reduce the length of certain periods that a person is required to wait before petitioning a
 20 court for the sealing of records; and (2) remove the requirement that a petition be
 21 accompanied by the petitioner's current, verified records received from local agencies of
 22 criminal justice. **Sections 7 and 8** also provide that if the prosecuting attorney stipulates to the
 23 sealing of the records and the court makes certain findings, the court is authorized to order the
 24 records sealed without a hearing.

25 Existing law also authorizes the sealing of the records of a person who completes a
 26 correctional or judicial program for reentry into the community 5 years after the completion of
 27 the program. (NRS 179.259) **Section 9** of this bill reduces such a period to 4 years.

28 **Section 4** of this bill provides that upon the filing of a petition for the sealing of records,
 29 ~~there is a rebuttable presumption that the records should be sealed if the applicant~~
 30 ~~satisfies all statutory requirements for the sealing of the records, and (2) if a hearing is~~
 31 ~~conducted, the prosecuting attorney or the Division of Parole and Probation of the Department~~
 32 ~~of Public Safety, as applicable, must prove by clear and convincing evidence that the records~~
 33 ~~should not be sealed. Section 4 also provides that such a presumption does not apply to a~~
 34 ~~defendant who is given a dishonorable discharge from probation and applies to the court~~
 35 ~~for the sealing of records relating to the conviction.~~

36 **Section 5** of this bill authorizes a person to file a petition for the sealing of records in
 37 district court if the person wishes to have more than one record sealed and would otherwise
 38 need to file a petition in more than one court. **Section 5** also authorizes the district court to
 39 order the sealing of any records in the justice or municipal courts in certain circumstances.

40 ~~Existing law provides for the dissemination of records of criminal history by agencies of~~
 41 ~~criminal justice in certain circumstances. (NRS 179A.090, 179A.100) Section 11 of this bill~~
 42 ~~requires that before an agency of criminal justice disseminates any record to a person or entity~~
 43 ~~other than another agency of criminal justice, the agency of criminal justice must remove any~~
 44 ~~record of a conviction of a category E felony, gross misdemeanor or misdemeanor if a certain~~
 45 ~~amount of time has passed since the person was released from actual custody, discharged from~~
 46 ~~parole or probation or was no longer under a suspended sentence, whichever occurred later.~~

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

1 **Section 1.** NRS 176A.870 is hereby amended to read as follows:

2 176A.870 1. A defendant whose term of probation has expired and:

3 ~~1-1~~ (a) Whose whereabouts are unknown;

4 ~~2-1~~ (b) Who has failed to make restitution in full as ordered by the court,
 5 without a verified showing of economic hardship; or

6 ~~3-1~~ (c) Who has otherwise failed to qualify for an honorable discharge as
 7 provided in NRS 176A.850,

8 is not eligible for an honorable discharge and must be given a dishonorable
 9 discharge.

10 2. A dishonorable discharge releases the probationer from any further
 11 obligation, except a civil liability arising on the date of discharge for any unpaid
 12 restitution which is enforceable pursuant to NRS 176.275. ~~1-1~~

13 3. *A defendant who is given a dishonorable discharge pursuant to this*
 14 *section may, if he or she meets the requirements of NRS 179.245, apply to the*
 15 *court for the sealing of records relating to the conviction* but ~~1-1~~ *is otherwise*
 16 *not 1-1 entitled the probationer 1-1 entitled* to any privilege conferred by NRS 176A.850.

17 **Sec. 2.** Chapter 179 of NRS is hereby amended by adding thereto the
 18 provisions set forth as sections 3, 4 and 5 of this act.

19 **Sec. 3.** *The Legislature hereby declares that the public policy of this State*
 20 *is to favor the giving of second chances to offenders who are rehabilitated and*

1 *the sealing of the records of such persons in accordance with NRS 179.241 to*
 2 *179.301, inclusive, and sections 3, 4 and 5 of this act.*

3 **Sec. 4. ~~Upon~~**

4 1. Except as otherwise provided in subsection 2, upon the filing of a petition
 5 for the sealing of records pursuant to NRS 179.245, 179.255, ~~or~~ 179.259 ~~or~~

6 ~~1. Theref~~ or section 5 of this act, there is a rebuttable presumption that the
 7 records should be sealed if the applicant satisfies all statutory requirements for
 8 the sealing of the records. ~~It and~~

9 2. ~~If a hearing on the petition is conducted, the prosecuting attorney with~~
 10 ~~jurisdiction or the Division of Parole and Probation of the Department of Public~~
 11 ~~Safety, as applicable, must prove by clear and convincing evidence that the~~
 12 ~~records should not be sealed.~~ The presumption set forth in subsection 1 does not
 13 apply to a defendant who is given a dishonorable discharge from probation
 14 pursuant to NRS 176A.870 and applies to the court for the sealing of records
 15 relating to the conviction.

