

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB354

Hearing Date: Thursday January 31, 2019
Committee On: Judiciary
Introducer: Pansing Brooks
One Liner: Change provisions relating to sealing of juvenile records

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Brandt, DeBoer, Lathrop, Morfeld, Pansing Brooks, Slama, Wayne
Nay:		
Absent:	1	Senator Chambers
Present Not Voting:		

Oral Testimony:

Proponents:

Senator Patty Pansing Brooks
Christine Henningsen
Shakil Malik
Jasmine Jones
Anne Hobbs
Jacinta Dai-Klabunde
Margene Timm
Juliet Summers

Representing:

Introducer
Nebraska Youth Advocates
Nebraska County Attorneys Association
Juvenile Justice Council & Operation Youth Success
self
Legal Aid of Nebraska
Nebraska Criminal Defense Attorneys Association
Voices for Children in Nebraska

Opponents:

Larry Storer

Representing:

Self

Neutral:

Representing:

Summary of purpose and/or changes:

Section 1

Amends section 43-260.04 which describes the juvenile pretrial diversion program by adding a subsection (9) that requires the records to be sealed upon discharge from the program.

Section 2

Amends section 43-2,108 regarding the case file in juvenile court by adding language that the public case file shall not contain any HIPAA information.

Section 3

Amends section 43-2,108.01 to include another factor in sealing a juvenile record by including the situation where a felony criminal complaint was filed but was subsequently transferred to juvenile court. Also adds a new subsection (2) that provides that the changes made by LB 354 apply whether the offense occurred before or after the effective date of

the bill.

Section 4

Amends section 43-2,108.02 by adding a new subsection (1)(a) that provides notice that the juveniles record will be automatically sealed dismissal or completion of the diversion program. Maintains language allowing the juvenile or parent or guardian to request the sealing of the record. The Supreme Court develops the notices in developmentally appropriate language no later than 1/1/20. The notices are attached to the juvenile petition or criminal complaint.

Section 5

Amends section 43-2,108.03 and provides that if the juvenile case is not filed, dismissed, supervision/probation completed or diversion or mediation is completed, the county or city attorney (not filed or diversion completed) or court (dismissal or supervision/probation) shall provide the notice in section 4. If the juvenile discovers that the record was not automatically sealed shall contact either the court or county attorney who shall seal the record.

Section 6

Amends section 43-2,108.04 which addresses the process when an action to seal the record has been undertaken. The bill provides that all parties shall be notified of responses and if a response objects to the sealing of the record, the response must include factors that form the basis for the objection. If no response is filed the court must seal the record. The section establishes a preponderance of evidence standard for the court to be required to seal the record.

Section 7

Amends section 43-2,108.05 to require an explanation, verbal or written, to the juvenile as to what sealing the record means along with contact information for each agency subject to the sealing order. The proposal adds the individual and others authorized by the individual to the list of those allowed access to the sealed records. A person who negligently, recklessly, knowingly and intentionally violates the section commits a Class V misdemeanor.

Section 8

Repeals original sections.

Explanation of amendments:

The Committee Amendment proposes five changes to LB 354.

First it removes section 2 of the bill that would have prohibited any information covered by the Health Insurance Portability and Accountability Act (HIPAA) from appearing in the juvenile court public case file.

Second, it amends section 1 of the bill (Section 43-260.04) that addresses juvenile pretrial diversion programs by striking language regarding the sealing of the record and rewrites language instructing a response to a public inquiry as if there was no record of participation in the diversion program. In addition the amendment provides a list of those that may have access to the record upon proper verification of their identity.

Third, the amendment rewrites proposed section 43-2,108.01(2) regarding retroactivity, to provide that retroactivity does not apply in situations where a county or city attorney declined to file, offered pretrial diversion, filed in juvenile court or other situations (section 43-2,108.01). It also eliminates the retroactivity for notices provided by the city or county attorney (section 43-2,108.02).

Fourth, the Committee Amendment amends section 7 of the bill (section 43-2,108.05) that addresses juvenile records that are sealed to require satisfactory identification of an individual authorized to access a sealed record.

Fifth, the standard for a violation of section 43-2,108.05, improperly disclosing sealed records, is changed from "negligently, recklessly or knowingly and intentionally" to "knowingly".

Steve Lathrop, Chairperson