

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 114

Introduced by McCollister, 20.

Read first time January 07, 2021

Committee:

- 1 A BILL FOR AN ACT relating to criminal procedure; to adopt the Clean
- 2 Slate Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known and may be
2 cited as the Clean Slate Act.

3 Sec. 2. (1) The Legislature finds and declares that:

4 (a) After individuals convicted of nonviolent or less violent crimes
5 have served their sentences and obeyed the law long enough to demonstrate
6 their rehabilitation, such individuals' criminal records should not stand
7 as an impediment to the necessities of life, such as employment, housing,
8 and education. However, criminal justice agencies need access to all
9 criminal history record information in order to effectively carry out
10 their duties to protect the public;

11 (b) The state shall provide a clean slate remedy, as set forth under
12 the Clean Slate Act, in order to:

13 (i) Provide an incentive for offenders to remain crime-free;

14 (ii) Provide hope to offenders who are trying to rehabilitate
15 themselves;

16 (iii) Save the state money that must be spent when offenders
17 recidivate; and

18 (iv) Ensure appropriate access to criminal history record
19 information by criminal justice agencies and for other purposes essential
20 to the health and safety of the public; and

21 (c) To the extent possible, the Clean Slate Act should be
22 implemented with low cost to the courts, criminal justice agencies, and
23 individuals seeking relief under the act.

24 Sec. 3. For purposes of the Clean Slate Act, the definitions found
25 in the Security, Privacy, and Dissemination of Criminal History
26 Information Act and sections 4 and 5 of this act apply.

27 Sec. 4. The terms conviction and adjudication:

28 (1) Include a conviction or adjudication following trial or entry of
29 a guilty plea or plea of nolo contendere and include a forfeiture of
30 bail, bond, or other security deposited to secure appearance by a person
31 charged with an offense;

1 (2) When used in reference to an offense committed in another
2 jurisdiction, include convictions and adjudications by any village, town,
3 city, state, territory, commonwealth, or other jurisdiction of the United
4 States, by the United States Government, or by court-martial or other
5 military tribunal; and

6 (3) When used in determining whether a person has been convicted of
7 or adjudicated for an offense during the eligibility period described in
8 section 6 or 7 of this act, do not include convictions or adjudications
9 (i) pardoned, (ii) set aside under section 29-2264, or (iii) set aside,
10 expunged, or otherwise nullified by another jurisdiction through a
11 procedure comparable in effect to section 29-2264.

12 Sec. 5. (1) Qualified offense means an offense under Nebraska law,
13 an ordinance of a Nebraska city or village, or a county resolution that
14 is:

15 (a) A Class III, IIIA, or IV felony, including unclassified felonies
16 under section 28-107;

17 (b) A misdemeanor, including unclassified misdemeanors under section
18 28-107; or

19 (c) An infraction.

20 (2) Qualified offense does not include any of the following
21 offenses:

22 (a) Illegal disclosure of juror names, section 25-1673;

23 (b) Tampering with a jury list, section 25-1676;

24 (c) Motor vehicle homicide, section 28-306;

25 (d) Assault by strangulation or suffocation, section 28-310.01;

26 (e) Criminal child enticement, section 28-311;

27 (f) Terroristic threats, section 28-311.01;

28 (g) Stalking, section 28-311.04, except for a misdemeanor violation;

29 (h) A violation of section 28-311.08, except for a misdemeanor
30 violation;

31 (i) Violation of harassment protection order, section 28-311.09;

