

AMENDMENTS TO LB881

Introduced by Judiciary.

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

3 Section 1. On or before September 1, 2020, and annually thereafter,
4 each city of the primary class and city of the metropolitan class shall
5 make a report listing the number of untested sexual assault evidence
6 collection kits for such city. The report shall contain aggregate data
7 only and shall not contain any personal identifying information. The
8 report shall be made publicly available on the city's web site and shall
9 be electronically submitted to the Attorney General and to the
10 Legislature.

11 Sec. 2. The testimony of an expert witness regarding eyewitness
12 identification and memory may be admitted in any criminal or civil
13 proceeding pursuant to the rules governing admissibility of evidence set
14 forth in the Nebraska Evidence Rules.

15 Sec. 3. Section 27-1103, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 27-1103 These rules and section 2 of this act ~~sections 27-412 to~~
18 ~~27-415~~ may be known and cited as the Nebraska Evidence Rules.

19 Sec. 4. Section 29-901, Revised Statutes Cumulative Supplement,
20 2018, is amended to read:

21 29-901 (1) Except as provided in subsection (2) of this section, any
22 ~~Any~~ bailable defendant shall be ordered released from custody pending
23 judgment on his or her personal recognizance unless the judge determines
24 in the exercise of his or her discretion that such a release will not
25 reasonably assure the appearance of the defendant as required or that
26 such a release could jeopardize the safety and maintenance of evidence or
27 the safety of victims, witnesses, or other persons in the community.

1 (2)(a) This subsection applies to any bailable defendant who is
2 charged with one or more Class IIIA, IV, or V misdemeanors or violations
3 of city or county ordinances, except when:

4 (i) The victim is an intimate partner as defined in section 28-323;
5 or

6 (ii) The defendant is charged with one or more violations of section
7 60-6,196 or 60-6,197 or city or village ordinances enacted in conformance
8 with section 60-6,196 or 60-6,197.

9 (b) Any bailable defendant described in this subsection shall be
10 ordered released from custody pending judgment on his or her personal
11 recognizance or under other conditions of release, other than payment of
12 a bond, unless:

13 (i) The defendant has previously failed to appear in the instant
14 case or any other case in the previous six months;

15 (ii) The judge determines in the exercise of his or her discretion
16 that such a release will not reasonably assure the appearance of the
17 defendant as required or that such a release could jeopardize the safety
18 and maintenance of evidence or the safety of the defendant, victims,
19 witnesses, or other persons; and

20 (iii) The defendant was arrested pursuant to a warrant.

21 (3) The court shall consider all methods of bond and conditions of
22 release to avoid pretrial incarceration. If the judge determines that the
23 defendant shall not be released on his or her personal recognizance, the
24 judge shall consider the defendant's financial ability to pay a bond and
25 shall impose the least onerous of the following conditions that will
26 reasonably assure the defendant's appearance or that will eliminate or
27 minimize the risk of harm to others or the public at large:

28 (a) Place the defendant in the custody of a designated person or
29 organization agreeing to supervise the defendant;

30 (b) Place restrictions on the travel, association, or place of abode
31 of the defendant during the period of such release; or

1 (c) Require, at the option of any bailable defendant, either of the
2 following:

3 (i) The execution of an appearance bond in a specified amount and
4 the deposit with the clerk of the court in cash of a sum not to exceed
5 ten percent of the amount of the bond, ninety percent of such deposit to
6 be returned to the defendant upon the performance of the appearance or
7 appearances and ten percent to be retained by the clerk as appearance
8 bond costs, except that when no charge is subsequently filed against the
9 defendant or if the charge or charges which are filed are dropped before
10 the appearance of the defendant which the bond was to assure, the entire
11 deposit shall be returned to the defendant. If the bond is subsequently
12 reduced by the court after the original bond has been posted, no
13 additional appearance bond costs shall be retained by the clerk. The
14 difference in the appearance bond costs between the original bond and the
15 reduced bond shall be returned to the defendant. In no event shall the
16 deposit be less than twenty-five dollars. Whenever jurisdiction is
17 transferred from a court requiring an appearance bond under this
18 subdivision to another state court, the transferring court shall transfer
19 the ninety percent of the deposit remaining after the appearance bond
20 costs have been retained. No further costs shall be levied or collected
21 by the court acquiring jurisdiction; or

22 (ii) The execution of a bail bond with such surety or sureties as
23 shall seem proper to the judge or, in lieu of such surety or sureties, at
24 the option of such person, a cash deposit of such sum so fixed,
25 conditioned for his or her appearance before the proper court, to answer
26 the offense with which he or she may be charged and to appear at such
27 times thereafter as may be ordered by the proper court. The cash deposit
28 shall be returned to the defendant upon the performance of all
29 appearances.

