

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 463**

Introduced by Ashford, 20; at the request of the Governor.

Read first time January 14, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to juveniles; to amend sections 28-416, 29-2258,  
2 29-2262.08, 43-2,108.05, 43-2,129, 79-209, 79-2104.02,  
3 and 79-2115, Revised Statutes Cumulative Supplement,  
4 2010; to change a controlled substances penalty, sealed  
5 records access, and juvenile services plans; to transfer  
6 administrative probation sanctions; to change provisions  
7 relating to truancy; to harmonize provisions; and to  
8 repeal the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 28-416, Revised Statutes Cumulative  
2 Supplement, 2010, is amended to read:

3           28-416 (1) Except as authorized by the Uniform Controlled  
4 Substances Act, it shall be unlawful for any person knowingly or  
5 intentionally: (a) To manufacture, distribute, deliver, dispense, or  
6 possess with intent to manufacture, distribute, deliver, or dispense  
7 a controlled substance; or (b) to create, distribute, or possess with  
8 intent to distribute a counterfeit controlled substance.

9           (2) Except as provided in subsections (4), (5), (7), (8),  
10 (9), and (10) of this section, any person who violates subsection (1)  
11 of this section with respect to: (a) A controlled substance  
12 classified in Schedule I, II, or III of section 28-405 which is an  
13 exceptionally hazardous drug shall be guilty of a Class II felony;  
14 (b) any other controlled substance classified in Schedule I, II, or  
15 III of section 28-405 shall be guilty of a Class III felony; or (c) a  
16 controlled substance classified in Schedule IV or V of section 28-405  
17 shall be guilty of a Class IIIA felony.

18           (3) A person knowingly or intentionally possessing a  
19 controlled substance, except marijuana, unless such substance was  
20 obtained directly or pursuant to a medical order issued by a  
21 practitioner authorized to prescribe while acting in the course of  
22 his or her professional practice, or except as otherwise authorized  
23 by the act, shall be guilty of a Class IV felony.

24           (4)(a) Except as authorized by the Uniform Controlled  
25 Substances Act, any person eighteen years of age or older who

1 knowingly or intentionally manufactures, distributes, delivers,  
2 dispenses, or possesses with intent to manufacture, distribute,  
3 deliver, or dispense a controlled substance or a counterfeit  
4 controlled substance (i) to a person under the age of eighteen years,  
5 (ii) in, on, or within one thousand feet of the real property  
6 comprising a public or private elementary, vocational, or secondary  
7 school, a community college, a public or private college, junior  
8 college, or university, or a playground, or (iii) within one hundred  
9 feet of a public or private youth center, public swimming pool, or  
10 video arcade facility shall be punished by the next higher penalty  
11 classification than the penalty prescribed in subsection (2), (7),  
12 (8), (9), or (10) of this section, depending upon the controlled  
13 substance involved, for the first violation and for a second or  
14 subsequent violation shall be punished by the next higher penalty  
15 classification than that prescribed for a first violation of this  
16 subsection, but in no event shall such person be punished by a  
17 penalty greater than a Class IB felony.

18 (b) For purposes of this subsection:

19 (i) Playground shall mean any outdoor facility, including  
20 any parking lot appurtenant to the facility, intended for recreation,  
21 open to the public, and with any portion containing three or more  
22 apparatus intended for the recreation of children, including sliding  
23 boards, swingsets, and teeterboards;

24 (ii) Video arcade facility shall mean any facility  
25 legally accessible to persons under eighteen years of age, intended

1 primarily for the use of pinball and video machines for amusement,  
2 and containing a minimum of ten pinball or video machines; and

3 (iii) Youth center shall mean any recreational facility  
4 or gymnasium, including any parking lot appurtenant to the facility  
5 or gymnasium, intended primarily for use by persons under eighteen  
6 years of age which regularly provides athletic, civic, or cultural  
7 activities.

8 (5)(a) Except as authorized by the Uniform Controlled  
9 Substances Act, it shall be unlawful for any person eighteen years of  
10 age or older to knowingly and intentionally employ, hire, use, cause,  
11 persuade, coax, induce, entice, seduce, or coerce any person under  
12 the age of eighteen years to manufacture, transport, distribute,  
13 carry, deliver, dispense, prepare for delivery, offer for delivery,  
14 or possess with intent to do the same a controlled substance or a  
15 counterfeit controlled substance.

