

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 669

Introduced by Flood, 19.

Read first time January 19, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to juveniles; to amend sections 43-2,108.01,
2 43-2,108.02, 43-2,108.03, 43-2,108.04, and 43-2,108.05,
3 Revised Statutes Cumulative Supplement, 2010; to change
4 provisions relating to sealing of records; and to repeal
5 the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-2,108.01, Revised Statutes
2 Cumulative Supplement, 2010, is amended to read:

3 43-2,108.01 Sections 43-2,108.01 to 43-2,108.05 apply
4 only to persons who were under the age of eighteen years when the
5 offense took place and after being arrested or taken into custody the
6 county attorney or city attorney (1) released the juvenile without
7 filing a juvenile petition or criminal complaint, (2) offered
8 juvenile pretrial diversion or mediation to the juvenile under the
9 Nebraska Juvenile Code, (3) or—filed a juvenile court petition
10 describing the juvenile as a juvenile described in subdivision (1),
11 (2), (3)(b), or (4) of section 43-247, ~~or the county attorney or city~~
12 ~~attorney~~—(4) filed a criminal complaint in county court against ~~such~~
13 the juvenile for a misdemeanor or infraction under the laws of this
14 state or a city or village ordinance, other than for a traffic an
15 offense that may be waived., ~~under the laws of this state or a city~~
16 ~~or village ordinance.~~

17 Sec. 2. Section 43-2,108.02, Revised Statutes Cumulative
18 Supplement, 2010, is amended to read:

19 43-2,108.02 For a juvenile described in section
20 43-2,108.01, the county attorney or city attorney shall, ~~in addition~~
21 ~~to the filings or actions described in such section,~~ provide the
22 juvenile with written notice that:

23 (1) States in plain language that the juvenile or the
24 juvenile's parent or guardian may petition file a motion to seal the
25 record with the court ~~to seal the record when the juvenile has~~

1 satisfactorily completed the diversion, mediation, probation,
2 supervision, or other treatment or rehabilitation program provided ~~to~~
3 ~~the juvenile~~ under the Nebraska Juvenile Code or has satisfactorily
4 completed the diversion or sentence ordered by a county court; and

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

7 Sec. 3. Section 43-2,108.03, Revised Statutes Cumulative
8 Supplement, 2010, is amended to read:

9 43-2,108.03 (1) ~~Notwithstanding subsection (2) of this~~
10 ~~section, if the~~ If a juvenile described in section 43-2,108.01 was
11 taken into custody or arrested but no juvenile petition or criminal
12 complaint was filed against the juvenile with respect to the arrest
13 or custody, the county attorney or city attorney shall notify the
14 ~~appropriate public office or government~~ agency responsible for the
15 arrest or custody that no criminal charge or juvenile court petition
16 was filed.

17 (2) If the county attorney or city attorney ~~has~~ offered
18 ~~and the~~ a juvenile described in section 43-2,108.01 has agreed to
19 pretrial diversion or mediation, the county attorney or city attorney
20 shall notify the ~~appropriate public office or government~~ agency
21 responsible for the arrest or custody ~~that~~ when the juvenile has
22 satisfactorily completed the resulting diversion or mediation.

23 (3) Upon receiving notice under subsection (1) or (2) of
24 this section, the ~~public office or government~~ agency shall
25 immediately seal all ~~original records housed at that public office or~~

1 ~~agency pertaining to the citation, arrest, record of custody,~~
2 ~~complaint, disposition, diversion, or mediation. records under its~~
3 ~~control pertaining to the offense.~~

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

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

21 Sec. 4. Section 43-2,108.04, Revised Statutes Cumulative
22 Supplement, 2010, is amended to read:

23 43-2,108.04 (1) If a juvenile described in section
24 43-2,108.01 has satisfactorily completed diversion, mediation,
25 probation, supervision, or other treatment or rehabilitation program

1 provided under the Nebraska Juvenile Code or has satisfactorily
2 completed the diversion or sentence ordered by a county court, the
3 juvenile or the juvenile's parent or guardian may file a motion in
4 the court of record asking the court to seal the record pertaining to
5 the offense which resulted in such disposition, adjudication, or
6 diversion of the juvenile court or diversion or sentence of the
7 county court.