30 (4) If the court requires the defendant to execute an appearance
31 bond requiring the defendant to post money or requires the defendant to

1 execute a bail bond, the court shall appoint counsel for the defendant if
2 the court finds the defendant is financially unable to pay the amount
3 required and is indigent.

4 (5) (2) If the amount of bail is deemed insufficient by the court
5 before which the offense is pending, the court may order an increase of
6 such bail and the defendant shall provide the additional undertaking,
7 written or cash, to secure his or her release. All recognizances in
8 criminal cases shall be in writing and be continuous from term to term
9 until final judgment of the court in such cases and shall also extend,
10 when the court has suspended execution of sentence for a limited time, as
11 provided in section 29-2202, or, when the court has suspended execution
12 of sentence to enable the defendant to apply for a writ of error to the
13 Supreme Court or Court of Appeals, as provided in section 29-2301, until
14 the period of suspension has expired. When two or more indictments or
15 informations are returned against the same person at the same term of
16 court, the recognizance given may be made to include all offenses charged
17 therein. Each surety on such recognizance shall be required to justify
18 under oath in a sum twice the amount of such recognizance and give the
19 description of real estate owned by him or her of a value above
20 encumbrance equal to the amount of such justification and shall name all
21 other cases pending in which he or she is a surety. No one shall be
22 accepted as surety on recognizance aggregating a sum in excess of his or
23 her equity in the real estate, but such recognizance shall not constitute
24 a lien on the real estate described therein until judgment is entered
25 thereon against such surety.

26 (6) (3) In order to assure compliance with the conditions of release
27 referred to in subsection (3) (1) of this section, the court may order a
28 defendant to be supervised by a person, an organization, or a pretrial
29 services program approved by the county board. A court shall waive any
30 fees or costs associated with the conditions of release or supervision if
31 the court finds the defendant is unable to pay for such costs.

1 Eligibility for release or supervision by such pretrial release program
2 shall under no circumstances be conditioned upon the defendant's ability
3 to pay. While under supervision of an approved entity, and in addition to
4 the conditions of release referred to in subsection (3) ~~(1)~~ of this
5 section, the court may impose the following conditions:

6 (a) Periodic telephone contact by the defendant with the
7 organization or pretrial services program;

8 (b) Periodic office visits by the defendant to the organization or
9 pretrial services program;

10 (c) Periodic visits to the defendant's home by the organization or
11 pretrial services program;

12 (d) Mental health or substance abuse treatment for the defendant,
13 including residential treatment, if the defendant consents or agrees to
14 the treatment;

15 (e) Periodic alcohol or drug testing of the defendant;

16 (f) Domestic violence counseling for the defendant, if the defendant
17 consents or agrees to the counseling;

18 (g) Electronic or global-positioning monitoring of the defendant;
19 and

20 (h) Any other supervision techniques shown by research to increase
21 court appearance and public safety rates for defendants released on bond.

22 (7) ~~(4)~~ The incriminating results of any drug or alcohol test or any
23 information learned by a representative of an organization or program
24 shall not be admissible in any proceeding, except for a proceeding
25 relating to revocation or amendment of conditions of bond release.

26 Sec. 5. Section 29-1406, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 29-1406 (1) The grand jury, after being sworn, shall be charged as
29 to their duty by the judge, who shall call their attention particularly
30 to the obligation of secrecy which their oaths impose, and to such
31 offenses as he or she is by law required to specially charge.

1 (2) Upon impanelment of each grand jury, the court shall give to
2 such grand jury adequate and reasonable written notice of and shall
3 assure that the grand jury reasonably understands the nature of:

4 (a) Its duty to inquire into offenses against the criminal laws of
5 the State of Nebraska alleged to have been committed or, in the case of a
6 grand jury impaneled pursuant to subsection (4) of section 29-1401, its
7 duty to inquire into offenses against the criminal laws of the State of
8 Nebraska regarding the death of a person who has died while being
9 apprehended or while in the custody of a law enforcement officer or
10 detention personnel;

11 (b) Its right to call and interrogate witnesses;

12 (c) Its right to request the production of documents or other
13 evidence;

14 (d) The subject matter of the investigation and the criminal
15 statutes or other statutes involved, if these are known at the time the
16 grand jury is impaneled;

17 (e) The duty of the grand jury by an affirmative vote of twelve or
18 more members of the grand jury to determine, based on the evidence
19 presented before it, whether or not there is probable cause for finding
20 indictments and to determine the violations to be included in any such
21 indictments;

