

AMENDMENTS TO LB1132

(Amendments to Standing Committee amendments, AM1971)

Introduced by Lindstrom, 18.

1 1. Strike section 2 and insert the following new section:

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

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

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

14 (b) Is currently an announced candidate for or holder of public
15 office;

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

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

25 (2) That part of criminal history record information described in
26 subsection ~~(6)~~ (4) of this section may be disseminated to individuals and

1 agencies for the express purpose of research, evaluative, or statistical
2 activities pursuant to an agreement with a criminal justice agency that
3 specifically authorizes access to the information, limits the use of the
4 information to research, evaluative, or statistical activities, and
5 ensures the confidentiality and security of the information.

6 (3) Except as provided in subsections (1) and (2) of this section,
7 in the case of an arrest, citation in lieu of arrest, or referral for
8 prosecution without citation, all criminal history record information
9 relating to the case shall be removed from the public record as follows:

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

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

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

27 (4) Upon the granting of a petition to set aside a conviction or
28 adjudication pursuant to section 1 of this act, a person who is a victim
29 of sex trafficking, as defined in section 1 of this act, may file a
30 motion with the sentencing court for an order to seal the criminal
31 history record information related to such conviction or adjudication.

1 Upon a finding that a court issued an order setting aside such conviction
2 or adjudication pursuant to section 1 of this act, the sentencing court
3 shall grant the motion and issue an order as provided in subsection (6)
4 of this section.

5 (5) Any person who has received a pardon may file a motion with the
6 sentencing court for an order to seal the criminal history record
7 information and any cases related to such charges or conviction. Upon a
8 finding that the person received a pardon, the court shall grant the
9 motion and issue an order as provided in subsection (6) of this section.

10 (6) (4) Upon acquittal, or entry of an order dismissing a case
11 described in subdivision (3)(c) of this section, or after granting a
12 motion under subsection (4) or (5) of this section, the court shall:

13 (a) Order that all records, including any information or other data
14 concerning any proceedings relating to the case, including the arrest,
15 taking into custody, petition, complaint, indictment, information, trial,
16 hearing, adjudication, correctional supervision, dismissal, or other
17 disposition or sentence, are not part of the public record and shall not
18 be disseminated to persons other than criminal justice agencies, except
19 as provided in subsection (1) or (2) of this section;

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

24 (c) Order all parties notified under subdivision (6)(b) ~~(4)(b)~~ of
25 this section to seal all records pertaining to the case; and

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

28 (7) (5) In any application for employment, bonding, license,
29 education, or other right or privilege, any appearance as a witness, or
30 any other public inquiry, a person cannot be questioned with respect to
31 any offense for which the record is sealed. If an inquiry is made in

1 violation of this subsection, the person may respond as if the offense
2 never occurred.

3 (8) (6) Any person arrested due to the error of a law enforcement
4 agency may file a petition with the district court for an order to
5 expunge the criminal history record information related to such error.
6 The petition shall be filed in the district court of the county in which
7 the petitioner was arrested. The county attorney shall be named as the
8 respondent and shall be served with a copy of the petition. The court may
9 grant the petition and issue an order to expunge such information if the
10 petitioner shows by clear and convincing evidence that the arrest was due
11 to error by the arresting law enforcement agency.

12 (9) The changes made to this section by Laws 2016, LB505 shall be
13 retroactive in application and shall apply to all persons, otherwise
14 eligible in accordance with the provisions of this section, whether
15 arrested, cited in lieu of arrest, referred for prosecution without
16 citation, charged, or convicted prior to, on, or subsequent to the
17 effective date of this act.

18 (10) The changes made to this section by this legislative bill shall
19 be retroactive in application and shall apply to all persons, otherwise
20 eligible in accordance with the provisions of this section, whether
21 convicted or adjudicated prior to, on, or subsequent to the effective
22 date of this act.