

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 965

Introduced by Cook, 13.

Read first time January 14, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal procedure; to amend sections
2 29-3501, 29-3502, 29-3503, 29-3518, 29-3527, and 29-3528, Reissue
3 Revised Statutes of Nebraska, and section 29-3523, Revised Statutes
4 Supplement, 2015; to change provisions relating to mistaken arrest
5 and expungement of records; to provide for expungement of records
6 for persons charged with or found guilty of a crime because of
7 stolen identity or mistaken identity; to harmonize provisions; and
8 to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-3501, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-3501 Sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423 and
4 section 6 of this act shall be known and may be cited as the Security,
5 Privacy, and Dissemination of Criminal History Information Act.

6 Sec. 2. Section 29-3502, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 29-3502 The purposes of the Security, Privacy, and Dissemination of
9 Criminal History Information Act ~~purposes of sections 29-209, 29-210,~~
10 ~~29-3501 to 29-3528, and 81-1423~~ are (1) to control and coordinate
11 criminal offender record keeping within this state, (2) to establish more
12 efficient and uniform systems of criminal offender record keeping, (3) to
13 assure periodic audits of such record keeping in order to determine
14 compliance with the act ~~sections 29-209, 29-210, 29-3501 to 29-3528, and~~
15 ~~81-1423~~, (4) to establish a more effective administrative structure for
16 the protection of individual privacy in connection with such record
17 keeping, and (5) to preserve the principle of the public's right to know
18 of the official actions of criminal justice agencies.

19 Sec. 3. Section 29-3503, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 29-3503 For ~~the~~ purposes of the Security, Privacy, and Dissemination
22 of Criminal History Information Act ~~sections 29-209, 29-210, 29-3501 to~~
23 ~~29-3528, and 81-1423~~, unless the context otherwise requires, the
24 definitions found in sections 29-3504 to 29-3514 shall be used.

25 Sec. 4. Section 29-3518, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 29-3518 Direct access to criminal history record information system
28 facilities, system operating environments, data file contents, and system
29 documentation shall be restricted to authorized organizations and
30 persons. Wherever criminal history record information is collected,
31 stored, or disseminated, the criminal justice agency or agencies

1 responsible for the operation of the system: (1) May determine for
2 legitimate security purposes which personnel may work in a defined area
3 where such information is stored, collected, or disseminated; (2) shall
4 select and supervise all personnel authorized to have direct access to
5 such information; (3) shall assure that an individual or agency
6 authorized direct access is administratively held responsible for (a) the
7 physical security of criminal history record information under its
8 control or in its custody, and (b) the protection of such information
9 from unauthorized access, disclosure, or dissemination; (4) shall
10 institute procedures to reasonably protect any central repository of
11 criminal history record information from unauthorized access, theft,
12 sabotage, fire, flood, wind, or other natural or manmade disasters; (5)
13 shall provide that each employee working with or having access to
14 criminal history record information is to be made familiar with the
15 Security, Privacy, and Dissemination of Criminal History Information Act
16 ~~sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423~~ and of any rules
17 and regulations promulgated under such sections; and (6) shall require
18 that direct access to criminal history record information shall be made
19 available only to authorized officers or employees of a criminal justice
20 agency and, as necessary, other authorized personnel essential to the
21 proper operation of the criminal history record information system. This
22 section shall not be construed to inhibit or limit dissemination of
23 criminal history record information as authorized in other sections of
24 the act ~~sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423,~~
25 including both review of original records and the right to have copies
26 made of records when not prohibited.

27 Sec. 5. Section 29-3523, Revised Statutes Supplement, 2015, is
28 amended to read:

29 29-3523 (1) That part of criminal history record information
30 consisting of a notation of an arrest, described in subsection (3) of
31 this section, shall not be disseminated to persons other than criminal

1 justice agencies after the expiration of the periods described in
2 subsection (3) of this section except as provided in subsection (2) of
3 this section and except when the subject of the record:

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

6 (b) Is currently an announced candidate for or holder of public
7 office;

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

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

17 (2) That part of criminal history record information consisting of a
18 notation of an arrest, described in subsection (3) of this section, may
19 be disseminated to individuals and agencies for the express purpose of
20 research, evaluative, or statistical activities pursuant to an agreement
21 with a criminal justice agency that specifically authorizes access to the
22 information, limits the use of the information to research, evaluative,
23 or statistical activities, and ensures the confidentiality and security
24 of the information.

25 (3) Except as provided in subsections (1) and (2) of this section,
26 the notation of arrest shall be removed from the public record as
27 follows:

28 (a) In the case of an arrest for which no charges are filed as a
29 result of the determination of the prosecuting attorney, the arrest shall
30 not be part of the public record after one year from the date of arrest;

31 (b) In the case of an arrest for which charges are not filed as a

1 result of a completed diversion, the arrest shall not be part of the
2 public record after two years from the date of arrest; and

3 (c) In the case of an arrest for which charges are filed, but
4 dismissed by the court on motion of the prosecuting attorney or as a
5 result of a hearing not the subject of a pending appeal, the arrest shall
6 not be part of the public record after three years from the date of
7 arrest.