22 (f) The requirement that the grand jury may not return an indictment
23 in cases of perjury unless at least two witnesses to the same fact
24 present evidence establishing probable cause to return such an
25 indictment; and

26 (g) In the case of a grand jury impaneled pursuant to subsection (4)
27 of section 29-1401, if the grand jury returns a no true bill:

28 (i) The grand jury shall create a grand jury report with the
29 assistance of the prosecuting attorney. The grand jury report shall
30 briefly provide an explanation of the grand jury's findings and any
31 recommendations the grand jury determines to be appropriate based upon

1 the grand jury's investigation and deliberations; and

2 (ii) The no true bill and the grand jury report shall be filed with
3 the court, where they shall be available for public review, along with
4 the grand jury transcript provided for in subsection (3) subdivision (2)
5 ~~(b)~~ of section 29-1407.01.

6 Sec. 6. Section 29-1407.01, Revised Statutes Cumulative Supplement,
7 2018, is amended to read:

8 29-1407.01 (1) A certified or authorized reporter shall be present
9 at all grand jury sessions. All grand jury proceedings and testimony from
10 commencement to adjournment shall be reported. Except as otherwise
11 provided in this section, no copies of transcripts of, or exhibits from,
12 such proceedings shall be made available.

13 (2) ~~(2)(a)~~ Except as provided in subsection (3) of this section:
14 ~~subdivision (2)(b) of this section, the~~

15 (a) The reporter's stenography notes and tape recordings shall be
16 preserved and sealed and any transcripts which may be prepared shall be
17 preserved, sealed, and filed with the court; -

18 (b) No release or destruction of the notes or transcripts shall
19 occur without prior court approval; and -

20 (c) No copies of such transcript or exhibits shall be made
21 available.

22 (3)(a) This subsection applies to (b) In the case of a grand jury
23 impaneled pursuant to subsection (4) of section 29-1401, -a

24 (b) A transcript, including any exhibits of the grand jury
25 proceedings, and a copy of such transcript and copies of such exhibits
26 shall be prepared at court expense and shall be filed with the court
27 where it shall be available for public review. Such transcript shall not
28 include the names of grand jurors or their deliberations.

29 (c) If the grand jury returns a no true bill, a copy of the
30 transcript, including a copy of any exhibits, shall be available for
31 public review upon written request to the clerk of the district court.

1 Such review shall be made at a reasonable time set by the clerk of the
2 district court. Except as otherwise provided in this subdivision, no
3 copies of such transcript or exhibits shall be made available.

4 (d)(i) If the grand jury returns a true bill, once a trial court is
5 assigned and the criminal case docketed, any of the parties to the
6 criminal case, within five days of the criminal case being docketed, may
7 file a motion for a protective order requesting a hearing before the
8 trial court to request a delay of the public review of the transcript,
9 including any exhibits, of the grand jury proceedings. Except as
10 otherwise provided in this subdivision, no copies of such transcript or
11 exhibits shall be made available.

12 (ii) If after a hearing the trial court grants the request for a
13 protective order, then any public review of the transcript, including any
14 exhibits, of the grand jury proceedings shall not take place until the
15 conclusion of the criminal prosecution. Conclusion of the criminal
16 prosecution means an acquittal, a dismissal, or, if there is a
17 conviction, when the direct appeal process has concluded. Once the
18 criminal prosecution has concluded, a copy of the transcript, including a
19 copy of any exhibits, shall be available for public review upon written
20 request to the clerk of the district court. Such review shall be made at
21 a reasonable time set by the clerk of the district court. Except as
22 otherwise provided in this subdivision, no copies of such transcript or
23 exhibits shall be made available.

24 (iii) If after a hearing the trial court denies the request for a
25 protective order, then a copy of the transcript, including a copy of any
26 exhibits, shall be available for public review once the trial court's
27 order is filed and upon written request to the clerk of the district
28 court. Such review shall be made at a reasonable time set by the clerk of
29 the district court. Except as otherwise provided in this subdivision, no
30 copies of such transcript or exhibits shall be made available.

31 (iv) If no party to the criminal case files a motion for a

1 protective order within the time provided in subdivision (3)(d)(i) of
2 this section, then a copy of the transcript, including a copy of any
3 exhibits, shall be available for public review upon written request to
4 the clerk of the district court. Such review shall be made at a
5 reasonable time set by the clerk of the district court. Except as
6 otherwise provided in this subdivision, no copies of such transcript or
7 exhibits shall be made available.