16 **Sec. 5. Notwithstanding the procedure established in NRS 179.245, 179.255**
 17 **or 179.259 for the filing of a petition for the sealing of records:**

18 **1. If a person wishes to have more than one record sealed and would**
 19 **otherwise need to file a petition in more than one court for the sealing of the**
 20 **records, the person may, instead of filing a petition in each court, file a petition in**
 21 **district court for the sealing of all such records.**

22 **2. If a person files a petition for the sealing of records in district court**
 23 **pursuant to subsection 1 or NRS 179.245, 179.255 or 179.259, the district court**
 24 **may order the sealing of any other records in the justice or municipal courts in**
 25 **accordance with the provisions of NRS 179.241 to 179.301, inclusive, and**
 26 **sections 3, 4 and 5 of this act.**

27 **Sec. 6. NRS 179.241 is hereby amended to read as follows:**

28 179.241 As used in NRS 179.241 to 179.301, inclusive, **and sections 3, 4 and**
 29 **5 of this act**, unless the context otherwise requires, the words and terms defined in
 30 NRS 179.242, 179.243 and 179.244 have the meanings ascribed to them in those
 31 sections.

32 **Sec. 7. NRS 179.245 is hereby amended to read as follows:**

33 179.245 1. Except as otherwise provided in subsection ~~1~~ **6** and NRS
 34 176A.265, 176A.295, 179.259, 453.3365 and 458.330, a person may petition the
 35 court in which the person was convicted for the sealing of all records relating to a
 36 conviction of:

37 (a) A category A ~~or B~~ felony, a crime of violence pursuant to NRS 200.408
 38 or burglary pursuant to NRS 205.060 after ~~5-11~~ **10** years from the date of
 39 release from actual custody or discharge from parole or probation, whichever
 40 occurs later;

41 (b) ~~1A~~ Except as otherwise provided in paragraph (a), a category **B, C** or **D**
 42 felony after ~~12-24~~ **5** years from the date of release from actual custody or discharge
 43 from parole or probation, whichever occurs later;

44 (c) A category **E** felony after ~~17-54~~ **2** years from the date of release from actual
 45 custody or discharge from parole or probation, whichever occurs later;

46 (d) Except as otherwise provided in paragraph (e), any gross misdemeanor
 47 after ~~15-44~~ **2** years from the date of release from actual custody or discharge from
 48 probation, whichever occurs later;

49 (e) A violation of NRS 422.540 to 422.570, inclusive, other than a felony, a
 50 violation of NRS 484C.110 or 484C.120 other than a felony, or a battery which
 51 constitutes domestic violence pursuant to NRS 33.018 other than a felony, after ~~7~~
 52 ~~15~~ **7** years from the date of release from actual custody or from the date when the
 53 person is no longer under a suspended sentence, whichever occurs later; ~~or~~

1 (f) ~~Any other~~ *Except as otherwise provided in paragraph (e), if the offense*
2 *is punished as a misdemeanor, a battery pursuant to NRS 200.481, harassment*
3 *pursuant to NRS 200.571, stalking pursuant to NRS 200.575 or a violation of a*
4 *temporary or extended order for protection,* after 2 years ~~18 months~~ from the
5 date of release from actual custody or from the date when the person is no longer
6 under a suspended sentence, whichever occurs later ~~;~~ *or*

7 *(g) Any other misdemeanor after 1 year from the date of release from actual*
8 *custody or from the date when the person is no longer under a suspended*
9 *sentence, whichever occurs later.*

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

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

12 ~~;~~
13 ~~(1) The~~ *the* Central Repository for Nevada Records of Criminal History;

14 ~~and~~
15 ~~(2) All agencies of criminal justice which maintain such records within the~~
16 ~~city or county in which the conviction was entered;~~

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

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

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

27 (1) Date of birth of the petitioner;

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

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

31 3. Upon receiving a petition pursuant to this section, the court shall notify the
32 law enforcement agency that arrested the petitioner for the crime and the
33 prosecuting attorney, including, without limitation, the Attorney General, who
34 prosecuted the petitioner for the crime. The prosecuting attorney and any person
35 having relevant evidence may testify and present evidence at ~~the~~ *any* hearing on
36 the petition.

37 4. *If the prosecuting attorney who prosecuted the petitioner for the crime*
38 *stipulates to the sealing of the records after receiving notification pursuant to*
39 *subsection 3 and the court makes the findings set forth in subsection 5, the court*
40 *may order the sealing of the records in accordance with subsection 5 without a*
41 *hearing. If the prosecuting attorney does not stipulate to the sealing of the*
42 *records, a hearing on the petition must be conducted.*

43 5. If ~~;~~ ~~after the hearing;~~ the court finds that, in the period prescribed in
44 subsection 1, the petitioner has not been charged with any offense for which the
45 charges are pending or convicted of any offense, except for minor moving or
46 standing traffic violations, the court may order sealed all records of the conviction
47 which are in the custody of any agency of criminal justice or any public or private
48 agency, company, official or other custodian of records in the State of Nevada, and
49 may also order all such records of the petitioner returned to the file of the court
50 where the proceeding was commenced from, including, without limitation, the
51 Federal Bureau of Investigation, the California Bureau of Criminal Identification
52 and Information and all other agencies of criminal justice which maintain such

1 records and which are reasonably known by either the petitioner or the court to
2 have possession of such records.

