

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 213

Introduced by McCollister, 20.

Read first time January 11, 2019

Committee:

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend sections
- 2 29-2264 and 29-3005, Revised Statutes Cumulative Supplement, 2018;
- 3 to provide a procedure for setting aside convictions as prescribed;
- 4 to harmonize provisions; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2264, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 29-2264 (1) Whenever any person is placed on probation by a court
4 and satisfactorily completes the conditions of his or her probation for
5 the entire period or is discharged from probation prior to the
6 termination of the period of probation, the sentencing court shall issue
7 an order releasing the offender from probation. Such order in all felony
8 cases shall provide notice that the person's voting rights are restored
9 two years after completion of probation. The order shall include
10 information on restoring other civil rights through the pardon process,
11 including application to and hearing by the Board of Pardons.

12 (2) Whenever any person is convicted of an infraction, a
13 misdemeanor, or a felony and is placed on probation by the court, ~~or~~ is
14 sentenced to a fine only, or is sentenced to community service, he or she
15 may, after satisfactory fulfillment of the conditions of probation for
16 the entire period or after discharge from probation prior to the
17 termination of the period of probation and after payment of any fine and
18 completion of any community service, petition the sentencing court to set
19 aside the conviction.

20 (3)(a) Except as provided in subdivision (3)(b) of this section,
21 whenever any person is convicted of an infraction, a misdemeanor, or a
22 felony and is sentenced other than as provided in subsection (2) of this
23 section, but is not sentenced to a term of imprisonment of more than one
24 year, such person may, after completion of his or her sentence, petition
25 the sentencing court to set aside the conviction.

26 (b) A petition under subdivision (3)(a) of this section shall be
27 denied if filed:

28 (i) By any person with a criminal charge pending in any court in the
29 United States or in any other country;

30 (ii) During any period in which the person is required to register
31 under the Sex Offender Registration Act;

1 (iii) For any misdemeanor or felony motor vehicle offense under
2 section 28-306 or the Nebraska Rules of the Road; or

3 (iv) Within two years after a denial of a petition to set aside a
4 conviction under this subsection.

5 ~~(4) (3)~~ In determining whether to set aside the conviction, the
6 court shall consider:

7 (a) The behavior of the offender after sentencing;

8 (b) The likelihood that the offender will not engage in further
9 criminal activity; and

10 (c) Any other information the court considers relevant.

11 ~~(5) (4)~~ The court may grant the offender's petition and issue an
12 order setting aside the conviction when in the opinion of the court the
13 order will be in the best interest of the offender and consistent with
14 the public welfare. The order shall:

15 (a) Nullify the conviction; ~~and~~

16 (b) Remove all civil disabilities and disqualifications imposed as a
17 result of the conviction; and -

18 (c) Notify the offender that he or she should consult with an
19 attorney regarding the effect of the order, if any, on the offender's
20 ability to possess a firearm under state or federal law.

21 ~~(6) (5)~~ The setting aside of a conviction in accordance with the
22 Nebraska Probation Administration Act shall not:

23 (a) Require the reinstatement of any office, employment, or position
24 which was previously held and lost or forfeited as a result of the
25 conviction;

26 (b) Preclude proof of a plea of guilty whenever such plea is
27 relevant to the determination of an issue involving the rights or
28 liabilities of someone other than the offender;

29 (c) Preclude proof of the conviction as evidence of the commission
30 of the infraction, misdemeanor, or felony whenever the fact of its
31 commission is relevant for the purpose of impeaching the offender as a

1 witness, except that the order setting aside the conviction may be
2 introduced in evidence;

3 (d) Preclude use of the conviction for the purpose of determining
4 sentence on any subsequent conviction of a criminal offense;

5 (e) Preclude the proof of the conviction as evidence of the
6 commission of the infraction, misdemeanor, or felony in the event an
7 offender is charged with a subsequent offense and the penalty provided by
8 law is increased if the prior conviction is proved;

9 (f) Preclude the proof of the conviction to determine whether an
10 offender is eligible to have a subsequent conviction set aside in
11 accordance with the Nebraska Probation Administration Act;

12 (g) Preclude use of the conviction as evidence of commission of the
13 infraction, misdemeanor, or felony for purposes of determining whether an
14 application filed or a license issued under sections 71-1901 to
15 71-1906.01, the Child Care Licensing Act, or the Children's Residential
16 Facilities and Placing Licensure Act or a certificate issued under
17 sections 79-806 to 79-815 should be denied, suspended, or revoked;

18 (h) Preclude use of the conviction as evidence of incompetence,
19 neglect of duty, physical, mental, or emotional incapacity, or final
20 conviction of or pleading guilty or nolo contendere to a felony for
21 purposes of determining whether an application filed or a certificate
22 issued under sections 81-1401 to 81-1414.10 should be denied, suspended,
23 or revoked;

24 (i) Preclude proof of the conviction as evidence whenever the fact
25 of the conviction is relevant to a determination of the registration
26 period under section 29-4005;~~or~~

27 (j) Relieve a person who is convicted of an offense for which
28 registration is required under the Sex Offender Registration Act of the
29 duty to register and to comply with the terms of the act; or -

30 (k) Affect the right of a victim of a crime to prosecute or defend a
31 civil action.

