

ASSEMBLY BILL NO. 259—ASSEMBLYMEN MCCURDY II, MONROE-MORENO, THOMPSON, OHRENSCHALL; BILBRAY-AXELROD, BROOKS, FUMO AND MILLER

MARCH 7, 2017

JOINT SPONSORS: SENATORS PARKS, CANCELA, SEGERBLOM AND RATTI

Referred to Committee on Corrections,
Parole, and Probation

SUMMARY—Revises provisions relating to certain criminal convictions and sentences. (BDR 14-657)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~

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

AN ACT relating to criminal procedure; providing for the vacating of certain judgments of conviction and sealing of certain records relating to marijuana; authorizing a court to depart from prescribed minimum terms of imprisonment for the possession of controlled substances in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes a court to grant a motion to vacate a judgment of
2 conviction in certain circumstances. (NRS 176.515) Existing law also establishes a
3 process for sealing certain records of criminal proceedings. (NRS 179.245-179.301)
4 With certain limited exceptions, if the court orders a person’s record of criminal
5 history sealed, all proceedings recounted in the record are deemed never to have
6 occurred. (NRS 179.285)

7 **Section 1.2** of this bill provides that if a person is convicted of a misdemeanor
8 for: (1) the possession of 1 ounce or less of marijuana; or (2) a violation of any
9 provision of law concerning certain offenses involving marijuana and the act
10 constituting the offense is a lawful act in this State on or after January 1, 2017, the
11 person may petition the court to vacate the judgment and seal all documents
12 relating to the case. **Section 1.2** establishes the circumstances in which the court is
13 required or authorized to grant such a petition. If granting such a petition is within



14 the discretion of the court, the petitioner is required to notify the office of the
15 prosecuting attorney who prosecuted the petitioner for the crime and the
16 prosecuting attorney must be allowed to testify and present evidence before the
17 court decides whether to grant the petition. **Section 1.2** also authorizes a court to
18 enter an interim order to vacate a judgment of conviction if the petitioner satisfies
19 all requirements necessary for the judgment to be vacated but the petition is
20 deficient with respect to the sealing of the petitioner's record. **Section 1.2** provides
21 that if the court enters such an interim order, the court is also required to order
22 sealed the records of the petitioner which relate to the judgment being vacated.
23 **Sections 1.3-1.7** of this bill make conforming changes.

24 Existing law generally prohibits a person from knowingly or intentionally
25 possessing a controlled substance and sets forth the penalties for violating such a
26 provision. The severity of the penalty generally depends on the type of controlled
27 substance the person possessed and the number of times the person has committed
28 the offense. (NRS 453.336) **Section 2** of this bill provides that if a person is
29 convicted of knowingly or intentionally possessing a controlled substance and the
30 penalty for such possession requires that the person serve a minimum term of
31 imprisonment, the court is authorized to depart from the prescribed minimum term
32 of imprisonment in certain specified circumstances.

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

1 **Section 1.** (Deleted by amendment.)

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

4 *1. If a person has been convicted of a misdemeanor for the*
5 *possession of 1 ounce or less of marijuana in violation of*
6 *subsection 4 of NRS 453.336 or for a violation of any other*
7 *provision of law concerning an offense involving marijuana, if the*
8 *act constituting such an offense is a lawful act in this State on or*
9 *after January 1, 2017, the person may petition the court in which*
10 *he or she was convicted or, if the person wishes to file more than*
11 *one petition and would otherwise need to file a petition in more*
12 *than one court, the district court, for an order:*

13 *(a) Vacating the judgment; and*

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

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

20 *3. Except as otherwise provided in subsection 6, the court:*

21 *(a) Shall grant a petition filed pursuant to subsection 1 if the*
22 *judgment is a misdemeanor conviction for the possession of 1*
23 *ounce or less of marijuana in violation of subsection 4 of*
24 *NRS 453.336.*



1 (b) Except as otherwise provided in paragraph (a), may grant a
2 petition filed pursuant to subsection 1 if the judgment is a
3 misdemeanor conviction for a violation of any provision of law
4 concerning an offense involving marijuana and the act
5 constituting the offense is a lawful act in this State on or after
6 January 1, 2017.

7 4. Before the court decides whether to grant a petition
8 pursuant to paragraph (b) of subsection 3:

9 (a) The petitioner must notify the office of the prosecuting
10 attorney who prosecuted the petitioner for the crime; and

11 (b) The prosecuting attorney must be allowed to testify and
12 present evidence.