3 ~~5-~~ 6. A person may not petition the court to seal records relating to a
4 conviction of:

5 (a) A crime against a child;

6 (b) A sexual offense;

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

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

10 (e) A homicide resulting from driving or being in actual physical control of a
11 vehicle while under the influence of intoxicating liquor or a controlled substance or
12 resulting from any other conduct prohibited by NRS 484C.110, 484C.130 or
13 484C.430;

14 (f) A violation of NRS 488.410 that is punishable as a felony pursuant to NRS
15 488.427; or

16 (g) A violation of NRS 488.420 or 488.425.

17 ~~6-~~ 7. If the court grants a petition for the sealing of records pursuant to this
18 section, upon the request of the person whose records are sealed, the court may
19 order sealed all records of the civil proceeding in which the records were sealed.

20 ~~7-~~ 8. As used in this section:

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

22 (b) "Sexual offense" means:

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

26 (2) Sexual assault pursuant to NRS 200.366.

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

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

30 (5) An offense involving the administration of a drug to another person
31 with the intent to enable or assist the commission of a felony pursuant to NRS
32 200.405, if the felony is an offense listed in this paragraph.

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

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

39 (8) An offense involving pornography and a minor pursuant to NRS
40 200.710 to 200.730, inclusive.

41 (9) Incest pursuant to NRS 201.180.

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

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

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

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

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

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

52 (16) Luring a child or a person with mental illness pursuant to NRS
53 201.560, if punishable as a felony.

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

2 **Sec. 8.** NRS 179.255 is hereby amended to read as follows:

3 179.255 1. If a person has been arrested for alleged criminal conduct and
4 the charges are dismissed, the prosecuting attorney having jurisdiction declined
5 prosecution of the charges or such person is acquitted of the charges, the person
6 may petition:

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

9 (b) The court having jurisdiction in which the charges were declined for
10 prosecution:

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

12 (2) Any time ~~10~~ 8 years after the arrest; or

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

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

16 ↪ for the sealing of all records relating to the arrest and the proceedings leading to
17 the dismissal, declination or acquittal.

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

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

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

24 ~~+~~
25 ~~— (1) The~~ *the* Central Repository for Nevada Records of Criminal History;

26 ~~and~~
27 ~~— (2) All agencies of criminal justice which maintain such records within the~~
28 ~~city or county in which the petitioner appeared in court;]~~

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

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

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

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

42 (1) Date of birth of the petitioner;

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

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

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

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

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

1 ↪ The prosecuting attorney and any person having relevant evidence may testify
2 and present evidence at ~~the~~ any hearing on the petition.

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

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

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

8 ↪ The prosecuting attorney and any person having relevant evidence may testify
9 and present evidence at ~~the~~ any hearing on the petition.

10 6. *If the prosecuting attorney stipulates to the sealing of the records after*
11 *receiving notification pursuant to subsection 4 or 5 and the court makes the*
12 *findings set forth in subsection 7 or 8, as applicable, the court may order the*
13 *sealing of the records in accordance with subsection 7 or 8, as applicable, without*
14 *a hearing. If the prosecuting attorney does not stipulate to the sealing of the*
15 *records, a hearing on the petition must be conducted.*

16 7. If ~~after the hearing on a petition submitted pursuant to subsection 1,~~ the
17 court finds that there has been an acquittal, that the prosecution was declined or that
18 the charges were dismissed and there is no evidence that further action will be
19 brought against the person, the court may order sealed all records of the arrest and
20 of the proceedings leading to the acquittal, declination or dismissal which are in the
21 custody of any agency of criminal justice or any public or private company, agency,
22 official or other custodian of records in the State of Nevada.

23 ~~7.~~ 8. If ~~after the hearing on a petition submitted pursuant to subsection 2,~~
24 the court finds that the conviction of the petitioner was set aside pursuant to NRS
25 458A.240, the court may order sealed all records relating to the setting aside of the
26 conviction which are in the custody of any agency of criminal justice or any public
27 or private company, agency, official or other custodian of records in the State of
28 Nevada.

29 ~~8.~~ 9. If the prosecuting attorney having jurisdiction previously declined
30 prosecution of the charges and the records of the arrest have been sealed pursuant to
31 subsection ~~6.~~ 7, the prosecuting attorney may subsequently file the charges at any
32 time before the running of the statute of limitations for those charges. If such
33 charges are filed with the court, the court shall order the inspection of the records
34 without the prosecuting attorney having to petition the court pursuant to NRS
35 179.295.

36 **Sec. 9.** NRS 179.259 is hereby amended to read as follows:

37 179.259 1. Except as otherwise provided in subsections 3, 4 and 5, ~~5~~ 4
38 years after an eligible person completes a program for reentry, the court may order
39 sealed all documents, papers and exhibits in the eligible person's record, minute
40 book entries and entries on dockets, and other documents relating to the case in the
41 custody of such other agencies and officers as are named in the court's order. The
42 court may order those records sealed without a hearing unless the Division of
43 Parole and Probation of the Department of Public Safety petitions the court, for
44 good cause shown, not to seal the records and requests a hearing thereon.

