

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 226

Introduced by Juarez, 5.

Read first time January 14, 2025

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal procedure; to amend section
2 29-3528, Reissue Revised Statutes of Nebraska, and section 29-3523,
3 Revised Statutes Cumulative Supplement, 2024; to provide for setting
4 aside and expunging records relating to convictions and
5 adjudications for certain concealed weapon offenses; to define a
6 term; to provide for retroactivity; to provide a private cause of
7 action for violations of the Security, Privacy, and Dissemination of
8 Criminal History Information Act; to waive sovereign immunity as
9 prescribed; to provide a statute of limitations for such actions; to
10 harmonize provisions; and to repeal the original sections.

11 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** (1) For purposes of this section, concealed weapon
2 offense means:

3 (a) A violation of section 28-1202 as it existed before September 2,
4 2023; or

5 (b) Attempt, conspiracy, solicitation, being an accessory to, aiding
6 and abetting, aiding the consummation of, or compounding a felony with a
7 violation described in subdivision (1)(a) of this section as the
8 underlying offense.

9 (2) At any time following the completion of sentence or disposition,
10 a person convicted of a concealed weapon offense or adjudicated in
11 juvenile court for a concealed weapon offense may file a motion to set
12 aside such conviction or adjudication. The motion shall be filed in the
13 county, district, or separate juvenile court in which the movant was
14 convicted or adjudicated.

15 (3) In determining whether to set aside the conviction, the court
16 shall consider:

17 (a) The behavior of the movant after completion of sentencing or
18 disposition;

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

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

22 (4) There shall be a rebuttable presumption that the movant is
23 entitled to relief under this section if the conduct underlying the
24 conviction or adjudication for a concealed weapon offense would not be a
25 violation of section 28-1202 as such section exists at the time the
26 motion is filed.

27 (5) The court may grant the motion and issue an order setting aside
28 the conviction or adjudication when in the opinion of the court the order
29 will be in the best interest of the movant and consistent with the public
30 welfare.

31 (6) An order setting aside a conviction or an adjudication under

1 this section shall have the same effect as an order setting aside a
2 conviction as provided in subsections (5) and (6) of section 29-2264.

3 **Sec. 2.** Section 29-3523, Revised Statutes Cumulative Supplement,
4 2024, is amended to read:

5 29-3523 (1) After the expiration of the periods described in
6 subsection (3) of this section or after the granting of a motion under
7 subsection (4), (5), ~~or (6),~~ or (7) of this section, a criminal justice
8 agency shall respond to a public inquiry in the same manner as if there
9 were no criminal history record information and criminal history record
10 information shall not be disseminated to any person other than a criminal
11 justice agency, except as provided in subsection (2) of this section or
12 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) That part of criminal history record information described in
27 subsection (8) ~~(7)~~ of this section may be disseminated to individuals and
28 agencies for the express purpose of research, evaluative, or statistical
29 activities pursuant to an agreement with a criminal justice agency that
30 specifically authorizes access to the information, limits the use of the
31 information to research, evaluative, or statistical activities, and

1 ensures the confidentiality and security of the information.

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

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

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

14 (c) When charges are filed, but the case is dismissed by the court
15 (i) on motion of the prosecuting attorney, (ii) as a result of a hearing
16 not the subject of a pending appeal, (iii) after acquittal, (iv) after a
17 deferred judgment, or (v) after completion of a program prescribed by a
18 drug court or any other problem solving court approved by the Supreme
19 Court, the criminal history record information shall not be part of the
20 public record immediately upon notification of a criminal justice agency
21 after acquittal pursuant to subdivision (3)(c)(iii) of this section or
22 after the entry of an order dismissing the case.

23 (4) Upon the granting of a motion to set aside a conviction or an
24 adjudication pursuant to section 29-3005, a person who is a victim of sex
25 trafficking, as defined in section 29-3005, may file a motion with the
26 ~~same sentencing~~ court for an order to seal the criminal history record
27 information related to such conviction or adjudication. Upon a finding
28 that a court issued an order setting aside such conviction or
29 adjudication pursuant to section 29-3005, the ~~sentencing~~ court shall
30 grant the motion and:

31 (a) For a conviction, issue an order as provided in subsection (8)

1 ~~(7)~~ of this section; or

2 (b) For an adjudication, issue an order as provided in section
3 43-2,108.05.

4 (5) Upon the granting of a motion to set aside a conviction or an
5 adjudication pursuant to section 1 of this act, the movant may file a
6 motion with the same court for an order to seal the criminal history
7 record information related to such conviction or adjudication. Upon a
8 finding that a court issued an order setting aside such conviction or
9 adjudication pursuant to section 1 of this act, the court shall grant the
10 motion and:

11 (a) For a conviction, issue an order as provided in subsection (8)
12 of this section; or

13 (b) For an adjudication, issue an order as provided in section
14 43-2,108.05.