16 (b) Except as authorized by the Uniform Controlled  
17 Substances Act, it shall be unlawful for any person eighteen years of  
18 age or older to knowingly and intentionally employ, hire, use, cause,  
19 persuade, coax, induce, entice, seduce, or coerce any person under  
20 the age of eighteen years to aid and abet any person in the  
21 manufacture, transportation, distribution, carrying, delivery,  
22 dispensing, preparation for delivery, offering for delivery, or  
23 possession with intent to do the same of a controlled substance or a  
24 counterfeit controlled substance.

25 (c) Any person who violates subdivision (a) or (b) of

1 this subsection shall be punished by the next higher penalty  
2 classification than the penalty prescribed in subsection (2), (7),  
3 (8), (9), or (10) of this section, depending upon the controlled  
4 substance involved, for the first violation and for a second or  
5 subsequent violation shall be punished by the next higher penalty  
6 classification than that prescribed for a first violation of this  
7 subsection, but in no event shall such person be punished by a  
8 penalty greater than a Class IB felony.

9 (6) It shall not be a defense to prosecution for  
10 violation of subsection (4) or (5) of this section that the defendant  
11 did not know the age of the person through whom the defendant  
12 violated such subsection.

13 (7) Any person who violates subsection (1) of this  
14 section with respect to cocaine or any mixture or substance  
15 containing a detectable amount of cocaine in a quantity of:

16 (a) One hundred forty grams or more shall be guilty of a  
17 Class IB felony;

18 (b) At least twenty-eight grams but less than one hundred  
19 forty grams shall be guilty of a Class IC felony; or

20 (c) At least ten grams but less than twenty-eight grams  
21 shall be guilty of a Class ID felony.

22 (8) Any person who violates subsection (1) of this  
23 section with respect to base cocaine (crack) or any mixture or  
24 substance containing a detectable amount of base cocaine in a  
25 quantity of:

1                   (a) One hundred forty grams or more shall be guilty of a  
2 Class IB felony;

3                   (b) At least twenty-eight grams but less than one hundred  
4 forty grams shall be guilty of a Class IC felony; or

5                   (c) At least ten grams but less than twenty-eight grams  
6 shall be guilty of a Class ID felony.

7                   (9) Any person who violates subsection (1) of this  
8 section with respect to heroin or any mixture or substance containing  
9 a detectable amount of heroin in a quantity of:

10                   (a) One hundred forty grams or more shall be guilty of a  
11 Class IB felony;

12                   (b) At least twenty-eight grams but less than one hundred  
13 forty grams shall be guilty of a Class IC felony; or

14                   (c) At least ten grams but less than twenty-eight grams  
15 shall be guilty of a Class ID felony.

16                   (10) Any person who violates subsection (1) of this  
17 section with respect to amphetamine, its salts, optical isomers, and  
18 salts of its isomers, or with respect to methamphetamine, its salts,  
19 optical isomers, and salts of its isomers, in a quantity of:

20                   (a) One hundred forty grams or more shall be guilty of a  
21 Class IB felony;

22                   (b) At least twenty-eight grams but less than one hundred  
23 forty grams shall be guilty of a Class IC felony; or

24                   (c) At least ten grams but less than twenty-eight grams  
25 shall be guilty of a Class ID felony.

1                   (11) Any person knowingly or intentionally possessing  
2 marijuana weighing more than one ounce but not more than one pound  
3 shall be guilty of a Class III misdemeanor.

4                   (12) Any person knowingly or intentionally possessing  
5 marijuana weighing more than one pound shall be guilty of a Class IV  
6 felony.

7                   (13) Any person knowingly or intentionally possessing  
8 marijuana weighing one ounce or less shall:

9                   (a) For the first offense, be guilty of an infraction,  
10 receive a citation, be fined three hundred dollars, and be assigned  
11 to attend a course as prescribed in section 29-433 if the judge  
12 determines that attending such course is in the best interest of the  
13 individual defendant;

14                   (b) For the second offense, be guilty of a Class IV  
15 misdemeanor, receive a citation, and be fined four hundred dollars  
16 and may be imprisoned not to exceed five days; and

17                   (c) For the third and all subsequent offenses, be guilty  
18 of a Class IIIA misdemeanor, receive a citation, be fined five  
19 hundred dollars, and be imprisoned not to exceed seven days.

20                   (14) Any person convicted of violating this section, if  
21 placed on probation, shall, as a condition of probation,  
22 satisfactorily attend and complete appropriate treatment and  
23 counseling on drug abuse provided by a program authorized under the  
24 Nebraska Behavioral Health Services Act or other licensed drug  
25 treatment facility.

