

LEGISLATIVE BILL 1246

Approved by the Governor April 18, 2022

Introduced by Pansing Brooks, 28; Albrecht, 17; Geist, 25; Linehan, 39;
Sanders, 45; Slama, 1; DeBoer, 10.

A BILL FOR AN ACT relating to criminal procedure; to amend section 55-182, Reissue Revised Statutes of Nebraska, section 29-4003, Revised Statutes Cumulative Supplement, 2020, and sections 79-2,144 and 84-712.05, Revised Statutes Supplement, 2021; to provide for confidentiality of victims of sexual assault and sex trafficking prior to the filing of criminal charges; to define terms; to add a registrable offense and provide for applicability under the Sex Offender Registration Act; to change provisions relating to public records; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) To communication with an individual that an educational entity, as defined in section 79-1201.01, has designated:

(i) As a Title IX coordinator; or

(ii) To receive reports related to sexual assault or sex trafficking or to provide supportive measures related to such reports; or

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

Sec. 2. Section 29-4003, Revised Statutes Cumulative Supplement, 2020, is amended to read:

29-4003 (1)(a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(A) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this section;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault pursuant to section 28-319 or 28-320;

(D) Sexual abuse by a school employee pursuant to section 28-316.01;

(E) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(F) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(G) Sexual abuse of a vulnerable adult or senior adult pursuant to subdivision (1)(c) of section 28-386;

(H) Incest of a minor pursuant to section 28-703;

(I) Pandering of a minor pursuant to section 28-802;

(J) Visual depiction of sexually explicit conduct of a child pursuant to

section 28-1463.03 or subdivision (2)(b) or (c) of section 28-1463.05;

(K) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to subsection (1) or (4) of section 28-813.01;

(L) Criminal child enticement pursuant to section 28-311;

(M) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(N) Debauching a minor pursuant to section 28-805; or

(O) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(N) of this section;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(a)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(iii) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a)(i) or (ii) of this section prior to January 1, 1997; or

(iv) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:

(i)(A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(I) Murder in the first degree pursuant to section 28-303;

(II) Murder in the second degree pursuant to section 28-304;

(III) Manslaughter pursuant to section 28-305;

(IV) Assault in the first degree pursuant to section 28-308;

(V) Assault in the second degree pursuant to section 28-309;

(VI) Assault in the third degree pursuant to section 28-310;

(VII) Stalking pursuant to section 28-311.03;

(VIII) Violation of section 28-311.08 requiring registration under the act pursuant to subsection (6) of section 28-311.08;

(IX) Kidnapping pursuant to section 28-313;

(X) False imprisonment pursuant to section 28-314 or 28-315;

(XI) Sexual abuse of an inmate or parolee in the first degree pursuant to section 28-322.02;

(XII) Sexual abuse of an inmate or parolee in the second degree pursuant to section 28-322.03;

(XIII) Sexual abuse of a protected individual pursuant to section 28-322.04;

(XIV) Incest pursuant to section 28-703;

(XV) Child abuse pursuant to subdivision (1)(d) or (e) of section 28-707;

(XVI) Enticement by electronic communication device pursuant to section 28-833; or

(XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.

(B) In order for the Sex Offender Registration Act to apply to the offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V), (VI), (VII), (IX), and (X) of this section, a court shall have found that evidence of sexual penetration or sexual contact, as those terms are defined in section 28-318, was present in the record, which shall include consideration of the factual basis for a plea-based conviction and information contained in the presentence report;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(b)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon; or

(iii) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(c) In addition to the registrable offenses under subdivisions (1)(a) and (b) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2020:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of sexual abuse of a detainee under section 28-322.05; or

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(c)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the

United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon.

(d) In addition to the registrable offenses under subdivisions (1)(a), (b), and (c) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2023:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of human trafficking under subsection (1) or (2) of section 28-831, and the court determines either by notification of sex offender registration responsibilities or notation in the sentencing order that the human trafficking was sex trafficking or sex trafficking of a minor and not solely labor trafficking or labor trafficking of a minor; or

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(d)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon.

(2) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

Sec. 3. Section 55-182, Reissue Revised Statutes of Nebraska, is amended to read:

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

- (1) Seek employment with state, county, and local government;
- (2) Not have membership in the Nebraska National Guard impact such member's right to donate to political parties when not on duty status;
- (3) Participate with state, county, or local government in a law enforcement function as prescribed by that government;
- (4) Receive the same protections a law enforcement officer is afforded under section 23-3211 if the member is acting as a law enforcement officer pursuant to subdivision (3) of this section; and
- (5) Protection of such member's personal information as afforded personnel of public bodies pursuant to subdivision (8) ~~(7)~~ of section 84-712.05, if the member is acting as a law enforcement officer pursuant to subdivision (3) of this section.

Sec. 4. Section 79-2,144, Revised Statutes Supplement, 2021, is amended to read:

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

- (1) Collecting safety and security plans, required pursuant to rules and regulations of the State Department of Education relating to accreditation of schools, and other school security information from each school system in Nebraska. School districts shall provide the state school security director with the safety and security plans of the school district and any other security information requested by the director, but any plans or information submitted by a school district may be withheld by the department pursuant to subdivision (9) ~~(8)~~ of section 84-712.05;
- (2) Recommending minimum standards for school security on or before January 1, 2016, to the State Board of Education;
- (3) Conducting an assessment of the security of each public school building, which assessment shall be completed by August 31, 2019;
- (4) Identifying deficiencies in school security based on the minimum standards adopted by the State Board of Education and making recommendations to school boards for remedying such deficiencies;
- (5) Establishing security awareness and preparedness tools and training programs for public school staff;
- (6) Establishing research-based model instructional programs for staff, students, and parents to address the underlying causes for violent attacks on schools;
- (7) Overseeing suicide awareness and prevention training in public schools pursuant to section 79-2,146;
- (8) Establishing tornado preparedness standards which shall include, but not be limited to, ensuring that every school conducts at least two tornado drills per year;
- (9) Responding to inquiries and requests for assistance relating to school security from private, denominational, and parochial schools;
- (10) Recommending curricular and extracurricular materials to assist school districts in preventing and responding to cyberbullying and digital citizenship issues; and
- (11) Carrying out the department's responsibilities under the School Safety and Security Reporting System Act.

Sec. 5. Section 84-712.05, Revised Statutes Supplement, 2021, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) (10) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities

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

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

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

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

~~(15)~~ ~~(14)~~ Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

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

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

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

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

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

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

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

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

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

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

~~(24)~~ ~~(23)~~ Information obtained by any government entity, whether federal, state, county, or local, regarding firearm registration, possession, sale, or use that is obtained for purposes of an application permitted or required by law or contained in a permit or license issued by such entity. Such information

shall be available upon request to any federal, state, county, or local law enforcement agency.

Sec. 6. Original section 55-182, Reissue Revised Statutes of Nebraska, section 29-4003, Revised Statutes Cumulative Supplement, 2020, and sections 79-2,144 and 84-712.05, Revised Statutes Supplement, 2021, are repealed.