

AMENDMENTS TO LB1132

(Amendments to E and R amendments, ER139)

Introduced by Pansing Brooks, 28.

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

3           Section 1. Section 28-902, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           28-902 (1) Except as provided in subsection (2) of this section,  
6 every health care provider ~~Every person engaged in the practice of~~  
7 ~~medicine and surgery, or who is in charge of any emergency room or first-~~  
8 ~~aid station in this state,~~ shall immediately report to law enforcement  
9 every case, in which the health care provider ~~he~~ is consulted for medical  
10 care for physical treatment or treats a wound or injury of violence which  
11 appears to have been received in connection with, or as a result of, the  
12 commission of a criminal offense, ~~immediately to the chief of police of~~  
13 ~~the municipality or to the sheriff of the county wherein the consultation~~  
14 ~~or treatment occurs.~~ Such report shall include the name of the victim  
15 such person, the residence, if ascertainable, and a brief description of  
16 the victim's physical injury, and, if ascertainable, the victim's  
17 residential address and the location of the offense injury. Any other  
18 ~~provision~~ of law or rule of evidence relative to confidential  
19 communications is suspended insofar as compliance with the provisions of  
20 this section is are concerned.

21           (2) When a health care provider is consulted for medical care for  
22 physical injury which reasonably appears to have been received in  
23 connection with, or as a result of, the commission of an actual or  
24 attempted sexual assault and the victim was eighteen years of age or  
25 older at the time of such actual or attempted sexual assault, the health  
26 care provider shall:

1       (a) Provide the victim with information detailing the reporting  
2 options available under subdivision (2)(b) of this section;

3       (b) Ask the victim either:

4       (i) To provide written consent to report such actual or attempted  
5 sexual assault as provided in subsection (1) of this section. If the  
6 victim provides such written consent, the health care provider shall make  
7 the report required by subsection (1) of this section and submit to law  
8 enforcement a sexual assault evidence collection kit if one has been  
9 obtained; or

10       (ii) To sign a written acknowledgment that such actual or attempted  
11 sexual assault will not be reported except as provided in subdivision (2)  
12 (c) or subsection (3) of this section, but that the health care provider  
13 will submit to law enforcement a sexual assault evidence collection kit,  
14 if one has been obtained, using an anonymous reporting protocol. A health  
15 care provider may use the anonymous reporting protocol developed by the  
16 Attorney General under section 4 of this act or may use a different  
17 anonymous reporting protocol;

18       (c) Regardless of the victim's decision under subdivision (2)(b) of  
19 this section, if the victim is suffering from a serious bodily injury, or  
20 any bodily injury where a deadly weapon was used to inflict such injury,  
21 which appears to have been received in connection with, or as a result  
22 of, the commission of an actual or attempted sexual assault, the health  
23 care provider shall report such injury to law enforcement as provided in  
24 subsection (1) of this section; and

25       (d) Unless declined by the victim, refer him or her to an advocate.

26       (3) When a health care provider is consulted for medical care for  
27 physical injury which reasonably appears to have been received in  
28 connection with, or as a result of, the commission of an actual or  
29 attempted sexual assault, the health care provider shall, regardless of  
30 the victim's age or the victim's decision under subdivision (2)(b) of  
31 this section, provide law enforcement with a sexual assault evidence

1 collection kit if one has been obtained.

2 (4) A law enforcement agency receiving a sexual assault evidence  
3 collection kit under this section shall preserve such kit for twenty  
4 years after the date of receipt or as otherwise ordered by a court.

5 (5) Any health care provider who knowingly fails to make any report  
6 required by subsection (1) of this section is guilty of a Class III  
7 misdemeanor. If multiple health care providers are involved in the  
8 consultation of a person in a given occurrence, this section does not  
9 require each health care provider to make a separate report, so long as  
10 one of such health care providers makes the report required by this  
11 section.

