

E AND R AMENDMENTS TO LB 1132

Introduced by Wishart, 27, Chairman Enrollment and Review

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

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

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

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

27 (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. 2. (1) For purposes of this section:

30 (a) Prostitution-related offense includes:

31 (i) Prostitution under section 28-801, solicitation of prostitution

1 under section 28-801.01, keeping a place of prostitution under section
2 28-804, public indecency under section 28-806, or loitering for the
3 purpose of engaging in prostitution or related or similar offenses under
4 local ordinances; and

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

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

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

14 (2) At any time following the date of the conviction or
15 adjudication, a victim of sex trafficking convicted in county or district
16 court of, or adjudicated in a juvenile court for (a) a prostitution-
17 related offense or (b) any other offense committed as a direct result of,
18 or incident to, being a victim of sex trafficking may file a petition to
19 set aside such conviction or adjudication. The petition shall be filed in
20 the county or district court of the county in which charges were filed or
21 the petitioner was convicted or adjudicated. The prosecuting attorney
22 shall be named as respondent and shall be served with a copy of the
23 petition.

24 (3)(a) The court shall grant a petition to set aside a conviction or
25 adjudication for a prostitution-related offense if the court finds that
26 the petitioner was a victim of sex trafficking at the time of the offense
27 or if the court finds that the petitioner's participation in the offense
28 was otherwise incidental to being a victim of sex trafficking.

29 (b) The court shall grant a petition to set aside a conviction or
30 adjudication for an offense other than a prostitution-related offense if
31 the court finds that the petitioner's participation in the offense was a

1 direct result of or incidental to being a victim of sex trafficking.

2 (4) The court shall find that the petitioner is a victim of sex
3 trafficking if the petitioner submits to the court:

4 (a) A copy of an official record, certification, or eligibility
5 letter from a federal, state, tribal, or local proceeding, including an
6 approval notice or an enforcement certification generated from a federal
7 immigration proceeding, that shows that the petitioner is a victim of sex
8 trafficking; or

9 (b) An affidavit or sworn testimony from an attorney, a member of
10 the clergy, a medical professional, a trained professional staff member
11 of a victim services organization, or other professional from whom the
12 petitioner has sought legal counsel or other assistance in addressing the
13 trauma associated with being a victim of sex trafficking.

14 (5) In considering whether the petitioner is a victim of sex
15 trafficking, the court may consider any other evidence the court
16 determines is of sufficient credibility and probative value, including an
17 affidavit or sworn testimony. Examples of such evidence include, but are
18 not limited to:

19 (a) Branding or other tattoos on the petitioner that identified him
20 or her as having a trafficker;

21 (b) Testimony or affidavits from those with firsthand knowledge of
22 the petitioner's involvement in the commercial sex trade such as
23 solicitors of commercial sex, family members, hotel workers, and other
24 individuals trafficked by the same individual or group of individuals who
25 trafficked the petitioner;

26 (c) Financial records showing profits from the commercial sex trade,
27 such as records of hotel stays, employment at indoor venues such as
28 massage parlors or strip clubs, or employment at an escort service;

29 (d) Internet listings, print advertisements, or business cards used
30 to promote the petitioner for commercial sex; or

31 (e) Email, text, or voicemail records between the petitioner, the

1 trafficker, or solicitors of sex that reveal aspects of the sex trade
2 such as behavior patterns, meeting times, or payments or examples of the
3 trafficker exerting force, fraud, or coercion over the petitioner.

4 (6) Upon request of a petitioner, any hearing relating to the
5 petition shall be conducted in camera. The rules of evidence shall not
6 apply at any hearing relating to the petition.

7 (7) An order setting aside a conviction or adjudication under this
8 section shall:

9 (a) Nullify the conviction or adjudication; and

10 (b) Remove all civil disabilities and disqualifications imposed as a
11 result of the conviction or adjudication.

12 (8) The setting aside of a conviction in accordance with this
13 section shall not:

14 (a) Require the reinstatement of any office, employment, or position
15 which was previously held and lost or forfeited as a result of the
16 conviction or adjudication; or

17 (b) Preclude proof of a plea of guilty in a criminal proceeding or
18 an admission of responsibility in a juvenile proceeding whenever such
19 plea or admission is relevant to the determination of an issue involving
20 the rights or liabilities of someone other than the petitioner.

