

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1132**

FINAL READING

Introduced by Pansing Brooks, 28; Ebke, 32; Linehan, 39; Morfeld, 46;  
Vargas, 7; Wishart, 27; Quick, 35; McCollister, 20.

Read first time January 18, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to crime victims; to amend sections 28-902 and  
2 29-3523, Reissue Revised Statutes of Nebraska; to require reporting  
3 by a health care provider of injury from actual or attempted sexual  
4 assault as prescribed; to provide duties for health care providers  
5 and law enforcement as prescribed; to define terms; to provide a  
6 procedure to set aside convictions for victims of sex trafficking;  
7 to provide for expungement of criminal history record information of  
8 such victims; to provide for development and distribution by the  
9 Attorney General of a statewide model anonymous reporting protocol;  
10 to provide a duty for the Nebraska Commission on Law Enforcement and  
11 Criminal Justice; to harmonize provisions; and to repeal the  
12 original sections.  
13 Be it enacted by the people of the State of Nebraska,

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

3 28-902 (1) Except as provided in subsection (2) of this section,  
4 every health care provider ~~Every person engaged in the practice of~~  
5 ~~medicine and surgery, or who is in charge of any emergency room or first-~~  
6 ~~aid station in this state,~~ shall immediately report to law enforcement  
7 ~~every case,~~ in which the health care provider ~~he~~ is consulted for medical  
8 care for physical ~~treatment or treats a wound or injury of violence~~ which  
9 appears to have been received in connection with, or as a result of, the  
10 commission of a criminal offense, ~~immediately to the chief of police of~~  
11 ~~the municipality or to the sheriff of the county wherein the consultation~~  
12 ~~or treatment occurs.~~ Such report shall include the name of the victim  
13 ~~such person,~~ the residence, ~~if ascertainable,~~ and a brief description of  
14 the victim's physical injury, and, if ascertainable, the victim's  
15 residential address and the location of the offense ~~injury.~~ Any other  
16 ~~provision~~ of law or rule of evidence relative to confidential  
17 communications is suspended insofar as compliance with the provisions of  
18 this section is ~~are~~ concerned.

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

25 (a) Provide the victim with information detailing the reporting  
26 options available under subdivision (2)(b) of this section;

27 (b) Ask the victim either:

28 (i) To provide written consent to report such actual or attempted  
29 sexual assault as provided in subsection (1) of this section. If the  
30 victim provides such written consent, the health care provider shall make  
31 the report required by subsection (1) of this section and submit to law

1 enforcement a sexual assault evidence collection kit if one has been  
2 obtained; or

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

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

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

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

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

29 (5) Any health care provider who knowingly fails to make any report  
30 required by subsection (1) of this section is guilty of a Class III  
31 misdemeanor. If multiple health care providers are involved in the

1 consultation of a person in a given occurrence, this section does not  
2 require each health care provider to make a separate report, so long as  
3 one of such health care providers makes the report required by this  
4 section.

5 (6) For purposes of this section:

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

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

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

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

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

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

23 Sec. 2. (1) For purposes of this section:

24 (a) Prostitution-related offense includes:

25 (i) Prostitution under section 28-801, solicitation of prostitution  
26 under section 28-801.01, keeping a place of prostitution under section  
27 28-804, public indecency under section 28-806, or loitering for the  
28 purpose of engaging in prostitution or related or similar offenses under  
29 local ordinances; and

30 (ii) Attempt, conspiracy, solicitation, being an accessory to,  
31 aiding and abetting, aiding the consummation of, or compounding a felony

1 with any of the offenses in subdivision (1)(a) of this section as the  
2 underlying offense;

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

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

8 (2) At any time following the completion of sentence or disposition,  
9 a victim of sex trafficking convicted in county or district court of, or  
10 adjudicated in a juvenile court for, (a) a prostitution-related offense  
11 committed while the movant was a victim of sex trafficking or proximately  
12 caused by the movant's status as a victim of sex trafficking or (b) any  
13 other offense committed as a direct result of, or proximately caused by,  
14 the movant's status as a victim of sex trafficking, may file a motion to  
15 set aside such conviction or adjudication. The motion shall be filed in  
16 the county, district, or separate juvenile court of the county in which  
17 the movant was convicted or adjudicated.

18 (3)(a) If the court finds that the movant was a victim of sex  
19 trafficking at the time of the prostitution-related offense or finds that  
20 the movant's participation in the prostitution-related offense was  
21 proximately caused by the movant's status as a victim of sex trafficking,  
22 the court shall grant the motion to set aside a conviction or an  
23 adjudication for such prostitution-related offense.

24 (b) If the court finds that the movant's participation in an offense  
25 other than a prostitution-related offense was a direct result of or  
26 proximately caused by the movant's status as a victim of sex trafficking,  
27 the court shall grant the motion to set aside a conviction or an  
28 adjudication for such offense.

