

**2023 Legislative Session
PROPOSED AMENDMENT**

March 6, 2023

Assembly Bill 160
Amendment submitted to Assembly Committee on Judiciary

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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.

Proposed Changes to Section 1 of AB160

Intent: The purpose of the changes in section 1 is to increase the implementation timeline, clarify the role of the Division and the Administrative Office of the Courts, clarify that eligible records for automatic record sealing will be eligible on January 1, 2028, ensure all eligible records for sealing are captured in this bill, keep the ability for prosecuting agencies to object to a seal, ensure this automated process does not prohibit persons from filing a petition, and finally require regular reporting the Legislature. It is the intention that the Division identifies eligible charges and convictions, but the determination of eligibility be approved by the Administrative Office of the Courts which will then notify courts with jurisdiction of the records to be sealed.

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

- 1. Not later than January 1, ~~2026~~ 2028, the Division shall develop and implement a process to identify, based on data maintained in the records of the Division, each:
 - (a) Conviction of a person that becomes an eligible conviction beginning January 1, 2028;*
 - (b) Charge against a person that becomes an eligible charge beginning January 1, 2028; and*
 - (c) Agency of criminal justice or public or private company, agency, officer and other custodian of records that may reasonably be identified as having possession of records relating to a conviction or charge that becomes an eligible conviction or eligible charge.**
- 2. After the development and implementation of the process described in subsection 1, the Division shall, each month:
 - (a) Identify each:**

(1) Conviction of a person or charge against a person that has become an eligible conviction or eligible charge in the immediately preceding month; and

(2) Agency of criminal justice or public or private company, agency, officer or other custodian of records that may reasonably be identified as having possession of records relating to an eligible conviction or eligible charge identified pursuant to subparagraph (1);

(b) Compile a recommended list of each eligible conviction, eligible charge and person or governmental entity identified pursuant to paragraph (a); and

(c) Transmit the recommended list compiled pursuant to paragraph (b) to the Administrative Office of the Courts ~~each court having jurisdiction~~ pursuant to NRS 179.245, 179.255, 179.259, or 179.271, or 453.3365 to recommend ~~order~~ the sealing of records relating to an eligible conviction or eligible charge identified on the list.

3. Not later than January 1, 2028, the Administrative Office of the Courts shall develop and implement a process to review, approve, and transmit to each court (s) with jurisdiction, each:

(a) Conviction of a person that becomes an eligible conviction;

(b) Charge against a person that becomes an eligible charge pursuant to paragraph (c) of subsection 2.

~~3.~~ 4. Upon ~~A court that receives~~ receiving a list of recommendations transmitted by the Division pursuant to paragraph (c) of subsection 2 the Administrative Office of the Courts shall confirm eligibility and notify each court with jurisdiction not later than 30 business days upon receipt ~~order sealed all records relating to~~ each eligible conviction or eligible charge over which the court has jurisdiction pursuant to NRS 179.245, 179.255, 179.259, or 179.271, or 453.3365 to order the sealing of records. ~~The court shall issue the order without a hearing and not later than 15 days after the receipt of the list. Each person or governmental entity identifies on the list as having possession of records relating to an eligible conviction or eligible charge to which the applies must be named in the order.~~

5. The court with jurisdiction shall notify the prosecuting attorney or agency not later than 15 calendar days after the receipt of the list.

(a) Upon receiving such notice, a prosecuting agency may object to seal such records within 30 calendar days of receiving the notice.

(b) If a prosecuting agency stipulates the sealing the court shall apply the presumption set forth in NRS 179.2445 and seal the records. If the prosecuting agency does not stipulate to the sealing of the records within 30 calendar days after receiving such notice pursuant to subparagraph (a) the court shall order the sealing of records without a hearing. Each person or governmental entity identified on the list as having possession of records relating to an eligible conviction or eligible charge to which the order applies must be named in the order.

(c) If the prosecuting agency objects to the notice to seal the court may conduct a hearing. At the hearing, unless an objecting party presents evidence sufficient to rebut the presumption set forth in NRS 179.2445, the court shall apply the presumption and seal the records.

~~4.~~ 6. The Division and the Administrative Office of the Courts shall take such actions as are necessary to ensure public awareness of the provisions of this section. Such actions may

include, without limitation, the posting of appropriate information on an Internet website maintained by the Division and the Administrative Office of the Courts or the conducting of a public awareness campaign.

~~5~~ 7. The Division and the Administrative Office of the Courts may adopt any regulations or rules necessary to carry out the provisions of this section to include but not limited to:

(a) Contracting with any vendors to update any needed technology; and

(b) Applying for any grants available to carry out the provisions of this section

~~6~~ 8. As used in this section:

(a) “Division” means the Records, Communications and Compliance Division of the Department of Public Safety.

(b) “Administrative Office of the Courts” means the Administrative Office of the Courts of the Supreme Court of Nevada

~~(c)~~ (c) “Eligible charge” means any charge against a person if the records relating to the charge are eligible to be sealed pursuant to subsection 1 of NRS 179.255.

~~(d)~~ (d) “Eligible conviction” means any conviction of a person if the records relating to the conviction are eligible to be sealed pursuant to:

(1) Subsection 1 of NRS 179.245, subsection 2 of NRS 179.255, subsection 1 of NRS 179.259 ~~NRS 179.271~~ or subsection 1 of NRS 453.3365; and

(2) Subsection 1 of NRS 179.245, the person has not been, in the time period prescribed in that subsection, charged with any offense for which the charges are pending or convicted of any offense, except for minor moving or standing traffic violations.

