

AMENDMENTS TO LB 463

(Amendments to AM1131)

Introduced by Flood

1 1. Strike section 6 and insert the following sections:

2 Sec. 6. Section 43-2,108.01, Revised Statutes Cumulative
3 Supplement, 2010, is amended to read:

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

1 Sec. 7. Section 43-2,108.02, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 43-2,108.02 For a juvenile described in section
4 43-2,108.01, the county attorney or city attorney shall ~~in~~
5 ~~addition to the filings or actions described in such section,~~
6 provide the juvenile with written notice that:

7 (1) States in plain language that the juvenile or the
8 juvenile's parent or guardian may petition file a motion to
9 seal the record with the court to seal the record when the
10 juvenile has satisfactorily completed the diversion, mediation,
11 probation, supervision, or other treatment or rehabilitation
12 program provided ~~to the juvenile~~ under the Nebraska Juvenile Code
13 or has satisfactorily completed the diversion or sentence ordered
14 by a county court; and

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

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

19 43-2,108.03 (1) ~~Notwithstanding subsection (2) of this~~
20 ~~section, if the~~ If a juvenile described in section 43-2,108.01
21 was taken into custody, or arrested, cited in lieu of arrest, or
22 referred for prosecution without citation but no juvenile petition
23 or criminal complaint was filed against the juvenile with respect
24 to the arrest or custody, the county attorney or city attorney
25 shall notify the ~~appropriate public office or~~ government agency
26 responsible for the arrest, or custody, citation in lieu of arrest,
27 or referral for prosecution without citation that no criminal

1 charge or juvenile court petition was filed.

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

8 (3) If the juvenile was taken into custody, arrested,
9 cited in lieu of arrest, or referred for prosecution without
10 citation and charges were filed, but later dismissed and any
11 required pretrial diversion or mediation for any related charges
12 have been completed and no related charges remain under the
13 jurisdiction of the court, the county attorney or city attorney
14 shall notify the government agency responsible for the arrest,
15 custody, citation in lieu of arrest, or referral for prosecution
16 without citation and the court where the charge or petition was
17 filed that the charge or juvenile court petition was dismissed.

18 ~~(3)~~ (4) Upon receiving notice under subsection (1), (2),
19 or ~~(2)~~ (3) of this section, the ~~public office or~~ government agency
20 or court shall immediately seal all ~~original~~ records housed at
21 that ~~public office or~~ government agency or court pertaining to
22 the citation, arrest, record of custody, complaint, disposition,
23 diversion, or mediation.

24 ~~(4)~~ (5) If a juvenile described in section 43-2,108.01
25 has satisfactorily completed such juvenile's probation,
26 supervision, or other treatment or rehabilitation program
27 provided under the Nebraska Juvenile Code or has satisfactorily

1 completed such juvenile's diversion or sentence in county court:
2 and

3 (a) The court may initiate proceedings pursuant to
4 section 43-2,108.04 to seal the record pertaining to such
5 disposition or adjudication under the juvenile code or sentence of
6 the county court; and

7 (b) If the juvenile has attained at least the age of
8 seventeen years, the court shall initiate proceedings pursuant
9 to section 43-2,108.04 to seal the record pertaining to such
10 disposition or adjudication, or under the juvenile code or
11 diversion or sentence of the county court, except that the court
12 is not required to initiate proceedings to seal a record pertaining
13 to a misdemeanor or infraction not described in subdivision (4)
14 of section 43-2,108.01 under a city or village ordinance that
15 has no possible jail sentence. Such a record may be sealed under
16 subsection (6) of this section.

17 (6) If a juvenile described in section 43-2,108.01
18 has satisfactorily completed diversion, mediation, probation,
19 supervision, or other treatment or rehabilitation program provided
20 under the Nebraska Juvenile Code or has satisfactorily completed
21 the diversion or sentence ordered by a county court, the juvenile
22 or the juvenile's parent or guardian may file a motion in the
23 court of record asking the court to seal the record pertaining to
24 the offense which resulted in such disposition, adjudication, or
25 diversion of the juvenile court or diversion or sentence of the
26 county court.