- 1 (j) Violation of sexual assault protection order, section 28-311.11;
- 2 (k) False imprisonment in the first degree, section 28-314;
- 3 (l) Sexual abuse by a school employee, section 28-316.01;
- 4 (m) Any sexual assault or sexual abuse offense, sections 28-317 to
5 28-322.05;
- 6 (n) Any domestic assault, section 28-323, except for a misdemeanor
7 violation of subdivision (1)(c) of section 28-323;
- 8 (o) Any violation relating to abortion, sections 28-325 to 28-345
9 and section 28-347.04;
- 10 (p) Failure to report under Adult Protective Services Act, section
11 28-384;
- 12 (q) Knowing and intentional abuse, neglect, or exploitation of a
13 vulnerable or senior adult, section 28-386;
- 14 (r) Any felony violation of the Homicide of the Unborn Child Act,
15 sections 28-388 to 28-394, except for a misdemeanor violation of motor
16 vehicle homicide of an unborn child under section 28-394;
- 17 (s) Any violation of the Assault of an Unborn Child Act, sections
18 28-395 to 28-3,101;
- 19 (t) Intentional or reckless performance of or attempt to perform an
20 abortion in violation of the Pain-Capable Unborn Child Protection Act,
21 section 28-3,108;
- 22 (u) Prohibited acts related to methamphetamine, chemical substances,
23 and paraphernalia, section 28-457;
- 24 (v) Arson in the second degree, section 28-503;
- 25 (w) Violation of Counterfeit Airbag Prevention Act, section 28-644;
- 26 (x) Incest, section 28-703;
- 27 (y) Child abuse, section 28-707;
- 28 (z) Willful failure to report abused or neglected children, section
29 28-717;
- 30 (aa) Solicitation of prostitution, section 28-801.01, except for a
31 misdemeanor violation;

1 (bb) Keeping a place of prostitution used by a person under the age
2 of eighteen years, section 28-804;

3 (cc) Possession by a person under nineteen years of age of visual
4 depiction of sexually explicit conduct containing a child other than the
5 defendant as one of its participants or portrayed observers, section
6 28-813.01, except for a misdemeanor violation;

7 (dd) Enticement by electronic communication device, section 28-833;

8 (ee) Resisting arrest, section 28-904, except for a misdemeanor
9 violation;

10 (ff) Operating a motor vehicle or vessel to avoid arrest, section
11 28-905, except for a misdemeanor violation;

12 (gg) Escape or permitting an escape from official detention, section
13 28-912;

14 (hh) Accessory to escape of juvenile from custody of Office of
15 Juvenile Services, section 28-912.01;

16 (ii) Introducing escape implements or contraband, section 28-913;

17 (jj) Perjury and subornation of perjury, section 28-915;

18 (kk) Bribery, section 28-917;

19 (ll) Bribery of a witness or witness accepting bribe or benefit,
20 section 28-918;

21 (mm) Tampering with a witness or informant or jury tampering,
22 section 28-919;

23 (nn) Bribery of a juror or juror accepting bribe or benefit, section
24 28-920;

25 (oo) Tampering with physical evidence, section 28-922;

26 (pp) Assault on an officer, an emergency responder, a state
27 correctional employee, a Department of Health and Human Services
28 employee, or a health care professional in the third degree, section
29 28-931;

30 (qq) Assault on an officer, an emergency responder, a state
31 correctional employee, a Department of Health and Human Services

1 employee, or a health care professional using a motor vehicle, section
2 28-931.01;
3 (rr) Assault by a confined person, section 28-932;
4 (ss) Assault with a bodily fluid against a public safety officer,
5 28-934;
6 (tt) Animal fighting, prohibited acts, section 28-1005;
7 (uu) Knowing or intentional ownership or possession of animal
8 fighting paraphernalia, section 28-1005.01;
9 (vv) Abandonment, cruel neglect, or cruel mistreatment of an animal
10 or harassment of a police animal, section 28-1009, except for a Class IV
11 misdemeanor violation;
12 (ww) Indecency with an animal, section 28-1010;
13 (xx) Violation of court order related to felony animal abuse
14 conviction, section 28-1019;
15 (yy) Gambling debt collection, section 28-1105.01;
16 (zz) Carrying a concealed weapon, section 28-1202, except for a
17 misdemeanor violation;
18 (aaa) Transporting or possessing a machine gun, short rifle, or
19 short shotgun, section 28-1203;
20 (bbb) Unlawful possession of a firearm at a school, section
21 28-1204.04;
22 (ccc) Unlawful possession of a firearm by a prohibited juvenile
23 offender, section 28-1204.05, except for a Class IV felony violation;
24 (ddd) Possession of a deadly weapon other than a firearm during
25 commission of a felony, section 28-1205;
26 (eee) Possession of a deadly weapon other than a firearm by a
27 prohibited person, section 28-1206;
28 (fff) Possession of a defaced firearm, section 28-1207;
29 (ggg) Defacing a firearm, section 28-1208;
30 (hhh) Unlawful possession of explosive materials in the first
31 degree, section 28-1215;

