

Amendment No. CA5

Conference Committee Amendment to (BDR 16-634)
Assembly Bill No. 136 Second Reprint

Proposed by: Conference Committee

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

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

NCA



Date: 6/5/2011

A.B. No. 136—Revises provisions governing credits for offenders sentenced for certain crimes. (BDR 16-634)



ASSEMBLY BILL NO. 136—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ADVISORY COMMISSION
ON THE ADMINISTRATION OF JUSTICE)

FEBRUARY 11, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing ~~credits for offenders sentenced for certain crimes.~~ criminal laws. (BDR 16-634)

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

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

AN ACT relating to ~~offenders;~~ criminal laws; revising provisions governing credits for offenders sentenced for certain crimes; revising provisions governing the sealing and removal of certain records; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that certain credits to the sentence of an offender convicted of certain category C, D or E felonies must be deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole and from the maximum term imposed by the sentence, except in certain circumstances. (NRS 209.4465) ~~This~~ Section 1 of this bill adds to the exceptions that an offender who has been convicted of being a habitual criminal or a habitual felon may not have credits applied to both the minimum and maximum term imposed by the sentence. ~~This bill~~ Section 1 further provides that an offender convicted of a category B felony also qualifies to have certain credits deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole and from the maximum term imposed by the sentence, except in certain circumstances.

Existing law authorizes a person arrested for alleged criminal conduct to petition for the sealing of all records relating to the arrest if the charges were dismissed or the person was acquitted of the charges. (NRS 179.255) Section 1.3 of this bill authorizes such a person to petition for the sealing of all records relating to an arrest if the prosecuting attorney declines to prosecute the charges.

Existing law also provides that a person arrested, or issued a citation or a warrant, for alleged criminal conduct may apply to the Central Repository for Nevada Records of Criminal History to remove the record of criminal history if the charge was dismissed, acquittal was entered or the disposition of the charge was favorable to the accused. (NRS 179A.160) Section 1.7 of this bill authorizes such a person to apply to have the record of criminal history removed if the prosecuting attorney declined to prosecute the charges.

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

Section 1. NRS 209.4465 is hereby amended to read as follows:

209.4465 1. An offender who is sentenced to prison for a crime committed on or after July 17, 1997, who has no serious infraction of the regulations of the Department, the terms and conditions of his or her residential confinement or the laws of the State recorded against the offender, and who performs in a faithful, orderly and peaceable manner the duties assigned to the offender, must be allowed:

(a) For the period the offender is actually incarcerated pursuant to his or her sentence;

(b) For the period the offender is in residential confinement; and

(c) For the period the offender is in the custody of the Division of Parole and Probation of the Department of Public Safety pursuant to NRS 209.4886 or 209.4888,

↳ a deduction of 20 days from his or her sentence for each month the offender serves.

2. In addition to the credits allowed pursuant to subsection 1, the Director may allow not more than 10 days of credit each month for an offender whose diligence in labor and study merits such credits. In addition to the credits allowed pursuant to this subsection, an offender is entitled to the following credits for educational achievement:

(a) For earning a general educational development certificate, 60 days.

(b) For earning a high school diploma, 90 days.

(c) For earning his or her first associate degree, 120 days.

3. The Director may, in his or her discretion, authorize an offender to receive a maximum of 90 days of credit for each additional degree of higher education earned by the offender.

4. The Director may allow not more than 10 days of credit each month for an offender who participates in a diligent and responsible manner in a center for the purpose of making restitution, program for reentry of offenders and parolees into the community, conservation camp, program of work release or another program conducted outside of the prison. An offender who earns credit pursuant to this subsection is eligible to earn the entire 30 days of credit each month that is allowed pursuant to subsections 1 and 2.

5. The Director may allow not more than 90 days of credit each year for an offender who engages in exceptional meritorious service.

6. The Board shall adopt regulations governing the award, forfeiture and restoration of credits pursuant to this section.