8 (4) ~~(3)~~ Upon application by the prosecutor or by any witness after
9 notice to the prosecutor, the court, for good cause, may enter an order
10 to furnish to that witness a transcript of his or her own grand jury
11 testimony or exhibits relating thereto.

12 (5) ~~(4)~~ Any witness summoned to testify before a grand jury, or an
13 attorney for such witness with the witness's written approval, shall be
14 entitled, prior to testifying, to examine and copy at the witness's
15 expense any statement in the possession of the prosecuting attorney or
16 the grand jury which such witness has made that relates to the subject
17 matter under inquiry by the grand jury. If a witness is proceeding in
18 forma pauperis, he or she shall be furnished, upon request, a copy of
19 such transcript and shall not pay a fee.

20 Sec. 7. Section 29-1822, Revised Statutes Cumulative Supplement,
21 2018, is amended to read:

22 29-1822 (1) A person who becomes mentally incompetent after the
23 commission of an offense ~~a crime or misdemeanor~~ shall not be tried for
24 the offense until such disability is removed as provided in section
25 29-1823 during the continuance of the incompetency.

26 (2) If, after a ~~the~~ verdict of guilty, but ~~and~~ before judgment is
27 pronounced, a defendant ~~such person~~ becomes mentally incompetent, then no
28 judgment shall be given until such disability is removed.

29 (3) If a defendant is sentenced to death and, ~~while such~~
30 ~~incompetency shall continue; and if,~~ after judgment, but ~~and~~ before
31 execution of the sentence, such person becomes ~~shall become~~ mentally

1 ~~incompetent, then in case the punishment be capital, the execution of the~~
2 ~~sentence thereof shall be stayed until such disability is removed the~~
3 ~~recovery of such person from the incompetency.~~

4 Sec. 8. Section 29-1823, Revised Statutes Supplement, 2019, is
5 amended to read:

6 29-1823 (1) If at any time prior to or during trial it appears that
7 the defendant has become mentally incompetent to stand trial, such
8 disability may be called to the attention of the district or county court
9 by the county attorney or city attorney, by the defendant, or by any
10 person for the defendant. The judge of the district or county court of
11 the county where the defendant is to be tried shall have the authority to
12 determine whether or not the defendant is competent to stand trial. The
13 judge may also cause such medical, psychiatric, or psychological
14 examination of the defendant to be made as he or she deems warranted and
15 hold such hearing as he or she deems necessary. The cost of the
16 examination, when ordered by the court, shall be the expense of the
17 county in which the crime is charged. The judge may allow any physician,
18 psychiatrist, or psychologist a reasonable fee for his or her services,
19 which amount, when determined by the judge, shall be certified to the
20 county board which shall cause payment to be made. Should the judge
21 determine after a hearing that the defendant is mentally incompetent to
22 stand trial and that there is a substantial probability that the
23 defendant will become competent within the reasonably foreseeable future,
24 the judge shall order the defendant to be committed to the Department of
25 Health and Human Services to provide appropriate treatment to restore
26 competency. This may include commitment to a state hospital for the
27 mentally ill, another appropriate state-owned or state-operated facility,
28 or a contract facility or provider pursuant to an alternative treatment
29 plan proposed by the department and approved by the court under
30 subsection (2) of this section until such time as the disability may be
31 removed.

1 (2)(a) If the department determines that treatment by a contract
2 facility or provider is appropriate, the department shall file a report
3 outlining its determination and such alternative treatment plan with the
4 court. Within twenty-one days after the filing of such report, the court
5 shall hold a hearing to determine whether such treatment is appropriate.
6 The court may approve or deny such alternative treatment plan.

7 (b) A defendant shall not be eligible for treatment by a contract
8 facility or provider under this subsection if the judge determines that
9 the public's safety would be at risk.

10 (3) Within sixty days after entry of the order committing the
11 defendant to the department ~~six months after the commencement of the~~
12 ~~treatment ordered by the district or county court~~, and every sixty days
13 ~~six months~~ thereafter until either the disability is removed or other
14 disposition of the defendant has been made, the court shall hold a
15 hearing to determine (a) whether the defendant is competent to stand
16 trial or (b) whether or not there is a substantial probability that the
17 defendant will become competent within the reasonably foreseeable future.

18 (4) If it is determined that there is not a substantial probability
19 that the defendant will become competent within the reasonably
20 foreseeable future, then the state shall either (a) commence the
21 applicable civil commitment proceeding that would be required to commit
22 any other person for an indefinite period of time or (b) release the
23 defendant. If during the period of time between the sixty-day ~~six-month~~
24 review hearings set forth in subsection (3) of this section it is the
25 opinion of the department that the defendant is competent to stand trial,
26 the department shall file a report outlining its opinion with the court
27 and within seven ~~twenty-one~~ days after such report being filed the court
28 shall hold a hearing to determine whether or not the defendant is
29 competent to stand trial. The state shall pay the cost of maintenance and
30 care of the defendant during the period of time ordered by the court for
31 treatment to remove the disability.

