

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 869

Introduced by Pansing Brooks, 28; Ebke, 32; Howard, 9; Morfeld, 46.

Read first time January 05, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
2 sections 43-2,108.01, 43-2,108.02, 43-2,108.03, 43-2,108.04, and
3 43-2,108.05, Reissue Revised Statutes of Nebraska; to change
4 provisions relating to the sealing of juvenile records; to provide
5 for retroactivity; to increase a penalty; and to repeal the original
6 sections.

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

1 Section 1. Section 43-2,108.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 43-2,108.01 (1) Sections 43-2,108.01 to 43-2,108.05 apply only to
4 persons who were under the age of eighteen years when the offense took
5 place and, after being taken into custody, arrested, cited in lieu of
6 arrest, or referred for prosecution without citation, the county attorney
7 or city attorney (a) ~~(1)~~ released the juvenile without filing a juvenile
8 petition or criminal complaint, (b) ~~(2)~~ offered juvenile pretrial
9 diversion or mediation to the juvenile under the Nebraska Juvenile Code,
10 (c) ~~(3)~~ filed a juvenile court petition describing the juvenile as a
11 juvenile described in subdivision (1), (2), (3)(b), or (4) of section
12 43-247, (d) ~~(4)~~ filed a criminal complaint in county court against the
13 juvenile under state statute or city or village ordinance for misdemeanor
14 or infraction possession of marijuana or misdemeanor or infraction
15 possession of drug paraphernalia, (e) ~~or (5)~~ filed a criminal complaint
16 in county court against the juvenile for any other misdemeanor or
17 infraction under state statute or city or village ordinance, other than
18 for a traffic offense that may be waived, or (f) filed a criminal
19 complaint in county or district court for a felony offense under state
20 statute or city or village ordinance that was subsequently transferred to
21 the juvenile court for ongoing jurisdiction.

22 (2) The changes made to sections 43-2,108.01 to 43-2,108.05 by this
23 legislative bill shall be retroactive in application and shall apply to
24 all persons otherwise eligible in accordance with the provisions of such
25 sections.

26 Sec. 2. Section 43-2,108.02, Reissue Revised Statutes of Nebraska,
27 is amended to read:

28 43-2,108.02 For a juvenile described in section 43-2,108.01, the
29 county attorney or city attorney shall provide the juvenile with written
30 notice, attached to any petition or complaint, that:

31 (1) States in developmentally appropriate language that the

1 juvenile's record will be automatically sealed if the petition is
2 dismissed, if the juvenile has satisfactorily completed the diversion,
3 mediation, probation, supervision, or other treatment or rehabilitation
4 program provided under the Nebraska Juvenile Code, or if the juvenile has
5 satisfactorily completed the diversion or sentence ordered by a county
6 court or district court;

7 (2) ~~(1)~~ States in developmentally appropriate plain language that,
8 if the record is not sealed as provided in subdivision (1) of this
9 section, the juvenile or the juvenile's parent or guardian may file a
10 motion to seal the record with the court when the juvenile reaches the
11 age of majority or six months have passed since the case was closed,
12 whichever occurs sooner has satisfactorily completed the diversion,
13 mediation, probation, supervision, or other treatment or rehabilitation
14 program provided under the Nebraska Juvenile Code or has satisfactorily
15 completed the diversion or sentence ordered by a county court; and

16 (3) ~~(2)~~ Explains in developmentally appropriate plain language what
17 sealing the record means.

18 Sec. 3. Section 43-2,108.03, Reissue Revised Statutes of Nebraska,
19 is amended to read:

20 43-2,108.03 (1) If a juvenile described in section 43-2,108.01 was
21 taken into custody, arrested, cited in lieu of arrest, or referred for
22 prosecution without citation but no juvenile petition or criminal
23 complaint was filed against the juvenile with respect to the arrest or
24 custody, the county attorney or city attorney shall notify the government
25 agency responsible for the arrest, custody, citation in lieu of arrest,
26 or referral for prosecution without citation that no criminal charge or
27 juvenile court petition was filed.

28 (2) If the county attorney or city attorney offered and a juvenile
29 described in section 43-2,108.01 has agreed to pretrial diversion or
30 mediation, the county attorney or city attorney shall notify the
31 government agency responsible for the arrest or custody when the juvenile

1 has satisfactorily completed the resulting diversion or mediation.

2 (3) If the juvenile was taken into custody, arrested, cited in lieu
3 of arrest, or referred for prosecution without citation and charges were
4 filed but later dismissed and any required pretrial diversion or
5 mediation for any related charges have been completed and no related
6 charges remain under the jurisdiction of the court, the county attorney
7 or city attorney shall notify the government agency responsible for the
8 arrest, custody, citation in lieu of arrest, or referral for prosecution
9 without citation and the court where the charge or petition was filed
10 that the charge or juvenile court petition was dismissed.

