

LEGISLATIVE BILL 856

Approved by the Governor May 27, 1997

Introduced by Abboud, 12

AN ACT relating to criminal procedure; to amend section 29-3523, Reissue Revised Statutes of Nebraska; to provide for an expungement procedure of a person's criminal history record in cases of erroneous arrest; and to repeal the original section.

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

Section 1. Section 29-3523, Reissue Revised Statutes of Nebraska, is amended to read:

29-3523. (1) That part of criminal history record information consisting of a notation of an arrest, when after an interval of one year active prosecution is neither completed nor pending, shall not be disseminated to persons other than criminal justice agencies except when the subject of the record:

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

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

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

(4) (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 (a) (i) dates of arrests, (b) (ii) reasons for arrests, and (c) (iii) the nature of the dispositions, including, but not limited to, reasons for not prosecuting the case or cases.

(2) 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. Original section 29-3523, Reissue Revised Statutes of Nebraska, is repealed.