9. The provisions of this section shall not prohibit persons from petitioning the court to seal any eligible records.

10. If someone believes they may have had their record sealed, someone may make a written request to the court to confirm and review their sealed record.

11. Beginning January 1, 2029, the Administrative Office of the Courts shall yearly report to the Legislature the number of records identified eligible for sealing and the number of records ordered to be sealed.

Proposed Changes to Section 8 of AB160

Intent: Add a new subsection that clarifies sealed records can be inspected pursuant to NRS 202.360 related to the prohibition of firearms for certain persons.

The Central Repository for Nevada Records of Criminal History and its employees may inquire into and inspect any records sealed pursuant to section 1 of this act for the purposes of complying with NRS 202.360.

Proposed Addition to AB 160

Intent: To create a task force tasked with the overseeing the implementation of AB 160.

1. The Advisory Task Force on Automatic Record Sealing is hereby created.

2. The Department of Public Safety shall solicit applications for appointment to the Task Force; and appoint not more than 15 members to the Task Force ensuring that members are:
 - (a) Persons from state criminal justice agencies, to include but not limited to, law enforcement agencies, prosecuting agencies, indigent defense, the Judiciary, Parole and Probation, Corrections, and detention centers.
 - (b) Persons from non-profit organizations focused on issues related to criminal justice.
3. The Speaker of the Assembly and Majority Leader of the Senate may each appoint one Legislator to the Task Force.
4. The Minority Leader of the Assembly and the Minority Leader of the Senate may each appoint one Legislator to the Task Force.
5. At the first meeting of the Task Force, the members of the Task Force shall elect a Chair and Vice Chair by a majority vote.
6. The Department of Public Safety shall provide the Task Force with such staff necessary for the Task Force to carry out its duties.
7. The members of the Task Force serve without compensation or per diem allowance. A member may receive reimbursement for travel expenses if sufficient money is available.
8. The Task Force may apply for any grants and accept any gifts, grants, or donations to assist the Task Force in carrying out its duties.
9. The Task Force shall:
 - a. Conduct research on methods to implement automatic record sealing to include but not limited to, needed technology and system upgrades within the state criminal justice system;
 - b. Identify and assess technology and systems gaps, needed infrastructure, and policy constraints to support the implementation of automatic record sealing; and
 - c. Recommend approaches to improve the ability of this State to implement automatic record sealing.
10. The Task Force may enter into a contract with a consultant or vendor to perform the research necessary to carry out the duties of the Task Force.
11. The Task Force shall, on or before September 1 2024, prepare and submit a report of initial activities and findings.
12. The Task Force shall, on or before September 1, 2026, prepare and submit a report of final activities, findings, and recommendations to support the implementation of automatic record sealing.
13. The Task Force will sunset July 1, 2027.

Proposed Addition to NRS 179.245

Intent: The purpose of this section is to streamline the current petition-based process during the implementation of this bill and ensure that any petition-based process is treated in the same manner as automatic record sealing upon implementation.

By January 1, 2025, the Administrative Office of the Courts may issue any rule or regulation to streamline the process for filing a petition pursuant to subsection 1 of NRS 179.245 to include but not limited to:

- (a) A standard seal order to be used by all courts with jurisdiction;
- (b) The authority for a petitioner to file such request with one court; and
- (c) Any other changes that expedite or simplify the process for petitioners.

Proposed Changes to NRS 179.245

Intent: Per section 1 subsection (c) of AB 160, the Division will identify each agency of criminal justice or public or private company, agency, officer, and other custodians of records that may reasonably be identified as having possession of records relating to a conviction or charge that becomes an eligible conviction or eligible charge. Upon implementation, this amendment seeks to remove the requirement of a petitioner to include a list of agencies in possession of their records as outlined in section 2(c) of NRS 179.245.

- 2. A petition filed pursuant to subsection 1 must:
 - (a) Be accompanied by the petitioner’s current, verified records received from the Central Repository for Nevada Records of Criminal History;
 - (b) If the petition references NRS 453.3365, 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.

Proposed Addition to NRS179A

Intent: AB160 seeks to automate the record sealing process. For the provisions of AB160 to be successful, the Records, Communication and Compliance Division of the Department of Public Safety need to have accurate and complete records from all agencies of criminal justice.

The Legislature hereby declares that the public policy of this state is to enhance and modernize information sharing amongst criminal justice agencies as defined by NRS 179A.030 and records of criminal history as set forth in NRS 179A.075 shall be shared timely and within the statutory requirements.

Proposed Changes to Section 9 of AB160

Intent: To clarify implementation timelines. The automatic record sealing process shall become effective January 1, 2028, and any changes to the petition-based process during the implementation and moving forward shall become effective January 1, 2025. Annual reporting to the Legislature shall become effective January 1, 2029.

Sec. 9. 1. This act becomes effective upon passage and approval.

~~2. Sections 1 to 8, inclusive, of this act become effective:~~

~~(a) Upon passage and approval~~ for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary carry out the provisions of this act; and

~~(b)~~ (a) On January 1, 2025, for all other purposes petition-based sealing requests.

(b) On January 1, 2028, for the provisions of section 1 of this act.

(c) On January 1, 2029, for the annual reporting to the Legislature.