

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1132

Introduced by Pansing Brooks, 28; Ebke, 32; Linehan, 39; Morfeld, 46;
Vargas, 7; Wishart, 27.

Read first time January 18, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
2 29-3523, Reissue Revised Statutes of Nebraska; to define terms; to
3 provide a procedure to set aside convictions for victims of sex
4 trafficking; to provide for expungement of criminal history record
5 information of such victims; 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:

2 (a) Prostitution-related offense includes:

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

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

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

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

17 (2) At any time following the date of the conviction, a victim of
18 sex trafficking convicted of (a) a prostitution-related offense or (b)
19 any other offense committed as a direct result of, or incident to, being
20 a victim of sex trafficking may file a petition to set aside such
21 conviction. The petition shall be filed in the county or district court
22 of the county in which charges were filed or the petitioner was
23 convicted. The prosecuting attorney shall be named as respondent and
24 shall be served with a copy of the petition.

25 (3)(a) The court shall grant a petition to set aside a conviction
26 for a prostitution-related offense if the court finds that the petitioner
27 was a victim of sex trafficking at the time of the offense or if the
28 court finds that the petitioner's participation in the offense was
29 otherwise incidental to being a victim of sex trafficking.

30 (b) The court shall grant a petition to set aside a conviction for
31 an offense other than a prostitution-related offense if the court finds

1 that the petitioner's participation in the offense was a direct result of
2 or incidental to being a victim of sex trafficking.

3 (4) The court shall find that the petitioner is a victim of sex
4 trafficking if the petitioner submits to the court:

5 (a) A copy of an official record, certification, or eligibility
6 letter from a federal, state, tribal, or local proceeding, including an
7 approval notice or an enforcement certification generated from a federal
8 immigration proceeding, that shows that the petitioner is a victim of sex
9 trafficking; or

10 (b) An affidavit or sworn testimony from an attorney, a member of
11 the clergy, a medical professional, a trained professional staff member
12 of a victim services organization, or other professional from whom the
13 petitioner has sought legal counsel or other assistance in addressing the
14 trauma associated with being a victim of sex trafficking.

15 (5) In considering whether the petitioner is a victim of sex
16 trafficking, the court may consider any other evidence the court
17 determines is of sufficient credibility and probative value, including an
18 affidavit or sworn testimony. Examples of such evidence include, but are
19 not limited to:

20 (a) Branding or other tattoos on the petitioner that identified him
21 or her as having a trafficker;

22 (b) Testimony or affidavits from those with firsthand knowledge of
23 the petitioner's involvement in the commercial sex trade such as
24 solicitors of commercial sex, family members, hotel workers, and other
25 individuals trafficked by the same individual or group of individuals who
26 trafficked the petitioner;

27 (c) Financial records showing profits from the commercial sex trade,
28 such as records of hotel stays, employment at indoor venues such as
29 massage parlors or strip clubs, or employment at an escort service;

30 (d) Internet listings, print advertisements, or business cards used
31 to promote the petitioner for commercial sex; or

1 (e) Email, text, or voicemail records between the petitioner, the
2 trafficker, or solicitors of sex that reveal aspects of the sex trade
3 such as behavior patterns, meeting times, or payments or examples of the
4 trafficker exerting force, fraud, or coercion over the petitioner.

5 (6) Upon request of a petitioner, any hearing relating to the
6 petition shall be conducted in camera. The rules of evidence shall not
7 apply at any hearing relating to the petition.

8 (7) An order setting aside a conviction under this section shall:

9 (a) Nullify the conviction; and

10 (b) Remove all civil disabilities and disqualifications imposed as a
11 result of the conviction.

12 (8) The setting aside of a conviction in accordance with this
13 section shall not:

14 (a) Require the reinstatement of any office, employment, or position
15 which was previously held and lost or forfeited as a result of the
16 conviction; or

17 (b) Preclude proof of a plea of guilty whenever such plea is
18 relevant to the determination of an issue involving the rights or
19 liabilities of someone other than the petitioner.

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

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

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

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

1 office;

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

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

11 (2) That part of criminal history record information described in
12 subsection (5) ~~(4)~~ of this section may be disseminated to individuals and
13 agencies for the express purpose of research, evaluative, or statistical
14 activities pursuant to an agreement with a criminal justice agency that
15 specifically authorizes access to the information, limits the use of the
16 information to research, evaluative, or statistical activities, and
17 ensures the confidentiality and security of the information.

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

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

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

30 (c) When charges are filed, but the case is dismissed by the court
31 (i) on motion of the prosecuting attorney, (ii) as a result of a hearing

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

8 (4) Upon the granting of a petition to set aside a conviction
9 pursuant to section 1 of this act, a person who is a victim of sex
10 trafficking, as defined in section 1 of this act, may file a petition
11 with the county or district court for an order to seal the criminal
12 history record information related to such conviction. The petition shall
13 be filed in the county or district court of the county in which charges
14 were filed or the petitioner was convicted. The prosecuting attorney
15 shall be named as respondent and shall be served with a copy of the
16 petition. Upon a finding that a court issued an order setting aside such
17 conviction pursuant to section 1 of this act, the court shall grant the
18 petition and issue an order as provided in subsection (5) of this
19 section.

20 (5) ~~(4)~~ Upon acquittal, ~~or~~ entry of an order dismissing a case
21 described in subdivision (3)(c) of this section, or granting a petition
22 under subsection (4) of this section, the court shall:

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

30 (b) Send notice of the order (i) to the Nebraska Commission on Law
31 Enforcement and Criminal Justice, (ii) to the Nebraska State Patrol, and

1 (iii) to law enforcement agencies, county attorneys, and city attorneys
2 referenced in the court record;

3 (c) Order all parties notified under subdivision (5)(b) ~~(4)(b)~~ of
4 this section to seal all records pertaining to the case; and

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

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

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

21 Sec. 3. Original section 29-3523, Reissue Revised Statutes of
22 Nebraska, is repealed.