

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 505

FINAL READING

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, Revised Statutes Supplement, 2015; to change provisions
3 relating to the Security, Privacy, and Dissemination of Criminal
4 History Information Act; to provide an operative date; and to repeal
5 the original section.

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

1 Section 1. Section 29-3523, Revised Statutes Supplement, 2015, is
2 amended to read:

3 29-3523 (1) After the expiration of the periods described in
4 subsection (3) 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 except as provided in subsection (2) of this section or ~~That part of~~
9 ~~criminal history record information consisting of a notation of an~~
10 ~~arrest, described in subsection (3) of this section, shall not be~~
11 ~~disseminated to persons other than criminal justice agencies after the~~
12 ~~expiration of the periods described in subsection (3) of this section~~
13 ~~except as provided in subsection (2) of this section and except when the~~
14 subject of the record:

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

17 (b) Is currently an announced candidate for or holder of public
18 office;

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

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

28 (2) ~~That part of criminal history record information consisting of a~~
29 ~~notation of an arrest,~~ described in subsection (4 3) of this section, may
30 be disseminated to individuals and agencies for the express purpose of
31 research, evaluative, or statistical activities pursuant to an agreement

1 with a criminal justice agency that specifically authorizes access to the
2 information, limits the use of the information to research, evaluative,
3 or statistical activities, and ensures the confidentiality and security
4 of the information.

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

10 (a) ~~When In the case of an arrest for which~~ no charges are filed as
11 a result of the determination of the prosecuting attorney, the criminal
12 history record information ~~arrest~~ shall not be part of the public record
13 after one year from the date of arrest, citation in lieu of arrest, or
14 referral for prosecution without citation;

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

20 (c) ~~When In the case of an arrest for which~~ charges are filed, but
21 the case is dismissed by the court (i) on motion of the prosecuting
22 attorney, (ii) or as a result of a hearing not the subject of a pending
23 appeal, (iii) after acquittal, or (iv) after completion of a program
24 prescribed by a drug court or any other problem solving court approved by
25 the Supreme Court, the criminal history record information ~~the arrest~~
26 shall not be part of the public record immediately upon notification of a
27 criminal justice agency after acquittal pursuant to subdivision (3)(c)
28 (iii) of this section or after the entry of an order dismissing the case
29 after three years from the date of arrest.

30 (4) Upon acquittal or entry of an order dismissing a case described
31 in subdivision (3)(c) of this section, the court shall:

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

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

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

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

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

21 (6 4) Any person arrested due to the error of a law enforcement
22 agency may file a petition with the district court for an order to
23 expunge the criminal history record information related to such error.
24 The petition shall be filed in the district court of the county in which
25 the petitioner was arrested. The county attorney shall be named as the
26 respondent and shall be served with a copy of the petition. The court may
27 grant the petition and issue an order to expunge such information if the
28 petitioner shows by clear and convincing evidence that the arrest was due
29 to error by the arresting law enforcement agency.

30 Sec. 2. This act becomes operative on January 1, 2017.

31 Sec. 3. Original section 29-3523, Revised Statutes Supplement,

1 2015, is repealed.