13 5. If the court grants a petition filed pursuant to subsection 1,
14 the court:

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

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

21 (c) May take any additional action that the court deems
22 appropriate under the circumstances.

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

30 7. If the court enters an interim order pursuant to subsection
31 6, the court shall also order sealed the records of the petitioner
32 which relate to the judgment being vacated in accordance with
33 paragraph (b) of subsection 5, regardless of whether any records
34 relating to other convictions are ineligible for sealing, either by
35 operation of law or because of a deficiency in the petition.

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

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

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

42 179.245 1. Except as otherwise provided in subsection 5 and
43 NRS 176A.265, 176A.295, 179.259, 453.3365 and 458.330, **and**
44 **section 1.2 of this act**, a person may petition the court in which the



1 person was convicted for the sealing of all records relating to a
2 conviction of:

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

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

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

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

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

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

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

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

27 (1) The Central Repository for Nevada Records of Criminal
28 History; and

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

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

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

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

43 (1) Date of birth of the petitioner;

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



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

3 3. Upon receiving a petition pursuant to this section, the court
4 shall notify the law enforcement agency that arrested the petitioner
5 for the crime and the prosecuting attorney, including, without
6 limitation, the Attorney General, who prosecuted the petitioner for
7 the crime. The prosecuting attorney and any person having relevant
8 evidence may testify and present evidence at the hearing on the
9 petition.

10 4. If, after the hearing, the court finds that, in the period
11 prescribed in subsection 1, the petitioner has not been charged with
12 any offense for which the charges are pending or convicted of any
13 offense, except for minor moving or standing traffic violations, the
14 court may order sealed all records of the conviction which are in the
15 custody of any agency of criminal justice or any public or private
16 agency, company, official or other custodian of records in the State
17 of Nevada, and may also order all such records of the petitioner
18 returned to the file of the court where the proceeding was
19 commenced from, including, without limitation, the Federal Bureau
20 of Investigation, the California Bureau of Criminal Identification
21 and Information and all other agencies of criminal justice which
22 maintain such records and which are reasonably known by either the
23 petitioner or the court to have possession of such records.

24 5. A person may not petition the court to seal records relating
25 to a conviction of:

26 (a) A crime against a child;

27 (b) A sexual offense;

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

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

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

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

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

39 6. If the court grants a petition for the sealing of records
40 pursuant to this section, upon the request of the person whose
41 records are sealed, the court may order sealed all records of the civil
42 proceeding in which the records were sealed.

43 7. As used in this section:

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



* A B 2 5 9 R 1 *

1 (b) "Sexual offense" means:

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

6 (2) Sexual assault pursuant to NRS 200.366.

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

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

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

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

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

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

23 (9) Incest pursuant to NRS 201.180.

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

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

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

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

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

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

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

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

39 **Sec. 1.5.** NRS 179.275 is hereby amended to read as follows:

40 179.275 Where the court orders the sealing of a record
41 pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259,
42 453.3365 or 458.330, *or section 1.2 of this act*, a copy of the order
43 must be sent to:

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



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

6 **Sec. 1.6.** NRS 179.285 is hereby amended to read as follows:

7 179.285 Except as otherwise provided in NRS 179.301:

8 1. If the court orders a record sealed pursuant to NRS
9 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
10 458.330 ~~H~~ *or section 1.2 of this act:*

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

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

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

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

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

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

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

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



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

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

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

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

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

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

31 **Sec. 2.** NRS 453.336 is hereby amended to read as follows:

32 453.336 1. Except as otherwise provided in subsection ~~5~~ **6**,
33 a person shall not knowingly or intentionally possess a controlled
34 substance, unless the substance was obtained directly from, or
35 pursuant to, a prescription or order of a physician, physician
36 assistant licensed pursuant to chapter 630 or 633 of NRS, dentist,
37 podiatric physician, optometrist, advanced practice registered nurse
38 or veterinarian while acting in the course of his or her professional
39 practice, or except as otherwise authorized by the provisions of NRS
40 453.005 to 453.552, inclusive.

41 2. Except as otherwise provided in subsections 3, ~~and~~ **4 and**
42 **5** and in NRS 453.3363, and unless a greater penalty is provided in
43 NRS 212.160, 453.3385, 453.339 or 453.3395, a person who
44 violates this section shall be punished:



1 (a) For the first or second offense, if the controlled substance is
2 listed in schedule I, II, III or IV, for a category E felony as provided
3 in NRS 193.130.

