

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 855**

Introduced by Lindstrom, 18; Brewer, 43; Groene, 42; Kolterman, 24;  
McCollister, 20; Quick, 35; Vargas, 7; Wayne, 13; Wishart,  
27.

Read first time January 05, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-3523, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to the Security, Privacy, and Dissemination of Criminal
- 4 History Information Act to provide for charges or offenses that have
- 5 been pardoned; 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, or after the granting of a petition under  
5 subsection (4) of this section, a criminal justice agency shall respond  
6 to a public inquiry in the same manner as if there were no criminal  
7 history record information and criminal history record information shall  
8 not be disseminated to any person other than a criminal justice agency,  
9 except as provided in subsection (2) of this section or when the subject  
10 of the record:

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

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

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

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

24 (2) That part of criminal history record information described in  
25 subsection ~~(5)~~ (4) of this section may be disseminated to individuals and  
26 agencies for the express purpose of research, evaluative, or statistical  
27 activities pursuant to an agreement with a criminal justice agency that  
28 specifically authorizes access to the information, limits the use of the  
29 information to research, evaluative, or statistical activities, and  
30 ensures the confidentiality and security of the information.

31 (3) Except as provided in subsections (1) and (2) of this section,

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

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

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

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

21 (4) Any person who is subject to a record which resulted in a  
22 conviction for which such person received a pardon may file a petition  
23 with the county or district court for an order to seal the criminal  
24 history record information related to such charges or conviction. The  
25 petition shall be filed in the county or district court of the county in  
26 which charges were filed or the petitioner was convicted. The county  
27 attorney shall be named as respondent and shall be served with a copy of  
28 the petition. Upon a finding that the person received a pardon, the court  
29 shall grant the petition and issue an order to seal such information,  
30 except as provided in subsections (1) and (2) of this section.

31 (5) ~~(4)~~ Upon acquittal or entry of an order dismissing a case

1 described in subdivision (3)(c) of this section or granting a petition  
2 under subsection (4) of this section, the court shall:

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

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

14 (c) Order all parties notified under subdivision ~~(5)(b)~~ ~~(4)(b)~~ of  
15 this section to seal all records pertaining to the case; and

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

18 ~~(6)~~ ~~(5)~~ In any application for employment, bonding, license,  
19 education, or other right or privilege, any appearance as a witness, or  
20 any other public inquiry, a person cannot be questioned with respect to  
21 any offense for which the record is sealed. If an inquiry is made in  
22 violation of this subsection, the person may respond as if the offense  
23 never occurred.

24 ~~(7)~~ ~~(6)~~ Any person arrested due to the error of a law enforcement  
25 agency may file a petition with the district court for an order to  
26 expunge the criminal history record information related to such error.  
27 The petition shall be filed in the district court of the county in which  
28 the petitioner was arrested. The county attorney shall be named as the  
29 respondent and shall be served with a copy of the petition. The court may  
30 grant the petition and issue an order to expunge such information if the  
31 petitioner shows by clear and convincing evidence that the arrest was due

1 to error by the arresting law enforcement agency.

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