

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 678

Introduced by Krist, 10.

Read first time January 03, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal justice; to amend section 29-3523,
2 Reissue Revised Statutes of Nebraska, and section 83-962, Revised
3 Statutes Cumulative Supplement, 2016; to change provisions relating
4 to criminal history record information and correctional emergencies
5 as prescribed; to repeal the original sections; and to declare an
6 emergency.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-3523, Reissue Revised Statutes of Nebraska, is
2 amended to read:

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

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

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

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

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

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

30 (3) Except as provided in subsections (1) and (2) of this section,
31 in the case of an arrest, citation in lieu of arrest, or referral for

1 prosecution without citation, all criminal history record information
2 relating to the case shall be removed from the public record as follows:

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

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

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

20 (4) Upon acquittal or entry of an order dismissing a case described
21 in subdivision (3)(c) of this section, the court shall:

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

29 (b) Send notice of the order (i) to the Nebraska Commission on Law
30 Enforcement and Criminal Justice, (ii) to the Nebraska State Patrol, and
31 (iii) to law enforcement agencies, county attorneys, and city attorneys

1 referenced in the court record;

2 (c) Order all parties notified under subdivision (4)(b) of this
3 section to seal all records pertaining to the case; and

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

6 (5) Any person who is subject to a record which resulted in charges
7 not being filed prior to January 1, 2017, as described in subdivision (3)
8 (a) or (b) of this section, may file a petition with the district court
9 for an order to expunge the criminal history record information related
10 to such entry. The petition shall be filed in the district court of the
11 county in which the petitioner was arrested. The county attorney shall be
12 named as the respondent and shall be served with a copy of the petition.
13 Upon a finding that the case was not filed or charged, the court shall
14 grant the petition and issue an order to expunge such information, except
15 as provided in subsections (1) and (2) of this section.

16 (6) Any person who is subject to a record which resulted in a case
17 being dismissed prior to January 1, 2017, as described in subdivision (3)
18 (c) of this section, may petition the court to enter an order pursuant to
19 subdivisions (4)(a) through (d) of this section. Upon a finding that the
20 case was dismissed for any reason described in subdivision (3)(c) of this
21 section, the court shall enter an order, except as provided in
22 subsections (1) and (2) of this section.

23 (7) (5) In any application for employment, bonding, license,
24 education, or other right or privilege, any appearance as a witness, or
25 any other public inquiry, a person cannot be questioned with respect to
26 any offense for which the record is sealed. If an inquiry is made in
27 violation of this subsection, the person may respond as if the offense
28 never occurred.

29 (8) (6) Any person arrested due to the error of a law enforcement
30 agency may file a petition with the district court for an order to
31 expunge the criminal history record information related to such error.

1 The petition shall be filed in the district court of the county in which
2 the petitioner was arrested. The county attorney shall be named as the
3 respondent and shall be served with a copy of the petition. The court may
4 grant the petition and issue an order to expunge such information if the
5 petitioner shows by clear and convincing evidence that the arrest was due
6 to error by the arresting law enforcement agency.

7 Sec. 2. Section 83-962, Revised Statutes Cumulative Supplement,
8 2016, is amended to read:

9 83-962 (1) Until July 1, 2018 ~~2020~~, the Governor may declare a
10 correctional system overcrowding emergency whenever the director
11 certifies that the department's inmate population is over one hundred
12 forty percent of design capacity. Beginning July 1, 2018 ~~2020~~, a
13 correctional system overcrowding emergency shall exist whenever the
14 director certifies that the department's inmate population is over one
15 hundred forty percent of design capacity. The director shall so certify
16 within thirty days after the date on which the population first exceeds
17 one hundred forty percent of design capacity.

18 (2) During a correctional system overcrowding emergency, the board
19 shall immediately consider or reconsider committed offenders eligible for
20 parole who have not been released on parole.

21 (3) Upon such consideration or reconsideration, and for all other
22 consideration of committed offenders eligible for parole while the
23 correctional system overcrowding emergency is in effect, the board shall
24 order the release of each committed offender unless it is of the opinion
25 that such release should be deferred because:

26 (a) The board has determined that it is more likely than not that
27 the committed offender will not conform to the conditions of parole;

28 (b) The board has determined that release of the committed offender
29 would have a very significant and quantifiable effect on institutional
30 discipline; or

31 (c) The board has determined that there is a very substantial risk

1 that the committed offender will commit a violent act against a person.

2 (4) In making the determination regarding the risk that a committed
3 offender will not conform to the conditions of parole, the board shall
4 take into account the factors set forth in subsection (2) of section
5 83-1,114.

6 (5) The board shall continue granting parole to offenders under this
7 section until the director certifies that the population is at
8 operational capacity. The director shall so certify within thirty days
9 after the date on which the population first reaches operational
10 capacity.

11 Sec. 3. Original section 29-3523, Reissue Revised Statutes of
12 Nebraska, and section 83-962, Revised Statutes Cumulative Supplement,
13 2016, are repealed.

14 Sec. 4. Since an emergency exists, this act takes effect when
15 passed and approved according to law.