8 ~~(1) The~~ (2) Upon the filing of a motion to seal the
9 record, the court shall promptly notify the county attorney or city
10 attorney involved in the case that is the subject of the ~~proceeding~~
11 motion to seal the record ~~shall be promptly notified~~ of the
12 proceedings, and shall also promptly notify the Department of Health
13 and Human Services ~~shall also be promptly notified of the proceedings~~
14 if the juvenile whose record is the subject of the ~~proceeding~~ motion
15 to seal the record is a ward of the state or if the department was a
16 party in the case.

17 ~~(2)~~ (3) A party notified under subsection ~~(1)~~ (2) of this
18 section may file a response with the court within thirty days after
19 receiving such notice.

20 ~~(3)~~ (4) If a party notified under subsection ~~(1)~~ (2) of
21 this section does not file a response with the court or files a
22 response that indicates there is no objection to the sealing of the
23 record, the court may order the record of the juvenile under
24 consideration be sealed without conducting a hearing on the motion.
25 If the court decides in its discretion to conduct a hearing on the

1 motion, the court shall conduct the hearing within ~~thirty-sixty~~ days
2 after making that decision and shall give notice, by regular mail, of
3 the date, time, and location of the hearing to the parties receiving
4 notice under subsection ~~(1)-(2)~~ of this section and to the juvenile
5 who is the subject of the record under consideration.

6 ~~(4)-(5)~~ If a party receiving notice under subsection ~~(1)~~
7 ~~(2)~~ of this section files a response with the court objecting to the
8 sealing of the record, the court shall conduct a hearing on the
9 motion within ~~thirty-sixty~~ days after the court receives the
10 response. The court shall give notice, by regular mail, of the date,
11 time, and location of the hearing to the parties receiving notice
12 under subsection ~~(1)-(2)~~ of this section and to the juvenile who is
13 the subject of the record under consideration.

14 ~~(5)-(6)~~ After conducting a hearing in accordance with
15 this section, the court may order that the record of the juvenile
16 ~~that is the subject of the motion to be sealed~~ if it finds that the
17 juvenile has been rehabilitated to a satisfactory degree. In
18 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 disposition,
24 adjudication, diversion, or sentence and the juvenile's response to
25 diversion, medication, probation, supervision, other treatment and or

1 rehabilitation ~~programs;~~ program, or sentence;

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

4 (e) Any other circumstances that may relate to the
5 rehabilitation of the juvenile, ~~who is the subject of the record~~
6 ~~under consideration.~~

7 ~~(6)~~ (7) If, after conducting the hearing in accordance
8 with this section, the juvenile is not found to be satisfactorily
9 rehabilitated such that the record is not ordered to be sealed, a
10 juvenile who is a person described in section 43-2,108.01 or such
11 juvenile's parent or guardian may not move the court to seal the
12 record for ~~a period of one year~~ after the court's decision not to
13 seal the record is made, unless waived by the court.

14 ~~(7)~~ The juvenile court or county court shall provide
15 verbal notice to a juvenile whose record is sealed, if that juvenile
16 is present in the court at the time the court issues a sealing order,
17 and explain what sealing a record means.

18 ~~(8)~~ The juvenile court or county court shall provide
19 written notice to a juvenile whose record is sealed under this
20 section by regular mail to the juvenile's last known address, if that
21 juvenile is not present in the court at the time the court issues a
22 sealing order, that explains what sealing a record means.