45 2. If the court orders sealed the record of an eligible person, the court shall
46 send a copy of the order to each agency or officer named in the order. Each such
47 agency or officer shall notify the court in writing of its compliance with the order.

48 3. A professional licensing board is entitled, for the purpose of determining
49 suitability for a license or liability to discipline for misconduct, to inspect and to
50 copy from a record sealed pursuant to this section.

51 4. The Division of Insurance of the Department of Business and Industry is
52 entitled, for the purpose of determining suitability for a license or liability to

1 discipline for misconduct, to inspect and to copy from a record sealed pursuant to
 2 this section.

3 5. A person may not petition the court to seal records relating to a conviction
 4 of a crime against a child or a sexual offense.

5 6. As used in this section:

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

7 (b) "Eligible person" means a person who has:

8 (1) Successfully completed a program for reentry, which the person
 9 participated in pursuant to NRS 209.4886, 209.4888, 213.625 or 213.632; and

10 (2) Been convicted of a single offense which was punishable as a felony
 11 and which did not involve the use or threatened use of force or violence against the
 12 victim. For the purposes of this subparagraph, multiple convictions for an offense
 13 punishable as a felony shall be deemed to constitute a single offense if those
 14 offenses arose out of the same transaction or occurrence.

15 (c) "Program for reentry" means:

16 (1) A correctional program for reentry of offenders and parolees into the
 17 community that is established by the Director of the Department of Corrections
 18 pursuant to NRS 209.4887; or

19 (2) A judicial program for reentry of offenders and parolees into the
 20 community that is established in a judicial district pursuant to NRS 209.4883.

21 (d) "Sexual offense" has the meaning ascribed to it in paragraph (b) of
 22 subsection ~~7~~ 8 of NRS 179.245.

23 **Sec. 9.3. NRS 179.275 is hereby amended to read as follows:**

24 179.275 Where the court orders the sealing of a record pursuant to NRS
 25 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330, **or section**
 26 **5 of this act**, a copy of the order must be sent to:

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

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

32 **Sec. 9.7. NRS 179.285 is hereby amended to read as follows:**

33 179.285 Except as otherwise provided in NRS 179.301:

34 1. If the court orders a record sealed pursuant to NRS 176A.265, 176A.295,
 35 179.245, 179.255, 179.259, 453.3365 or 458.330, **or section 5 of this act:**

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

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

43 (1) The right to vote;

44 (2) The right to hold office; and

45 (3) The right to serve on a jury.

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

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

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

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

8 4. A person who has had his or her records sealed in this State or any other
9 state may present official documentation that the person has been restored to his or
10 her civil rights or a court order restoring civil rights as proof that the person has
11 been restored to the right to vote, to hold office and to serve as a juror.

12 **Sec. 10.** NRS 179.295 is hereby amended to read as follows:

13 179.295 1. The person who is the subject of the records that are sealed
14 pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
15 458.330 or section 5 of this act may petition the court that ordered the records
16 sealed to permit inspection of the records by a person named in the petition, and the
17 court may order such inspection. Except as otherwise provided in this section,
18 subsection ~~8~~ 9 of NRS 179.255 and NRS 179.259 and 179.301, the court may not
19 order the inspection of the records under any other circumstances.

20 2. If a person has been arrested, the charges have been dismissed and the
21 records of the arrest have been sealed, the court may order the inspection of the
22 records by a prosecuting attorney upon a showing that as a result of newly
23 discovered evidence, the person has been arrested for the same or a similar offense
24 and that there is sufficient evidence reasonably to conclude that the person will
25 stand trial for the offense.

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

30 4. This section does not prohibit a court from considering a conviction for
31 which records have been sealed pursuant to NRS 176A.265, 176A.295, 179.245,
32 179.255, 179.259, 453.3365 or 458.330 or section 5 of this act in determining
33 whether to grant a petition pursuant to NRS 176A.265, 176A.295, 179.245,
34 179.255, 179.259, 453.3365 or 458.330 or section 5 of this act for a conviction of
35 another offense.

36 **Sec. 11.** ~~[Chapter 179A of NRS is hereby amended by adding thereto a new
37 section to read as follows:~~

38 ~~— Before an agency of criminal justice disseminates any record of criminal
39 history to a person or entity other than another agency of criminal justice
40 pursuant to the provisions of this chapter, the agency of criminal justice must
41 remove any record of:~~

42 ~~1. A conviction of a category E felony or gross misdemeanor for which the
43 date of release from actual custody or discharge from parole or probation,
44 whichever occurred later, was 10 or more years before the date of dissemination.~~

45 ~~2. A conviction of a misdemeanor for which the date of release from actual
46 custody or the date on which the person was no longer under a suspended
47 sentence, whichever occurred later, was 5 or more years before the date of
48 dissemination.] (Deleted by amendment.)~~

49 **Sec. 12.** NRS 179A.030 is hereby amended to read as follows:

50 179A.030 “Agency of criminal justice” means:

51 1. Any court; and
52 2. Any governmental agency or subunit of any governmental agency which
53 performs a function in the administration of criminal justice pursuant to a statute or

