

AMENDMENTS TO LB773
(Amendments to AM1757)

Introduced by Cavanaugh, J., 9.

1 1. Insert the following new sections:

2 Sec. 14. (1) For purposes of this section, concealed weapon offense
3 means:

4 (a) A violation of section 28-1202 as it existed on or before
5 January 1, 2022; or

6 (b) Attempt, conspiracy, solicitation, being an accessory to, aiding
7 and abetting, aiding the consummation of, or compounding a felony with a
8 violation described in subdivision (1)(a) of this section as the
9 underlying offense.

10 (2) At any time following the completion of sentence or disposition,
11 a person convicted of a concealed weapon offense or adjudicated in
12 juvenile court for a concealed weapon offense may file a motion to set
13 aside such conviction or adjudication. The motion shall be filed in the
14 county, district, or separate juvenile court in which the movant was
15 convicted or adjudicated.

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

18 (a) The behavior of the movant after completion of sentencing or
19 disposition;

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

22 (c) Any other information the court considers relevant.

23 (4) There shall be a rebuttable presumption that the movant is
24 entitled to relief under this section if:

25 (a) As a result of the changes made to section 28-1202 by this
26 legislative bill, the movant's conduct underlying the conviction or

1 adjudication for a concealed weapon offense would not be a violation of
2 section 28-1202;

3 (b) Section 28-1202 is amended by the Legislature such that the
4 movant's conduct underlying the conviction or adjudication for a
5 concealed weapon offense would no longer be a violation of section
6 28-1202; or

7 (c) Section 28-1202 is outright repealed by the Legislature.

8 (5) The court may grant the motion and issue an order setting aside
9 the conviction or adjudication when in the opinion of the court the order
10 will be in the best interest of the movant and consistent with the public
11 welfare.

12 (6) An order setting aside a conviction or an adjudication under
13 this section shall have the same effect as an order setting aside a
14 conviction as provided in subsections (5) and (6) of section 29-2264.

15 Sec. 15. Section 29-3523, Revised Statutes Cumulative Supplement,
16 2020, is amended to read:

17 29-3523 (1) After the expiration of the periods described in
18 subsection (3) of this section or after the granting of a motion under
19 subsection (4), (5), ~~or (6)~~, or (7) of this section, a criminal justice
20 agency shall respond to a public inquiry in the same manner as if there
21 were no criminal history record information and criminal history record
22 information shall not be disseminated to any person other than a criminal
23 justice agency, except as provided in subsection (2) of this section or
24 when the subject of the record:

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

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

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

31 (d) Is kept unidentified, and the record is used for purposes of

1 surveying or summarizing individual or collective law enforcement agency
2 activity or practices, or the dissemination is requested consisting only
3 of release of criminal history record information showing (i) dates of
4 arrests, (ii) reasons for arrests, and (iii) the nature of the
5 dispositions including, but not limited to, reasons for not prosecuting
6 the case or cases.

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

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

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

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

26 (c) When charges are filed, but the case is dismissed by the court
27 (i) on motion of the prosecuting attorney, (ii) as a result of a hearing
28 not the subject of a pending appeal, (iii) after acquittal, (iv) after a
29 deferred judgment, or (v) after completion of a program prescribed by a
30 drug court or any other problem solving court approved by the Supreme
31 Court, the criminal history record information shall not be part of the

1 public record immediately upon notification of a criminal justice agency
2 after acquittal pursuant to subdivision (3)(c)(iii) of this section or
3 after the entry of an order dismissing the case.

4 (4) Upon the granting of a motion to set aside a conviction or an
5 adjudication pursuant to section 29-3005, a person who is a victim of sex
6 trafficking, as defined in section 29-3005, may file a motion with the
7 same sentencing court for an order to seal the criminal history record
8 information related to such conviction or adjudication. Upon a finding
9 that a court issued an order setting aside such conviction or
10 adjudication pursuant to section 29-3005, the sentencing court shall
11 grant the motion and:

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

14 (b) For an adjudication, issue an order as provided in section
15 43-2,108.05.

16 (5) Upon the granting of a motion to set aside a conviction or an
17 adjudication pursuant to section 14 of this act, the movant may file a
18 motion with the same court for an order to seal the criminal history
19 record information related to such conviction or adjudication. Upon a
20 finding that an order setting aside such conviction or adjudication was
21 issued pursuant to section 14 of this act, the court shall grant the
22 motion and:

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

25 (b) For an adjudication, issue an order as provided in section
26 43-2,108.05.

27 (6) (5) Any person who has received a pardon may file a motion with
28 the 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 (8) ~~(7)~~ of this

1 section.

2 ~~(7)~~ (6) Any person who is subject to a record which resulted in a
3 case being dismissed prior to January 1, 2017, as described in
4 subdivision (3)(c) of this section, may file a motion with the court in
5 which the case was filed to enter an order pursuant to subsection ~~(8)~~ (7)
6 of this section. Upon a finding that the case was dismissed for any
7 reason described in subdivision (3)(c) of this section, the court shall
8 grant the motion and enter an order as provided in subsection ~~(8)~~ (7) of
9 this section.

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

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

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

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

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

29 ~~(9)~~ (8) In any application for employment, bonding, license,
30 education, or other right or privilege, any appearance as a witness, or
31 any other public inquiry, a person cannot be questioned with respect to

1 any offense for which the record is sealed. If an inquiry is made in
2 violation of this subsection, the person may respond as if the offense
3 never occurred.

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

13 (11) ~~{10}~~ The changes made by Laws 2018, LB1132 and this legislative
14 bill, to the relief set forth in this section shall apply to all persons
15 otherwise eligible in accordance with the provisions of this section,
16 whether arrested, cited in lieu of arrest, referred for prosecution
17 without citation, charged, convicted, or adjudicated prior to, on, or
18 subsequent to July 19, 2018.

19 Sec. 16. Section 29-3528, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 29-3528 (1) If a state agency or political subdivision or an
22 ~~Whenever any officer or employee of a the state, its agencies, or its~~
23 ~~political subdivisions, or whenever any state agency or any political~~
24 ~~subdivision or its agencies fails to comply with the requirements of the~~
25 Security, Privacy, and Dissemination of Criminal History Information Act
26 ~~sections 29-209, 29-210, 29-3501 to 29-3528, and 81-1423 or of rules and~~
27 regulations lawfully adopted and promulgated under such act, such failure
28 creates private liability on the part of such agency, political
29 subdivision, officer, or employee. Any to implement sections 29-209,
30 ~~29-210, 29-3501 to 29-3528, and 81-1423, any person aggrieved by such a~~
31 violation may bring an action for appropriate relief, including, but not

1 limited to, actual damages, such preliminary and other equitable or
2 declaratory relief as may be appropriate, or a writ of an action for
3 mandamus.

4 (2) Consent is hereby given to join the state, any agency or
5 political subdivision of the state, and any officer or employee of the
6 state, its agencies, or its political subdivisions as a defendant in any
7 action under this section. Such entities, when a party to any such
8 action, shall be deemed to have waived sovereign immunity and shall be
9 subject to the judgments, orders, and decrees of the court.

10 (3) An action under this section is not subject to the State Tort
11 Claims Act or the Political Subdivisions Tort Claims Act.

12 (4) An ~~, to compel compliance and such~~ action under this section may
13 be brought in the district court of any district in which the records
14 involved are located or in the district court of Lancaster County. The
15 commission may request the Attorney General to bring such action.

16 2. Renumber the remaining sections and correct the repealer
17 accordingly.