

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1246

Introduced by Pansing Brooks, 28; Albrecht, 17; Geist, 25; Linehan, 39;
Sanders, 45; Slama, 1.

Read first time January 20, 2022

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 55-182, Reissue Revised Statutes of Nebraska, and sections 79-2,144
- 3 and 84-712.05, Revised Statutes Supplement, 2021; to provide for
- 4 confidentiality of victims of sexual assault and sex trafficking
- 5 prior to the filing of criminal charges; to define terms; to change
- 6 provisions relating to public records; to harmonize provisions; and
- 7 to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) For purposes of this section:

2 (a) Criminal justice agency has the same meaning as in section
3 29-3509;

4 (b) Sex trafficking means sex trafficking or sex trafficking of a
5 minor in violation of section 28-831; and

6 (c) Sexual assault means a violation of section 28-319, 28-319.01,
7 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04,
8 28-322.05, 28-703, or 28-1463.03 or subdivision (1)(c) or (g) of section
9 28-386 or subdivision (1)(d), (e), or (f) of section 28-707.

10 (2) Except as provided in subsection (3) of this section, and unless
11 otherwise required by statute, a criminal justice agency and any attorney
12 involved in the investigation or prosecution of an alleged sexual assault
13 or sex trafficking violation shall maintain the confidentiality of the
14 identity and personal identifying information of the alleged victim. Such
15 information may be shared between such criminal justice agencies and
16 attorneys as necessary to carry out their duties.

17 (3) The confidentiality required by subsection (2) of this section
18 does not apply:

19 (a) To the extent waived by the alleged victim;

20 (b) If criminal charges involving the alleged sexual assault or sex
21 trafficking are filed;

22 (c) If the victim has died as a result of, or in connection with,
23 the alleged sexual assault or sex trafficking;

24 (d) In cases where personal identifying information or the identity
25 of the victim are released as part of a child abduction alert system used
26 by law enforcement agencies, such as the AMBER Alert system;

27 (e) To a person making a report of suspected child abuse or neglect
28 as required in section 28-711;

29 (f) To the sharing of reports and information regarding child abuse
30 and neglect with a child abuse and neglect investigation team or child
31 abuse and neglect treatment team provided for in section 28-728;

1 (g) To the Department of Health and Human Services and other
2 assisting agencies as necessary to carry out their duties in
3 investigations of child abuse or neglect; or

4 (h) To communication with advocates and health care providers as
5 defined in section 29-4309.

6 Sec. 2. Section 55-182, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 55-182 The rights of a member of the Nebraska National Guard in the
9 State of Nebraska shall include, but not be limited to, the right to:

10 (1) Seek employment with state, county, and local government;

11 (2) Not have membership in the Nebraska National Guard impact such
12 member's right to donate to political parties when not on duty status;

13 (3) Participate with state, county, or local government in a law
14 enforcement function as prescribed by that government;

15 (4) Receive the same protections a law enforcement officer is
16 afforded under section 23-3211 if the member is acting as a law
17 enforcement officer pursuant to subdivision (3) of this section; and

18 (5) Protection of such member's personal information as afforded
19 personnel of public bodies pursuant to subdivision ~~(8)~~ (7) of section
20 84-712.05, if the member is acting as a law enforcement officer pursuant
21 to subdivision (3) of this section.

22 Sec. 3. Section 79-2,144, Revised Statutes Supplement, 2021, is
23 amended to read:

24 79-2,144 The state school security director appointed pursuant to
25 section 79-2,143 shall be responsible for providing leadership and
26 support for safety and security for the public schools. Duties of the
27 director include, but are not limited to:

28 (1) Collecting safety and security plans, required pursuant to rules
29 and regulations of the State Department of Education relating to
30 accreditation of schools, and other school security information from each
31 school system in Nebraska. School districts shall provide the state

1 school security director with the safety and security plans of the school
2 district and any other security information requested by the director,
3 but any plans or information submitted by a school district may be
4 withheld by the department pursuant to subdivision (9) ~~(8)~~ of section
5 84-712.05;