1 executive order, and which allocates a substantial part of its budget to a function in
2 the administration of criminal justice ~~H~~, *including, without limitation, a local law*
3 *enforcement agency, the Nevada Highway Patrol, the Division of Parole and*
4 *Probation of the Department of Public Safety and the Department of Corrections.*

5 **Sec. 13.** ~~NRS 179A.100 is hereby amended to read as follows:~~

6 ~~179A.100 Subject to the requirements set forth in section 11 of this act:~~

7 ~~1. The following records of criminal history may be disseminated by an~~
8 ~~agency of criminal justice without any restriction pursuant to this chapter:~~

9 ~~(a) Any which reflect records of conviction only; and~~

10 ~~(b) Any which pertain to an incident for which a person is currently within the~~
11 ~~system of criminal justice, including parole or probation.~~

12 ~~2. Without any restriction pursuant to this chapter, a record of criminal history~~
13 ~~or the absence of such a record may be:~~

14 ~~(a) Disclosed among agencies which maintain a system for the mutual~~
15 ~~exchange of criminal records;~~

16 ~~(b) Furnished by one agency to another to administer the system of criminal~~
17 ~~justice, including the furnishing of information by a police department to a district~~
18 ~~attorney;~~

19 ~~(c) Reported to the Central Repository;~~

20 ~~3. An agency of criminal justice shall disseminate to a prospective employer,~~
21 ~~upon request, records of criminal history concerning a prospective employee or~~
22 ~~volunteer which are the result of a name based inquiry and which:~~

23 ~~(a) Reflect convictions only; or~~

24 ~~(b) Pertain to an incident for which the prospective employee or volunteer is~~
25 ~~currently within the system of criminal justice, including parole or probation.~~

26 ~~4. In addition to any other information to which an employer is entitled or~~
27 ~~authorized to receive from a name based inquiry, the Central Repository shall~~
28 ~~disseminate to a prospective or current employer, or a person or entity designated to~~
29 ~~receive the information on behalf of such an employer, the information contained in~~
30 ~~a record of registration concerning an employee, prospective employee, volunteer~~
31 ~~or prospective volunteer who is a sex offender or an offender convicted of a crime~~
32 ~~against a child, regardless of whether the employee, prospective employee,~~
33 ~~volunteer or prospective volunteer gives written consent to the release of that~~
34 ~~information. The Central Repository shall disseminate such information in a~~
35 ~~manner that does not reveal the name of an individual victim of an offense or the~~
36 ~~information described in subsection 7 of NRS 179D.250. A request for information~~
37 ~~pursuant to this subsection must conform to the requirements of the Central~~
38 ~~Repository and must include:~~

39 ~~(a) The name and address of the employer, and the name and signature of the~~
40 ~~person or entity requesting the information on behalf of the employer;~~

41 ~~(b) The name and address of the employer's facility in which the employee,~~
42 ~~prospective employee, volunteer or prospective volunteer is employed or volunteers~~
43 ~~or is seeking to become employed or volunteer; and~~

44 ~~(c) The name and other identifying information of the employee, prospective~~
45 ~~employee, volunteer or prospective volunteer.~~

46 ~~5. In addition to any other information to which an employer is entitled or~~
47 ~~authorized to receive, the Central Repository shall disseminate to a prospective or~~
48 ~~current employer, or a person or entity designated to receive the information on~~
49 ~~behalf of such an employer, the information described in subsection 4 of NRS~~
50 ~~179A.100 concerning an employee, prospective employee, volunteer or prospective~~
51 ~~volunteer who gives written consent to the release of that information if the~~
52 ~~employer submits a request in the manner set forth in NRS 179A.200 for obtaining~~
53 ~~a notice of information. The Central Repository shall search for and disseminate~~

1 such information in the manner set forth in NRS 179A.210 for the dissemination of
2 a notice of information.

3 ~~6. Except as otherwise provided in subsection 5, the provisions of NRS~~
4 ~~179A.180 to 179A.240, inclusive, do not apply to an employer who requests~~
5 ~~information and to whom such information is disseminated pursuant to subsections~~
6 ~~4 and 5.~~

7 ~~7. Records of criminal history must be disseminated by an agency of criminal~~
8 ~~justice, upon request, to the following persons or governmental entities:~~

9 ~~(a) The person who is the subject of the record of criminal history for the~~
10 ~~purposes of NRS 179A.150.~~

11 ~~(b) The person who is the subject of the record of criminal history when the~~
12 ~~subject is a party in a judicial, administrative, licensing, disciplinary or other~~
13 ~~proceeding to which the information is relevant.~~

14 ~~(c) The Nevada Gaming Control Board.~~

15 ~~(d) The State Board of Nursing.~~

16 ~~(e) The Private Investigator's Licensing Board to investigate an applicant for a~~
17 ~~license.~~

18 ~~(f) A public administrator to carry out the duties as prescribed in chapter 253 of~~
19 ~~NRS.~~

20 ~~(g) A public guardian to investigate a ward or proposed ward or persons who~~
21 ~~may have knowledge of assets belonging to a ward or proposed ward.~~

22 ~~(h) Any agency of criminal justice of the United States or of another state or~~
23 ~~the District of Columbia.~~

