

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 816

Introduced by Pirsch, 4.

Read first time January 05, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to probation; to amend section 29-2264, Revised
2 Statutes Cumulative Supplement, 2010; to change
3 provisions relating to set aside convictions as
4 prescribed; and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2264, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 29-2264 (1) Whenever any person is placed on probation by
4 a court and satisfactorily completes the conditions of his or her
5 probation for the entire period or is discharged from probation prior
6 to the termination of the period of probation, the sentencing court
7 shall issue an order releasing the offender from probation. Such
8 order in all felony cases shall provide notice that the person's
9 voting rights are restored two years after completion of probation.
10 The order shall include information on restoring other civil rights
11 through the pardon process, including application to and hearing by
12 the Board of Pardons.

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

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

22 (a) The behavior of the offender after sentencing;

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

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

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

5 (a) Nullify the conviction; and

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

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

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

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

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

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

24 (e) Preclude the proof of the conviction as evidence of
25 the commission of the misdemeanor or felony in the event an offender

1 is charged with a subsequent offense and the penalty provided by law
2 is increased if the prior conviction is proved;

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

6 (g) Preclude use of the conviction as evidence of
7 commission of the misdemeanor or felony for purposes of determining
8 whether an application filed or a license issued under sections
9 71-1901 to 71-1906.01 or the Child Care Licensing Act or a
10 certificate issued under sections 79-806 to 79-815 should be denied,
11 suspended, or revoked;

12 (h) Preclude use of the conviction as evidence
13 of incompetence, neglect of duty, physical, mental, or emotional
14 incapacity, or final conviction of or pleading guilty or nolo
15 contendere to a felony for purposes of determining whether an
16 application filed or a certificate issued under sections 81-1401 to
17 81-1414 should be denied, suspended, or revoked;

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

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

25 (6) Except as otherwise provided for the notice in

1 subsection (1) of this section, changes made to this section by Laws
2 2005, LB 713, shall be retroactive in application and shall apply to
3 all persons, otherwise eligible in accordance with the provisions of
4 this section, whether convicted prior to, on, or subsequent to
5 September 4, 2005.

6 Sec. 2. Original section 29-2264, Revised Statutes
7 Cumulative Supplement, 2010, is repealed.