- 1 (iii) Unlawful sale of explosives, section 28-1217;
- 2 (jjj) Obtaining an explosives permit through false representations,
- 3 section 28-1219;
- 4 (kkk) Possession of a destructive device, section 28-1220;
- 5 (lll) Threatening the use of explosives or placing a false bomb,
- 6 section 28-1221;
- 7 (mmm) Using explosives to damage or destroy property, section
- 8 28-1223;
- 9 (nnn) Concealment of death to prevent determination of cause or
- 10 circumstances of death, section 28-1302;
- 11 (ooo) Unauthorized computer access creating grave risk of death,
- 12 section 28-1343.01;
- 13 (ppp) Operation of aircraft while under the influence of alcohol or
- 14 drugs, third or subsequent offense, section 28-1469;
- 15 (qqq) Unlawful paramilitary activities, section 28-1482;
- 16 (rrr) Violation of the Sex Offender Registration Act, section
- 17 29-4011;
- 18 (sss) Placing burning materials or items likely to cause injury on
- 19 highways, third or subsequent offense, section 39-311;
- 20 (ttt) Violation of domestic abuse protection order, section 42-924;
- 21 (uuu) Knowingly and intentionally dispensing alcohol in any manner
- 22 to minors or incompetents resulting in serious bodily injury or death
- 23 caused by the minors' consumption or impaired condition, section
- 24 53-180.05;
- 25 (vvv) Owner of a dangerous dog which inflicts serious bodily injury,
- 26 second or subsequent offense, section 54-622.01;
- 27 (www) Violation of prohibitions relating to dangerous dogs, section
- 28 54-623;
- 29 (xxx) Abandonment, cruel neglect, or cruel mistreatment of a
- 30 livestock animal, section 54-903, except for a misdemeanor violation;
- 31 (yyy) Violation of court order not to own or possess a livestock

1 animal, section 54-909;

2 (zzz) Motor vehicle accident, violation of duty to stop, section
3 60-698;

4 (aaaa) Driving under the influence with a prior felony conviction
5 for driving under the influence, section 60-6,196.01;

6 (bbbb) Any offense punishable under section 60-6,197.03, except for
7 a Class W misdemeanor;

8 (cccc) Operating a motor vehicle during revocation period, section
9 60-6,197.06;

10 (dddd) Causing serious bodily injury to another person or an unborn
11 child while driving under the influence, section 60-6,198;

12 (eeee) Prohibited acts relating to ignition interlock device,
13 section 60-6,211.11;

14 (ffff) Violations regarding children in foster care, section
15 71-1905;

16 (gggg) Violation of Children's Residential Facilities and Placing
17 Licensure Act, section 71-1950;

18 (hhhh) Threatening or attempting to influence a member or an
19 employee of the Board of Parole, section 83-198;

20 (iiii) Operation of a motor vehicle while under the influence with
21 disabled, bypassed, or altered ignition interlock device or without an
22 ignition interlock device or permit in violation of Board of Pardons
23 order, section 83-1,127.02; and

24 (jjjj) Threatening or attempting to influence a member of the Board
25 of Pardons, section 83-1,133;

26 (3) Qualified offense does not include any offense for which:

27 (a) Registration is required under the Sex Offender Registration
28 Act;

29 (b) Relief has already been provided under section 29-3523 or
30 sections 43-2,108.01 to 43-2,108.05; or

31 (c) The penalty has been enhanced under section 29-2221.

1 (4) Qualified offense does not include any other offense involving
2 as an element of the offense:

3 (a) Sexual contact or sexual penetration, as those terms are defined
4 in section 28-318; or

5 (b) The infliction of serious bodily injury or death.

6 (5) Qualified offense does not include:

7 (a) Attempt, under section 28-201, to commit any offense excluded
8 from the definition of a qualified offense under this section;

9 (b) Attempt, under section 28-201, to commit any offense when such
10 attempt is punishable as a Class IIIA felony or higher;

11 (c) Conspiracy, under section 28-202, to commit any offense excluded
12 from the definition of a qualified offense under this section;

13 (d) Accessory to felony, under section 28-204, except for accessory
14 violations punishable as a Class IV felony or a misdemeanor;

15 (e) Aiding consummation of felony, under section 28-205, for any
16 felony excluded from the definition of a qualified offense under this
17 section; and

18 (f) Aiding or abetting commission of an offense, under section
19 28-206, for any offense excluded from the definition of a qualified
20 offense under this section.