4 (b) For a third or subsequent offense, if the controlled substance
5 is listed in schedule I, II, III or IV, or if the offender has previously
6 been convicted two or more times in the aggregate of any violation
7 of the law of the United States or of any state, territory or district
8 relating to a controlled substance, for a category D felony as
9 provided in NRS 193.130, and may be further punished by a fine of
10 not more than \$20,000.

11 (c) For the first offense, if the controlled substance is listed in
12 schedule V, for a category E felony as provided in NRS 193.130.

13 (d) For a second or subsequent offense, if the controlled
14 substance is listed in schedule V, for a category D felony as
15 provided in NRS 193.130.

16 3. ~~Unless~~ *Except as otherwise provided in subsection 5 and*
17 *unless* a greater penalty is provided in NRS 212.160, 453.337 or
18 453.3385, a person who is convicted of the possession of
19 flunitrazepam or gamma-hydroxybutyrate, or any substance for
20 which flunitrazepam or gamma-hydroxybutyrate is an immediate
21 precursor, is guilty of a category B felony and shall be punished by
22 imprisonment in the state prison for a minimum term of not less
23 than 1 year and a maximum term of not more than 6 years.

24 4. ~~Unless~~ *Except as otherwise provided in subsection 5 and*
25 *unless* a greater penalty is provided pursuant to NRS 212.160, a
26 person who is convicted of the possession of 1 ounce or less of
27 marijuana:

28 (a) For the first offense, is guilty of a misdemeanor and shall be:

29 (1) Punished by a fine of not more than \$600; or

30 (2) Examined by a treatment provider approved by the court
31 to determine whether the person is a drug addict and is likely to be
32 rehabilitated through treatment and, if the examination reveals that
33 the person is a drug addict and is likely to be rehabilitated through
34 treatment, assigned to a program of treatment and rehabilitation
35 pursuant to NRS 453.580. As used in this subparagraph, "treatment
36 provider" has the meaning ascribed to it in NRS 458.010.

37 (b) For the second offense, is guilty of a misdemeanor and shall
38 be:

39 (1) Punished by a fine of not more than \$1,000; or

40 (2) Assigned to a program of treatment and rehabilitation
41 pursuant to NRS 453.580.

42 (c) For the third offense, is guilty of a gross misdemeanor and
43 shall be punished as provided in NRS 193.140.

44 (d) For a fourth or subsequent offense, is guilty of a category E
45 felony and shall be punished as provided in NRS 193.130.



* A B 2 5 9 R 1 *

1 5. *Notwithstanding any other provision of law, if a person is*
2 *convicted of a violation of any provision of this section which is*
3 *punishable by the imposition of a minimum term of imprisonment,*
4 *the court may, upon a showing of good cause by the person, depart*
5 *from the prescribed minimum term of imprisonment if:*

6 (a) *The offense for which the person was convicted did not*
7 *involve the use, attempted use or threatened use of physical force*
8 *against another person or result in any physical injury to another*
9 *person;*

10 (b) *During the commission of the offense for which the person*
11 *was convicted, the person was not in possession of, and did not*
12 *threaten the use of, display or represent by words or conduct that*
13 *he or she was in possession of, any weapon listed in subsection 1*
14 *of NRS 202.265;*

15 (c) *The provisions of this subsection have not previously been*
16 *applied to the person; and*

17 (d) *At the time of sentencing, the court states the reasons for*
18 *imposing a particular sentence upon the person and the specific*
19 *reason for imposing a sentence that departs from the prescribed*
20 *minimum term of imprisonment.*

21 6. It is not a violation of this section if a person possesses a
22 trace amount of a controlled substance and that trace amount is in or
23 on a hypodermic device obtained from a sterile hypodermic device
24 program pursuant to NRS 439.985 to 439.994, inclusive.

25 ~~6~~ 7. As used in this section:

26 (a) "Controlled substance" includes flunitrazepam, gamma-
27 hydroxybutyrate and each substance for which flunitrazepam or
28 gamma-hydroxybutyrate is an immediate precursor.

29 (b) "Marijuana" does not include concentrated cannabis.

30 (c) "Sterile hypodermic device program" has the meaning
31 ascribed to it in NRS 439.986.

32 **Sec. 3.** The amendatory provisions of section 2 of this act
33 apply to an offense committed:

34 1. On or after July 1, 2017; and

35 2. Before July 1, 2017, if the person is convicted on or after
36 July 1, 2017.

37 **Sec. 4.** This act becomes effective on July 1, 2017.

