

SEALING RECORDS:

CONVICTION / ACQUITTAL / DISMISSAL

INTRODUCTION:

In Nevada, the ability to petition a court to seal records of an arrest, criminal conviction, acquittal or dismissal is controlled by statute; specifically, NRS 179.245 through NRS 179.301. The purpose of these instructions and attached forms is to assist in the preparation and filing of a petition under the relevant statutes. These instructions are not intended to supplant the statutes, but supplement them. Thus, familiarity with the statutes is encouraged.¹

These instructions and forms assume the petition is to be filed in the district court. However, a municipal court or justice court may also be petitioned for an order sealing records under NRS 179.245 (sealing records after conviction) or NRS 179.255 (sealing records after dismissal or acquittal). The caption of the petition will have to be changed to conform to the pleading requirements of the specific limited-jurisdiction court, but the substance of the petition will remain the same.

An order sealing records is not an expungement of records, which allows for the destruction of the records themselves. Rather, an order sealing records removes the records from general information sources, but does not authorize their destruction. In fact, a record sealed pursuant to statute may later be used in certain circumstances. See NRS 179.295 (reopening sealed records) and NRS 179.301 (inspection of sealed records by certain agencies).

Additionally, although the entry of an order by a court requires that certain criminal justice agencies located outside of Nevada comply with its direction, these agencies are not bound to follow this order and, therefore, these records may not be removed from their record entry systems.

Finally, the statutory provisions authorizing the sealing of records do not extend to or permit the sealing of Department of Motor Vehicle records.

¹ Certain types of proceedings where the entry of judgment is deferred are not included in this material and may be subject to other statutory provisions. See for example, NRS 453.3363 (suspension of proceedings and probation of accused under certain conditions; effect of discharge and dismissal); NRS 458.330 (deferment of sentencing; satisfaction of conditions; setting aside conviction; sentencing).

THE RELEVANT STATUTES – NRS 179.245 and NRS 179.255:

NRS 179.245 (Sealing Records after Conviction)

Generally, under NRS 179.245(1) the nature or level of the offense controls the time after which a petition may be filed. A person may petition the court in which he was convicted of:

A Category A or B felony after 15 years from the date of his release from actual custody or discharge from parole or probation, whichever occurs later;

A Category C or D felony after 12 years from the date of his release from actual custody or discharge from parole or probation, whichever occurs later;

A Category E felony after 7 years from the date of his release from actual custody or discharge from parole or probation, whichever occurs later;

Any gross misdemeanor after 7 years from the date of his release from actual custody or discharge from probation, whichever occurs later;

A violation of NRS 484.379 other than a felony, or a domestic battery other than a felony after 7 years from the date of his release from actual custody or from the date when he is no longer under a suspended sentence, whichever occurs later; or

Any other misdemeanor after 2 years from the date of his release from actual custody or from the date when he is no longer under a suspended sentence, whichever occurs later.

But note: under NRS 179.245(5) a person may not petition a court to seal records relating to a conviction for a crime against a child or a sexual offense. Subsection 7 of the statute defines both “crime against a child” and “sexual offense.”

Under NRS 179.245(2) a petition filed pursuant to subsection 1 must be accompanied by current, verified records of the petitioner’s criminal history received from (1) the Central Repository for Nevada Records of Criminal History; and (2) the local law enforcement agency of the city or county in which the conviction was entered.

The petition must 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 must include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.

Finally, unless the parties stipulate otherwise, a court may not grant a petition to seal records without first conducting an evidentiary hearing.² After a hearing, a court may grant the petition only if it 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.” NRS 179.245(4).³

In sum, in order to successfully petition a court for an order sealing a record of conviction under NRS 179.245, four things must be a place:

1. The conviction suffered by the petitioner must not be one involving a crime against a child or a sexual offense as defined in NRS 179.245(7);
2. A sufficient amount of time (as set out in NRS 179.245(1)) must have passed between the date of release from custody or other constructive “custodial” status, *i.e.* parole, probation or suspended sentence, whichever is later;
3. Verified records of the petitioner’s criminal history must be obtained from the Central Repository for Nevada Records of Criminal History and from the applicable local law enforcement agency and be submitted with the petition; and
4. The petitioner must not have any charges pending or a conviction of any offense except for minor moving or standing traffic violations between the date of release and the hearing date.

Please note: under NRS 179.265 (1) a person whose petition under NRS 179.245 is denied may petition for a rehearing no sooner than two years after the denial of the petition. Under subsection 2 of this statute, a petitioner is limited to two rehearing petitions.

² *State v. District Court (Giles)*, 105 Nev. 822, 783 P.2d 463 (1989).

³ *State v. Cavaricci*, 108 Nev. 411, 834 P.2d 406 (1992).

NRS 179.255 (Sealing Records after Dismissal or Acquittal)

Under NRS 179.255(1) a person who was arrested for alleged criminal conduct and the charges were either dismissed or such person was acquitted of the charges, may petition the court in which the charges were dismissed or in which the acquittal was entered at any time after the date the charges were dismissed or the date the acquittal was entered, for the sealing of all records relating to the arrest and the proceedings leading to the dismissal or acquittal.