21 Sec. 6. (1) Beginning January 1, 2022, a person shall automatically
22 be eligible for clean slate relief under section 8 of this act for a
23 qualified offense that is a misdemeanor if:

24 (a) The qualified offense was committed on or after January 1, 2017;

25 (b) Such person has not been convicted of, or adjudicated for, a
26 misdemeanor or felony anywhere in the United States during the
27 eligibility period described in subsection (3) of this section; and

28 (c) Such person has paid all court-ordered financial obligations
29 related to such qualified offense.

30 (2) Eligibility for relief under this section shall be determined
31 internally and administratively by the State Court Administrator and does

1 not require any involvement by the person in interest.

2 (3) The eligibility period for qualified offenses under this section
3 shall be:

4 (a) For conviction of a qualified offense that is a Class I or II
5 misdemeanor, ten years following the date of conviction;

6 (b) For an adjudication for a qualified offense that is a Class I or
7 II misdemeanor, seven years following the date of conviction; or

8 (c) For a conviction of, or adjudication for, a qualified offense
9 that is a Class III or lower misdemeanor, five years following the date
10 of conviction or adjudication.

11 (4) No later than thirty days following expiration of the
12 eligibility period under subsection (3) of this section, the State Court
13 Administrator shall determine if a person convicted of or adjudicated for
14 a qualified offense described in subsection (1) of this section is
15 eligible for clean slate relief under this section. If the State Court
16 Administrator determines that a person is eligible, the State Court
17 Administrator shall, within such same thirty-day period, notify the court
18 of conviction or adjudication of such determination.

19 (5) Each court of conviction or adjudication shall, on a monthly
20 basis, issue orders for clean slate relief under section 8 of this act
21 for each person for whom the court received a notification under
22 subsection (4) of this section.

23 (6) The State Court Administrator is not required to proceed under
24 subsection (4) of this section if the State Court Administrator
25 determines that the person in interest is deceased.

26 Sec. 7. (1) A person convicted of, or adjudicated for, a qualified
27 offense may petition the court for clean slate relief under section 8 of
28 this act if:

29 (a) Such person has not been convicted of, or adjudicated for, a
30 misdemeanor or felony anywhere in the United States during the
31 eligibility period described in subsection (3) of this section; and

1 (b) Such person has paid all court-ordered financial obligations
2 related to such qualified offense.

3 (2) This section applies to qualified offenses committed before, on,
4 or after the effective date of this act.

5 (3) The eligibility period for qualified offenses under this section
6 shall be:

7 (a) For conviction of a qualified offense that is a Class III or
8 lower felony or a Class I or II misdemeanor, ten years following the date
9 of conviction;

10 (b) For an adjudication for a qualified offense that is a Class III
11 or lower felony or a Class I or II misdemeanor, seven years following the
12 date of conviction; or

13 (c) For a conviction of, or adjudication for, a qualified offense
14 that is a Class III or lower misdemeanor or an infraction, five years
15 following the date of conviction or adjudication.

16 (4) The petition shall be filed in the court of conviction or
17 adjudication. There shall be no filing or docketing fee charged by the
18 court for the filing of a petition except for the fee authorized by this
19 subsection. The court may charge a filing fee in an amount set by the
20 State Court Administrator. The fee shall be set at an amount to recoup
21 the costs associated with administering the Clean Slate Act, but shall
22 not exceed forty dollars.

23 (5) The court shall provide notice of the filing of the petition to
24 the appropriate county attorney or city attorney within ten days. Within
25 thirty days after receipt of notice, the county attorney or city attorney
26 may file objections to the petition. If no objection is timely filed, the
27 court may grant the petition without further hearing if the requirements
28 of this section have been met.

29 (6) If the court determines that the person in interest meets the
30 eligibility requirements, and the qualified offense:

31 (a) Is a felony, the court may grant the petition; or

1 (b) Is a misdemeanor or infraction, the court shall grant the
2 petition.

3 (7) Upon granting a petition under this section, the court shall
4 issue an order for clean slate relief under section 8 of this act.

5 (8) An order granting or denying a petition under this section is a
6 final, appealable order for purposes of section 25-1902.

7 Sec. 8. (1) Following entry of a court order granting a person
8 clean slate relief under sections 6 or 7 of this act, a criminal justice
9 agency shall respond to a public inquiry in the same manner as if there
10 were no criminal history record information and criminal history record
11 information shall not be disseminated to any person other than a criminal
12 justice agency, except as provided in subsections (4) and (5) of this
13 section.

