

## LEGISLATIVE BILL 146

Approved by the Governor February 14, 2018

Introduced by Hansen, 26.

A BILL FOR AN ACT relating to the Nebraska Probation Administration Act; to amend section 29-2264, Reissue Revised Statutes of Nebraska; to provide for set-asides of infractions as prescribed; to harmonize provisions; and to repeal the original section.

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

Section 1. Section 29-2264, Reissue Revised Statutes of Nebraska, is amended to read:

29-2264 (1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation. Such order in all felony cases shall provide notice that the person's voting rights are restored two years after completion of probation. The order shall include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(2) Whenever any person is convicted of an infraction, a misdemeanor, or a felony and is placed on probation by the court or is sentenced to a fine only, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine, petition the sentencing court to set aside the conviction.

(3) In determining whether to set aside the conviction, the court shall consider:

(a) The behavior of the offender after sentencing;

(b) The likelihood that the offender will not engage in further criminal activity; and

(c) Any other information the court considers relevant.

(4) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. The order shall:

(a) Nullify the conviction; and

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

(5) The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:

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

(b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;

(c) Preclude proof of the conviction as evidence of the commission of the infraction, misdemeanor, or felony whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of the infraction, misdemeanor, or felony in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act;

(g) Preclude use of the conviction as evidence of commission of the infraction, misdemeanor, or felony for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;

(h) Preclude use of the conviction as evidence of incompetence, neglect of duty, physical, mental, or emotional incapacity, or final conviction of or pleading guilty or nolo contendere to a felony for purposes of determining whether an application filed or a certificate issued under sections 81-1401 to 81-1414.10 should be denied, suspended, or revoked;

(i) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of the registration period under section 29-4005; or

(j) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act.

(6) Except as otherwise provided for the notice in subsection (1) of this

section, changes made to this section by Laws 2005, LB 713, shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to September 4, 2005.

(7) The changes made to this section by this legislative bill shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to the effective date of this act.

Sec. 2. Original section 29-2264, Reissue Revised Statutes of Nebraska, is repealed.