

AMENDMENTS TO LB1132

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. (1) For purposes of this section:

4 (a) Prostitution-related offense includes:

5 (i) Prostitution under section 28-801, solicitation of prostitution
6 under section 28-801.01, keeping a place of prostitution under section
7 28-804, public indecency under section 28-806, or loitering for the
8 purpose of engaging in prostitution or related or similar offenses under
9 local ordinances; and

10 (ii) Attempt, conspiracy, solicitation, being an accessory to,
11 aiding and abetting, aiding the consummation of, or compounding a felony
12 with any of the offenses in subdivision (1)(a) of this section as the
13 underlying offense;

14 (b) Trafficker means a person who engages in sex trafficking or sex
15 trafficking of a minor as defined in section 28-830; and

16 (c) Victim of sex trafficking means a person subjected to sex
17 trafficking or sex trafficking of a minor, as those terms are defined in
18 section 28-830.

19 (2) At any time following the date of the conviction or
20 adjudication, a victim of sex trafficking convicted in county or district
21 court of, or adjudicated in a juvenile court for (a) a prostitution-
22 related offense or (b) any other offense committed as a direct result of,
23 or incident to, being a victim of sex trafficking may file a petition to
24 set aside such conviction or adjudication. The petition shall be filed in
25 the county or district court of the county in which charges were filed or
26 the petitioner was convicted or adjudicated. The prosecuting attorney
27 shall be named as respondent and shall be served with a copy of the

1 petition.

2 (3)(a) The court shall grant a petition to set aside a conviction or
3 adjudication for a prostitution-related offense if the court finds that
4 the petitioner was a victim of sex trafficking at the time of the offense
5 or if the court finds that the petitioner's participation in the offense
6 was otherwise incidental to being a victim of sex trafficking.

7 (b) The court shall grant a petition to set aside a conviction or
8 adjudication for an offense other than a prostitution-related offense if
9 the court finds that the petitioner's participation in the offense was a
10 direct result of or incidental to being a victim of sex trafficking.

11 (4) The court shall find that the petitioner is a victim of sex
12 trafficking if the petitioner submits to the court:

13 (a) A copy of an official record, certification, or eligibility
14 letter from a federal, state, tribal, or local proceeding, including an
15 approval notice or an enforcement certification generated from a federal
16 immigration proceeding, that shows that the petitioner is a victim of sex
17 trafficking; or

18 (b) An affidavit or sworn testimony from an attorney, a member of
19 the clergy, a medical professional, a trained professional staff member
20 of a victim services organization, or other professional from whom the
21 petitioner has sought legal counsel or other assistance in addressing the
22 trauma associated with being a victim of sex trafficking.

23 (5) In considering whether the petitioner is a victim of sex
24 trafficking, the court may consider any other evidence the court
25 determines is of sufficient credibility and probative value, including an
26 affidavit or sworn testimony. Examples of such evidence include, but are
27 not limited to:

28 (a) Branding or other tattoos on the petitioner that identified him
29 or her as having a trafficker;

30 (b) Testimony or affidavits from those with firsthand knowledge of
31 the petitioner's involvement in the commercial sex trade such as

1 solicitors of commercial sex, family members, hotel workers, and other
2 individuals trafficked by the same individual or group of individuals who
3 trafficked the petitioner;

4 (c) Financial records showing profits from the commercial sex trade,
5 such as records of hotel stays, employment at indoor venues such as
6 massage parlors or strip clubs, or employment at an escort service;

7 (d) Internet listings, print advertisements, or business cards used
8 to promote the petitioner for commercial sex; or

9 (e) Email, text, or voicemail records between the petitioner, the
10 trafficker, or solicitors of sex that reveal aspects of the sex trade
11 such as behavior patterns, meeting times, or payments or examples of the
12 trafficker exerting force, fraud, or coercion over the petitioner.

13 (6) Upon request of a petitioner, any hearing relating to the
14 petition shall be conducted in camera. The rules of evidence shall not
15 apply at any hearing relating to the petition.

16 (7) An order setting aside a conviction or adjudication under this
17 section shall:

18 (a) Nullify the conviction or adjudication; and

19 (b) Remove all civil disabilities and disqualifications imposed as a
20 result of the conviction or adjudication.

21 (8) The setting aside of a conviction in accordance with this
22 section shall not:

23 (a) Require the reinstatement of any office, employment, or position
24 which was previously held and lost or forfeited as a result of the
25 conviction or adjudication; or

26 (b) Preclude proof of a plea of guilty in a criminal proceeding or
27 an admission of responsibility in a juvenile proceeding whenever such
28 plea or admission is relevant to the determination of an issue involving
29 the rights or liabilities of someone other than the petitioner.