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

23 29-3523 (1) After the expiration of the periods described in
24 subsection (3) of this section or after the granting of a motion under
25 subsection (4), (5), or (6) of this section, a criminal justice agency
26 shall respond to a public inquiry in the same manner as if there were no
27 criminal history record information and criminal history record
28 information shall not be disseminated to any person other than a criminal
29 justice agency, except as provided in subsection (2) of this section or
30 when the subject of the record:

31 (a) Is currently the subject of prosecution or correctional control

1 as the result of a separate arrest;

2 (b) Is currently an announced candidate for or holder of public
3 office;

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

6 (d) Is kept unidentified, and the record is used for purposes of
7 surveying or summarizing individual or collective law enforcement agency
8 activity or practices, or the dissemination is requested consisting only
9 of release of criminal history record information showing (i) dates of
10 arrests, (ii) reasons for arrests, and (iii) the nature of the
11 dispositions including, but not limited to, reasons for not prosecuting
12 the case or cases.

13 (2) That part of criminal history record information described in
14 subsection ~~(7)~~ (4) of this section may be disseminated to individuals and
15 agencies for the express purpose of research, evaluative, or statistical
16 activities pursuant to an agreement with a criminal justice agency that
17 specifically authorizes access to the information, limits the use of the
18 information to research, evaluative, or statistical activities, and
19 ensures the confidentiality and security of the information.

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

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

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

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

10 (4) Upon the granting of a petition to set aside a conviction or
11 adjudication pursuant to section 2 of this act, a person who is a victim
12 of sex trafficking, as defined in section 2 of this act, may file a
13 motion with the sentencing court for an order to seal the criminal
14 history record information related to such conviction or adjudication.
15 Upon a finding that a court issued an order setting aside such conviction
16 or adjudication pursuant to section 2 of this act, the sentencing court
17 shall grant the motion and issue an order as provided in subsection (7)
18 of this section.

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

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

31 (7) ~~(4)~~ Upon acquittal, or entry of an order dismissing a case

1 described in subdivision (3)(c) of this section, or after granting a
2 motion under subsection (4), (5), or (6) of this section, the court
3 shall:

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

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

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

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

19 ~~(8)~~ ~~(5)~~ In any application for employment, bonding, license,
20 education, or other right or privilege, any appearance as a witness, or
21 any other public inquiry, a person cannot be questioned with respect to
22 any offense for which the record is sealed. If an inquiry is made in
23 violation of this subsection, the person may respond as if the offense
24 never occurred.

25 ~~(9)~~ ~~(6)~~ Any person arrested due to the error of a law enforcement
26 agency may file a petition with the district court for an order to
27 expunge the criminal history record information related to such error.
28 The petition shall be filed in the district court of the county in which
29 the petitioner was arrested. The county attorney shall be named as the
30 respondent and shall be served with a copy of the petition. The court may
31 grant the petition and issue an order to expunge such information if the

1 petitioner shows by clear and convincing evidence that the arrest was due
2 to error by the arresting law enforcement agency.

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

8 Sec. 4. On or before July 1, 2019, the Attorney General shall
9 develop and distribute a statewide model anonymous reporting protocol for
10 use by health care providers as provided in section 28-902. Once
11 developed, the statewide model anonymous reporting protocol shall be
12 maintained by the Nebraska Commission on Law Enforcement and Criminal
13 Justice.

14 Sec. 5. Original sections 28-902 and 29-3523, Reissue Revised
15 Statutes of Nebraska, are repealed.

16 2. On page 1, strike beginning with "crimes" in line 1 through line
17 5 and insert "crime victims; to amend sections 28-902 and 29-3523,
18 Reissue Revised Statutes of Nebraska; to require reporting by a health
19 care provider of injury from actual or attempted sexual assault as
20 prescribed; to provide duties for health care providers and law
21 enforcement as prescribed; to define terms; to provide a procedure to set
22 aside convictions for victims of sex trafficking; to provide for
23 expungement of criminal history record information of such victims; to
24 provide for development and distribution by the Attorney General of a
25 statewide model anonymous reporting protocol; to provide a duty for the
26 Nebraska Commission on Law Enforcement and Criminal Justice; to harmonize
27 provisions; and to repeal the original sections."