24 ~~(i) Any public utility subject to the jurisdiction of the Public Utilities~~
25 ~~Commission of Nevada when the information is necessary to conduct a security~~
26 ~~investigation of an employee or prospective employee or to protect the public~~
27 ~~health, safety or welfare.~~

28 ~~(j) Persons and agencies authorized by statute, ordinance, executive order,~~
29 ~~court rule, court decision or court order as construed by appropriate state or local~~
30 ~~officers or agencies.~~

31 ~~(k) Any person or governmental entity which has entered into a contract to~~
32 ~~provide services to an agency of criminal justice relating to the administration of~~
33 ~~criminal justice, if authorized by the contract, and if the contract also specifies that~~
34 ~~the information will be used only for stated purposes and that it will be otherwise~~
35 ~~confidential in accordance with state and federal law and regulation.~~

36 ~~(l) Any reporter for the electronic or printed media in a professional capacity~~
37 ~~for communication to the public.~~

38 ~~(m) Prospective employers if the person who is the subject of the information~~
39 ~~has given written consent to the release of that information by the agency which~~
40 ~~maintains it.~~

41 ~~(n) For the express purpose of research, evaluative or statistical programs~~
42 ~~pursuant to an agreement with an agency of criminal justice.~~

43 ~~(o) An agency which provides child welfare services, as defined in NRS~~
44 ~~432B.020.~~

45 ~~(p) The Division of Welfare and Supportive Services of the Department of~~
46 ~~Health and Human Services or its designated representative, as needed to ensure the~~
47 ~~safety of investigators and caseworkers.~~

48 ~~(q) The Aging and Disability Services Division of the Department of Health~~
49 ~~and Human Services or its designated representative, as needed to ensure the safety~~
50 ~~of investigators and caseworkers.~~

51 ~~(r) An agency of this or any other state or the Federal Government that is~~
52 ~~conducting activities pursuant to Part D of Subchapter IV of Chapter 7 of Title 42~~
53 ~~of the Social Security Act, 42 U.S.C. §§ 651 et seq.~~

1 ~~(e) The State Disaster Identification Team of the Division of Emergency~~
2 ~~Management of the Department.~~

3 ~~(f) The Commissioner of Insurance.~~

4 ~~(u) The Board of Medical Examiners.~~

5 ~~(v) The State Board of Osteopathic Medicine.~~

6 ~~(w) The Board of Massage Therapists and its Executive Director.~~

7 ~~(x) The Board of Examiners for Social Workers.~~

8 ~~(y) A multidisciplinary team to review the death of the victim of a crime that~~
9 ~~constitutes domestic violence organized or sponsored by the Attorney General~~
10 ~~pursuant to NRS 228.495.~~

11 ~~8. Agencies of criminal justice in this State which receive information from~~
12 ~~sources outside this State concerning transactions involving criminal justice which~~
13 ~~occur outside Nevada shall treat the information as confidentially as is required by~~
14 ~~the provisions of this chapter.] (Deleted by amendment.)~~

15 **Sec. 14.** The amendatory provisions of sections 7 and 8 of this act apply to a
16 petition for the sealing of a record of criminal history that is filed on or after
17 October 1, 2017. As used in this section, “record of criminal history” has the
18 meaning ascribed to it in NRS 179A.070.

Assembly Bill No. 327—Assemblymen McCurdy II,
Fumo, Yeager, Frierson and Carrillo

Joint Sponsor: Senator Segerblom

CHAPTER.....

AN ACT relating to criminal procedure; authorizing a person who was dishonorably discharged from probation to apply to a court for the sealing of records of criminal history relating to the conviction; establishing a rebuttable presumption that records of criminal history should be sealed in certain circumstances; revising various provisions relating to the filing of petitions for the sealing of records of criminal history; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a person who is granted an honorable discharge from probation to apply to the court for the sealing of records relating to the conviction. (NRS 176A.850) Existing law also provides that a person who is given a dishonorable discharge from probation is not entitled to such a privilege. (NRS 176A.870) **Section 1** of this bill authorizes a person who is given a dishonorable discharge from probation to apply to the court for the sealing of records relating to the conviction if he or she is otherwise eligible to have the records sealed.

Existing law authorizes a person who was convicted of certain offenses or who was arrested for alleged criminal conduct but the charges against the person were dismissed, the prosecuting attorney declined prosecution of the charges or the person was acquitted of the charges to petition the court in which the person was convicted or in which the charges were dismissed or declined for prosecution or the acquittal was entered for the sealing of all records relating to the conviction or the arrest and proceedings leading to the dismissal, declination or acquittal, as applicable. Existing law also: (1) generally requires a person to wait a specified number of years, depending on the offense, until he or she may petition the court for the sealing of such records; and (2) requires a petition to be accompanied by the person's current, verified records received from the Central Repository for Nevada Records of Criminal History and all agencies of criminal justice which maintain such records within the city or county in which the petitioner appeared in court. (NRS 179.245, 179.255) **Sections 7 and 8** of this bill: (1) reduce the length of certain periods that a person is required to wait before petitioning a court for the sealing of records; and (2) remove the requirement that a petition be accompanied by the petitioner's current, verified records received from local agencies of criminal justice. **Sections 7 and 8** also provide that if the prosecuting attorney stipulates to the sealing of the records and the court makes certain findings, the court is authorized to order the records sealed without a hearing.