1 (5) The defendant, by and through counsel, may move to be discharged
2 from the offenses charged in the complaint or information for the reason
3 that there is not a substantial probability that the defendant will
4 become competent within the reasonably foreseeable future.

5 (6) In determining whether there is a substantial probability that a
6 defendant will become competent in the reasonably foreseeable future, the
7 court shall take into consideration the likely length of any sentence
8 that would be imposed upon the defendant. If the court discharges the
9 defendant, the court shall state whether such discharge is with or
10 without prejudice. ~~The department may establish a network of contract~~
11 ~~facilities and providers to provide competency restoration treatment~~
12 ~~pursuant to alternative treatment plans under this section. The~~
13 ~~department may create criteria for participation in such network and~~
14 ~~establish training in competency restoration treatment for participating~~
15 ~~contract facilities and providers.~~

16 Sec. 9. The Department of Health and Human Services may establish a
17 network of contract facilities and providers to provide competency
18 restoration treatment pursuant to alternative treatment plans under
19 section 29-1823. The department may create criteria for participation in
20 such network and establish training in competency restoration treatment
21 for participating contract facilities and providers.

22 Sec. 10. Section 29-2004, Revised Statutes Cumulative Supplement,
23 2018, is amended to read:

24 29-2004 (1) All parties may stipulate that the jury may be selected
25 up to thirty-one days prior to the date of trial. The stipulation must be
26 unanimous among all parties and evidenced by a joint stipulation to the
27 county court.

28 (2) In all cases, except as may be otherwise expressly provided, the
29 accused shall be tried by a jury drawn, summoned, and impaneled according
30 to provisions of the code of civil procedure, except that whenever in the
31 opinion of the court the trial is likely to be a protracted one, the

1 court may, immediately after the jury is impaneled and sworn, direct the
2 calling of ~~one or two~~ additional jurors, to be known as alternate jurors.

3 (3)(a) The court may impanel up to six alternate jurors to replace
4 any jurors who are unable to perform or who are disqualified from
5 performing their duties.

6 (b) Alternate jurors must have the same qualifications and shall be
7 selected and sworn in the same manner as any other juror.

8 (c) Alternate jurors shall replace jurors in the same sequence in
9 which the alternates were selected. An alternate juror who replaces a
10 juror has the same authority as the other jurors.

11 ~~(4) Such jurors shall be drawn from the same source and in the same~~
12 ~~manner, and have the same qualifications as regular jurors, and be~~
13 ~~subject to examination and challenge as such jurors, except that each~~
14 ~~party shall be allowed one peremptory challenge to each alternate juror.~~
15 The alternate jurors shall take the proper oath or affirmation and shall
16 be seated near the regular jurors with equal facilities for seeing and
17 hearing the proceedings in the cause, and shall attend at all times upon
18 the trial of the cause in company with the regular jurors. They shall
19 obey all orders and admonitions of the court, and if the regular jurors
20 are ordered to be kept in the custody of an officer during the trial of
21 the cause, the alternate jurors shall also be kept with the other jurors.

22 (5)(a) The court may retain alternate jurors after the jury retires
23 to deliberate, except that if and, except as hereinafter provided, shall
24 be discharged upon the final submission of the cause to the jury. If an
25 information charging a violation of section 28-303 and in which the death
26 penalty is sought contains a notice of aggravation, the alternate jurors
27 shall be retained as provided in section 29-2520.

28 (b) The court must ensure that a retained alternate does not discuss
29 the case with anyone until that alternate replaces a juror or is
30 discharged. If an alternate replaces a juror after deliberations have
31 begun, the court must instruct the jury to begin its deliberations anew.

1 (6)(a) Each party is entitled to the following number of additional
2 peremptory challenges to prospective alternate jurors:

3 (i) One additional peremptory challenge is permitted when one or two
4 alternates are impaneled;

5 (ii) Two additional peremptory challenges are permitted when three
6 or four alternates are impaneled; and

7 (iii) Three additional peremptory challenges are permitted when five
8 or six alternates are impaneled.

9 (b) The additional peremptory challenges provided in this subsection
10 may only be used to remove alternate jurors.