7. Except as otherwise provided in subsection 8, credits earned pursuant to this section:

(a) Must be deducted from the maximum term imposed by the sentence; and

(b) Apply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole.

8. Credits earned pursuant to this section by an offender who has not been convicted of:

(a) Any crime that is punishable as a felony involving the use or threatened use of force or violence against the victim;

(b) A sexual offense that is punishable as a felony;

1 (c) A violation of NRS 484C.110, 484C.120, 484C.130 or 484C.430 that is
2 punishable as a felony; ~~{or}~~

3 (d) *Being a habitual criminal pursuant to NRS 207.010, a habitual felon*
4 *pursuant to NRS 207.012 or a habitually fraudulent felon pursuant to NRS*
5 *207.014; or*

6 (e) ~~{A}~~ *Except as otherwise provided in subsection 9, a category A or B*
7 *felony,*

8 *↪ apply to eligibility for parole and must be deducted from the minimum term*
9 *imposed by the sentence until the offender becomes eligible for parole and must be*
10 *deducted from the maximum term imposed by the sentence.*

11 *9. Credits earned by an offender who has been convicted of a category B*
12 *felony apply to eligibility for parole, must be deducted from the minimum term*
13 *imposed by the sentence until the offender becomes eligible for parole and must*
14 *be deducted from the maximum term imposed by the sentence if the offender:*

15 (a) *Has not been convicted of an offense listed in paragraphs (a) to (d),*
16 *inclusive, of subsection 8;*

17 (b) *Has not served three or more separate terms of imprisonment for three*
18 *separate felony convictions in this State;*

19 (c) *Has not served five or more separate terms of imprisonment for five*
20 *separate felony convictions, regardless of the jurisdiction in which the offender*
21 *was convicted;*

22 (d) *Is not serving a sentence for which an additional penalty was imposed for*
23 *the use of a firearm pursuant to NRS 193.165; and*

24 ~~{d}~~ (e) *Is not serving a sentence for violating the provisions of NRS*
25 *202.360.*

26 **Sec. 1.3. NRS 179.255 is hereby amended to read as follows:**

27 179.255 1. If a person has been arrested for alleged criminal conduct and
28 the charges are dismissed, the prosecuting attorney having jurisdiction declined
29 prosecution of the charges or such person is acquitted of the charges, the person
30 may petition:

31 (a) The court in which the charges were dismissed, at any time after the date
32 the charges were dismissed; ~~{or}~~

33 (b) The court having jurisdiction in which the charges were declined for
34 prosecution, at any time after 180 days after the date of the declination; or

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

37 *↪ for the sealing of all records relating to the arrest and the proceedings leading to*
38 *the dismissal, declination or acquittal.*

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

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

44 (a) Be accompanied by a current, verified record of the criminal history of the
45 petitioner received from the local law enforcement agency of the city or county in
46 which the petitioner appeared in court;

47 (b) Include a list of any other public or private agency, company, official and
48 other custodian of records that is reasonably known to the petitioner to have
49 possession of records of the arrest and of the proceedings leading to the dismissal,
50 declination or acquittal and to whom the order to seal records, if issued, will be
51 directed; and

1 (c) Include information that, to the best knowledge and belief of the petitioner,
2 accurately and completely identifies the records to be sealed.

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

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

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

10 ↪ The prosecuting attorney and any person having relevant evidence may testify
11 and present evidence at the hearing on the petition.

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

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

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

17 ↪ The prosecuting attorney and any person having relevant evidence may testify
18 and present evidence at the hearing on the petition.

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

26 7. If, after the hearing on a petition submitted pursuant to subsection 2, the
27 court finds that the conviction of the petitioner was set aside pursuant to NRS
28 458A.240, the court may order sealed all records relating to the setting aside of the
29 conviction which are in the custody of the court, of another court in the State of
30 Nevada or of a public or private company, agency or official in the State of Nevada.

