

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 615**

Introduced by Wayne, 13.

Read first time January 18, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Security, Privacy, and Dissemination of
- 2 Criminal History Information Act; to amend section 29-3523, Reissue
- 3 Revised Statutes of Nebraska; to provide for expungement of criminal
- 4 history record information in cases of arrests based upon mistaken
- 5 identity; and to 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 Nebraska, is  
2 amended to read:

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

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

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

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

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

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

30 (3) Except as provided in subsections (1) and (2) of this section,  
31 in the case of an arrest, citation in lieu of arrest, or referral for

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

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

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

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

20 (4) Upon acquittal or entry of an order dismissing a case described  
21 in subdivision (3)(c) of this section, the court shall:

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

29 (b) Send notice of the order (i) to the Nebraska Commission on Law  
30 Enforcement and Criminal Justice, (ii) to the Nebraska State Patrol, and  
31 (iii) to law enforcement agencies, county attorneys, and city attorneys

1 referenced in the court record;

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

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

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

11 (6)(a) (6) Any person arrested due to the error of a law enforcement  
12 agency may file a petition with the district court for an order to  
13 expunge the criminal history record information related to such error.  
14 The petition shall be filed in the district court of the county in which  
15 the petitioner was arrested. The county attorney shall be named as the  
16 respondent and shall be served with a copy of the petition. The court may  
17 grant the petition and issue an order to expunge such information if the  
18 petitioner shows by clear and convincing evidence that the arrest was due  
19 to error by the arresting law enforcement agency and shall issue such an  
20 order if the petitioner shows by clear and convincing evidence that the  
21 arrest was a result of mistaken identity by the arresting law enforcement  
22 agency and no charges were filed against the petitioner.

23 (b) If a law enforcement agency finds that it arrested a person as a  
24 result of mistaken identity and no charges were filed against such  
25 person, such agency shall, no later than ninety days after such finding,  
26 file a petition with the district court for an order to expunge the  
27 criminal history record information related to such mistake. The petition  
28 shall be filed in the district court of the county in which the person  
29 was arrested. The agency shall not be required to pay a filing fee or  
30 other court costs. No later than ninety days after the filing of such  
31 petition, the court shall grant the petition and issue an order to

1 expunge the criminal history record information related to such mistake.

2 (7) For purposes of this section, mistaken identity includes a  
3 misidentification by a witness, an informant, or law enforcement  
4 personnel, confusion by a witness, an informant, or law enforcement  
5 personnel as to the identity of a person alleged to have committed a  
6 crime, misinformation provided to a law enforcement agency as to the  
7 identity of the person alleged to have committed a crime, or some other  
8 mistake on the part of a witness, an informant, or law enforcement as to  
9 the identity of the person alleged to have committed a crime.

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