

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 923

Introduced by Ashford, 20; Council, 11.

Read first time January 13, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to juveniles; to amend sections 25-2701
2 and 43-2,129, Reissue Revised Statutes of Nebraska, and
3 section 43-245, Revised Statutes Supplement, 2009; to
4 provide powers to county courts; to define a term; to
5 provide and eliminate provisions relating to sealing
6 criminal justice records; to harmonize provisions; to
7 repeal the original sections; and to outright repeal
8 sections 43-2,102, 43-2,103, 43-2,104, and 43-2,105,
9 Reissue Revised Statutes of Nebraska.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-2701, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-2701 (1) All provisions in the codes of criminal
4 and civil procedure governing actions and proceedings in the
5 district court not in conflict with statutes specifically governing
6 procedure in county courts and related to matters for which no
7 specific provisions have been made for county courts shall govern
8 and apply to all actions and proceedings in the county court.

9 (2) County courts may seal records of a person as
10 provided under sections 3 to 7 of this act.

11 Sec. 2. Section 43-245, Revised Statutes Supplement,
12 2009, is amended to read:

13 43-245 For purposes of the Nebraska Juvenile Code, unless
14 the context otherwise requires:

15 (1) Age of majority means nineteen years of age;

16 (2) Approved center means a center that has applied for
17 and received approval from the Director of the Office of Dispute
18 Resolution under section 25-2909;

19 (3) Cost or costs means (a) the sum or equivalent
20 expended, paid, or charged for goods or services, or expenses
21 incurred, or (b) the contracted or negotiated price;

22 (4) Criminal street gang means a group of three or more
23 people with a common identifying name, sign, or symbol whose group
24 identity or purposes include engaging in illegal activities;

25 (5) Criminal street gang member means a person who

1 willingly or voluntarily becomes and remains a member of a criminal
2 street gang;

3 (6) Juvenile means any person under the age of eighteen;

4 (7) Juvenile court means the separate juvenile court
5 where it has been established pursuant to sections 43-2,111 to
6 43-2,127 and the county court sitting as a juvenile court in all
7 other counties. Nothing in the Nebraska Juvenile Code shall be
8 construed to deprive the district courts of their habeas corpus,
9 common-law, or chancery jurisdiction or the county courts and
10 district courts of jurisdiction of domestic relations matters as
11 defined in section 25-2740;

12 (8) Juvenile detention facility has the same meaning as
13 in section 83-4,125;

14 (9) Mediator for juvenile offender and victim mediation
15 means a person who (a) has completed at least thirty hours of
16 training in conflict resolution techniques, neutrality, agreement
17 writing, and ethics set forth in section 25-2913, (b) has an
18 additional eight hours of juvenile offender and victim mediation
19 training, and (c) meets the apprenticeship requirements set forth
20 in section 25-2913;

21 (10) Mental health facility means a treatment facility
22 as defined in section 71-914 or a government, private, or state
23 hospital which treats mental illness;

24 (11) Nonoffender means a juvenile who is subject to the
25 jurisdiction of the juvenile court for reasons other than legally

1 prohibited conduct, including, but not limited to, juveniles
2 described in subdivision (3) (a) of section 43-247;

3 (12) Nonsecure detention means detention characterized by
4 the absence of restrictive hardware, construction, and procedure.
5 Nonsecure detention services may include a range of placement and
6 supervision options, such as home detention, electronic monitoring,
7 day reporting, drug court, tracking and monitoring supervision,
8 staff secure and temporary holdover facilities, and group homes;

9 (13) Parent means one or both parents or a stepparent
10 when such stepparent is married to the custodial parent as of the
11 filing of the petition;

12 (14) Parties means the juvenile as described in section
13 43-247 and his or her parent, guardian, or custodian;

14 (15) Except in proceedings under the Nebraska Indian
15 Child Welfare Act, relative means father, mother, grandfather,
16 grandmother, brother, sister, stepfather, stepmother, stepbrother,
17 stepsister, uncle, aunt, first cousin, nephew, or niece;

18 (16) Seal a record means that a record shall not be
19 available to the public except upon the order of a court upon good
20 cause shown;

21 ~~(16)~~ (17) Secure detention means detention in a highly
22 structured, residential, hardware-secured facility designed to
23 restrict a juvenile's movement;

24 ~~(17)~~ (18) Status offender means a juvenile who has been
25 charged with or adjudicated for conduct which would not be a crime

1 if committed by an adult, including, but not limited to, juveniles
2 charged under subdivision (3)(b) of section 43-247 and sections
3 53-180.01 and 53-180.02; and

4 ~~(18)~~ (19) Traffic offense means any nonfelonious act in
5 violation of a law or ordinance regulating vehicular or pedestrian
6 travel, whether designated a misdemeanor or a traffic infraction.

