

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1051**

Introduced by Cavanaugh, J., 9; McKinney, 11.

Read first time January 18, 2022

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-2523, Revised Statutes Cumulative Supplement, 2020; to provide
- 3 for setting aside and expunging records relating to convictions and
- 4 adjudications for concealed weapon offenses; to define a term; to
- 5 harmonize provisions; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1           Section 1.   (1) For purposes of this section, concealed weapon  
2 offense means:

3           (a) A violation of section 28-1202 as it existed on or before  
4 January 1, 2022; or

5           (b) Attempt, conspiracy, solicitation, being an accessory to, aiding  
6 and abetting, aiding the consummation of, or compounding a felony with a  
7 violation described in subdivision (1)(a) of this section as the  
8 underlying offense.

9           (2) At any time following the completion of sentence or disposition,  
10 a person convicted of a concealed weapon offense or adjudicated in  
11 juvenile court for a concealed weapon offense may file a motion to set  
12 aside such conviction or adjudication. The motion shall be filed in the  
13 county, district, or separate juvenile court in which the movant was  
14 convicted or adjudicated.

15           (3) In determining whether to set aside the conviction, the court  
16 shall consider:

17           (a) The behavior of the movant after completion of sentencing or  
18 disposition;

19           (b) The likelihood that the movant will not engage in further  
20 criminal activity; and

21           (c) Any other information the court considers relevant.

22           (4) There shall be a rebuttable presumption that the movant is  
23 entitled to relief under this section if section 28-1202:

24           (a) Is amended by the Legislature such that the movant's conduct  
25 underlying the conviction or adjudication for a concealed weapon offense  
26 would no longer be a violation of section 28-1202; or

27           (b) Section 28-1202 is outright repealed by the Legislature.

28           (5) The court may grant the motion and issue an order setting aside  
29 the conviction or adjudication when in the opinion of the court the order  
30 will be in the best interest of the movant and consistent with the public  
31 welfare.

1       (6) An order setting aside a conviction or an adjudication under  
2 this section shall have the same effect as an order setting aside a  
3 conviction as provided in subsections (5) and (6) of section 29-2264.

4       Sec. 2. Section 29-3523, Revised Statutes Cumulative Supplement,  
5 2020, is amended to read:

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

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

16       (b) Is currently an announced candidate for or holder of public  
17 office;

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

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

27       (2) That part of criminal history record information described in  
28 subsection ~~(8)~~ (7) of this section may be disseminated to individuals and  
29 agencies for the express purpose of research, evaluative, or statistical  
30 activities pursuant to an agreement with a criminal justice agency that  
31 specifically authorizes access to the information, limits the use of the

1 information to research, evaluative, or statistical activities, and  
2 ensures the confidentiality and security of the information.

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

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

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

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

24 (4) Upon the granting of a motion to set aside a conviction or an  
25 adjudication pursuant to section 29-3005, a person who is a victim of sex  
26 trafficking, as defined in section 29-3005, may file a motion with the  
27 ~~same sentencing~~ court for an order to seal the criminal history record  
28 information related to such conviction or adjudication. Upon a finding  
29 that a court issued an order setting aside such conviction or  
30 adjudication pursuant to section 29-3005, the ~~sentencing~~ court shall  
31 grant the motion and:

1 (a) For a conviction, issue an order as provided in subsection (8)  
2 ~~(7)~~ of this section; or

3 (b) For an adjudication, issue an order as provided in section  
4 43-2,108.05.

5 (5) Upon the granting of a motion to set aside a conviction or an  
6 adjudication pursuant to section 1 of this act, the movant may file a  
7 motion with the same court for an order to seal the criminal history  
8 record information related to such conviction or adjudication. Upon a  
9 finding that a court issued an order setting aside such conviction or  
10 adjudication pursuant to section 1 of this act, the court shall grant the  
11 motion and:

12 (a) For a conviction, issue an order as provided in subsection (8)  
13 of this section; or

14 (b) For an adjudication, issue an order as provided in section  
15 43-2,108.05.

16 (6) ~~(5)~~ Any person who has received a pardon may file a motion with  
17 the sentencing court for an order to seal the criminal history record  
18 information and any cases related to such charges or conviction. Upon a  
19 finding that the person received a pardon, the court shall grant the  
20 motion and issue an order as provided in subsection (8) ~~(7)~~ of this  
21 section.

22 (7) ~~(6)~~ Any person who is subject to a record which resulted in a  
23 case being dismissed prior to January 1, 2017, as described in  
24 subdivision (3)(c) of this section, may file a motion with the court in  
25 which the case was filed to enter an order pursuant to subsection (8) ~~(7)~~  
26 of this section. Upon a finding that the case was dismissed for any  
27 reason described in subdivision (3)(c) of this section, the court shall  
28 grant the motion and enter an order as provided in subsection (8) ~~(7)~~ of  
29 this section.

30 (8) ~~(7)~~ Upon acquittal or entry of an order dismissing a case  
31 described in subdivision (3)(c) of this section, or after granting a

1 motion under subsection (4), (5), ~~or (6)~~, or (7) of this section, the  
2 court shall:

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

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

14 (c) Order all parties notified under subdivision ~~(7)(b)~~ (8)(b) of  
15 this section to seal all records pertaining to the case; and

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

18 (9) ~~(8)~~ In any application for employment, bonding, license,  
19 education, or other right or privilege, any appearance as a witness, or  
20 any other public inquiry, a person cannot be questioned with respect to  
21 any offense for which the record is sealed. If an inquiry is made in  
22 violation of this subsection, the person may respond as if the offense  
23 never occurred.

24 (10) ~~(9)~~ Any person arrested due to the error of a law enforcement  
25 agency may file a petition with the district court for an order to  
26 expunge the criminal history record information related to such error.  
27 The petition shall be filed in the district court of the county in which  
28 the petitioner was arrested. The county attorney shall be named as the  
29 respondent and shall be served with a copy of the petition. The court may  
30 grant the petition and issue an order to expunge such information if the  
31 petitioner shows by clear and convincing evidence that the arrest was due

1 to error by the arresting law enforcement agency.

2 ~~(11) (10)~~ The changes made by Laws 2018, LB1132 and this legislative  
3 bill, to the relief set forth in this section shall apply to all persons  
4 otherwise eligible in accordance with the provisions of this section,  
5 whether arrested, cited in lieu of arrest, referred for prosecution  
6 without citation, charged, convicted, or adjudicated prior to, on, or  
7 subsequent to July 19, 2018.

8 Sec. 3. Original section 29-3523, Revised Statutes Cumulative  
9 Supplement, 2020, is repealed.