11 (7) In construing and applying this section, courts shall consider
12 Federal Rule of Criminal Procedure 24 and case law interpreting such
13 rule. If, before the final submission of the cause a regular juror dies
14 or is discharged, the court shall order the alternate juror, if there is
15 but one, to take his or her place in the jury box. If there are two
16 alternate jurors the court shall select one by lot, who shall then take
17 his or her place in the jury box. After an alternate juror is in the jury
18 box he or she shall be subject to the same rules as a regular juror.

19 Sec. 11. Section 29-2005, Revised Statutes Cumulative Supplement,
20 2018, is amended to read:

21 29-2005 Except as otherwise provided in section 29-2004 for
22 peremptory challenges to alternate jurors:

23 (1) Every Every person arraigned for any crime punishable with
24 death, or imprisonment for life, shall be admitted on his or her trial to
25 a peremptory challenge of twelve jurors, and no more;

26 (2) Every every person arraigned for any offense that may be
27 punishable by imprisonment for a term exceeding eighteen months and less
28 than life, shall be admitted to a peremptory challenge of six jurors;

29 (3) In and in all other criminal trials, the defendant shall be
30 allowed a peremptory challenge of three jurors; and -

31 (4) The attorney prosecuting on behalf of the state shall be

1 admitted to a peremptory challenge of twelve jurors in all cases when the
2 offense is punishable with death or imprisonment for life, six jurors
3 when the offense is punishable by imprisonment for a term exceeding
4 eighteen months and less than life, and three jurors in all other cases;
5 ~~Provided, that in all cases where alternate jurors are called, as~~
6 ~~provided in section 29-2004, then in that case both the defendant and the~~
7 ~~attorney prosecuting for the state shall each be allowed one added~~
8 ~~peremptory challenge to each alternate juror.~~

9 Sec. 12. A defendant charged with any offense shall not be held in
10 custody awaiting trial on such offense for a period of time longer than
11 the maximum possible sentence of imprisonment authorized for such
12 offense. On the next judicial day after expiration of such deadline, the
13 defendant shall be released on such defendant's personal recognizance.

14 Sec. 13. Section 29-2206, Revised Statutes Cumulative Supplement,
15 2018, is amended to read:

16 29-2206 (1)(a) In all cases in which courts or magistrates have now
17 or may hereafter have the power to punish offenses, either in whole or in
18 part, by requiring the offender to pay fines or costs, or both, such
19 courts or magistrates may make it a part of the sentence that the party
20 stand committed and be imprisoned in the jail of the proper county until
21 the fines or costs are paid or secured to be paid or the offender is
22 otherwise discharged according to law if the court or magistrate
23 determines that the offender has the financial ability to pay such fines
24 or costs. The court or magistrate may make such determination at the
25 sentencing hearing or at a separate hearing prior to sentencing. A
26 separate hearing shall not be required. In making such determination, the
27 court or magistrate may consider the information or evidence adduced in
28 an earlier proceeding pursuant to section 29-3902, 29-3903, 29-3906, or
29 29-3916. At any such hearing, the offender shall have the opportunity to
30 present information as to his or her income, assets, debts, or other
31 matters affecting his or her financial ability to pay. Following such

1 hearing and prior to imposing sentence, the court or magistrate shall
2 determine the offender's financial ability to pay the fines or costs,
3 including his or her financial ability to pay in installments under
4 subsection (2) of this section.

5 (b) If the court or magistrate determines that the offender is
6 financially able to pay the fines or costs and the offender refuses to
7 pay, the court or magistrate may:

8 (i) Make it a part of the sentence that the offender stand committed
9 and be imprisoned in the jail of the proper county until the fines or
10 costs are paid or secured to be paid or the offender is otherwise
11 discharged according to law; or

12 (ii) Order the offender, in lieu of paying such fines or costs, to
13 complete community service for a specified number of hours pursuant to
14 sections 29-2277 to 29-2279.

15 (c) If the court or magistrate determines that the offender is
16 financially unable to pay the fines or costs, the court or magistrate:

17 (i) Shall either:

18 (A) Impose a sentence without such fines or costs; or

19 (B) Enter an order pursuant to subdivision (1)(d) of this section
20 discharging the offender of such fines or costs; and

21 (ii) May order, as a term of the offender's sentence or as a
22 condition of probation, that he or she complete community service for a
23 specified number of hours pursuant to sections 29-2277 to 29-2279.

24 (d) An order discharging the offender of any fines or costs shall be
25 set forth in or accompanied by a judgment entry. Such order shall operate
26 as a complete release of such fines or costs.

