

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 505

Introduced by Krist, 10.

Read first time January 21, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-3523, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to the Security, Privacy, and Dissemination of Criminal
- 4 History Information Act; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-3523, Reissue Revised Statutes of Nebraska, is
2 amended to read:

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

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

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

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

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

26 (2) Except as provided in subsection (1) of this section, in the
27 case of an arrest, citation in lieu of arrest, or referral for
28 prosecution without citation, all criminal history record information
29 relating to the case the notation of arrest shall be removed from the
30 public record as follows:

31 (a) ~~When In the case of an arrest for which no charges are filed as~~

1 a result of the determination of the prosecuting attorney, the criminal
2 history record information arrest shall not be part of the public record
3 after one year from the date of arrest, citation in lieu of arrest, or
4 referral for prosecution without citation;

5 (b) ~~When In the case of an arrest for which~~ charges are not filed as
6 a result of a completed diversion, the criminal history record
7 information ~~arrest~~ shall not be part of the public record after two years
8 from the date of arrest, citation in lieu of arrest, or referral for
9 prosecution without citation; and

10 (c) ~~When In the case of an arrest for which~~ charges are filed, but
11 the case is dismissed by the court (i) on motion of the prosecuting
12 attorney, (ii) ~~or~~ as a result of a hearing not the subject of a pending
13 appeal, (iii) after acquittal, or (iv) after completion of a program
14 prescribed by a drug court or any other problem solving court approved by
15 the Supreme Court, the criminal history record information ~~the arrest~~
16 shall not be part of the public record immediately upon notification of a
17 criminal justice agency after acquittal pursuant to subdivision (2)(c)
18 (iii) of this section or after the entry of an order dismissing the case
19 after three years from the date of arrest.

20 (3) Upon entry of an order dismissing a case described in
21 subdivision (2)(c) of this section, the court shall:

22 (a) Order that all records, including any information or other data
23 concerning any proceedings relating to the offense, including the arrest,
24 taking into custody, petition, complaint, indictment, information, trial,
25 hearing, adjudication, correctional supervision, dismissal, or other
26 disposition or sentence, are not part of the public record and shall not
27 be disseminated to persons other than criminal justice agencies;

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

1 (c) Order all parties notified under subdivision (3)(b) of this
2 section to seal all records pertaining to the offense; and

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

5 (4) After criminal history record information has been removed from
6 the public record, the person whose information was removed can respond
7 to any public inquiry as if such arrest, citation in lieu of arrest, or
8 referral for prosecution without citation never occurred.

9 (5) A person who willfully discloses, communicates, or allows access
10 to criminal history record information that has been removed from the
11 public record is guilty of a Class III misdemeanor.

12 (6 3) Any person arrested due to the error of a law enforcement
13 agency may file a petition with the district court for an order to
14 expunge the criminal history record information related to such error.
15 The petition shall be filed in the district court of the county in which
16 the 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. 2. Original section 29-3523, Reissue Revised Statutes of
22 Nebraska, is repealed.