12 (6) For purposes of this section:

13 (a) Advocate has the same meaning as in section 29-4302;

14 (b) Anonymous reporting protocol means a reporting protocol that  
15 allows the identity of the victim, his or her personal or identifying  
16 information, and the details of the sexual assault or attempted sexual  
17 assault to remain confidential and undisclosed by the health care  
18 provider, other than submission to law enforcement of any sexual assault  
19 evidence collection kit, unless and until the victim consents to the  
20 release of such information;

21 (c) Health care provider means any of the following individuals who  
22 are licensed, certified, or registered to perform specified health  
23 services consistent with state law: A physician, physician assistant,  
24 nurse, or advanced practice registered nurse;

25 (d) Law enforcement means a law enforcement agency in the county in  
26 which the consultation occurred; and

27 (e) Victim means the person seeking medical care.

28 ~~(2) Any person who fails to make the report required by subsection~~  
29 ~~(1) of this section commits a Class III misdemeanor.~~

30 Sec. 2. (1) For purposes of this section:

31 (a) Prostitution-related offense includes:

1           (i) Prostitution under section 28-801, solicitation of prostitution  
2           under section 28-801.01, keeping a place of prostitution under section  
3           28-804, public indecency under section 28-806, or loitering for the  
4           purpose of engaging in prostitution or related or similar offenses under  
5           local ordinances; and

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

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

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

15           (2) At any time following the completion of sentence or disposition,  
16           a victim of sex trafficking convicted in county or district court of, or  
17           adjudicated in a juvenile court for, (a) a prostitution-related offense  
18           committed while the movant was a victim of sex trafficking or proximately  
19           caused by the movant's status as a victim of sex trafficking or (b) any  
20           other offense committed as a direct result of, or proximately caused by,  
21           the movant's status as a victim of sex trafficking, may file a motion to  
22           set aside such conviction or adjudication. The motion shall be filed in  
23           the county, district, or separate juvenile court of the county in which  
24           the movant was convicted or adjudicated.

25           (3)(a) If the court finds that the movant was a victim of sex  
26           trafficking at the time of the prostitution-related offense or finds that  
27           the movant's participation in the prostitution-related offense was  
28           proximately caused by the movant's status as a victim of sex trafficking,  
29           the court shall grant the motion to set aside a conviction or  
30           adjudication for such prostitution-related offense.

31           (b) If the court finds that the movant's participation in an offense

1 other than a prostitution-related offense was a direct result of or  
2 proximately caused by the movant's status as a victim of sex trafficking,  
3 the court shall grant the motion to set aside a conviction or  
4 adjudication for such offense.

5 (4) Official documentation of a movant's status as a victim of sex  
6 trafficking at the time of the prostitution-related offense or other  
7 offense shall create a rebuttable presumption that the movant was a  
8 victim of sex trafficking at the time of the prostitution-related offense  
9 or other offense. Such official documentation shall not be required to  
10 obtain relief under this section. Such official documentation includes:

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

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

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

26 (a) Branding or other tattoos on the movant that identified him or  
27 her as having a trafficker;

28 (b) Testimony or affidavits from those with firsthand knowledge of  
29 the movant's involvement in the commercial sex trade such as solicitors  
30 of commercial sex, family members, hotel workers, and other individuals  
31 trafficked by the same individual or group of individuals who trafficked

1 the movant;

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

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

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

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

15 (7) An order setting aside a conviction or adjudication under this  
16 section shall have the same effect as an order setting aside a conviction  
17 as provided in subsections (4) and (5) of section 29-2264.

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

20 29-3523 (1) After the expiration of the periods described in  
21 subsection (3) of this section or after the granting of a motion under  
22 subsection (4), (5), or (6) of this section, a criminal justice agency  
23 shall respond to a public inquiry in the same manner as if there were no  
24 criminal history record information and criminal history record  
25 information shall not be disseminated to any person other than a criminal  
26 justice agency, except as provided in subsection (2) of this section or  
27 when the subject of the record:

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

30 (b) Is currently an announced candidate for or holder of public  
31 office;

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

3 (d) Is kept unidentified, and the record is used for purposes of  
4 surveying or summarizing individual or collective law enforcement agency  
5 activity or practices, or the dissemination is requested consisting only  
6 of release of criminal history record information showing (i) dates of  
7 arrests, (ii) reasons for arrests, and (iii) the nature of the  
8 dispositions including, but not limited to, reasons for not prosecuting  
9 the case or cases.