Existing law also authorizes the sealing of the records of a person who completes a correctional or judicial program for reentry into the community 5 years after the completion of the program. (NRS 179.259) **Section 9** of this bill reduces such a period to 4 years.

Section 4 of this bill provides that upon the filing of a petition for the sealing of records, there is a rebuttable presumption that the records should be sealed if the applicant satisfies all statutory requirements for the sealing of the records. **Section 4** also provides that such a presumption does not apply to a defendant who is given



79th Session (2017)

AC APP0031

a dishonorable discharge from probation and applies to the court for the sealing of records relating to the conviction.

Section 5 of this bill authorizes a person to file a petition for the sealing of records in district court if the person wishes to have more than one record sealed and would otherwise need to file a petition in more than one court. **Section 5** also authorizes the district court to order the sealing of any records in the justice or municipal courts in certain circumstances.

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

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

Section 1. NRS 176A.870 is hereby amended to read as follows:

176A.870 *1.* A defendant whose term of probation has expired and:

~~1-1~~ *(a)* Whose whereabouts are unknown;

~~1-2~~ *(b)* Who has failed to make restitution in full as ordered by the court, without a verified showing of economic hardship; or

~~1-3~~ *(c)* Who has otherwise failed to qualify for an honorable discharge as provided in NRS 176A.850,

↪ is not eligible for an honorable discharge and must be given a dishonorable discharge.

2. A dishonorable discharge releases the probationer from any further obligation, except a civil liability arising on the date of discharge for any unpaid restitution which is enforceable pursuant to NRS 176.275. ~~1-1~~

3. A defendant who is given a dishonorable discharge pursuant to this section may, if he or she meets the requirements of NRS 179.245, apply to the court for the sealing of records relating to the conviction but ~~1-1~~ is otherwise not ~~1-1~~ entitled to any privilege conferred by NRS 176A.850.

Sec. 2. Chapter 179 of NRS is hereby amended by adding thereto the provisions set forth as sections 3, 4 and 5 of this act.

Sec. 3. *The Legislature hereby declares that the public policy of this State is to favor the giving of second chances to offenders who are rehabilitated and the sealing of the records of such persons in accordance with NRS 179.241 to 179.301, inclusive, and sections 3, 4 and 5 of this act.*

Sec. 4. *1. Except as otherwise provided in subsection 2, upon the filing of a petition for the sealing of records pursuant to NRS 179.245, 179.255, 179.259 or section 5 of this act, there is a rebuttable presumption that the records should be sealed if the*



applicant satisfies all statutory requirements for the sealing of the records.

2. The presumption set forth in subsection 1 does not apply to a defendant who is given a dishonorable discharge from probation pursuant to NRS 176A.870 and applies to the court for the sealing of records relating to the conviction.

Sec. 5. *Notwithstanding the procedure established in NRS 179.245, 179.255 or 179.259 for the filing of a petition for the sealing of records:*

1. If a person wishes to have more than one record sealed and would otherwise need to file a petition in more than one court for the sealing of the records, the person may, instead of filing a petition in each court, file a petition in district court for the sealing of all such records.

2. If a person files a petition for the sealing of records in district court pursuant to subsection 1 or NRS 179.245, 179.255 or 179.259, the district court may order the sealing of any other records in the justice or municipal courts in accordance with the provisions of NRS 179.241 to 179.301, inclusive, and sections 3, 4 and 5 of this act.

Sec. 6. NRS 179.241 is hereby amended to read as follows:

179.241 As used in NRS 179.241 to 179.301, inclusive, **and sections 3, 4 and 5 of this act**, unless the context otherwise requires, the words and terms defined in NRS 179.242, 179.243 and 179.244 have the meanings ascribed to them in those sections.

Sec. 7. NRS 179.245 is hereby amended to read as follows:

179.245 1. Except as otherwise provided in subsection ~~H~~ 6 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, **a crime of violence pursuant to NRS 200.408 or burglary pursuant to NRS 205.060** after ~~H~~ 10 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(b) ~~A~~ **Except as otherwise provided in paragraph (a)**, a category B, C or D felony after ~~H~~ 5 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(c) A category E felony after ~~H~~ 2 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;



(d) Except as otherwise provided in paragraph (e), any gross misdemeanor after ~~15~~ 2 years from the date of release from actual custody or discharge from probation, whichever occurs later;

(e) A violation of NRS 422.540 to 422.570, inclusive, other than a felony, 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~~ *Except as otherwise provided in paragraph (e), if the offense is punished as a misdemeanor, a battery pursuant to NRS 200.481, harassment pursuant to NRS 200.571, stalking pursuant to NRS 200.575 or a violation of a temporary or extended order for protection,* 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 ~~or~~; *or*

(g) Any other misdemeanor after 1 year 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 the petitioner's current, verified records received from ~~the~~

~~(1) The~~ *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 conviction was entered;~~

(b) 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;

(c) 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

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

(1) Date of birth of the petitioner;

(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 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~~ **any** hearing on the petition.