11 (4) If a juvenile described in section 43-2,108.01 has
12 satisfactorily completed the diversion, mediation, probation,
13 supervision, or other treatment or rehabilitation program provided under
14 the Nebraska Juvenile Code or if the juvenile has satisfactorily
15 completed the diversion or sentence ordered by a county court or district
16 court, the county attorney or city attorney shall notify the government
17 agency responsible for the arrest, custody, citation in lieu of arrest,
18 or referral for prosecution without citation and the court where the
19 charge or juvenile court petition was filed or adjudicated.

20 (5) A government agency or court that receives ~~(4) Upon receiving~~
21 notice under subsection (1), (2), or (3), or (4) of this section, ~~the~~
22 government agency or court shall, upon such receipt, immediately seal all
23 records housed at that government agency or court pertaining to the
24 citation, arrest, record of custody, complaint, disposition, diversion,
25 or mediation.

26 (6) When a juvenile described in section 43-2,108.01 whose records
27 have not been automatically sealed as provided in subsection (1), (2),
28 (3), or (4) of this section reaches the age of majority or six months
29 have passed since the case was closed, whichever occurs sooner, such
30 juvenile or his or her parent or guardian may file a motion in the court
31 of record asking the court to seal the record pertaining to the offense

1 which resulted in disposition, adjudication, or diversion in juvenile
2 court or diversion or sentence of the county or district court.

3 ~~(5) If a juvenile described in section 43-2,108.01 has~~
4 ~~satisfactorily completed such juvenile's probation, supervision, or other~~
5 ~~treatment or rehabilitation program provided under the Nebraska Juvenile~~
6 ~~Code or has satisfactorily completed such juvenile's diversion or~~
7 ~~sentence in county court:~~

8 ~~(a) The court may initiate proceedings pursuant to section~~
9 ~~43-2,108.04 to seal the record pertaining to such disposition or~~
10 ~~adjudication under the juvenile code or sentence of the county court; and~~

11 ~~(b) If the juvenile has attained the age of seventeen years, the~~
12 ~~court shall initiate proceedings pursuant to section 43-2,108.04 to seal~~
13 ~~the record pertaining to such disposition or adjudication under the~~
14 ~~juvenile code or diversion or sentence of the county court, except that~~
15 ~~the court is not required to initiate proceedings to seal a record~~
16 ~~pertaining to a misdemeanor or infraction not described in subdivision~~
17 ~~(4) of section 43-2,108.01 under a city or village ordinance that has no~~
18 ~~possible jail sentence. Such a record may be sealed under subsection (6)~~
19 ~~of this section.~~

20 ~~(6) If a juvenile described in section 43-2,108.01 has~~
21 ~~satisfactorily completed diversion, mediation, probation, supervision, or~~
22 ~~other treatment or rehabilitation program provided under the Nebraska~~
23 ~~Juvenile Code or has satisfactorily completed the diversion or sentence~~
24 ~~ordered by a county court, the juvenile or the juvenile's parent or~~
25 ~~guardian may file a motion in the court of record asking the court to~~
26 ~~seal the record pertaining to the offense which resulted in such~~
27 ~~disposition, adjudication, or diversion of the juvenile court or~~
28 ~~diversion or sentence of the county court.~~

29 Sec. 4. Section 43-2,108.04, Reissue Revised Statutes of Nebraska,
30 is amended to read:

31 43-2,108.04 (1) When a proceeding to seal the record is initiated,

1 the court shall promptly notify the county attorney or city attorney
2 involved in the case that is the subject of the proceeding to seal the
3 record of the proceedings, and shall promptly notify the Department of
4 Health and Human Services of the proceedings if the juvenile whose record
5 is the subject of the proceeding is a ward of the state at the time the
6 proceeding is initiated or if the department was a party in the
7 proceeding.

8 (2) A party notified under subsection (1) of this section may file a
9 response with the court within thirty days after receiving such notice.
10 Any such response shall be served on all parties to the case. If the
11 response objects to the sealing of a record, such response shall specify
12 which factor or factors under subsection (5) of this section form the
13 basis for the objection and shall set forth the facts supporting any
14 argument that the juvenile has not been satisfactorily rehabilitated.