6 (2) Recommending minimum standards for school security on or before
7 January 1, 2016, to the State Board of Education;

8 (3) Conducting an assessment of the security of each public school
9 building, which assessment shall be completed by August 31, 2019;

10 (4) Identifying deficiencies in school security based on the minimum
11 standards adopted by the State Board of Education and making
12 recommendations to school boards for remedying such deficiencies;

13 (5) Establishing security awareness and preparedness tools and
14 training programs for public school staff;

15 (6) Establishing research-based model instructional programs for
16 staff, students, and parents to address the underlying causes for violent
17 attacks on schools;

18 (7) Overseeing suicide awareness and prevention training in public
19 schools pursuant to section 79-2,146;

20 (8) Establishing tornado preparedness standards which shall include,
21 but not be limited to, ensuring that every school conducts at least two
22 tornado drills per year;

23 (9) Responding to inquiries and requests for assistance relating to
24 school security from private, denominational, and parochial schools;

25 (10) Recommending curricular and extracurricular materials to assist
26 school districts in preventing and responding to cyberbullying and
27 digital citizenship issues; and

28 (11) Carrying out the department's responsibilities under the School
29 Safety and Security Reporting System Act.

30 Sec. 4. Section 84-712.05, Revised Statutes Supplement, 2021, is
31 amended to read:

1 84-712.05 The following records, unless publicly disclosed in an
2 open court, open administrative proceeding, or open meeting or disclosed
3 by a public entity pursuant to its duties, may be withheld from the
4 public by the lawful custodian of the records:

5 (1) Personal information in records regarding a student, prospective
6 student, or former student of any educational institution or exempt
7 school that has effectuated an election not to meet state approval or
8 accreditation requirements pursuant to section 79-1601 when such records
9 are maintained by and in the possession of a public entity, other than
10 routine directory information specified and made public consistent with
11 20 U.S.C. 1232g, as such section existed on February 1, 2013, and
12 regulations adopted thereunder;

13 (2) Medical records, other than records of births and deaths and
14 except as provided in subdivision (5) of this section, in any form
15 concerning any person; records of elections filed under section 44-2821;
16 and patient safety work product under the Patient Safety Improvement Act;

17 (3) Trade secrets, academic and scientific research work which is in
18 progress and unpublished, and other proprietary or commercial information
19 which if released would give advantage to business competitors and serve
20 no public purpose;

21 (4) Records which represent the work product of an attorney and the
22 public body involved which are related to preparation for litigation,
23 labor negotiations, or claims made by or against the public body or which
24 are confidential communications as defined in section 27-503;

25 (5) Records developed or received by law enforcement agencies and
26 other public bodies charged with duties of investigation or examination
27 of persons, institutions, or businesses, when the records constitute a
28 part of the examination, investigation, intelligence information, citizen
29 complaints or inquiries, informant identification, or strategic or
30 tactical information used in law enforcement training, except that this
31 subdivision shall not apply to records so developed or received:

1 (a) Relating to the presence of and amount or concentration of
2 alcohol or drugs in any body fluid of any person; or

3 (b) Relating to the cause of or circumstances surrounding the death
4 of an employee arising from or related to his or her employment if, after
5 an investigation is concluded, a family member of the deceased employee
6 makes a request for access to or copies of such records. This subdivision
7 does not require access to or copies of informant identification, the
8 names or identifying information of citizens making complaints or
9 inquiries, other information which would compromise an ongoing criminal
10 investigation, or information which may be withheld from the public under
11 another provision of law. For purposes of this subdivision, family member
12 means a spouse, child, parent, sibling, grandchild, or grandparent by
13 blood, marriage, or adoption;

14 (6) The identity and personal identifying information of an alleged
15 victim of sexual assault or sex trafficking as provided in section 1 of
16 this act;

17 (7) (6) Appraisals or appraisal information and negotiation records
18 concerning the purchase or sale, by a public body, of any interest in
19 real or personal property, prior to completion of the purchase or sale;

