

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 301

Introduced by Ashford, 20.

Read first time January 12, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Juvenile Code; to amend sections
2 43-412 and 43-416, Reissue Revised Statutes of Nebraska,
3 and sections 43-2,108.03, 43-2,108.04, and 43-2,108.05,
4 Revised Statutes Cumulative Supplement, 2010; to change
5 and provide provisions for sealing of records; to
6 harmonize provisions; and to repeal the original
7 sections.

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

1 Section 1. Section 43-2,108.03, Revised Statutes
2 Cumulative Supplement, 2010, is amended to read:

3 43-2,108.03 (1) Notwithstanding subsection (2) of this
4 section, if the juvenile was taken into custody or arrested but no
5 juvenile petition or criminal complaint was filed against the
6 juvenile with respect to the arrest or custody, the county attorney
7 or city attorney shall notify the appropriate public office or agency
8 responsible for the arrest or custody that no criminal charge or
9 juvenile court petition was filed.

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

16 (3) If the juvenile was taken into custody or arrested
17 and charges were filed, but later dismissed, the county attorney or
18 city attorney shall notify the appropriate public office or agency
19 responsible for the arrest or custody and the court where the charge
20 or petition was filed that the charge or juvenile court petition was
21 dismissed.

22 ~~(3)-(4)~~ Upon receiving notice under subsection (1), ~~(2)~~,
23 or ~~(2)-(3)~~ of this section, the public office, ~~or~~ agency, or court
24 shall immediately seal all ~~original~~ records housed at that public
25 office, ~~or~~ agency, or court pertaining to the citation, arrest,

1 record of custody, complaint, disposition, diversion, or mediation.

2 ~~(4) If (5) At any time after~~ a juvenile described in
3 section 43-2,108.01 has satisfactorily completed such juvenile's
4 probation, supervision, or other treatment or rehabilitation program
5 provided under the Nebraska Juvenile Code or has satisfactorily
6 completed such juvenile's diversion or sentence in county court, ~~and~~
7 ~~the juvenile has attained at least the age of seventeen years, the~~
8 court shall initiate proceedings pursuant to section 43-2,108.04 to
9 seal the record pertaining to such disposition or ~~—~~adjudication, ~~or~~
10 under the juvenile code or diversion or sentence of the county court.

11 ~~(5) At any time after a juvenile described in section~~
12 ~~43-2,108.01 has satisfactorily completed probation, supervision, or~~
13 ~~other treatment or rehabilitation program under the code or has~~
14 ~~satisfactorily completed diversion or sentence of the county court,~~
15 ~~the court may, upon the motion of the juvenile or the court's own~~
16 ~~motion, initiate proceedings to seal the record pertaining to such~~
17 ~~disposition, dismissal following pretrial diversion under section~~
18 ~~43-260.04, or disposition under section 43-286 or any county court~~
19 ~~records pertaining to such county court diversion or sentence.~~

20 Sec. 2. Section 43-2,108.04, Revised Statutes Cumulative
21 Supplement, 2010, is amended to read:

22 43-2,108.04 (1) The county attorney or city attorney
23 involved in the case that is the subject of the proceeding to seal
24 the record shall be promptly notified of the proceedings, and the
25 Department of Health and Human Services shall also be promptly

1 notified of the proceedings if the juvenile whose record is the
2 subject of the proceeding to seal the record is a ward of the state
3 or if the department was a party in the case.

4 (2) A party notified under subsection (1) of this section
5 may file a response with the court within thirty days after receiving
6 such notice.

7 (3) If a party notified under subsection (1) of this
8 section does not file a response with the court or files a response
9 that indicates there is no objection to the sealing of the record,
10 the court may order the record of the juvenile under consideration be
11 sealed without conducting a hearing on the motion. If the court
12 decides in its discretion to conduct a hearing on the motion, the
13 court shall conduct the hearing within ~~thirty~~sixty days after making
14 that decision and shall give notice, by regular mail, of the date,
15 time, and location of the hearing to the parties receiving notice
16 under subsection (1) of this section and to the juvenile who is the
17 subject of the record under consideration.

18 (4) If a party receiving notice under subsection (1) of
19 this section files a response with the court objecting to the sealing
20 of the record, the court shall conduct a hearing on the motion within
21 ~~thirty~~sixty days after the court receives the response. The court
22 shall give notice, by regular mail, of the date, time, and location
23 of the hearing to the parties receiving notice under subsection (1)
24 of this section and to the juvenile who is the subject of the record
25 under consideration.

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

7 (a) The age of the juvenile;

8 (b) The nature of the offense and the role of the
9 juvenile in the offense;

10 (c) The behavior of the juvenile after the adjudication
11 and the juvenile's response to treatment and rehabilitation programs;

12 (d) The education and employment history of the juvenile;
13 and

14 (e) Any other circumstances that may relate to the
15 rehabilitation of the juvenile who is the subject of the record under
16 consideration.

17 (6) If, after conducting the hearing in accordance with
18 this section, the juvenile is not found to be satisfactorily
19 rehabilitated such that the record is not ordered to be sealed, a
20 juvenile who is a person described in section 43-2,108.01 may not
21 move the court to seal the record for a period of one year, unless
22 waived by the court.