27 (2) If the court or magistrate determines, pursuant to subsection
28 (1) of this section, that an offender is financially unable to pay such
29 fines or costs in one lump sum but is financially capable of paying in
30 installments, the court or magistrate shall make arrangements suitable to
31 the court or magistrate and to the offender by which the offender may pay

1 in installments. The court or magistrate shall enter an order specifying
2 the terms of such arrangements and the dates on which payments are to be
3 made. When the judgment of conviction provides for the suspension or
4 revocation of a motor vehicle operator's license and the court authorizes
5 the payment of fines or costs by installments, the revocation or
6 suspension shall be effective as of the date of judgment.

7 (3) As an alternative to a lump-sum payment or as an alternative or
8 in conjunction with installment payments, the court or magistrate may
9 deduct ~~fines or costs~~ only from a bond posted by the offender to the
10 extent that such bond is not otherwise encumbered by a valid lien, levy,
11 execution, or assignment to counsel of record or the person who posted
12 the bond.

13 Sec. 14. Section 29-2264, Revised Statutes Cumulative Supplement,
14 2018, is amended to read:

15 29-2264 (1) Whenever any person is placed on probation by a court
16 and satisfactorily completes the conditions of his or her probation for
17 the entire period or is discharged from probation prior to the
18 termination of the period of probation, the sentencing court shall issue
19 an order releasing the offender from probation. Such order in all felony
20 cases shall provide notice that the person's voting rights are restored
21 two years after completion of probation. The order shall include
22 information on restoring other civil rights through the pardon process,
23 including application to and hearing by the Board of Pardons.

24 (2) Whenever any person is convicted of an offense ~~infraction, a~~
25 ~~misdemeanor, or a felony~~ and is placed on probation by the court, ~~or~~ is
26 sentenced to a fine only, or is sentenced to community service, he or she
27 may, after satisfactory fulfillment of the conditions of probation for
28 the entire period or after discharge from probation prior to the
29 termination of the period of probation and after payment of any fine and
30 completion of any community service, petition the sentencing court to set
31 aside the conviction.

1 (3)(a) Except as provided in subdivision (3)(b) of this section,
2 whenever any person is convicted of an offense and is sentenced other
3 than as provided in subsection (2) of this section, but is not sentenced
4 to a term of imprisonment of more than one year, such person may, after
5 completion of his or her sentence, petition the sentencing court to set
6 aside the conviction.

7 (b) A petition under subdivision (3)(a) of this section shall be
8 denied if filed:

9 (i) By any person with a criminal charge pending in any court in the
10 United States or in any other country;

11 (ii) During any period in which the person is required to register
12 under the Sex Offender Registration Act;

13 (iii) For any misdemeanor or felony motor vehicle offense under
14 section 28-306 or the Nebraska Rules of the Road; or

15 (iv) Within two years after a denial of a petition to set aside a
16 conviction under this subsection.

17 (4) (3) In determining whether to set aside the conviction, the
18 court shall consider:

19 (a) The behavior of the offender after sentencing;

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

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

23 (5) (4) The court may grant the offender's petition and issue an
24 order setting aside the conviction when in the opinion of the court the
25 order will be in the best interest of the offender and consistent with
26 the public welfare. The order shall:

27 (a) Nullify the conviction;~~and~~

28 (b) Remove all civil disabilities and disqualifications imposed as a
29 result of the conviction; and -

30 (c) Notify the offender that he or she should consult with an
31 attorney regarding the effect of the order, if any, on the offender's

1 ability to possess a firearm under state or federal law.

2 ~~(6)~~ (5) The setting aside of a conviction in accordance with the
3 Nebraska Probation Administration Act shall not:

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

7 (b) Preclude proof of a plea of guilty whenever such plea is
8 relevant to the determination of an issue involving the rights or
9 liabilities of someone other than the offender;

10 (c) Preclude proof of the conviction as evidence of the commission
11 of the offense ~~infraction, misdemeanor, or felony~~ whenever the fact of
12 its commission is relevant for the purpose of impeaching the offender as
13 a witness, except that the order setting aside the conviction may be
14 introduced in evidence;

15 (d) Preclude use of the conviction for the purpose of determining
16 sentence on any subsequent conviction of a criminal offense;

17 (e) Preclude the proof of the conviction as evidence of the
18 commission of the offense ~~infraction, misdemeanor, or felony~~ in the event
19 an offender is charged with a subsequent offense and the penalty provided
20 by law is increased if the prior conviction is proved;

21 (f) Preclude the proof of the conviction to determine whether an
22 offender is eligible to have a subsequent conviction set aside in
23 accordance with the Nebraska Probation Administration Act;