7 Sec. 3. Sections 3 to 7 of this act apply only to persons
8 who were under the age of eighteen when the offense took place
9 and the county attorney offered juvenile pretrial diversion or
10 mediation to the juvenile under the Nebraska Juvenile Code or filed
11 a juvenile court petition describing the juvenile as a juvenile
12 described in subdivision (1), (2), (3)(b), or (4) of section 43-247
13 or the county attorney filed a criminal complaint in county court
14 against such juvenile for a misdemeanor or infraction under the
15 laws of this state or a city or village ordinance.

16 Sec. 4. For a juvenile who is a person described in
17 section 3 of this act, the county attorney shall, in addition
18 to the filings or actions described in such section, provide the
19 juvenile with written notice that:

20 (1) States in plain language that the juvenile may
21 petition the court to seal the record when the juvenile has
22 satisfactorily completed the diversion, mediation, probation,
23 supervision, or other treatment or rehabilitation program provided
24 to the juvenile under the Nebraska Juvenile Code or has
25 satisfactorily completed the diversion or sentence ordered by a

1 county court; and

2 (2) Explains in plain language what sealing the record
3 means.

4 Sec. 5. (1) Notwithstanding subsection (2) of this
5 section, if the juvenile was taken into custody or arrested but
6 no juvenile petition or criminal complaint was filed against the
7 juvenile with respect to the arrest or custody the county attorney
8 shall notify the appropriate public office or agency responsible
9 for the arrest or custody that no criminal charge or juvenile court
10 petition was filed.

11 (2) If the county attorney has offered and the juvenile
12 has agreed to pretrial diversion or mediation, the county attorney
13 shall notify the appropriate public office or agency responsible
14 for the arrest or custody that the juvenile has satisfactorily
15 completed the resulting diversion or mediation.

16 (3) Upon receiving notice under subsection (1) or (2)
17 of this section, the public office or agency shall immediately
18 seal all original records housed at that public office or agency
19 pertaining to the citation, arrest, record of custody, complaint,
20 disposition, diversion, or mediation.

21 (4) If a juvenile described in section 3 of this act has
22 satisfactorily completed such juvenile's probation, supervision,
23 or other treatment or rehabilitation program provided under
24 the Nebraska Juvenile Code or has satisfactorily completed such
25 juvenile's diversion or sentence in county court and the juvenile

1 has attained at least the age of seventeen, the court shall
2 initiate proceedings to seal the records pertaining to such
3 disposition or adjudication under section 43-247 or diversion or
4 sentence of the county court.

5 (5) At any time after a person described in section 3
6 of this act has satisfactorily completed probation, supervision,
7 or other treatment or rehabilitation program under the code or has
8 satisfactorily completed diversion or sentence of the county court,
9 the court may, upon the motion of the juvenile or the court's own
10 motion, initiate proceedings to seal the records pertaining to such
11 disposition, dismissal following pretrial diversion under section
12 43-260.04, disposition under section 43-286, or any county court
13 records pertaining to such county court diversion or sentence.

14 Sec. 6. (1) Proceedings to seal the record shall
15 be initiated by promptly notifying the county attorney of any
16 proceedings to seal the records.

17 (2) The county attorney may file a response with the
18 court within thirty days after receiving notice of the sealing
19 proceedings.

20 (3) If the county attorney does not file a response with
21 the court or if the county attorney files a response but indicates
22 that the county attorney does not object to the sealing of the
23 records, the court may order the records of the juvenile that are
24 under consideration to be sealed without conducting a hearing on
25 the motion or application. If the court decides in its discretion

1 to conduct a hearing on the motion or application, the court shall
2 conduct the hearing within thirty days after making that decision
3 and shall give notice, by regular mail, of the date, time, and
4 location of the hearing to the county attorney and to the juvenile
5 who is the subject of the records under consideration.

6 (4) If the county attorney files a response with the
7 court that indicates that the county attorney objects to the
8 sealing of the records, the court shall conduct a hearing on
9 the motion or application within thirty days after the court
10 receives the response. The court shall give notice, by regular
11 mail, of the date, time, and location of the hearing to the county
12 attorney and to the person who is the subject of the records under
13 consideration.

14 (5) After conducting a hearing in accordance with this
15 section, the court may order the records of the juvenile that
16 are the subject of the motion to be sealed if it finds that
17 the juvenile has been rehabilitated to a satisfactory degree.
18 In determining whether the juvenile has been rehabilitated to a
19 satisfactory degree, the court may consider all of the following:

20 (a) The age of the juvenile;

21 (b) The nature of the offense and the role of the
22 juvenile in the offense;

23 (c) The behavior of the juvenile after the adjudication
24 and the juvenile's response to treatment and rehabilitation
25 programs;

1 (d) The education and employment history of the juvenile;
2 and

3 (e) Any other circumstances that may relate to the
4 rehabilitation of the juvenile who is the subject of the records
5 under consideration.