1                   (15) Any person convicted of violating this section, if  
2 sentenced to the Department of Correctional Services, shall attend  
3 appropriate treatment and counseling on drug abuse.

4                   (16) Any person knowingly or intentionally possessing a  
5 firearm while in violation of subsection (1) of this section shall be  
6 punished by the next higher penalty classification than the penalty  
7 prescribed in subsection (2), (7), (8), (9), or (10) of this section,  
8 but in no event shall such person be punished by a penalty greater  
9 than a Class IB felony.

10                   (17) A person knowingly or intentionally in possession of  
11 money used or intended to be used to facilitate a violation of  
12 subsection (1) of this section shall be guilty of a Class IV felony.

13                   (18) In addition to the penalties provided in this  
14 section:

15                   (a) If the person convicted or adjudicated of violating  
16 this section is eighteen years of age or younger and has one or more  
17 licenses or permits issued under the Motor Vehicle Operator's License  
18 Act:

19                   (i) For the first offense, the court may, as a part of  
20 the judgment of conviction or adjudication, (A) impound any such  
21 licenses or permits for thirty days and (B) require such person to  
22 attend a drug education class;

23                   (ii) For a second offense, the court may, as a part of  
24 the judgment of conviction or adjudication, (A) impound any such  
25 licenses or permits for ninety days and (B) require such person to

1 complete no fewer than twenty and no more than forty hours of  
2 community service and to attend a drug education class; and

3 (iii) For a third or subsequent offense, the court may,  
4 as a part of the judgment of conviction or adjudication, (A) impound  
5 any such licenses or permits for twelve months and (B) require such  
6 person to complete no fewer than sixty hours of community service, to  
7 attend a drug education class, and to submit to a drug assessment by  
8 a licensed alcohol and drug counselor; and

9 (b) If the person convicted or adjudicated of violating  
10 this section is eighteen years of age or younger and does not have a  
11 permit or license issued under the Motor Vehicle Operator's License  
12 Act:

13 (i) For the first offense, the court may, as part of the  
14 judgment of conviction or adjudication, (A) prohibit such person from  
15 obtaining any permit or any license pursuant to the act for which  
16 such person would otherwise be eligible until thirty days after the  
17 date of such order and (B) require such person to attend a drug  
18 education class;

19 (ii) For a second offense, the court may, as part of the  
20 judgment of conviction or adjudication, (A) prohibit such person from  
21 obtaining any permit or any license pursuant to the act for which  
22 such person would otherwise be eligible until ninety days after the  
23 date of such order and (B) require such person to complete no fewer  
24 than twenty hours and no more than forty hours of community service  
25 and to attend a drug education class; and

1           (iii) For a third or subsequent offense, the court may,  
2 as part of the judgment of conviction or adjudication, (A) prohibit  
3 such person from obtaining any permit or any license pursuant to the  
4 act for which such person would otherwise be eligible until twelve  
5 months after the date of such order and (B) require such person to  
6 complete no fewer than sixty hours of community service, to attend a  
7 drug education class, and to submit to a drug assessment by a  
8 licensed alcohol and drug counselor.

9           A copy of an abstract of the court's conviction or  
10 adjudication shall be transmitted to the Director of Motor Vehicles  
11 pursuant to sections 60-497.01 to 60-497.04 if a license or permit is  
12 impounded or a juvenile is prohibited from obtaining a license or  
13 permit under this subsection.

14           Sec. 2. Section 29-2258, Revised Statutes Cumulative  
15 Supplement, 2010, is amended to read:

16           29-2258 A district probation officer shall:

17           (1) Conduct juvenile intake interviews and investigations  
18 in accordance with ~~section 43-253 utilizing a standardized juvenile~~  
19 ~~detention screening instrument described in section sections 43-253~~  
20 and 43-260.01;

21           (2) Make presentence and other investigations, as may be  
22 required by law or directed by a court in which he or she is serving;

23           (3) Supervise probationers in accordance with the rules  
24 and regulations of the office and the directions of the sentencing  
25 court;

1           (4) Advise the sentencing court, in accordance with the  
2 Nebraska Probation Administration Act and such rules and regulations  
3 of the office, of violations of the conditions of probation by  
4 individual probationers;