24 (g) Preclude use of the conviction as evidence of commission of the
25 offense ~~infraction, misdemeanor, or felony~~ for purposes of determining
26 whether an application filed or a license issued under sections 71-1901
27 to 71-1906.01, the Child Care Licensing Act, or the Children's
28 Residential Facilities and Placing Licensure Act or a certificate issued
29 under sections 79-806 to 79-815 should be denied, suspended, or revoked;

30 (h) Preclude use of the conviction as evidence of incompetence,
31 neglect of duty, physical, mental, or emotional incapacity, or final

1 conviction of or pleading guilty or nolo contendere to a felony for
2 purposes of determining whether an application filed or a certificate
3 issued under sections 81-1401 to 81-1414.10 should be denied, suspended,
4 or revoked;

5 (i) Preclude proof of the conviction as evidence whenever the fact
6 of the conviction is relevant to a determination of the registration
7 period under section 29-4005; ~~or~~

8 (j) Relieve a person who is convicted of an offense for which
9 registration is required under the Sex Offender Registration Act of the
10 duty to register and to comply with the terms of the act; ~~or~~

11 (k) Affect the right of a victim of a crime to prosecute or defend a
12 civil action;

13 (l) Affect the assessment or accumulation of points under section
14 60-4,182; or

15 (m) Affect eligibility for, or obligations relating to, a commercial
16 driver's license.

17 (7) For purposes of this section, offense means any violation of the
18 criminal laws of this state or any political subdivision of this state
19 including, but not limited to, any felony, misdemeanor, infraction,
20 traffic infraction, violation of a city or village ordinance, or
21 violation of a county resolution.

22 (8) ~~(6)~~ Except as otherwise provided for the notice in subsection
23 (1) of this section, changes made to this section by Laws 2005, LB 713,
24 shall be retroactive in application and shall apply to all persons,
25 otherwise eligible in accordance with the provisions of this section,
26 whether convicted prior to, on, or subsequent to September 4, 2005.

27 (9) ~~(7)~~ The changes made to this section by Laws 2018, LB146, and
28 this legislative bill shall be retroactive in application and shall apply
29 to all persons, otherwise eligible under in accordance with the
30 provisions of this section, without regard to the date of the conviction
31 sought to be set aside whether convicted prior to, on, or subsequent to

1 ~~July 19, 2018.~~

2 Sec. 15. Section 29-3005, Revised Statutes Cumulative Supplement,
3 2018, is amended to read:

4 29-3005 (1) For purposes of this section:

5 (a) Prostitution-related offense includes:

6 (i) Prostitution under section 28-801, solicitation of prostitution
7 under section 28-801.01, keeping a place of prostitution under section
8 28-804, public indecency under section 28-806, or loitering for the
9 purpose of engaging in prostitution or related or similar offenses under
10 local ordinances; and

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

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

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

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

30 (3)(a) If the court finds that the movant was a victim of sex
31 trafficking at the time of the prostitution-related offense or finds that

1 the movant's participation in the prostitution-related offense was
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 an
4 adjudication for such prostitution-related offense.

5 (b) If the court finds that the movant's participation in an offense
6 other than a prostitution-related offense was a direct result of or
7 proximately caused by the movant's status as a victim of sex trafficking,
8 the court shall grant the motion to set aside a conviction or an
9 adjudication for such offense.

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

16 (a) A copy of an official record, certification, or eligibility
17 letter from a federal, state, tribal, or local proceeding, including an
18 approval notice or an enforcement certification generated from a federal
19 immigration proceeding, that shows that the movant is a victim of sex
20 trafficking; or

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

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

31 (a) Branding or other tattoos on the movant that identified him or

1 her as having a trafficker;

2 (b) Testimony or affidavits from those with firsthand knowledge of
3 the movant's involvement in the commercial sex trade such as solicitors
4 of commercial sex, family members, hotel workers, and other individuals
5 trafficked by the same individual or group of individuals who trafficked
6 the movant;

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

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

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

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

20 (7) An order setting aside a conviction or an adjudication under
21 this section shall have the same effect as an order setting aside a
22 conviction as provided in subsections (5) ~~(4)~~ and (6) ~~(5)~~ of section
23 29-2264.

24 Sec. 16. The Revisor of Statutes shall assign:

25 (1) Section 2 of this act to Chapter 27, article 7; and

26 (2) Section 9 of this act to Chapter 29, article 18.

27 Sec. 17. Original sections 27-1103 and 29-1406, Reissue Revised
28 Statutes of Nebraska, sections 29-901, 29-1407.01, 29-1822, 29-2004,
29 29-2005, 29-2206, 29-2264, and 29-3005, Revised Statutes Cumulative
30 Supplement, 2018, and section 29-1823, Revised Statutes Supplement, 2019,
31 are repealed.