20 (8) (7) Personal information in records regarding personnel of
21 public bodies other than salaries and routine directory information;

22 (9) (8) Information solely pertaining to protection of the security
23 of public property and persons on or within public property, such as
24 specific, unique vulnerability assessments or specific, unique response
25 plans, either of which is intended to prevent or mitigate criminal acts
26 the public disclosure of which would create a substantial likelihood of
27 endangering public safety or property; computer or communications network
28 schema, passwords, and user identification names; guard schedules; lock
29 combinations; or public utility infrastructure specifications or design
30 drawings the public disclosure of which would create a substantial
31 likelihood of endangering public safety or property, unless otherwise

1 provided by state or federal law;

2 ~~(10)~~ ~~(9)~~ Information that relates details of physical and cyber
3 assets of critical energy infrastructure or critical electric
4 infrastructure, including (a) specific engineering, vulnerability, or
5 detailed design information about proposed or existing critical energy
6 infrastructure or critical electric infrastructure that (i) relates
7 details about the production, generation, transportation, transmission,
8 or distribution of energy, (ii) could be useful to a person in planning
9 an attack on such critical infrastructure, and (iii) does not simply give
10 the general location of the critical infrastructure and (b) the identity
11 of personnel whose primary job function makes such personnel responsible
12 for (i) providing or granting individuals access to physical or cyber
13 assets or (ii) operating and maintaining physical or cyber assets, if a
14 reasonable person, knowledgeable of the electric utility or energy
15 industry, would conclude that the public disclosure of such identity
16 could create a substantial likelihood of risk to such physical or cyber
17 assets. Subdivision ~~(10)(b)~~ ~~(9)(b)~~ of this section shall not apply to the
18 identity of a chief executive officer, general manager, vice president,
19 or board member of a public entity that manages critical energy
20 infrastructure or critical electric infrastructure. The lawful custodian
21 of the records must provide a detailed job description for any personnel
22 whose identity is withheld pursuant to subdivision ~~(10)(b)~~ ~~(9)(b)~~ of this
23 section. For purposes of subdivision ~~(10)~~ ~~(9)~~ of this section, critical
24 energy infrastructure and critical electric infrastructure mean existing
25 and proposed systems and assets, including a system or asset of the bulk-
26 power system, whether physical or virtual, the incapacity or destruction
27 of which would negatively affect security, economic security, public
28 health or safety, or any combination of such matters;

29 ~~(11)~~ ~~(10)~~ The security standards, procedures, policies, plans,
30 specifications, diagrams, access lists, and other security-related
31 records of the Lottery Division of the Department of Revenue and those

1 persons or entities with which the division has entered into contractual
2 relationships. Nothing in this subdivision shall allow the division to
3 withhold from the public any information relating to amounts paid persons
4 or entities with which the division has entered into contractual
5 relationships, amounts of prizes paid, the name of the prize winner, and
6 the city, village, or county where the prize winner resides;

7 (12) ~~(11)~~ With respect to public utilities and except as provided in
8 sections 43-512.06 and 70-101, personally identified private citizen
9 account payment and customer use information, credit information on
10 others supplied in confidence, and customer lists;

11 (13) ~~(12)~~ Records or portions of records kept by a publicly funded
12 library which, when examined with or without other records, reveal the
13 identity of any library patron using the library's materials or services;

14 (14) ~~(13)~~ Correspondence, memoranda, and records of telephone calls
15 related to the performance of duties by a member of the Legislature in
16 whatever form. The lawful custodian of the correspondence, memoranda, and
17 records of telephone calls, upon approval of the Executive Board of the
18 Legislative Council, shall release the correspondence, memoranda, and
19 records of telephone calls which are not designated as sensitive or
20 confidential in nature to any person performing an audit of the
21 Legislature. A member's correspondence, memoranda, and records of
22 confidential telephone calls related to the performance of his or her
23 legislative duties shall only be released to any other person with the
24 explicit approval of the member;