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

17 Sec. 6. (1)(a) If any person is named in a charge for an
18 infraction, a misdemeanor, or a felony, as a result of another person
19 using the identifying information of the named person or mistaken
20 identity and a finding of not guilty is entered, or the conviction is set
21 aside, the named person may apply by petition or written motion to the
22 court in which the charge was last pending on a form approved by the
23 State Court Administrator supplied by the clerk of the court for an order
24 to expunge from all official records any entries relating to the person's
25 apprehension, charge, or trial. The court, after notice to the county
26 attorney, shall hold a hearing on the motion or petition and, upon
27 finding that the person's identity was used without permission and the
28 charges were dismissed or the person was found not guilty, the court
29 shall order the expungement.

30 (b) If any person is named in a charge for an infraction, a
31 misdemeanor, or a felony, as a result of another person using the

1 identifying information of the named person or mistaken identity, and the
2 charge against the named person is dismissed, the prosecutor or other
3 judicial officer who ordered the dismissal shall provide notice to the
4 court of the dismissal, and the court shall order the expungement of all
5 official records containing any entries relating to the person's
6 apprehension, charge, or trial.

7 (2) No person as to whom such an order has been entered under this
8 section shall be held thereafter under any provision of any law to be
9 guilty of perjury, or to be guilty of otherwise giving a false statement
10 or response to any inquiry made for any purpose, by reason of the
11 person's failure to recite or acknowledge any expunged entries concerning
12 apprehension, charge, or trial.

13 (3) The court shall also order that such entries shall be expunged
14 from the records of the court and direct all law enforcement agencies,
15 the Department of Correctional Services, the Department of Motor
16 Vehicles, or any other state or local government agencies identified by
17 the petitioner, or the person eligible for automatic expungement under
18 subdivision (1)(b) of this section, to expunge their records of the
19 entries. The costs of expunging the records shall not be taxed against
20 the petitioner.

21 (4) The Department of Motor Vehicles shall expunge from its records
22 entries made as a result of the charge or conviction ordered expunged
23 under this section. The Department of Motor Vehicles shall also reverse
24 any administrative actions taken against a person whose record is
25 expunged under this section as a result of the charges or convictions
26 expunged, including the assessment of operator's license points and
27 operator's license suspension or revocation. The Department of Motor
28 Vehicles shall provide to the person whose motor vehicle record is
29 expunged under this section a certified corrected driver history at no
30 cost and shall reinstate at no cost any operator's license suspended or
31 revoked as a result of a charge or conviction expunged under this

1 section.

2 (5) The Department of Correctional Services and any other applicable
3 state or local government agency shall expunge its records. The agency
4 shall also reverse any administrative actions taken against a person
5 whose record is expunged under this section as a result of the charges or
6 convictions expunged. The fee for any reinstatement of a license or
7 privilege resulting under this section shall be waived.

8 (6) Any insurance company that charged any additional premium based
9 on insurance points assessed against a policyholder as a result of a
10 charge or conviction that was expunged under this section shall refund
11 the additional premiums to the policyholder upon notification of the
12 expungement.

13 (7) For purposes of this section, the term mistaken identity means
14 the erroneous arrest of a person for a crime as a result of
15 misidentification by a witness or law enforcement, confusion on the part
16 of a witness or law enforcement as to the identity of the person who
17 committed the crime, misinformation provided to law enforcement as to the
18 identity of the person who committed the crime, or some other mistake on
19 the part of a witness or law enforcement as to the identity of the person
20 who committed the crime.

21 Sec. 7. Section 29-3527, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 29-3527 Any person who (1) permits unauthorized direct access to
24 criminal history record information, (2) knowingly fails to disseminate
25 or make public criminal history record information of official acts as
26 required under the Security, Privacy, and Dissemination of Criminal
27 History Information Act sections 29-209, 29-210, 29-3501 to 29-3528, and
28 81-1423, or (3) knowingly disseminates nondisclosable criminal history
29 record information in violation of the act sections 29-209, 29-210,
30 29-3501 to 29-3528, and 81-1423, shall be guilty of a Class IV
31 misdemeanor.

1 Sec. 8. Section 29-3528, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-3528 Whenever any officer or employee of the state, its agencies,
4 or its political subdivisions, or whenever any state agency or any
5 political subdivision or its agencies fails to comply with the
6 requirements of the Security, Privacy, and Dissemination of Criminal
7 History Information Act ~~sections 29-209, 29-210, 29-3501 to 29-3528, and~~
8 ~~81-1423~~ or of rules or regulations lawfully adopted and promulgated to
9 implement the act ~~sections 29-209, 29-210, 29-3501 to 29-3528, and~~
10 ~~81-1423~~, any person aggrieved may bring an action, including, but not
11 limited to, an action for mandamus, to compel compliance and such action
12 may be brought in the district court of any district in which the records
13 involved are located or in the district court of Lancaster County. The
14 commission may request the Attorney General to bring such action.

15 Sec. 9. Original sections 29-3501, 29-3502, 29-3503, 29-3518,
16 29-3527, and 29-3528, Reissue Revised Statutes of Nebraska, and section
17 29-3523, Revised Statutes Supplement, 2015, are repealed.