15 (3) If a party notified under subsection (1) of this section does
16 not file a response with the court or files a response that indicates
17 there is no objection to the sealing of the record, the court shall order
18 that may: ~~(a) Order the record of the juvenile under consideration be~~
19 ~~sealed without conducting a hearing on the motion; or (b) decide in its~~
20 ~~discretion to conduct a hearing on the motion. If the court decides in~~
21 ~~its discretion to conduct a hearing on the motion, the court shall~~
22 ~~conduct the hearing within sixty days after making that decision and~~
23 ~~shall give notice, by regular mail, of the date, time, and location of~~
24 ~~the hearing to the parties receiving notice under subsection (1) of this~~
25 ~~section and to the juvenile who is the subject of the record under~~
26 ~~consideration.~~

27 (4) If a party receiving notice under subsection (1) of this section
28 files a response with the court objecting to the sealing of the record,
29 the court shall conduct a hearing on the motion within sixty days after
30 the court receives the response. The court shall give notice, by regular
31 mail, of the date, time, and location of the hearing to the parties

1 receiving notice under subsection (1) of this section and to the juvenile
2 who is the subject of the record under consideration.

3 (5) After conducting a hearing in accordance with this section, the
4 court ~~shall~~ may order the record of the juvenile that is the subject of
5 the motion be sealed if it finds by a preponderance of the evidence that
6 the juvenile has been rehabilitated to a satisfactory degree. In
7 determining whether the juvenile has been rehabilitated to a satisfactory
8 degree, the court may consider all of the following:

9 ~~(a) The age of the juvenile;~~

10 ~~(b) The nature of the offense and the role of the juvenile in the~~
11 ~~offense;~~

12 (a) ~~(c)~~ The behavior of the juvenile after the disposition,
13 adjudication, diversion, or sentence and the juvenile's response to
14 diversion, mediation, probation, supervision, other treatment or
15 rehabilitation program, or sentence;

16 (b) ~~(d)~~ The education and employment history of the juvenile; and

17 (c) ~~(e)~~ Any other circumstances that may relate to the
18 rehabilitation of the juvenile.

19 (6) If, after conducting the hearing in accordance with this
20 section, the juvenile is not found to be satisfactorily rehabilitated
21 such that the record is not ordered to be sealed, a juvenile who is a
22 person described in section 43-2,108.01 or such juvenile's parent or
23 guardian may not move the court to seal the record for one year after the
24 court's decision not to seal the record is made, unless such time
25 restriction is waived by the court.

26 Sec. 5. Section 43-2,108.05, Reissue Revised Statutes of Nebraska,
27 is amended to read:

28 43-2,108.05 (1) If the court orders the record of a juvenile sealed
29 pursuant to section 43-2,108.04, the court shall:

30 (a) Order that all records, including any information or other data
31 concerning any proceedings relating to the offense, including the arrest,

1 taking into custody, petition, complaint, indictment, information, trial,
2 hearing, adjudication, correctional supervision, dismissal, or other
3 disposition or sentence, be deemed never to have occurred;

4 (b) Send notice of the order to seal the record (i) to the Nebraska
5 Commission on Law Enforcement and Criminal Justice, (ii) if the record
6 includes impoundment or prohibition to obtain a license or permit
7 pursuant to section 43-287, to the Department of Motor Vehicles, (iii) if
8 the juvenile whose record has been ordered sealed was a ward of the state
9 at the time the proceeding was initiated or if the Department of Health
10 and Human Services was a party in the proceeding, to such department, and
11 (iv) to law enforcement agencies, county attorneys, and city attorneys
12 referenced in the court record;

13 (c) Order all notified under subdivision (1)(b) of this section to
14 seal all records pertaining to the offense;

15 (d) If the case was transferred from district court to juvenile
16 court or was transferred under section 43-282, send notice of the order
17 to seal the record to the transferring court; and

18 (e) Explain to the juvenile using developmentally appropriate
19 language what sealing the record means. The explanation shall be given
20 verbally if the juvenile is present in the court at the time the court
21 issues the sealing order and ~~or~~ by written notice sent by regular mail to
22 the juvenile's last-known address if the juvenile is not present in the
23 court at the time the court issues the sealing order. The sealing order
24 shall include contact information for each government agency subject to
25 the sealing order.

26 (2) The effect of having a record sealed ~~under section 43-2,108.04~~
27 is that thereafter no person is allowed to release any information
28 concerning such record, except as provided by this section. After a
29 record is sealed, the person whose record was sealed can respond to any
30 public inquiry as if the offense resulting in such record never occurred.
31 A government agency and any other public office or agency shall reply to

1 any public inquiry that no information exists regarding a sealed record.
2 Except as provided in subsection (3) of this section, an order to seal
3 the record applies to every government agency and any other public office
4 or agency that has a record relating to the offense, regardless of
5 whether it receives notice of the hearing on the sealing of the record or
6 a copy of the order. Upon the written request of a person whose record
7 has been sealed and the presentation of a copy of such order, a
8 government agency or any other public office or agency shall seal all
9 records pertaining to the offense.