25 (15) ~~(14)~~ Records or portions of records kept by public bodies which
26 would reveal the location, character, or ownership of any known
27 archaeological, historical, or paleontological site in Nebraska when
28 necessary to protect the site from a reasonably held fear of theft,
29 vandalism, or trespass. This section shall not apply to the release of
30 information for the purpose of scholarly research, examination by other
31 public bodies for the protection of the resource or by recognized tribes,

1 the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or
2 the federal Native American Graves Protection and Repatriation Act;

3 (16) ~~(15)~~ Records or portions of records kept by public bodies which
4 maintain collections of archaeological, historical, or paleontological
5 significance which reveal the names and addresses of donors of such
6 articles of archaeological, historical, or paleontological significance
7 unless the donor approves disclosure, except as the records or portions
8 thereof may be needed to carry out the purposes of the Unmarked Human
9 Burial Sites and Skeletal Remains Protection Act or the federal Native
10 American Graves Protection and Repatriation Act;

11 (17) ~~(16)~~ Library, archive, and museum materials acquired from
12 nongovernmental entities and preserved solely for reference, research, or
13 exhibition purposes, for the duration specified in subdivision (17)(b)
14 ~~(16)(b)~~ of this section, if:

15 (a) Such materials are received by the public custodian as a gift,
16 purchase, bequest, or transfer; and

17 (b) The donor, seller, testator, or transferor conditions such gift,
18 purchase, bequest, or transfer on the materials being kept confidential
19 for a specified period of time;

20 (18) ~~(17)~~ Job application materials submitted by applicants, other
21 than finalists or a priority candidate for a position described in
22 section 85-106.06 selected using the enhanced public scrutiny process in
23 section 85-106.06, who have applied for employment by any public body as
24 defined in section 84-1409. For purposes of this subdivision, (a) job
25 application materials means employment applications, resumes, reference
26 letters, and school transcripts and (b) finalist means any applicant who
27 is not an applicant for a position described in section 85-106.06 and (i)
28 who reaches the final pool of applicants, numbering four or more, from
29 which the successful applicant is to be selected, (ii) who is an original
30 applicant when the final pool of applicants numbers less than four, or
31 (iii) who is an original applicant and there are four or fewer original

1 applicants;

2 ~~(19)(a)~~ ~~(18)(a)~~ Records obtained by the Public Employees Retirement
3 Board pursuant to section 84-1512 and (b) records maintained by the board
4 of education of a Class V school district and obtained by the board of
5 trustees or the Public Employees Retirement Board for the administration
6 of a retirement system provided for under the Class V School Employees
7 Retirement Act pursuant to section 79-989;

8 ~~(20)~~ ~~(19)~~ Social security numbers; credit card, charge card, or
9 debit card numbers and expiration dates; and financial account numbers
10 supplied to state and local governments by citizens;

11 ~~(21)~~ ~~(20)~~ Information exchanged between a jurisdictional utility and
12 city pursuant to section 66-1867;

13 ~~(22)~~ ~~(21)~~ Draft records obtained by the Nebraska Retirement Systems
14 Committee of the Legislature and the Governor from Nebraska Public
15 Employees Retirement Systems pursuant to subsection (4) of section
16 84-1503;

17 ~~(23)~~ ~~(22)~~ All prescription drug information submitted pursuant to
18 section 71-2454, all data contained in the prescription drug monitoring
19 system, and any report obtained from data contained in the prescription
20 drug monitoring system; and

21 ~~(24)~~ ~~(23)~~ Information obtained by any government entity, whether
22 federal, state, county, or local, regarding firearm registration,
23 possession, sale, or use that is obtained for purposes of an application
24 permitted or required by law or contained in a permit or license issued
25 by such entity. Such information shall be available upon request to any
26 federal, state, county, or local law enforcement agency.

27 Sec. 5. Original section 55-182, Reissue Revised Statutes of
28 Nebraska, and sections 79-2,144 and 84-712.05, Revised Statutes
29 Supplement, 2021, are repealed.