30 Sec. 2. Section 29-3523, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 29-3523 (1) After the expiration of the periods described in
2 subsection (3) of this section or after the granting of a motion under
3 subsection (4) of this section, a criminal justice agency shall respond
4 to a public inquiry in the same manner as if there were no criminal
5 history record information and criminal history record information shall
6 not be disseminated to any person other than a criminal justice agency,
7 except as provided in subsection (2) of this section or when the subject
8 of the record:

9 (a) Is currently the subject of prosecution or correctional control
10 as the result of a separate arrest;

11 (b) Is currently an announced candidate for or holder of public
12 office;

13 (c) Has made a notarized request for the release of such record to a
14 specific person; or

15 (d) Is kept unidentified, and the record is used for purposes of
16 surveying or summarizing individual or collective law enforcement agency
17 activity or practices, or the dissemination is requested consisting only
18 of release of criminal history record information showing (i) dates of
19 arrests, (ii) reasons for arrests, and (iii) the nature of the
20 dispositions including, but not limited to, reasons for not prosecuting
21 the case or cases.

22 (2) That part of criminal history record information described in
23 subsection (5) ~~(4)~~ of this section may be disseminated to individuals and
24 agencies for the express purpose of research, evaluative, or statistical
25 activities pursuant to an agreement with a criminal justice agency that
26 specifically authorizes access to the information, limits the use of the
27 information to research, evaluative, or statistical activities, and
28 ensures the confidentiality and security of the information.

29 (3) Except as provided in subsections (1) and (2) of this section,
30 in the case of an arrest, citation in lieu of arrest, or referral for
31 prosecution without citation, all criminal history record information

1 relating to the case shall be removed from the public record as follows:

2 (a) When no charges are filed as a result of the determination of
3 the prosecuting attorney, the criminal history record information shall
4 not be part of the public record after one year from the date of arrest,
5 citation in lieu of arrest, or referral for prosecution without citation;

6 (b) When charges are not filed as a result of a completed diversion,
7 the criminal history record information shall not be part of the public
8 record after two years from the date of arrest, citation in lieu of
9 arrest, or referral for prosecution without citation; and

10 (c) When charges are filed, but the case is dismissed by the court
11 (i) on motion of the prosecuting attorney, (ii) as a result of a hearing
12 not the subject of a pending appeal, (iii) after acquittal, or (iv) after
13 completion of a program prescribed by a drug court or any other problem
14 solving court approved by the Supreme Court, the criminal history record
15 information shall not be part of the public record immediately upon
16 notification of a criminal justice agency after acquittal pursuant to
17 subdivision (3)(c)(iii) of this section or after the entry of an order
18 dismissing the case.

19 (4) Upon the granting of a petition to set aside a conviction or
20 adjudication pursuant to section 1 of this act, a person who is a victim
21 of sex trafficking, as defined in section 1 of this act, may file a
22 motion with the sentencing court for an order to seal the criminal
23 history record information related to such conviction or adjudication.
24 Upon a finding that a court issued an order setting aside such conviction
25 or adjudication pursuant to section 1 of this act, the sentencing court
26 shall grant the motion and issue an order as provided in subsection (5)
27 of this section.

28 (5) (4) Upon acquittal, or entry of an order dismissing a case
29 described in subdivision (3)(c) of this section, or after granting a
30 motion under subsection (4) of this section, the court shall:

31 (a) Order that all records, including any information or other data

1 concerning any proceedings relating to the case, including the arrest,
2 taking into custody, petition, complaint, indictment, information, trial,
3 hearing, adjudication, correctional supervision, dismissal, or other
4 disposition or sentence, are not part of the public record and shall not
5 be disseminated to persons other than criminal justice agencies, except
6 as provided in subsection (1) or (2) of this section;

7 (b) Send notice of the order (i) to the Nebraska Commission on Law
8 Enforcement and Criminal Justice, (ii) to the Nebraska State Patrol, and
9 (iii) to law enforcement agencies, county attorneys, and city attorneys
10 referenced in the court record;

11 (c) Order all parties notified under subdivision (5)(b) ~~(4)(b)~~ of
12 this section to seal all records pertaining to the case; and

13 (d) If the case was transferred from one court to another, send
14 notice of the order to seal the record to the transferring court.

15 (5) In any application for employment, bonding, license, education,
16 or other right or privilege, any appearance as a witness, or any other
17 public inquiry, a person cannot be questioned with respect to any offense
18 for which the record is sealed. If an inquiry is made in violation of
19 this subsection, the person may respond as if the offense never occurred.

20 (6) Any person arrested due to the error of a law enforcement agency
21 may file a petition with the district court for an order to expunge the
22 criminal history record information related to such error. The petition
23 shall be filed in the district court of the county in which the
24 petitioner was arrested. The county attorney shall be named as the
25 respondent and shall be served with a copy of the petition. The court may
26 grant the petition and issue an order to expunge such information if the
27 petitioner shows by clear and convincing evidence that the arrest was due
28 to error by the arresting law enforcement agency.

29 Sec. 3. Original section 29-3523, Reissue Revised Statutes of
30 Nebraska, is repealed.