

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



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.

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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 ~~1~~ 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 ~~15~~ 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 ~~12~~ 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 ~~7~~ 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.