23 (7) The juvenile court or county court shall provide
24 verbal notice to a juvenile whose record is sealed, if that juvenile
25 is present in the court at the time the court issues a sealing order,

1 and explain what sealing a record means.

2 (8) The juvenile court or county court shall provide
3 written notice to a juvenile whose record is sealed under this
4 section by regular mail to the juvenile's last-known address, if that
5 juvenile is not present in the court at the time the court issues a
6 sealing order, that explains what sealing a record means.

7 Sec. 3. Section 43-2,108.05, Revised Statutes Cumulative
8 Supplement, 2010, is amended to read:

9 43-2,108.05 (1) If the court orders the records of a
10 juvenile sealed pursuant to section 43-2,108.04: ~~;~~

11 (a) Upon any inquiry into the matter, the juvenile who is
12 the subject of the order properly may, and the court, county
13 attorneys, city attorneys, and institutions, persons, or agencies
14 shall, reply that no record exists with respect to the juvenile; and
15 ~~upon any public inquiry in the matter, and the~~

16 (b) The court shall: do all of the following:

17 ~~(a)~~ (i) Order that any information or other data
18 concerning any proceedings relating to the arrest, taking into
19 custody, petition, complaint, indictment, information, trial,
20 hearing, adjudication, correctional supervision, dismissal, or
21 disposition be deemed never to have occurred; ~~and~~

22 ~~(b)~~ (ii) Send notice of the order to seal the record (A)
23 to the Nebraska Commission on Law Enforcement and Criminal Justice,
24 (B) ~~and,~~ if the record includes impoundment or prohibition to obtain
25 a license or permit pursuant to section 43-287, to the Department of

1 Motor Vehicles, (C) and to any person referenced in the court record
2 including law enforcement agencies, and county attorneys, or city
3 attorneys, and institutions, persons, or and agencies, including
4 treatment providers, therapists, or other service providers, the
5 Department of Health and Human Services; referenced in the court
6 record

7 (iii) Order all notified under subdivision (1)(b)(ii) of
8 this section to seal and order that all original records of the case;
9 and be sealed.

10 (iv) If the case was transferred from district court to
11 juvenile court or was transferred under section 43-282, send notice
12 of the order to seal the record to transferring court.

13 (2) Except as provided in subsection (3) of this section,
14 an order to seal the record applies to every public office or agency
15 that has a record relating to the case, regardless of whether it
16 receives notice of the hearing on the sealing of the record or a copy
17 of the order. Upon the written request of a person whose record has
18 been sealed and the presentation of a copy of such order, a public
19 office or agency shall seal all original records relating to the
20 case.

21 (3) A sealed record is still accessible to law
22 enforcement officers, county attorneys, city attorneys, and the
23 sentencing judge in the investigation of crimes and in the
24 prosecution and sentencing of criminal defendants. Inspection of
25 records that have been ordered sealed under section 43-2,108.04 may

1 be made only by the following persons or for the following purposes:

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

4 (b) By the court, city attorney, or county attorney for
5 purposes of collection of any remaining parental support or
6 obligation balances under section 43-290;

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

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

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

24 ~~(e)-(f)~~ At the request of a party in a civil action that
25 is based on a case the record for which is the subject of a sealing

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

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

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

25 (5) In any application for employment, license, or other

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

17 Sec. 4. Section 43-412, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 43-412 (1) Every juvenile committed to the Office of
20 Juvenile Services pursuant to the Nebraska Juvenile Code or pursuant
21 to subsection (3) of section 29-2204 shall remain committed until he
22 or she attains the age of nineteen or is legally discharged.

23 (2) The discharge of any juvenile pursuant to the rules
24 and regulations or upon his or her attainment of the age of nineteen
25 shall be a complete release from all penalties incurred by conviction

1 or adjudication of the offense for which he or she was committed.

2 (3) The Office of Juvenile Services shall provide the
3 committing court with written notification of the juvenile's
4 discharge within thirty days of a juvenile being discharged from the
5 care and custody of the office.

6 Sec. 5. Section 43-416, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 43-416 The Office of Juvenile Services shall have
9 administrative authority over the parole function for juveniles
10 committed to a youth rehabilitation and treatment center and may (1)
11 determine the time of release on parole of committed juveniles
12 eligible for such release, (2) fix the conditions of parole, revoke
13 parole, issue or authorize the issuance of detainers for the
14 apprehension and detention of parole violators, and impose other
15 sanctions short of revocation for violation of conditions of parole,
16 and (3) determine the time of discharge from parole. The office shall
17 provide the committing court with written notification of the
18 juvenile's discharge from parole within thirty days of a juvenile
19 being discharged from the supervision of the office.

20 Sec. 6. Original sections 43-412 and 43-416, Reissue
21 Revised Statutes of Nebraska, and sections 43-2,108.03, 43-2,108.04,
22 and 43-2,108.05, Revised Statutes Cumulative Supplement, 2010, are
23 repealed.