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

37 Sec. 1.5. NRS 179.295 is hereby amended to read as follows:

38 179.295 1. The person who is the subject of the records that are sealed
39 pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
40 458.330 may petition the court that ordered the records sealed to permit inspection
41 of the records by a person named in the petition, and the court may order such
42 inspection. Except as otherwise provided in this section subsection 8 of NRS
43 179.255 and NRS 179.259 and 179.301, the court may not order the inspection of
44 the records under any other circumstances.

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

51 3. The court may, upon the application of a prosecuting attorney or an
52 attorney representing a defendant in a criminal action, order an inspection of such

1 records for the purpose of obtaining information relating to persons who were
2 involved in the incident recorded.

3 4. This section does not prohibit a court from considering a conviction for
4 which records have been sealed pursuant to NRS 176A.265, 176A.295, 179.245,
5 179.255, 179.259, 453.3365 or 458.330 in determining whether to grant a petition
6 pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
7 458.330 for a conviction of another offense.

8 **Sec. 1.7. NRS 179A.160 is hereby amended to read as follows:**

9 179A.160 1. If a person has been arrested or issued a citation, or has been
10 the subject of a warrant for alleged criminal conduct and the person is acquitted of
11 the charge or the disposition of the charge is favorable to the person, at any time
12 after the charge is dismissed, acquittal is entered or disposition of the charge in
13 favor of the person is final, the person who is the subject of a record of criminal
14 history relating to the arrest, citation or warrant may apply in writing to the Central
15 Repository and the agency which maintains the record to have it removed from the
16 files which are available and generally searched for the purpose of responding to
17 inquiries concerning the criminal history of a person.

18 2. *If a person has been arrested or issued a citation, or has been the subject*
19 *of a warrant for alleged criminal conduct and the prosecuting attorney having*
20 *jurisdiction declined prosecution, at any time after 180 days after the declination,*
21 *the person who is the subject of a record of criminal history relating to the arrest,*
22 *citation or warrant may apply in writing to the Central Repository and the agency*
23 *which maintains the record to have it removed from the files which are available*
24 *and generally searched for the purpose of responding to inquiries concerning the*
25 *criminal history of a person.*

26 3. The Central Repository and the agency shall remove the record unless:

- 27 (a) The defendant is a fugitive;
28 (b) The case is under active prosecution according to a current certificate of a
29 prosecuting attorney;
30 (c) The disposition of the case was a deferred prosecution, plea bargain or
31 other similar disposition;
32 (d) The person who is the subject of the record has a prior conviction for a
33 felony or gross misdemeanor in any jurisdiction in the United States; or
34 (e) The person who is the subject of the record has been arrested for or charged
35 with another crime, other than a minor traffic violation, since the arrest, citation or
36 warrant which the person seeks to have removed from the record.

37 ~~3.~~ 4. This section does not restrict the authority of a court to order the
38 deletion or modification of a record in a particular cause or concerning a particular
39 person or event.

40 **Sec. 2.** For the purpose of calculating the credits earned by an offender
41 pursuant to NRS 209.4465, the amendatory provisions of section 1 of this act must
42 be applied:

43 1. Retroactively to January 1, 2005, to reduce the minimum term of
44 imprisonment of an offender described in subsections 8 and 9 of NRS 209.4465, as
45 amended by section 1 of this act, who was placed in the custody of the Department
46 of Corrections before January 1, 2012, and who remains in such custody on January
47 1, 2012.

48 2. Retroactively to January 1, 2011, to reduce the maximum term of
49 imprisonment of an offender who was placed on parole before January 1, 2012.

50 3. In the manner set forth in NRS 209.4465 for all offenders in the custody of
51 the Department of Corrections commencing on January 1, 2012, and for all
52 offenders who are on parole commencing on January 1, 2012.

1 **Sec. 3.** This act becomes effective on January 1, 2012.