

AMENDMENTS TO LB1132

(Amendments to Standing Committee amendments, AM1971)

Introduced by Lindstrom, 18.

1 1. Strike section 2 and insert the following new sections:

2 Section 1. Section 28-902, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4 28-902 (1) Except as provided in subsection (2) of this section,  
5 every health care provider ~~Every person engaged in the practice of~~  
6 ~~medicine and surgery, or who is in charge of any emergency room or first-~~  
7 ~~aid station in this state,~~ shall immediately report to law enforcement  
8 every case, in which the health care provider he is consulted for medical  
9 care for physical treatment or treats a wound or injury of violence which  
10 appears to have been received in connection with, or as a result of, the  
11 commission of a criminal offense, ~~immediately to the chief of police of~~  
12 ~~the municipality or to the sheriff of the county wherein the consultation~~  
13 ~~or treatment occurs.~~ Such report shall include the name of the victim  
14 such person, the residence, if ascertainable, and a brief description of  
15 the victim's physical injury, and, if ascertainable, the victim's  
16 residential address and the location of the offense injury. Any other  
17 ~~provision~~ of law or rule of evidence relative to confidential  
18 communications is suspended insofar as compliance with the provisions of  
19 this section is ~~are~~ concerned.

20 (2) When a health care provider is consulted for medical care for  
21 physical injury which reasonably appears to have been received in  
22 connection with, or as a result of, the commission of an actual or  
23 attempted sexual assault and the victim was eighteen years of age or  
24 older at the time of such actual or attempted sexual assault, the health  
25 care provider shall:

26 (a) Provide the victim with information detailing the reporting

1 options available under subdivision (2)(b) of this section;

2 (b) Ask the victim either:

3 (i) To provide written consent to report such actual or attempted  
4 sexual assault as provided in subsection (1) of this section. If the  
5 victim provides such written consent, the health care provider shall make  
6 the report required by subsection (1) of this section and submit to law  
7 enforcement a sexual assault evidence collection kit if one has been  
8 obtained; or

9 (ii) To sign a written acknowledgment that such actual or attempted  
10 sexual assault will not be reported except as provided in subdivision (2)  
11 (c) or subsection (3) of this section, but that the health care provider  
12 will submit to law enforcement a sexual assault evidence collection kit,  
13 if one has been obtained, using an anonymous reporting protocol. A health  
14 care provider may use the anonymous reporting protocol developed by the  
15 Attorney General under section 4 of this act or may use a different  
16 anonymous reporting protocol;

17 (c) Regardless of the victim's decision under subdivision (2)(b) of  
18 this section, if the victim is suffering from a serious bodily injury, or  
19 any bodily injury where a deadly weapon was used to inflict such injury,  
20 which appears to have been received in connection with, or as a result  
21 of, the commission of an actual or attempted sexual assault, the health  
22 care provider shall report such injury to law enforcement as provided in  
23 subsection (1) of this section; and

24 (d) Unless declined by the victim, refer him or her to an advocate.

25 (3) When a health care provider is consulted for medical care for  
26 physical injury which reasonably appears to have been received in  
27 connection with, or as a result of, the commission of an actual or  
28 attempted sexual assault, the health care provider shall, regardless of  
29 the victim's age or the victim's decision under subdivision (2)(b) of  
30 this section, provide law enforcement with a sexual assault evidence  
31 collection kit if one has been obtained.

1           (4) A law enforcement agency receiving a sexual assault evidence  
2 collection kit under this section shall preserve such kit for twenty  
3 years after the date of receipt or as otherwise ordered by a court.

4           (5) Any health care provider who knowingly fails to make any report  
5 required by subsection (1) of this section is guilty of a Class III  
6 misdemeanor. If multiple health care providers are involved in the  
7 consultation of a person in a given occurrence, this section does not  
8 require each health care provider to make a separate report, so long as  
9 one of such health care providers makes the report required by this  
10 section.

11           (6) For purposes of this section:

12           (a) Advocate has the same meaning as in section 29-4302;

13           (b) Anonymous reporting protocol means a reporting protocol that  
14 allows the identity of the victim, his or her personal or identifying  
15 information, and the details of the sexual assault or attempted sexual  
16 assault to remain confidential and undisclosed by the health care  
17 provider, other than submission to law enforcement of any sexual assault  
18 evidence collection kit, unless and until the victim consents to the  
19 release of such information;

20           (c) Health care provider means any of the following individuals who  
21 are licensed, certified, or registered to perform specified health  
22 services consistent with state law: A physician, physician assistant,  
23 nurse, or advanced practice registered nurse;

24           (d) Law enforcement means a law enforcement agency in the county in  
25 which the consultation occurred; and

26           (e) Victim means the person seeking medical care.