5           (5) Advise the sentencing court, in accordance with the  
6 rules and regulations of the office and the direction of the court,  
7 when the situation of a probationer may require a modification of the  
8 conditions of probation or when a probationer's adjustment is such as  
9 to warrant termination of probation;

10           (6) Provide each probationer with a statement of the  
11 period and conditions of his or her probation;

12           (7) Whenever necessary, exercise the power of arrest or  
13 temporary custody as provided in section ~~29-2262.08~~ ~~or~~ 29-2266 or  
14 section 3 of this act;

15           (8) Establish procedures for the direction and guidance  
16 of deputy probation officers under his or her jurisdiction and advise  
17 such officers in regard to the most effective performance of their  
18 duties;

19           (9) Supervise and evaluate deputy probation officers  
20 under his or her jurisdiction;

21           (10) Delegate such duties and responsibilities to a  
22 deputy probation officer as he or she deems appropriate;

23           (11) Make such reports as required by the administrator,  
24 the judges of the probation district in which he or she serves, or  
25 the Supreme Court;

1                   (12) Keep accurate and complete accounts of all money or  
2 property collected or received from probationers and give receipts  
3 therefor;

4                   (13) Cooperate fully with and render all reasonable  
5 assistance to other probation officers;

6                   (14) In counties with a population of less than twenty-  
7 five thousand people, participate in pretrial diversion programs  
8 established pursuant to sections 29-3601 to 29-3604 and juvenile  
9 pretrial diversion programs established pursuant to sections  
10 43-260.02 to 43-260.07 as requested by judges of the probation  
11 district in which he or she serves, except that participation in such  
12 programs shall not require appointment of additional personnel and  
13 shall be consistent with the probation officer's current caseload;

14                   (15) Participate, at the direction of the probation  
15 administrator pursuant to an interlocal agreement which meets the  
16 requirements of section 29-2255, in non-probation-based programs and  
17 services;

18                   (16) Perform such other duties not inconsistent with the  
19 Nebraska Probation Administration Act or the rules and regulations of  
20 the office as a court may from time to time direct; and

21                   (17) Exercise all powers and perform all duties necessary  
22 and proper to carry out his or her responsibilities.

23                   Sec. 3. Section 29-2262.08, Revised Statutes Cumulative  
24 Supplement, 2010, is amended to read:

25                   ~~29-2262.08~~ (1) For purposes of this section:

1           (a) Administrative sanction means additional probation  
2 requirements imposed upon a juvenile subject to the supervision of a  
3 probation officer by his or her probation officer, with the full  
4 knowledge and consent of such juvenile and such juvenile's parents or  
5 guardian, designed to hold such juvenile accountable for substance  
6 abuse or noncriminal violations of conditions of probation,  
7 including, but not limited to:

8           (i) Counseling or reprimand by his or her probation  
9 officer;

10           (ii) Increased supervision contact requirements;

11           (iii) Increased substance abuse testing;

12           (iv) Referral for substance abuse or mental health  
13 evaluation or other specialized assessment, counseling, or treatment;

14           (v) Modification of a designated curfew for a period not  
15 to exceed thirty days;

16           (vi) Community service for a specified number of hours  
17 pursuant to sections 29-2277 to 29-2279;

18           (vii) Travel restrictions to stay within his or her  
19 residence or county of residence or employment unless otherwise  
20 permitted by the supervising probation officer;

21           (viii) Restructuring court-imposed financial obligations  
22 to mitigate their effect on the juvenile subject to the supervision  
23 of a probation officer; and

24           (ix) Implementation of educational or cognitive  
25 behavioral programming;

1                   (b) Noncriminal violation means activities or behaviors  
2 of a juvenile subject to the supervision of a probation officer which  
3 create the opportunity for re-offending or which diminish the  
4 effectiveness of probation supervision resulting in a violation of an  
5 original condition of probation, including, but not limited to:

- 6                   (i) Moving traffic violations;
- 7                   (ii) Failure to report to his or her probation officer;
- 8                   (iii) Leaving the juvenile's residence, jurisdiction of  
9 the court, or the state without the permission of the court or his or  
10 her probation officer;
- 11                   (iv) Failure to regularly attend school, vocational  
12 training, other training, counseling, treatment, programming, or  
13 employment;
- 14                   (v) Noncompliance with school rules;
- 15                   (vi) Continued violations of home rules;
- 16                   (vii) Failure to notify his or her probation officer of  
17 change of address, school, or employment;
- 18                   (viii) Frequenting places where controlled substances are  
19 illegally sold, used, distributed, or administered and association  
20 with persons engaged in illegal activity;
- 21                   (ix) Failure to perform community service as directed;