10 ~~(3) A sealed record is accessible to law enforcement officers,~~
11 ~~county attorneys, and city attorneys in the investigation, prosecution,~~
12 ~~and sentencing of crimes, to the sentencing judge in the sentencing of~~
13 ~~criminal defendants, to a judge making a determination whether to~~
14 ~~transfer a case to or from juvenile court, to any attorney representing~~
15 ~~the subject of the sealed record, and to the Inspector General of~~
16 ~~Nebraska Child Welfare pursuant to an investigation conducted under the~~
17 ~~Office of Inspector General of Nebraska Child Welfare Act. Inspection of~~
18 records that have been ordered sealed under section 43-2,108.04 may be
19 made by the following persons or for the following purposes:

20 (a) Within the first five years following the date the record is
21 sealed:

22 (i) By law enforcement officers, county attorneys, and city
23 attorneys in the investigation, prosecution, and sentencing of crimes, by
24 the sentencing judge in the sentencing of criminal defendants, by a judge
25 making a determination whether to transfer a case to or from juvenile
26 court, by any attorney representing the subject of the sealed record, and
27 by the Inspector General of Nebraska Child Welfare pursuant to an
28 investigation conducted under the Office of Inspector General of Nebraska
29 Child Welfare Act;

30 (ii) (a) By the court or by any person allowed to inspect such
31 records by an order of the court for good cause shown;

1 (iii) ~~(b)~~ By the court, city attorney, or county attorney for
2 purposes of collection of any remaining parental support or obligation
3 balances under section 43-290;

4 (iv) ~~(c)~~ By the Nebraska Probation System for purposes of juvenile
5 intake services, for presentence and other probation investigations, and
6 for the direct supervision of persons placed on probation and by the
7 Department of Correctional Services, the Office of Juvenile Services, a
8 juvenile assessment center, a criminal detention facility, a juvenile
9 detention facility, or a staff secure juvenile facility, for an
10 individual committed to it, placed with it, or under its care;

11 (v) ~~(d)~~ By the Department of Health and Human Services for purposes
12 of juvenile intake services, the preparation of case plans and reports,
13 the preparation of evaluations, compliance with federal reporting
14 requirements, or the supervision and protection of persons placed with
15 the department or for licensing or certification purposes under sections
16 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's
17 Residential Facilities and Placing Licensure Act;

18 (vi) ~~By (e) Upon application, by the individual person who is the~~
19 ~~subject of the sealed record and by persons authorized by such individual~~
20 ~~the person who is the subject of the sealed record who are named in that~~
21 ~~application;~~

22 (vii) ~~(f)~~ At the request of a party in a civil action that is based
23 on a case that has a sealed record, as needed for the civil action. The
24 party also may copy the sealed record as needed for the civil action. The
25 sealed record shall be used solely in the civil action and is otherwise
26 confidential and subject to this section;

27 (viii) ~~(g)~~ By persons engaged in bona fide research, with the
28 permission of the court or the State Court Administrator, only if the
29 research results in no disclosure of the individual's ~~person's~~ identity
30 and protects the confidentiality of the sealed record; or

31 (ix) ~~(h)~~ By a law enforcement agency if an individual ~~a person~~ whose

1 record has been sealed applies for employment with the law enforcement
2 agency; and -

3 (b) On or after five years following the date the record is sealed:

4 (i) By the individual who is the subject of the sealed record and by
5 persons authorized by such individual;

6 (ii) By persons engaged in bona fide research, with the permission
7 of the court or State Court Administrator, only if the research results
8 in no disclosure of the individual's identity and protects the
9 confidentiality of the sealed record; or

10 (iii) By the Inspector General of Nebraska Child Welfare pursuant to
11 an investigation conducted under the Office of Inspector General of
12 Nebraska Child Welfare Act.

13 (4) Nothing in this section prohibits the Department of Health and
14 Human Services from releasing information from sealed records in the
15 performance of its duties with respect to the supervision and protection
16 of persons served by the department.

17 (5) In any application for employment, bonding, license, education,
18 or other right or privilege, any appearance as a witness, or any other
19 public inquiry, a person cannot be questioned with respect to any offense
20 for which the record is sealed. If an inquiry is made in violation of
21 this subsection, the person may respond as if the offense never occurred.
22 Applications for employment shall contain specific language that states
23 that the applicant is not obligated to disclose a sealed record.
24 Employers shall not ask if an applicant has had a record sealed. The
25 Department of Labor shall develop a link on the department's web site to
26 inform employers that employers cannot ask if an applicant had a record
27 sealed and that an application for employment shall contain specific
28 language that states that the applicant is not obligated to disclose a
29 sealed record.

30 (6) Any person who negligently, recklessly, or knowingly and
31 intentionally violates this section shall be guilty of a Class V

1 ~~misdemeanor may be held in contempt of court.~~

2 Sec. 6. Original sections 43-2,108.01, 43-2,108.02, 43-2,108.03,
3 43-2,108.04, and 43-2,108.05, Reissue Revised Statutes of Nebraska, are
4 repealed.