27           ~~(2) Any person who fails to make the report required by subsection~~  
28 ~~(1) of this section commits a Class III misdemeanor.~~

29           Sec. 3. Section 29-3523, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31           29-3523 (1) After the expiration of the periods described in

1 subsection (3) of this section or after the granting of a motion under  
2 subsection (4), (5), or (6) of this section, a criminal justice agency  
3 shall respond to a public inquiry in the same manner as if there were no  
4 criminal history record information and criminal history record  
5 information shall not be disseminated to any person other than a criminal  
6 justice agency, except as provided in subsection (2) of this section or  
7 when the subject of the record:

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

10 (b) Is currently an announced candidate for or holder of public  
11 office;

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

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

21 (2) That part of criminal history record information described in  
22 subsection (7) ~~(4)~~ of this section may be disseminated to individuals and  
23 agencies for the express purpose of research, evaluative, or statistical  
24 activities pursuant to an agreement with a criminal justice agency that  
25 specifically authorizes access to the information, limits the use of the  
26 information to research, evaluative, or statistical activities, and  
27 ensures the confidentiality and security of the information.

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

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

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

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

18 (4) Upon the granting of a petition to set aside a conviction or  
19 adjudication pursuant to section 2 of this act, a person who is a victim  
20 of sex trafficking, as defined in section 2 of this act, may file a  
21 motion with the sentencing court for an order to seal the criminal  
22 history record information related to such conviction or adjudication.  
23 Upon a finding that a court issued an order setting aside such conviction  
24 or adjudication pursuant to section 2 of this act, the sentencing court  
25 shall grant the motion and issue an order as provided in subsection (7)  
26 of this section.

27 (5) Any person who has received a pardon may file a motion with the  
28 sentencing court for an order to seal the criminal history record  
29 information and any cases related to such charges or conviction. Upon a  
30 finding that the person received a pardon, the court shall grant the  
31 motion and issue an order as provided in subsection (7) of this section.

1           (6) Any person who is subject to a record which resulted in a case  
2 being dismissed prior to January 1, 2017, as described in subdivision (3)  
3 (c) of this section, may file a motion with the court to enter an order  
4 pursuant to subsection (7) of this section. Upon a finding that the case  
5 was dismissed for any reason described in subdivision (3)(c) of this  
6 section, the court shall grant the motion and enter an order as provided  
7 in subsection (7) of this section.

8           (7) (4) Upon acquittal, or entry of an order dismissing a case  
9 described in subdivision (3)(c) of this section, or after granting a  
10 motion under subsection (4), (5), or (6) of this section, the court  
11 shall:

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

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

23           (c) Order all parties notified under subdivision (7)(b) (4)(b) of  
24 this section to seal all records pertaining to the case; and

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

27           (8) (5) In any application for employment, bonding, license,  
28 education, or other right or privilege, any appearance as a witness, or  
29 any other public inquiry, a person cannot be questioned with respect to  
30 any offense for which the record is sealed. If an inquiry is made in  
31 violation of this subsection, the person may respond as if the offense

1 never occurred.

2 ~~(9) (6)~~ Any person arrested due to the error of a law enforcement  
3 agency may file a petition with the district court for an order to  
4 expunge the criminal history record information related to such error.  
5 The petition shall be filed in the district court of the county in which  
6 the petitioner was arrested. The county attorney shall be named as the  
7 respondent and shall be served with a copy of the petition. The court may  
8 grant the petition and issue an order to expunge such information if the  
9 petitioner shows by clear and convincing evidence that the arrest was due  
10 to error by the arresting law enforcement agency.

11 (10) The relief set forth in this section shall apply to all persons  
12 otherwise eligible in accordance with the provisions of this section,  
13 whether arrested, cited in lieu of arrest, referred for prosecution  
14 without citation, charged, convicted, or adjudicated prior to, on or  
15 subsequent to the effective date of this act.

16 Sec. 4. On or before July 1, 2019, the Attorney General shall  
17 develop and distribute a statewide model anonymous reporting protocol for  
18 use by health care providers as provided in section 28-902. Once  
19 developed, the statewide model anonymous reporting protocol shall be  
20 maintained by the Nebraska Commission on Law Enforcement and Criminal  
21 Justice.

22 2. Renumber the remaining sections and correct the repealer  
23 accordingly.