22 and

- 23                   (x) Curfew or electronic monitoring violations; and
- 24                   (c) Substance abuse violation means activities or  
25 behaviors of a juvenile subject to the supervision of a probation

1 officer associated with the use of chemical substances or related  
2 treatment services resulting in a violation of an original condition  
3 of probation, including, but not limited to:

4 (i) Positive breath test for the consumption of alcohol;

5 (ii) Positive urinalysis for the illegal use of drugs;

6 (iii) Failure to report for alcohol testing or drug  
7 testing;

8 (iv) Failure to appear for or complete substance abuse or  
9 mental health treatment evaluations or inpatient or outpatient  
10 treatment; and

11 (v) Tampering with alcohol or drug testing.

12 (2) Whenever a probation officer has reasonable cause to  
13 believe that a juvenile subject to the supervision of a probation  
14 officer has committed or is about to commit a substance abuse  
15 violation or noncriminal violation while on probation, but that such  
16 juvenile will not attempt to leave the jurisdiction and will not  
17 place lives or property in danger, the probation officer shall  
18 either:

19 (a) Impose one or more administrative sanctions with the  
20 approval of his or her chief probation officer or such chief's  
21 designee. The decision to impose administrative sanctions in lieu of  
22 formal revocation proceedings rests with the probation officer and  
23 his or her chief probation officer or such chief's designee and shall  
24 be based upon such juvenile's risk level, the severity of the  
25 violation, and the juvenile's response to the violation. If

1 administrative sanctions are to be imposed, such juvenile shall  
2 acknowledge in writing the nature of the violation and agree upon the  
3 administrative sanction with approval of such juvenile's parents or  
4 guardian. Such juvenile has the right to decline to acknowledge the  
5 violation, and if he or she declines to acknowledge the violation,  
6 the probation officer shall submit a written report pursuant to  
7 subdivision (2)(b) of this section. A copy of the report shall be  
8 submitted to the county attorney of the county where probation was  
9 imposed; or

10 (b) Submit a written report to the adjudicating court  
11 with a copy to the county attorney of the county where probation was  
12 imposed, outlining the nature of the probation violation and request  
13 that formal revocation proceedings be instituted against the juvenile  
14 subject to the supervision of a probation officer.

15 (3) Whenever a probation officer has reasonable cause to  
16 believe that a juvenile subject to the supervision of a probation  
17 officer has violated or is about to violate a condition of probation  
18 other than a substance abuse violation or noncriminal violation and  
19 that such juvenile will not attempt to leave the jurisdiction and  
20 will not place lives or property in danger, the probation officer  
21 shall submit a written report to the adjudicating court, with a copy  
22 to the county attorney of the county where probation was imposed,  
23 outlining the nature of the probation violation.

24 (4) Whenever a probation officer has reasonable cause to  
25 believe that a juvenile subject to the supervision of a probation

1 officer has violated or is about to violate a condition of his or her  
2 probation and that such juvenile will attempt to leave the  
3 jurisdiction or will place lives or property in danger, the probation  
4 officer shall take such juvenile into temporary custody without a  
5 warrant and may call on any peace officer for assistance as provided  
6 in section 43-248.

7 (5) Immediately after detention pursuant to subsection  
8 (4) of this section, the probation officer shall notify the county  
9 attorney of the county where probation was imposed and submit a  
10 written report of the reason for such detention and of any violation  
11 of probation. After prompt consideration of the written report, the  
12 county attorney shall:

13 (a) Order the release of the juvenile from confinement  
14 subject to the supervision of a probation officer; or

15 (b) File with the adjudicating court a motion or  
16 information to revoke the probation.

17 (6) Whenever a county attorney receives a report from a  
18 probation officer that a juvenile subject to the supervision of a  
19 probation officer has violated a condition of probation, the county  
20 attorney may file a motion or information to revoke probation.

21 (7) The probation administrator shall adopt and  
22 promulgate rules and regulations to carry out this section.