29 (4) Official documentation of a movant's status as a victim of sex  
30 trafficking at the time of the prostitution-related offense or other  
31 offense shall create a rebuttable presumption that the movant was a

1 victim of sex trafficking at the time of the prostitution-related offense  
2 or other offense. Such official documentation shall not be required to  
3 obtain relief under this section. Such official documentation includes:

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 movant 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 movant 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 movant 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 movant that identified him or  
20 her as having a trafficker;

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

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, bottle clubs, or strip clubs, or employment at an escort  
29 service;

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

1       (e) Email, text, or voicemail records between the movant, the  
2 trafficker, or solicitors of sex that reveal aspects of the sex trade  
3 such as behavior patterns, meeting times, or payments or examples of the  
4 trafficker exerting force, fraud, or coercion over the movant.

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

8       (7) An order setting aside a conviction or an adjudication under  
9 this section shall have the same effect as an order setting aside a  
10 conviction as provided in subsections (4) and (5) of section 29-2264.

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

13       29-3523 (1) After the expiration of the periods described in  
14 subsection (3) of this section or after the granting of a motion under  
15 subsection (4), (5), or (6) of this section, a criminal justice agency  
16 shall respond to a public inquiry in the same manner as if there were no  
17 criminal history record information and criminal history record  
18 information shall not be disseminated to any person other than a criminal  
19 justice agency, except as provided in subsection (2) of this section or  
20 when the subject of the record:

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

23       (b) Is currently an announced candidate for or holder of public  
24 office;

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

27       (d) Is kept unidentified, and the record is used for purposes of  
28 surveying or summarizing individual or collective law enforcement agency  
29 activity or practices, or the dissemination is requested consisting only  
30 of release of criminal history record information showing (i) dates of  
31 arrests, (ii) reasons for arrests, and (iii) the nature of the

1 dispositions including, but not limited to, reasons for not prosecuting  
2 the case or cases.

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

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

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

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

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

31 (4) Upon the granting of a motion to set aside a conviction or an



1 adjudication pursuant to section 2 of this act, a person who is a victim  
2 of sex trafficking, as defined in section 2 of this act, may file a  
3 motion with the sentencing court for an order to seal the criminal  
4 history record information related to such conviction or adjudication.  
5 Upon a finding that a court issued an order setting aside such conviction  
6 or adjudication pursuant to section 2 of this act, the sentencing court  
7 shall grant the motion and:

8 (a) For a conviction, issue an order as provided in subsection (7)  
9 of this section; or

10 (b) For an adjudication, issue an order as provided in section  
11 43-2,108.05.

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

17 (6) Any person who is subject to a record which resulted in a case  
18 being dismissed prior to January 1, 2017, as described in subdivision (3)

19 (c) of this section, may file a motion with the court in which the case  
20 was filed to enter an order pursuant to subsection (7) of this section.  
21 Upon a finding that the case was dismissed for any reason described in  
22 subdivision (3)(c) of this section, the court shall grant the motion and  
23 enter an order as provided in subsection (7) of this section.

24 (7) ~~(4)~~ Upon acquittal or entry of an order dismissing a case  
25 described in subdivision (3)(c) of this section, or after granting a  
26 motion under subsection (4), (5), or (6) of this section, the court  
27 shall:

28 (a) Order that all records, including any information or other data  
29 concerning any proceedings relating to the case, including the arrest,  
30 taking into custody, petition, complaint, indictment, information, trial,  
31 hearing, adjudication, correctional supervision, dismissal, or other

1 disposition or sentence, are not part of the public record and shall not  
2 be disseminated to persons other than criminal justice agencies, except  
3 as provided in subsection (1) or (2) of this section;

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

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

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

12 ~~(8)~~ ~~(5)~~ In any application for employment, bonding, license,  
13 education, or other right or privilege, any appearance as a witness, or  
14 any other public inquiry, a person cannot be questioned with respect to  
15 any offense for which the record is sealed. If an inquiry is made in  
16 violation of this subsection, the person may respond as if the offense  
17 never occurred.

18 ~~(9)~~ ~~(6)~~ Any person arrested due to the error of a law enforcement  
19 agency may file a petition with the district court for an order to  
20 expunge the criminal history record information related to such error.  
21 The petition shall be filed in the district court of the county in which  
22 the petitioner was arrested. The county attorney shall be named as the  
23 respondent and shall be served with a copy of the petition. The court may  
24 grant the petition and issue an order to expunge such information if the  
25 petitioner shows by clear and convincing evidence that the arrest was due  
26 to error by the arresting law enforcement agency.

27 (10) The changes made by this legislative bill to the relief set  
28 forth in this section shall apply to all persons otherwise eligible in  
29 accordance with the provisions of this section, whether arrested, cited  
30 in lieu of arrest, referred for prosecution without citation, charged,  
31 convicted, or adjudicated prior to, on, or subsequent to the effective

1 date of this act.

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

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