10 (2) That part of criminal history record information described in  
11 subsection ~~(7)~~ (4) of this section may be disseminated to individuals and  
12 agencies for the express purpose of research, evaluative, or statistical  
13 activities pursuant to an agreement with a criminal justice agency that  
14 specifically authorizes access to the information, limits the use of the  
15 information to research, evaluative, or statistical activities, and  
16 ensures the confidentiality and security of the information.

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

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

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

29 (c) When charges are filed, but the case is dismissed by the court  
30 (i) on motion of the prosecuting attorney, (ii) as a result of a hearing  
31 not the subject of a pending appeal, (iii) after acquittal, or (iv) after

1 completion of a program prescribed by a drug court or any other problem  
2 solving court approved by the Supreme Court, the criminal history record  
3 information shall not be part of the public record immediately upon  
4 notification of a criminal justice agency after acquittal pursuant to  
5 subdivision (3)(c)(iii) of this section or after the entry of an order  
6 dismissing the case.

7 (4) Upon the granting of a motion to set aside a conviction or  
8 adjudication pursuant to section 2 of this act, a person who is a victim  
9 of sex trafficking, as defined in section 2 of this act, may file a  
10 motion with the sentencing court for an order to seal the criminal  
11 history record information related to such conviction or adjudication.  
12 Upon a finding that a court issued an order setting aside such conviction  
13 or adjudication pursuant to section 2 of this act, the sentencing court  
14 shall grant the motion and:

15 (a) For a conviction, issue an order as provided in subsection (7)  
16 of this section; or

17 (b) For an adjudication, issue an order as provided in section  
18 43-2,108.05.

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

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

31 (7) ~~(4)~~ Upon acquittal, or entry of an order dismissing a case



1 described in subdivision (3)(c) of this section, or after granting a  
2 motion under subsection (4), (5), or (6) of this section, the court  
3 shall:

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

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

15 (c) Order all parties notified under subdivision ~~(7)(b)~~ ~~(4)(b)~~ of  
16 this section to seal all records pertaining to the case; and

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

19 ~~(8)~~ ~~(5)~~ In any application for employment, bonding, license,  
20 education, or other right or privilege, any appearance as a witness, or  
21 any other public inquiry, a person cannot be questioned with respect to  
22 any offense for which the record is sealed. If an inquiry is made in  
23 violation of this subsection, the person may respond as if the offense  
24 never occurred.

25 ~~(9)~~ ~~(6)~~ Any person arrested due to the error of a law enforcement  
26 agency may file a petition with the district court for an order to  
27 expunge the criminal history record information related to such error.  
28 The petition shall be filed in the district court of the county in which  
29 the petitioner was arrested. The county attorney shall be named as the  
30 respondent and shall be served with a copy of the petition. The court may  
31 grant the petition and issue an order to expunge such information if the

1 petitioner shows by clear and convincing evidence that the arrest was due  
2 to error by the arresting law enforcement agency.

3 (10) The changes made by this legislative bill to the relief set  
4 forth in this section shall apply to all persons otherwise eligible in  
5 accordance with the provisions of this section, whether arrested, cited  
6 in lieu of arrest, referred for prosecution without citation, charged,  
7 convicted, or adjudicated prior to, on, or subsequent to the effective  
8 date of this act.

9 Sec. 4. On or before July 1, 2019, the Attorney General shall  
10 develop and distribute a statewide model anonymous reporting protocol for  
11 use by health care providers as provided in section 28-902. Once  
12 developed, the statewide model anonymous reporting protocol shall be  
13 maintained by the Nebraska Commission on Law Enforcement and Criminal  
14 Justice.

15 Sec. 5. Original sections 28-902 and 29-3523, Reissue Revised  
16 Statutes of Nebraska, are repealed.