23 Sec. 4. Section 43-2,108.05, Revised Statutes Cumulative  
24 Supplement, 2010, is amended to read:

25 43-2,108.05 (1) If the court orders the records of a

1 juvenile sealed pursuant to section 43-2,108.04, the juvenile who is  
2 the subject of the order properly may, and the court, county  
3 attorneys, city attorneys, and institutions, persons, or agencies  
4 shall, reply that no record exists with respect to the juvenile upon  
5 any public inquiry in the matter, and the court shall do all of the  
6 following:

7 (a) Order that any information or other data concerning  
8 any proceedings relating to the arrest, taking into custody,  
9 petition, complaint, indictment, information, trial, hearing,  
10 adjudication, correctional supervision, dismissal, or disposition be  
11 deemed never to have occurred; and

12 (b) Send notice of the order to seal the record to the  
13 Nebraska Commission on Law Enforcement and Criminal Justice and, if  
14 the record includes impoundment or prohibition to obtain a license or  
15 permit pursuant to section 43-287, to the Department of Motor  
16 Vehicles and to any law enforcement agencies and county attorneys or  
17 city attorneys and institutions, persons, or agencies, including  
18 treatment providers, therapists, or other service providers,  
19 referenced in the court record and order that all original records of  
20 the case be sealed.

21 (2) Except as provided in subsection (3) of this section,  
22 an order to seal the record applies to every public office or agency  
23 that has a record relating to the case, regardless of whether it  
24 receives notice of the hearing on the sealing of the record or a copy  
25 of the order. Upon the written request of a person whose record has

1    been sealed and the presentation of a copy of such order, a public  
2    office or agency shall seal all original records relating to the  
3    case.

4                   (3) A sealed record is still accessible to law  
5    enforcement officers, county attorneys, city attorneys, and the  
6    sentencing judge in the investigation of crimes and in the  
7    prosecution and sentencing of criminal defendants. Inspection of  
8    records that have been ordered sealed under section 43-2,108.04 may  
9    be made only by the following persons or for the following purposes:

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

12                   (b) By the Nebraska Probation System for purposes of  
13    juvenile intake services, for presentence and other probation  
14    investigations, and for the direct supervision of persons placed on  
15    probation;

16                   (c) By the Department of Health and Human Services for  
17    purposes of juvenile intake services, the preparation of case plans  
18    and reports, the preparation of evaluations, or the supervision and  
19    protection of persons placed with the department or for licensing or  
20    certification purposes under sections 71-1901 to 71-1906.01 or the  
21    Child Care Licensing Act;

22                   (d) Upon application, by the juvenile who is the subject  
23    of the sealed record and by the person that is named in that  
24    application;

25                   (e) At the request of a party in a civil action that is

1 based on a case the record for which is the subject of a sealing  
2 order issued under section 43-2,108.04, as needed for the civil  
3 action. The party also may copy the record as needed for the civil  
4 action. The sealed record shall be used solely in the civil action  
5 and is otherwise confidential and subject to this section; ~~or~~

6 (f) By persons engaged in bona fide research, with the  
7 permission of the court, only if the research results in no  
8 disclosure of a juvenile's identity and protects the confidentiality  
9 of the record; or -

10 (g) By a law enforcement agency if a person whose record  
11 has been sealed applies for employment with the law enforcement  
12 agency.

13 (4) No person shall knowingly release, disseminate, or  
14 make available, for any purpose involving employment, bonding,  
15 licensing, or education, to any person or to any department, agency,  
16 or other instrumentality of the state or of any of its political  
17 subdivisions, any information or other data concerning any arrest,  
18 taking into custody, petition, complaint, indictment, information,  
19 trial, hearing, adjudication, correctional supervision, dismissal, or  
20 disposition, the record of which has been sealed pursuant to section  
21 43-2,108.04 and the release, dissemination, or making available of  
22 which is not expressly permitted by this section or court order.  
23 Nothing in this section shall prohibit the Department of Health and  
24 Human Services from releasing, disseminating, or making available  
25 information from sealed records in the performance of its duties with

1 respect to the supervision and protection of persons served by the  
2 department. Any person who violates this section may be held in  
3 contempt of court.

4 (5) In any application for employment, license, or other  
5 right or privilege, any appearance as a witness, or any other  
6 inquiry, a person cannot be questioned with respect to any arrest or  
7 taking into custody for which the record is sealed. If an inquiry is  
8 made in violation of this subsection, the person may respond as if  
9 the sealed arrest or taking into custody did not occur, and the  
10 person is not subject to any adverse action because of the arrest or  
11 taking into custody or the response. Applications for employment  
12 shall contain specific language that states that the applicant is not  
13 obligated to disclose a sealed juvenile record or sentence. Employers  
14 shall not ask if an applicant has had a juvenile record sealed. The  
15 Department of Labor shall develop a link on the department's web site  
16 to inform employers that employers cannot ask if an applicant had a  
17 juvenile record sealed and that an application for employment shall  
18 contain specific language that states that the applicant is not  
19 obligated to disclose a sealed juvenile record of arrest, custody,  
20 complaint, disposition, diversion, adjudication, or sentence.