15 (6) ~~(5)~~ Any person who has received a pardon may file a motion with
16 the sentencing court for an order to seal the criminal history record
17 information and any cases related to such charges or conviction. Upon a
18 finding that the person received a pardon, the court shall grant the
19 motion and issue an order as provided in subsection (8) ~~(7)~~ of this
20 section.

21 (7) ~~(6)~~ Any person who is subject to a record which resulted in a
22 case being dismissed prior to January 1, 2017, as described in
23 subdivision (3)(c) of this section, may file a motion with the court in
24 which the case was filed to enter an order pursuant to subsection (8) ~~(7)~~
25 of this section. Upon a finding that the case was dismissed for any
26 reason described in subdivision (3)(c) of this section, the court shall
27 grant the motion and enter an order as provided in subsection (8) ~~(7)~~ of
28 this section.

29 (8) ~~(7)~~ Upon acquittal or entry of an order dismissing a case
30 described in subdivision (3)(c) of this section, or after granting a
31 motion under subsection (4), (5), ~~or (6)~~, or (7) of this section, the

1 court shall:

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

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

13 (c) Order all parties notified under subdivision ~~(8)(b)~~ ~~(7)(b)~~ of
14 this section to seal all records pertaining to the case; and

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

17 ~~(9)~~ ~~(8)~~ In any application for employment, bonding, license,
18 education, or other right or privilege, any appearance as a witness, or
19 any other public inquiry, a person cannot be questioned with respect to
20 any offense for which the record is sealed. If an inquiry is made in
21 violation of this subsection, the person may respond as if the offense
22 never occurred.

23 ~~(10)~~ ~~(9)~~ Any person arrested due to the error of a law enforcement
24 agency may file a petition with the district court for an order to
25 expunge the criminal history record information related to such error.
26 The petition shall be filed in the district court of the county in which
27 the petitioner was arrested. The county attorney shall be named as the
28 respondent and shall be served with a copy of the petition. The court may
29 grant the petition and issue an order to expunge such information if the
30 petitioner shows by clear and convincing evidence that the arrest was due
31 to error by the arresting law enforcement agency.

1 (11) ~~(10)~~ The changes made by Laws 2018, LB1132, and this
2 legislative bill to the relief set forth in this section shall apply to
3 all persons otherwise eligible in accordance with the provisions of this
4 section, without regard to the date on which the person was whether
5 arrested, cited in lieu of arrest, referred for prosecution without
6 citation, charged, convicted, or adjudicated prior to, on, or subsequent
7 to July 19, 2018.

8 **Sec. 3.** Section 29-3528, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 29-3528 (1) If a state agency or political subdivision or an
11 Whenever any officer or employee of a the state, its agencies, or its
12 political subdivisions, or whenever any state agency or any political
13 subdivision or its agencies fails to comply with the requirements of the
14 Security, Privacy, and Dissemination of Criminal History Information Act
15 sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423 or of rules and
16 regulations lawfully adopted and promulgated under such act, such failure
17 creates private liability on the part of such agency, political
18 subdivision, officer, or employee. Any to implement sections 29-209,
19 29-210, 29-3501 to 29-3528, and 81-1423, any person aggrieved by such a
20 violation may bring an action, for appropriate relief including, but not
21 limited to, actual damages, such preliminary and other equitable or
22 declaratory relief as may be appropriate, or a writ of an action for
23 mandamus. 7

24 (2) Consent is hereby given to join the state, any agency or
25 political subdivision of the state, and any officer or employee of the
26 state, its agencies, or its political subdivisions as a defendant in any
27 action under this section. Such entities, when a party to any such
28 action, shall be deemed to have waived sovereign immunity and shall be
29 subject to the judgments, orders, and decrees of the court.

30 (3) An action under this section is not subject to the State Tort
31 Claims Act or the Political Subdivisions Tort Claims Act.

1 (4) An action under this section shall be brought within the later
2 of the following periods:

3 (a) Four years after the cause of action accrued; or

4 (b) By January 1, 2029, if the cause of action accrued on or after
5 January 1, 2015, and is brought against a state agency or political
6 subdivision or against an officer or employee of a state agency or
7 political subdivision only in such officer's or employee's official
8 capacity.

9 (5) An to compel compliance and such action under this section may
10 be brought in the district court of any district in which the records
11 involved are located or in the district court of Lancaster County. The
12 commission may request the Attorney General to bring such action.

13 **Sec. 4.** Original section 29-3528, Reissue Revised Statutes of
14 Nebraska, and section 29-3523, Revised Statutes Cumulative Supplement,
15 2024, are repealed.