6 (6) The juvenile court or county court shall provide
7 verbal notice to a juvenile whose records are sealed, if that
8 juvenile is present in the court at the time the court issues a
9 sealing order, and explain what sealing a record means.

10 (7) The juvenile court or county court shall provide
11 written notice to a juvenile whose records are sealed under this
12 section by regular mail to the juvenile's last-known address, if
13 that juvenile is not present in the court at the time the court
14 issues a sealing order, that explains what sealing a record means.

15 Sec. 7. (1) If the court orders the records of a juvenile
16 sealed pursuant to section 6 of this act, the juvenile who is
17 subject of the order properly may, and the court, county attorneys,
18 and institutions, persons, or agencies shall, reply that no record
19 exists with respect to the juvenile upon any inquiry in the matter,
20 and the court shall do all of the following:

21 (a) Order that any information or other data concerning
22 any proceedings relating to the arrest, taking into custody,
23 petition, complaint, indictment, information, trial, hearing,
24 adjudication, correctional supervision, dismissal, or disposition
25 be deemed never to have occurred; and

1 (b) Send notice of the order to seal the record to any
2 law enforcement agencies and county attorneys and institutions,
3 persons, or agencies, including treatment providers, therapists,
4 or other service providers, that the court has reason to believe
5 may have a record of the record to be sealed, and order that all
6 original records of the case be sealed.

7 (2) A sealed record is still accessible to law
8 enforcement officers, county attorneys, and the sentencing judge in
9 the investigation of crimes and in the prosecution and sentencing
10 of criminal defendants. Inspection of records that have been
11 ordered sealed under section 6 of this act may be made only by the
12 following persons or for the following purposes:

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

15 (b) The Nebraska Probation System for purposes of
16 juvenile intake services, for presentence and other probation
17 investigations, and for the direct supervision of persons placed
18 on probation;

19 (c) Upon application by the juvenile who is the subject
20 of the sealed records and by the person that is named in that
21 application;

22 (d) At the request of a party in a civil action that is
23 based on a case the records for which are the subject of a sealing
24 order issued under section 6 of this act, as needed for the civil
25 action. The party also may copy the records as needed for the civil

1 action. The sealed records shall be used solely in the civil action
2 and are otherwise confidential and subject to this section; or

3 (e) Persons engaged in bona fide research, with
4 the permission of the court, only if the research results
5 in no disclosure of a juvenile's identity and protects the
6 confidentiality of the record.

7 (3) No officer or employee of the state or any of its
8 political subdivisions shall knowingly release, disseminate, or
9 make available, for any purpose involving employment, bonding,
10 licensing, or education, to any person or to any department,
11 agency, or other instrumentality of the state or of any of
12 its political subdivisions, any information or other data
13 concerning any arrest, taking into custody, petition, complaint,
14 indictment, information, trial, hearing, adjudication, correctional
15 supervision, dismissal, or disposition, the records of which have
16 been sealed pursuant to section 6 of this act and the release,
17 dissemination, or making available of which is not expressly
18 permitted by this section or court order. Any person who violates
19 this section may be held in contempt of court.

20 (4) In any application for employment, license, or other
21 right or privilege, any appearance as a witness, or any other
22 inquiry, a person cannot be questioned with respect to any arrest
23 or taking into custody for which the records were sealed. If an
24 inquiry is made in violation of this subsection, the person may
25 respond as if the sealed arrest or taking into custody did not

1 occur, and the person is not subject to any adverse action because
2 of the arrest or taking into custody or the response. Applications
3 for employment shall contain specific language that states that
4 the applicant is not obligated to disclose sealed juvenile records
5 or sentence. Employers shall not ask if an applicant has had
6 a juvenile record sealed. The Department of Labor shall develop
7 a link on the department's web site to inform employers that
8 employers cannot ask if an applicant had a juvenile record sealed
9 and that application for employment shall contain specific language
10 that states that the applicant is not obligated to disclose
11 sealed juvenile records of arrest, custody, complaint, disposition,
12 diversion, adjudication, or sentence.

13 Sec. 8. Section 43-2,129, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 43-2,129 Sections 43-245 to 43-2,129 and sections 3 to
16 7 of this act shall be known and may be cited as the Nebraska
17 Juvenile Code.

18 Sec. 9. Original sections 25-2701 and 43-2,129, Reissue
19 Revised Statutes of Nebraska, and section 43-245, Revised Statutes
20 Supplement, 2009, are repealed.

21 Sec. 10. The following sections are outright repealed:
22 Sections 43-2,102, 43-2,103, 43-2,104, and 43-2,105, Reissue
23 Revised Statutes of Nebraska.