21 Sec. 5. Section 43-2,129, Revised Statutes Cumulative  
22 Supplement, 2010, is amended to read:

23 43-2,129 Sections 43-245 to 43-2,129 and section 3 of  
24 this act shall be known and may be cited as the Nebraska Juvenile  
25 Code.

1           Sec. 6. Section 79-209, Revised Statutes Cumulative  
2 Supplement, 2010, is amended to read:

3           79-209 In all school districts in this state, any  
4 superintendent, principal, teacher, or member of the school board who  
5 knows of any violation of section 79-201 on the part of any child of  
6 school age, his or her parent, the person in actual or legal control  
7 of such child, or any other person shall within three days report  
8 such violation to the attendance officer of the school, who shall  
9 investigate the case. When of his or her personal knowledge, by  
10 report or complaint from any resident of the district, or by report  
11 or complaint as provided in this section, the attendance officer  
12 believes that any child is unlawfully absent from school, the  
13 attendance officer shall immediately investigate.

14           All school districts shall have a written policy on  
15 excessive absenteeism developed in collaboration with the county  
16 attorney of the county in which the principal office of the school  
17 district is located. The policy shall include a provision indicating  
18 how the school district and the county attorney will handle cases in  
19 which excessive absences are due to documented serious illness, and  
20 shall state the number of absences or the hourly equivalent upon the  
21 occurrence of which the school shall render all services in its power  
22 to compel such child to attend some public, private, denominational,  
23 or parochial school, which the person having control of the child  
24 shall designate, in an attempt to address the problem of excessive  
25 absenteeism. The number of absences in the policy shall not exceed

1 five days per quarter or the hourly equivalent. School districts may  
2 use excused and unexcused absences for purposes of the policy. Such  
3 services shall include, but need not be limited to:

4 (1) One or more meetings between a school attendance  
5 officer, school social worker or the school principal or a member of  
6 the school administrative staff designated by the school  
7 administration if such school does not have a school social worker,  
8 the child's parent or guardian, and the child, if necessary, to  
9 report and to attempt to solve the problem of excessive absenteeism;

10 (2) Educational counseling to determine whether  
11 curriculum changes, including, but not limited to, enrolling the  
12 child in an alternative education program that meets the specific  
13 educational and behavioral needs of the child, would help solve the  
14 problem of excessive absenteeism;

15 (3) Educational evaluation, which may include a  
16 psychological evaluation, to assist in determining the specific  
17 condition, if any, contributing to the problem of excessive  
18 absenteeism, supplemented by specific efforts by the school to help  
19 remedy any condition diagnosed; and

20 (4) Investigation of the problem of excessive absenteeism  
21 by the school social worker, or if such school does not have a school  
22 social worker, by the school principal or a member of the school  
23 administrative staff designated by the school administration, to  
24 identify conditions which may be contributing to the problem. If  
25 services for the child and his or her family are determined to be

1 needed, the school social worker or the school principal or a member  
2 of the school administrative staff performing the investigation shall  
3 meet with the parent or guardian and the child to discuss any  
4 referral to appropriate community agencies for economic services,  
5 family or individual counseling, or other services required to remedy  
6 the conditions that are contributing to the problem of excessive  
7 absenteeism.

8 If a child is absent more than ten days per year or the  
9 hourly equivalent or is suspended from school for any reason, the  
10 school district shall inform and request from juvenile probation  
11 officers as defined in section 29-2246, the Department of Health and  
12 Human Services and any private entity providing services to children  
13 and families pursuant to a contract with the department, and the  
14 Nebraska Commission on Law Enforcement and Criminal Justice any  
15 information relating to such child available to the officers,  
16 department, entities, and commission. The officers, department,  
17 entities, and commission shall provide any such information in their  
18 records to the school district.

19 If the child is absent more than twenty days per year or  
20 the hourly equivalent, the attendance officer shall file a report  
21 with the county attorney of the county in which such person resides.  
22 The county attorney may file a complaint against a person violating  
23 section 79-201 before the judge of the county court of the county in  
24 which such person resides charging such person with violation of  
25 section 79-201 or may file a petition under the Nebraska Juvenile

1 Code alleging the person violating section 79-201 is a juvenile  
2 described in subdivision (3)(a) or (3)(b) of section 43-247. Nothing  
3 in this section shall preclude a county attorney from being involved  
4 at any stage in the process to address excessive absenteeism.