23 Sec. 5. 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~~ record of

1 a juvenile sealed pursuant to section 43-2,108.04, ~~the juvenile who~~
2 ~~is 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 all records, including any information or
8 other data concerning any proceedings relating to the offense,
9 including the arrest, taking into custody, petition, complaint,
10 indictment, information, trial, hearing, adjudication, correctional
11 supervision, dismissal, or other disposition or sentence be deemed
12 never to have occurred; ~~and~~

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

23 (c) Explain to the juvenile what sealing the record means
24 verbally if the juvenile is present in the court at the time the
25 court issues the sealing order or by written notice sent by regular

1 mail to the juvenile's last-known address if the juvenile is not
2 present in the court at the time the court issues the sealing order.

3 (2) The effect of having a record sealed under section
4 43-2,108.04 is that thereafter no person is allowed to release any
5 information concerning such record, except as provided by this
6 section. After a record is sealed, the person whose record was sealed
7 can respond to any public inquiry as if the offense resulting in such
8 record never occurred without risk of a perjury charge or any other
9 adverse action because of the response. A government agency and any
10 other public office or agency shall reply to any public inquiry that
11 no information exists regarding a sealed record. Except as provided
12 in subsection (3) of this section, an order to seal the record
13 applies to every government agency and any other public office or
14 agency that has a record relating to the case, offense, regardless of
15 whether it receives notice of the hearing on the sealing of the
16 record or a copy of the order. Upon the written request of a person
17 whose record has been sealed and the presentation of a copy of such
18 order, a government agency or any other public office or agency shall
19 seal all original records relating pertaining to the case. offense.

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

1 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 Nebraska Probation System for purposes of
5 juvenile intake services, for presentence and other probation
6 investigations, and for the direct supervision of persons placed on
7 probation;

8 (c) By the Department of Health and Human Services for
9 purposes of juvenile intake services, the preparation of case plans
10 and reports, the preparation of evaluations, or the supervision and
11 protection of persons placed with the department or for licensing or
12 certification purposes under sections 71-1901 to 71-1906.01 or the
13 Child Care Licensing Act;

14 (d) Upon application, by the ~~juvenile person~~ who is the
15 subject of the sealed record and by ~~the person that is persons~~
16 authorized by the person who is the subject of the sealed record who
17 are named in that application;

18 (e) At the request of a party in a civil action that is
19 based on a case ~~the record for which is the subject of a sealing~~
20 ~~order issued under section 43-2,108.04,~~ that has a sealed record as
21 needed for the civil action. The party also may copy the sealed
22 record as needed for the civil action. The sealed record shall be
23 used solely in the civil action and is otherwise confidential and
24 subject to this section; or

25 (f) By persons engaged in bona fide research, with the

1 permission of the court, only if the research results in no
2 disclosure of a ~~juvenile's~~ the person's identity and protects the
3 confidentiality of the record.

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

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

1 ~~into custody did not occur, and the person is not subject to any~~
2 ~~adverse action because of the arrest or taking into custody or the~~
3 ~~response. offense never occurred.~~ Applications for employment shall
4 contain specific language that states that the applicant is not
5 obligated to disclose a sealed ~~juvenile record~~ or ~~sentence~~.
6 Employers shall not ask if an applicant has had a ~~juvenile record~~
7 sealed. The Department of Labor shall develop a link on the
8 department's web site to inform employers that employers cannot ask
9 if an applicant had a ~~juvenile record~~ sealed and that an application
10 for employment shall contain specific language that states that the
11 applicant is not obligated to disclose a sealed ~~juvenile record~~ of
12 ~~arrest, custody, complaint, disposition, diversion, adjudication, or~~
13 ~~sentence.~~

14 (6) Any person who violates this section may be held in
15 contempt of court.

16 Sec. 6. Original sections 43-2,108.01, 43-2,108.02,
17 43-2,108.03, 43-2,108.04, and 43-2,108.05, Revised Statutes
18 Cumulative Supplement, 2010, are repealed.