14 (2) In issuing an order for clean slate relief, the court shall:

15 (a) Order that all records, including any information or other data
16 concerning any proceedings relating to the case, including the arrest,
17 taking into custody, petition, complaint, indictment, information, trial,
18 hearing, adjudication, correctional supervision, dismissal, or other
19 disposition or sentence, are not part of the public record and shall not
20 be disseminated to persons other than criminal justice agencies, except
21 as provided in subsection (4) of this section;

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

26 (c) If the order relates to an adjudication, send notice of the
27 order to (i) the Department of Motor Vehicles, if the adjudication
28 included impoundment or prohibition to obtain a license or permit
29 pursuant to section 43-287, and (ii) the Department of Health and Human
30 Services, if the person in interest was a ward of the state at the time
31 the proceeding was initiated or if the department was a party in the

1 proceeding;

2 (d) Order all parties notified under subdivisions (2)(b) and (c) of
3 this section to seal all records pertaining to the case; and

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

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

12 (4) A criminal justice agency may, with respect to criminal history
13 record information sealed under this section, disclose, disseminate,
14 respond to inquiries regarding, or allow inspection of such criminal
15 history record information:

16 (a) If the person in interest has made a notarized request for the
17 release of information, to the extent authorized in such release;

18 (b) If the person in interest is currently the subject of
19 prosecution or correctional control as the result of a separate arrest;

20 (c) If the person in interest is currently an announced candidate
21 for or holder of public office;

22 (d) If the criminal history record information is kept unidentified,
23 and the record is used for purposes of surveying or summarizing
24 individual or collective law enforcement agency activity or practices, or
25 the dissemination is requested consisting only of release of criminal
26 history record information showing (i) dates of arrests, (ii) reasons for
27 arrests, and (iii) the nature of the dispositions, including, but not
28 limited to, reasons for not prosecuting the case or cases;

29 (e) To individuals and agencies for the express purpose of research,
30 evaluative, or statistical activities pursuant to an agreement with a
31 criminal justice agency that specifically authorizes access to the

1 information, limits the use of the information to research, evaluative,
2 or statistical activities, and ensures the confidentiality and security
3 of the information; and

4 (f) In response to an inquiry for employment, security, or other
5 purposes to the extent disclosure of such criminal history record
6 information is required by:

7 (i) Federal law, including rules and regulations and rules and
8 regulations promulgated by a self-regulatory organization created under
9 federal law; or

10 (ii) State law, including rules or regulations, relating to
11 operation of a motor vehicle or caring for or interacting with children,
12 including, but not limited to, determining whether an application filed
13 or a license issued under sections 71-1901 to 71-1906.01, the Child Care
14 Licensing Act, or the Children's Residential Facilities and Placing
15 Licensure Act or a certificate issued under sections 79-806 to 79-815
16 should be denied, suspended, or revoked.

17 (5) In addition to disclosures authorized under subsection (4) of
18 this section, inspection of criminal history record information relating
19 to an adjudication that has been sealed under this section may be made by
20 the persons and for the purposes authorized in section 43-2,108.05.

21 Sec. 9. (1) Upon petition of the county attorney or city attorney,
22 and with notice to the person in interest and opportunity to be heard,
23 the court shall vacate an order for clean slate relief issued pursuant to
24 section 6 of this act if the court determines that the order was
25 erroneously entered and not in accordance with section 6 of this act.

26 (2)(a) Upon conviction of, or adjudication for, a felony or
27 misdemeanor, the county attorney or city attorney may file a motion
28 requesting the court to enter an order vacating a prior order for clean
29 slate relief issued pursuant to section 6 or 7 of this act.

30 (b) The court shall grant such motion if the new conviction is for:

31 (i) A felony; or

1 (ii) A misdemeanor that is not a qualified offense.

2 (c) The court may grant such motion if the new conviction is for a
3 misdemeanor that is a qualified offense.

4 (3) Upon entry of an order under subsection (1) or (2) of this
5 section, the court shall send notice of such order as provided in
6 subsection (2) of section 8 of this act.

7 Sec. 10. The State Court Administrator may adopt and promulgate
8 rules and regulations as necessary to carry out the Clean Slate Act.