5 Sec. 7. Section 79-2104.02, Revised Statutes Cumulative  
6 Supplement, 2010, is amended to read:

7 79-2104.02 Each learning community coordinating council  
8 shall use any funds received after January 15, 2011, pursuant to  
9 section 79-1241.03 for evaluation and research pursuant to plans  
10 developed by the learning community coordinating council with  
11 assistance from the educational service unit coordinating council and  
12 the student achievement coordinator and adjusted on an ongoing basis.  
13 The evaluation shall be conducted by one or more other entities or  
14 individuals who are not employees of the learning community and shall  
15 measure progress toward the goals and objectives of the learning  
16 community, which goals and objectives shall include reduction of  
17 excessive absenteeism of students in the member school districts of  
18 the learning community, closing academic achievement gaps based on  
19 socioeconomic status, and the effectiveness of the approaches used by  
20 the learning community or pilot project to reach such goals and  
21 objectives. Any research conducted pursuant to this section shall  
22 also be related to such goals and objectives. After the first full  
23 year of operation, each learning community shall report evaluation  
24 and research results to the Education Committee of the Legislature on  
25 or before December 1 of each year.

1           Sec. 8. Section 79-2115, Revised Statutes Cumulative  
2 Supplement, 2010, is amended to read:

3           79-2115 (1) Beginning on the effective date of this act  
4 and continuing until the annual rate of truancy in learning community  
5 school districts, as calculated by the State Department of Education  
6 based on information provided by school districts, is reduced by  
7 fifty percent from the rate of truancy calculated for school year  
8 2010-11, not less than fifty percent of the learning community funds  
9 distributed pursuant to section 79-2103 shall be used only for  
10 truancy intervention programs that incorporate evidence-based  
11 practices, pursuant to a plan developed by the superintendents of the  
12 member school districts. Any program receiving funds under this  
13 subsection shall be approved by a majority of the members of the  
14 learning community coordinating council, the superintendents of two-  
15 thirds of the member school districts of the learning community.

16           (2) After the reduction of the annual rate of truancy in  
17 learning community districts described in subsection (1) of this  
18 section:

19           (a) Learning community funds distributed pursuant to  
20 section 79-2103 may be used by the learning community coordinating  
21 council receiving the funds for:

22           ~~(a)-(i)~~ The administration and operation of the learning  
23 community;

24           ~~(b)-(ii)~~ The administration, operations, and programs of  
25 elementary learning centers pursuant to sections 79-2112 to 79-2114;

1           ~~(e)~~—(iii) Supplements for extended hours to teachers in  
2 elementary schools in which at least thirty-five percent of the  
3 students attending the school who reside in the attendance area of  
4 such school qualify for free or reduced-price lunches;

5           ~~(d)~~—(iv) Transportation for parents of elementary  
6 students who qualify for free or reduced-price lunches to school  
7 functions of such students in elementary schools;

8           ~~(e)~~—(v) Up to six social workers to provide services  
9 through the elementary learning centers; and

10          ~~(f)~~—(vi) Pilot projects authorized pursuant to section  
11 79-2104; -

12          ~~(2)~~—(b) Each learning community coordinating council  
13 shall adopt policies and procedures for granting supplements for  
14 extended hours and for providing transportation for parents if any  
15 such funds are to be used for such purposes. An example of a pilot  
16 project that could receive such funds would be a school designated as  
17 Jump Start Center focused on providing intensive literacy services  
18 for elementary students with low reading scores; and -

19          ~~(3)~~—(c) Each learning community coordinating council  
20 shall provide for financial audits of elementary learning centers and  
21 pilot projects. A learning community coordinating council shall serve  
22 as the recipient of private funds donated to support any elementary  
23 learning center or pilot project receiving funds from such learning  
24 community coordinating council and shall assure that the use of such  
25 private funds is included in the financial audits required pursuant

1 to this section.

2           (3) For purposes of this section, truancy means the  
3 students who are absent for more than ten days in a school year.

4           Sec. 9. Original sections 28-416, 29-2258, 29-2262.08,  
5 43-2,108.05, 43-2,129, 79-209, 79-2104.02, and 79-2115, Revised  
6 Statutes Cumulative Supplement, 2010, are repealed.