

LEGISLATIVE BILL 505

Approved by the Governor April 18, 2016

Introduced by Krist, 10.

A BILL FOR AN ACT relating to criminal procedure; to amend section 29-3523, Revised Statutes Supplement, 2015; to change provisions relating to the Security, Privacy, and Dissemination of Criminal History Information Act; to provide an operative date; and to repeal the original section.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 29-3523, Revised Statutes Supplement, 2015, is amended to read:

29-3523 (1) After the expiration of the periods described in subsection (3) of this section, a criminal justice agency shall respond to a public inquiry in the same manner as if there were no criminal history record information and criminal history record information shall not be disseminated to any person other than a criminal justice agency, except as provided in subsection (2) of this section or That part of criminal history record information consisting of a notation of an arrest, described in subsection (3) of this section, shall not be disseminated to persons other than criminal justice agencies after the expiration of the periods described in subsection (3) of this section except as provided in subsection (2) of this section and except when the subject of the record:

- (a) Is currently the subject of prosecution or correctional control as the result of a separate arrest;
- (b) Is currently an announced candidate for or holder of public office;
- (c) Has made a notarized request for the release of such record to a specific person; or
- (d) Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is requested consisting only of release of criminal history record information showing (i) dates of arrests, (ii) reasons for arrests, and (iii) the nature of the dispositions including, but not limited to, reasons for not prosecuting the case or cases.

(2) That part of criminal history record information consisting of a notation of an arrest, described in subsection (4 3) of this section, may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that specifically authorizes access to the information, limits the use of the information to research, evaluative, or statistical activities, and ensures the confidentiality and security of the information.

(3) Except as provided in subsections (1) and (2) of this section, in the case of an arrest, citation in lieu of arrest, or referral for prosecution without citation, all criminal history record information relating to the case the notation of arrest shall be removed from the public record as follows:

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

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

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

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

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

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

(c) Order all parties notified under subdivision (4)(b) of this section to

seal all records pertaining to the case; and

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

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

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

Sec. 2. This act becomes operative on January 1, 2017.

Sec. 3. Original section 29-3523, Revised Statutes Supplement, 2015, is repealed.