Under NRS 179.255(2) the petition must be accompanied by current, verified record of the criminal history of the petitioner received from the local law enforcement agency of the city or county in which the petitioner appeared in court. It must also 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. Additionally, the petition must include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.

Finally, unless the parties stipulate otherwise, a court may not grant a petition to seal records without first conducting an evidentiary hearing. After a hearing, a court may grant the petition if it finds that “there has been an acquittal or that the charges were dismissed and there is no evidence that further action will be brought against the person.” NRS 179.255(4).

In sum, in order to successfully petition a court for an order sealing all records relating to an arrest and the proceedings leading to a dismissal or acquittal of the charge(s) under NRS 179.255, three things must be in place:

1. The alleged charge(s) must either have been dismissed by the court or an acquittal of them entered by the court;
2. Verified records of the petitioner’s criminal history must be obtained from the local law enforcement agency of the city or county in which the petitioner appeared in court and be submitted with the petition; and,
3. The court must be satisfied that no further action will be brought against the petitioner on the dismissed charge(s).

Please note: under NRS 179.265 (1) a person whose petition under NRS 179.255 is denied may petition for a rehearing no sooner than two years after the denial of the petition. Under subsection 2 of this statute, a petitioner is limited to two rehearing petitions.

PREPARATION AND FILING OF THE PETITION:

Step One: Obtain criminal history records. Nevada's Central Repository for Criminal Records is part of the Department of Motor Vehicle and Public Safety Records and Identification Bureau, 333 West Nye Lane, Carson City, Nevada 89706; (775) 684-6262.⁴ You should contact this Department directly to ascertain what information it will need from you (*i.e.* fingerprint cards, FBI Request Form and cashier's checks) in order to process your request for your criminal history. (You can obtain fingerprint cards and a FBI Request Form from this Department.) There are fees for these services. It is important that you ask about the fees involved and to whom, and in what manner, such fees are to be paid. NRS 179.245(2); NRS 179.255(2).

Step Two: Complete the petition and sign it before a Notary Public. File the petition (together with the required accompanying documents) in the appropriate court. Be sure to have extra-copies available for filing so that you will have a file-stamped copy for your records as well as a file-stamped copy for district or city attorney. You will be required to serve the prosecuting authority a file-stamped copy of the petition (and attached documents.)

1. The petition must contain the date of arrest, arresting agency, agency case number, the original charges under which the petitioner was arrested, the charges formally charged and the date and charges of which the petitioner was eventually convicted (or acquitted or which were dismissed.)
2. The petition must be filed in the court within thirty (30) days of receipt of the criminal history records. Beyond 30 days, the criminal history record is considered "stale" and the petitioner will be required to obtain a new criminal history record.
3. The petition must address one case only.⁵
4. In any felony or gross misdemeanor conviction for which the petitioner received a grant of probation from the court, the discharge papers from that probation must be attached to the petition. A copy of the discharge papers can be obtained from the Clerk of the Court. There may be a fee for this service.
5. As noted above, a current verified copy of the petitioner's criminal history (from Nevada and the FBI) must be attached to the petition.

⁴ <http://www.nvrepository.state.nv.us>.

⁵ Multiple convictions arising from the same set of facts and charged in the same charging document (*i.e.* criminal complaint, Information or Indictment) are just one case for the purpose of a petition. But multiple convictions growing out of separate facts, with separate dates, localities or victims and charged in separate and distinct charging documents are separate cases, and each needs its own separate petition to seal records.

6. The petition (and attached documents) must be filed in the court in which the judgment of conviction was entered, the court from which the dismissal or acquittal occurred or to the court to which proceedings would have been referred if the charge had been filed.

Step Three: Once the petition has been filed with the court and service of a file-stamped copy of the petition (and attached documents) has been made upon the city or district attorney (as appropriate), you should contact that prosecuting official to determine if he or she will be filing an objection to the petition. If not, the parties can probably resolve the matter by stipulation. (A sample Stipulation is provided in the attached forms.) As noted above, unless the parties stipulate otherwise, the court must hold an evidentiary hearing before it can grant the petition.

Where there is no objection to the petition and the stipulation has been signed by the parties, the petitioner should deliver file-stamped copies of the petition and the stipulation to the court. Petitioner should also at this time deliver to the court the original Order Sealing Records. The court will determine if a hearing is necessary and will make that decision on the record. If the court grants the petition the order will be signed and the petitioner will be contacted to pick up the signed order from the court.

If there is an objection to the petition that objection, in the form of a written response, will be filed with the court and a file-stamped copy will be mailed to you. You must thereafter contact the court and the opposing attorney to set a mutually convenient date and time for the required evidentiary hearing. You should bring the original Order Sealing Records (and copies) with you to the hearing.

Step Four:

Where a petition for sealing of records is approved by the court, the Order Sealing Records, once signed by the court must be filed by the petitioner with the clerk of the court. (A sample Order Sealing Records is provided in the attached forms.) You will want the clerk to certify the appropriate number of copies necessary for serving upon the agencies identified in the order. There will be a fee for this service.

Unless the court orders otherwise, it is the responsibility of the petitioner to serve upon the agencies identified in the order a certified copy of the Order Sealing Records. The petitioner must also provide a blank "return" to be completed by the agency for filing with the court advising it of compliance with the order. (A sample Return on Order Sealing Records is provided in the attached forms.)