

LEGISLATIVE BILL 1132

Approved by the Governor April 17, 2018

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

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

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

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

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

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

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

~~(b) Ask the victim either:~~

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

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

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

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

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

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

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

(6) For purposes of this section:

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

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

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

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

(e) Victim means the person seeking medical care.

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

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

(a) Prostitution-related offense includes:

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

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

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

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

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

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

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

(4) Official documentation of a movant's status as a victim of sex trafficking at the time of the prostitution-related offense or other offense shall create a rebuttable presumption that the movant was a victim of sex trafficking at the time of the prostitution-related offense or other offense. Such official documentation shall not be required to obtain relief under this section. Such official documentation includes:

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

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

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

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

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

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

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

(e) Email, text, or voicemail records between the movant, the trafficker, or solicitors of sex that reveal aspects of the sex trade such as behavior patterns, meeting times, or payments or examples of the trafficker exerting

force, fraud, or coercion over the movant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Order that all records, including any information or other data concerning any proceedings relating to the case, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing,

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

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

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

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

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

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

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

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

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