

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1007

Introduced by Haar, 21.

Read first time January 21, 2014

Committee:

A BILL

1 FOR AN ACT relating to criminal procedure; to amend section 29-3523,
2 Reissue Revised Statutes of Nebraska; to change
3 provisions relating to the Security, Privacy, and
4 Dissemination of Criminal History Information Act; and to
5 repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-3523, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-3523 (1) ~~That part of criminal~~ Criminal history record
4 information ~~consisting of a notation of an arrest,~~ described in
5 subsection (2) of this section, shall not be disseminated to persons
6 other than criminal justice agencies, and in response to a public
7 inquiry criminal justice agencies shall respond in the same manner as
8 if there was no such criminal history record information, after the
9 expiration of the periods described in subsection (2) of this section
10 except when the subject of the record:

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

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

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

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

24 (2) Except as provided in subsection (1) of this section,
25 ~~the notation of arrest in the case of an arrest,~~ citation in lieu of

1 arrest, or referral for prosecution without citation, all criminal
2 history record information relating to the case shall be removed from
3 the public record as follows:

4 (a) ~~In the case of an arrest for which~~ When no charges
5 are filed as a result of the determination of the prosecuting
6 attorney, the ~~arrest-related criminal history record information~~
7 shall not be part of the public record after one year from the date
8 of arrest, citation in lieu of arrest, or referral for prosecution
9 without citation;

10 (b) ~~In the case of an arrest for which~~ When charges are
11 not filed as a result of a completed diversion, the ~~arrest-related~~
12 criminal history record information shall not be part of the public
13 record after two years from the date of arrest, citation in lieu of
14 arrest, or referral for prosecution without citation; and

15 (c) ~~In the case of an arrest for which~~ When charges are
16 filed, but the case is dismissed by the court (i) on motion of the
17 prosecuting attorney, (ii) ~~or~~ as a result of a hearing not the
18 subject of a pending appeal, ~~the arrest~~ (iii) after acquittal, or
19 (iv) after completion of a drug court or other problem solving court
20 approved by the Supreme Court, the related criminal history record
21 information shall not be part of the public record after three years
22 from the date of arrest. immediately upon a criminal justice agency's
23 notification pursuant to subdivision (2)(c)(iii) of this section of
24 the entry of an order dismissing the case.

25 (3) Upon entry of an order dismissing a case described in

1 subdivision (2)(c) of this section, the court shall:

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

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

13 (c) Order all parties notified under subdivision (3)(b)
14 of this section to seal all records pertaining to the offense; and

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

18 (4) After criminal history record information has been
19 removed from the public record, the person whose information was
20 removed can respond to any public inquiry as if such arrest, citation
21 in lieu of arrest, or referral for prosecution without citation never
22 occurred.

23 (5) A person who willfully discloses, communicates, or
24 allows access to criminal history record information that has been
25 removed from the public record is guilty of a misdemeanor punishable

1 by imprisonment for not more than ninety days or a fine of not more
2 than five hundred dollars, or both.

3 ~~(3)~~(6) Any person arrested due to the error of a law
4 enforcement agency may file a petition with the district court for an
5 order to expunge the criminal history record information related to
6 such error. The petition shall be filed in the district court of the
7 county in which the petitioner was arrested. The county attorney
8 shall be named as the respondent and shall be served with a copy of
9 the petition. The court may grant the petition and issue an order to
10 expunge such information if the petitioner shows by clear and
11 convincing evidence that the arrest was due to error by the arresting
12 law enforcement agency.

13 (7) Changes made to this section by this legislative bill
14 shall be retroactive in application and shall apply to all persons,
15 otherwise eligible in accordance with the provisions of this section,
16 whether the arrest, citation in lieu of arrest, or referral for
17 prosecution without citation occurred prior to, on, or subsequent to
18 the effective date of this act.

19 Sec. 2. Original section 29-3523, Reissue Revised
20 Statutes of Nebraska, is repealed.