1 ~~(7)~~ (6) Except as otherwise provided for the notice in subsection
2 (1) of this section, changes made to this section by Laws 2005, LB 713,
3 shall be retroactive in application and shall apply to all persons,
4 otherwise eligible in accordance with the provisions of this section,
5 whether convicted prior to, on, or subsequent to September 4, 2005.

6 ~~(8)~~ (7) The changes made to this section by Laws 2018, LB146, shall
7 be retroactive in application and shall apply to all persons, otherwise
8 eligible in accordance with the provisions of this section, whether
9 convicted prior to, on, or subsequent to July 19, 2018.

10 (9) The changes made to this section by this legislative bill shall
11 apply to all persons, otherwise eligible in accordance with the
12 provisions of this section, whether convicted prior to, on, or subsequent
13 to the effective date of this act.

14 Sec. 2. Section 29-3005, Revised Statutes Cumulative Supplement,
15 2018, is amended to read:

16 29-3005 (1) For purposes of this section:

17 (a) Prostitution-related offense includes:

18 (i) Prostitution under section 28-801, solicitation of prostitution
19 under section 28-801.01, keeping a place of prostitution under section
20 28-804, public indecency under section 28-806, or loitering for the
21 purpose of engaging in prostitution or related or similar offenses under
22 local ordinances; and

23 (ii) Attempt, conspiracy, solicitation, being an accessory to,
24 aiding and abetting, aiding the consummation of, or compounding a felony
25 with any of the offenses in subdivision (1)(a) of this section as the
26 underlying offense;

27 (b) Trafficker means a person who engages in sex trafficking or sex
28 trafficking of a minor as defined in section 28-830; and

29 (c) Victim of sex trafficking means a person subjected to sex
30 trafficking or sex trafficking of a minor, as those terms are defined in
31 section 28-830.

1 (2) At any time following the completion of sentence or disposition,
2 a victim of sex trafficking convicted in county or district court of, or
3 adjudicated in a juvenile court for, (a) a prostitution-related offense
4 committed while the movant was a victim of sex trafficking or proximately
5 caused by the movant's status as a victim of sex trafficking or (b) any
6 other offense committed as a direct result of, or proximately caused by,
7 the movant's status as a victim of sex trafficking, may file a motion to
8 set aside such conviction or adjudication. The motion shall be filed in
9 the county, district, or separate juvenile court of the county in which
10 the movant was convicted or adjudicated.

11 (3)(a) If the court finds that the movant was a victim of sex
12 trafficking at the time of the prostitution-related offense or finds that
13 the movant's participation in the prostitution-related offense was
14 proximately caused by the movant's status as a victim of sex trafficking,
15 the court shall grant the motion to set aside a conviction or an
16 adjudication for such prostitution-related offense.

17 (b) If the court finds that the movant's participation in an offense
18 other than a prostitution-related offense was a direct result of or
19 proximately caused by the movant's status as a victim of sex trafficking,
20 the court shall grant the motion to set aside a conviction or an
21 adjudication for such offense.

22 (4) Official documentation of a movant's status as a victim of sex
23 trafficking at the time of the prostitution-related offense or other
24 offense shall create a rebuttable presumption that the movant was a
25 victim of sex trafficking at the time of the prostitution-related offense
26 or other offense. Such official documentation shall not be required to
27 obtain relief under this section. Such official documentation includes:

28 (a) A copy of an official record, certification, or eligibility
29 letter from a federal, state, tribal, or local proceeding, including an
30 approval notice or an enforcement certification generated from a federal
31 immigration proceeding, that shows that the movant is a victim of sex

1 trafficking; or

2 (b) An affidavit or sworn testimony from an attorney, a member of
3 the clergy, a medical professional, a trained professional staff member
4 of a victim services organization, or other professional from whom the
5 movant has sought legal counsel or other assistance in addressing the
6 trauma associated with being a victim of sex trafficking.

7 (5) In considering whether the movant is a victim of sex
8 trafficking, the court may consider any other evidence the court
9 determines is of sufficient credibility and probative value, including an
10 affidavit or sworn testimony. Examples of such evidence include, but are
11 not limited to:

12 (a) Branding or other tattoos on the movant that identified him or
13 her as having a trafficker;

14 (b) Testimony or affidavits from those with firsthand knowledge of
15 the movant's involvement in the commercial sex trade such as solicitors
16 of commercial sex, family members, hotel workers, and other individuals
17 trafficked by the same individual or group of individuals who trafficked
18 the movant;

19 (c) Financial records showing profits from the commercial sex trade,
20 such as records of hotel stays, employment at indoor venues such as
21 massage parlors, bottle clubs, or strip clubs, or employment at an escort
22 service;

23 (d) Internet listings, print advertisements, or business cards used
24 to promote the movant for commercial sex; or

25 (e) Email, text, or voicemail records between the movant, the
26 trafficker, or solicitors of sex that reveal aspects of the sex trade
27 such as behavior patterns, meeting times, or payments or examples of the
28 trafficker exerting force, fraud, or coercion over the movant.

29 (6) Upon request of a movant, any hearing relating to the motion
30 shall be conducted in camera. The rules of evidence shall not apply at
31 any hearing relating to the motion.

1 (7) An order setting aside a conviction or an adjudication under
2 this section shall have the same effect as an order setting aside a
3 conviction as provided in subsections (5) ~~(4)~~ and (6) ~~(5)~~ of section
4 29-2264.

5 Sec. 3. Original sections 29-2264 and 29-3005, Revised Statutes
6 Cumulative Supplement, 2018, are repealed.