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Section 29-2264

Probation; completion; conviction may be set aside; conditions; retroactive effect.

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

(2) Whenever any person is convicted of a misdemeanor or felony and is placed on probation by the court or is sentenced to a fine only, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine, petition the sentencing court to set aside the conviction.

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

- (a) The behavior of the offender after sentencing;
- (b) The likelihood that the offender will not engage in further criminal activity; and
- (c) Any other information the court considers relevant.

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

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

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

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

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

(c) Preclude proof of the conviction as evidence of the commission of the misdemeanor or felony whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

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

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

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

(g) Preclude use of the conviction as evidence of commission of the misdemeanor or felony for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1906.01 or the Child Care Licensing Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;

(h) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of risk of recidivism under section 29-4013; or

(i) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act.

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

Source:

Laws 1971, LB 680, § 19

Laws 1993, LB 564, § 1

Laws 1994, LB 677, § 1

Laws 1995, LB 401, § 1

Laws 1997, LB 310, § 1

Laws 1998, Spec. Sess., LB 1, § 3

Laws 2002, LB 1054, § 6

Laws 2003, LB 685, § 2

Laws 2004, LB 1005, § 3

Laws 2005, LB 53, § 3

Laws 2005, LB 713, § 3

Cross References:

Child Care Licensing Act, see section 71-1908.

Sex Offender Registration Act, see section 29-4001.

Annotations:

Where defendant admitted a felony conviction, his introduction of order terminating probation was permissible and did not open matter to further development. *State v. Boss*, 195 Neb. 467, 238 N.W.2d 639 (1976).

The provisions for discharge from probation and removal of civil disabilities and disqualifications do not apply to a jail sentence already served. *State v. Adamson*, 194 Neb. 592, 233 N.W.2d 925 (1975).

The Nebraska court's expunction of the defendant's conviction for possession of marijuana with intent to distribute, after defendant had served approximately half of probation, did not expunge the record for purposes of federal statute relating to receipt of firearms in interstate commerce by persons previously convicted of a crime punishable by imprisonment exceeding one year. *United States v. Germaine*, 720 F.2d 998 (8th Cir. 1983).

~Revised Statutes Supplement, 2006

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