4. *If the prosecuting attorney who prosecuted the petitioner for the crime stipulates to the sealing of the records after receiving notification pursuant to subsection 3 and the court makes the findings set forth in subsection 5, the court may order the sealing of the records in accordance with subsection 5 without a hearing. If the prosecuting attorney does not stipulate to the sealing of the records, a hearing on the petition must be conducted.*

5. 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.

~~5.1~~ 6. 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.



~~16~~ 7. 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.

~~17~~ 8. 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) 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. 8. 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, the prosecuting attorney having jurisdiction declined prosecution of the charges 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;

(b) The court having jurisdiction in which the charges were declined for prosecution:

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

(2) Any time ~~10~~ 8 years after the arrest; or

(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 the petitioner's current, verified records received from ~~f:~~

~~— (1) The~~ *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, declination or



acquittal and to whom the order to seal records, if issued, will be directed; and

(e) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed, 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, 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~~ **any** 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~~ **any** hearing on the petition.

6. *If the prosecuting attorney stipulates to the sealing of the records after receiving notification pursuant to subsection 4 or 5 and the court makes the findings set forth in subsection 7 or 8, as applicable, the court may order the sealing of the records in accordance with subsection 7 or 8, as applicable, without a hearing. If the prosecuting attorney does not stipulate to the sealing of the records, a hearing on the petition must be conducted.*

7. 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 any agency of criminal justice or any public or private company, agency, official or other custodian of records in the State of Nevada.

~~{7}~~ 8. If ~~1~~, 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 any agency of criminal justice or any public or private company, agency, official or other custodian of records in the State of Nevada.

~~{8}~~ 9. 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}~~ 7, 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 inspection of the records without the prosecuting attorney having to petition the court pursuant to NRS 179.295.

Sec. 9. NRS 179.259 is hereby amended to read as follows:

179.259 1. Except as otherwise provided in subsections 3, 4 and 5, ~~{5}~~ 4 years after an eligible person completes a program for reentry, the court may order sealed all documents, papers and exhibits in the eligible 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. The court may order those records sealed without a hearing unless the Division of Parole and Probation of the Department of Public Safety petitions the court, for good cause shown, not to seal the records and requests a hearing thereon.

2. If the court orders sealed the record of an eligible person, the court shall send a copy of the order to each agency or officer named in the order. Each such agency or officer shall notify the court in writing of its compliance with the order.

3. A professional licensing board is entitled, for the purpose of determining suitability for a license or liability to discipline for misconduct, to inspect and to copy from a record sealed pursuant to this section.

4. The Division of Insurance of the Department of Business and Industry is entitled, for the purpose of determining suitability for a license or liability to discipline for misconduct, to inspect and to copy from a record sealed pursuant to this section.



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. As used in this section:

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

(b) "Eligible person" means a person who has:

(1) Successfully completed a program for reentry, which the person participated in pursuant to NRS 209.4886, 209.4888, 213.625 or 213.632; and

(2) Been convicted of a single offense which was punishable as a felony and which did not involve the use or threatened use of force or violence against the victim. For the purposes of this subparagraph, multiple convictions for an offense punishable as a felony shall be deemed to constitute a single offense if those offenses arose out of the same transaction or occurrence.

(c) "Program for reentry" means:

(1) A correctional program for reentry of offenders and parolees into the community that is established by the Director of the Department of Corrections pursuant to NRS 209.4887; or

(2) A judicial program for reentry of offenders and parolees into the community that is established in a judicial district pursuant to NRS 209.4883.

(d) "Sexual offense" has the meaning ascribed to it in paragraph (b) of subsection ~~7~~ 8 of NRS 179.245.

Sec. 9.3. 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 5 of this act*, 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, 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. 9.7. 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 5 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 civil rights as proof that the person has been restored to the right to vote, to hold office and to serve as a juror.

Sec. 10. NRS 179.295 is hereby amended to read as follows:

179.295 1. The person who is the subject of the records that are sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 *or section 5 of this act* may petition the court that ordered the records sealed to permit inspection of the records by a person named in the petition, and the court may order such inspection. Except as otherwise provided in this section, subsection ~~8~~ 9 of NRS 179.255 and NRS 179.259 and 179.301, the



court may not order the inspection of the records under any other circumstances.

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

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

4. This section does not prohibit a court from considering a conviction for which records have been sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 *or section 5 of this act* in determining whether to grant a petition pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 *or section 5 of this act* for a conviction of another offense.

Sec. 11. (Deleted by amendment.)

Sec. 12. 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 **††**, *including, without limitation, a local law enforcement agency, the Nevada Highway Patrol, the Division of Parole and Probation of the Department of Public Safety and the Department of Corrections.*

Sec. 13. (Deleted by amendment.)

Sec. 14. The amendatory provisions of sections 7 and 8 of this act apply to a petition for the sealing of a record of criminal history that is filed on or after October 1, 2017. As used in this section, “record of criminal history” has the meaning ascribed to it in NRS 179A.070.