27 ~~(5) At any time after a juvenile described in section~~

1 ~~43-2,108.01~~ has satisfactorily completed probation, supervision, or
2 other treatment or rehabilitation program under the code or has
3 satisfactorily completed diversion or sentence of the county court,
4 the court may, upon the motion of the juvenile or the court's own
5 motion, initiate proceedings to seal the record pertaining to such
6 disposition, dismissal following pretrial diversion under section
7 ~~43-260.04~~, or disposition under section 43-286 or any county court
8 records pertaining to such county court diversion or sentence.

9 Sec. 9. Section 43-2,108.04, Revised Statutes Cumulative
10 Supplement, 2010, is amended to read:

11 43-2,108.04 (1) The When a proceeding to seal the record
12 is initiated, the court shall promptly notify the county attorney
13 or city attorney involved in the case that is the subject of the
14 proceeding to seal the record shall be promptly notified of the
15 proceedings, and shall promptly notify the Department of Health and
16 Human Services shall also be promptly notified of the proceedings
17 if the juvenile whose record is the subject of the proceeding ~~to~~
18 ~~seal the record~~ is a ward of the state at the time the proceeding
19 is initiated or if the department was a party in the case.
20 proceeding.

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

24 (3) If a party notified under subsection (1) of this
25 section does not file a response with the court or files a response
26 that indicates there is no objection to the sealing of the record,
27 the court may: (a) Order ~~order~~ the record of the juvenile under

1 consideration be sealed without conducting a hearing on the motion;
2 or (b) decide in its discretion to conduct a hearing on the motion.

3 If the court decides in its discretion to conduct a hearing on the
4 motion, the court shall conduct the hearing within ~~thirty~~ sixty
5 days after making that decision and shall give notice, by regular
6 mail, of the date, time, and location of the hearing to the parties
7 receiving notice under subsection (1) of this section and to the
8 juvenile who is the subject of the record under consideration.

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

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

23 (a) The age of the juvenile;

24 (b) The nature of the offense and the role of the
25 juvenile in the offense;

26 (c) The behavior of the juvenile after the disposition,
27 adjudication, diversion, or sentence and the juvenile's response to

1 diversion, mediation, probation, supervision, other treatment and
2 or rehabilitation programs, program, or sentence;

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

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

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

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

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

25 Sec. 10. Section 43-2,108.05, Revised Statutes Cumulative
26 Supplement, 2010, is amended to read:

27 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
5 upon any public inquiry in the matter, and the court shall: do all
6 of the following:

7 (a) Order that all records, including any information
8 or 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 (i) to
14 the Nebraska Commission on Law Enforcement and Criminal Justice,
15 (ii) and, if the record includes impoundment or prohibition to
16 obtain a license or permit pursuant to section 43-287, to the
17 Department of Motor Vehicles, (iii) if the juvenile whose record
18 has been ordered sealed was a ward of the state at the time
19 the proceeding was initiated or if the Department of Health
20 and Human Services was a party in the proceeding, to such
21 department, and (iv) and to any law enforcement agencies, and
22 county attorneys, and ~~or~~ city attorneys and institutions, persons,
23 ~~or~~ agencies, including treatment providers, therapists, or other
24 service providers, referenced in the court record;

25 (c) Order all notified under subdivision (1)(b) of this
26 section to seal and order that all original records of the case be
27 sealed, pertaining to the offense;

1 (d) If the case was transferred from district court to
2 juvenile court or was transferred under section 43-282, send notice
3 of the order to seal the record to the transferring court; and

4 (e) Explain to the juvenile what sealing the record means
5 verbally if the juvenile is present in the court at the time the
6 court issues the sealing order or by written notice sent by regular
7 mail to the juvenile's last-known address if the juvenile is not
8 present in the court at the time the court issues the sealing
9 order.

10 (2) The effect of having a record sealed under section
11 43-2,108.04 is that thereafter no person is allowed to release
12 any information concerning such record, except as provided by
13 this section. After a record is sealed, the person whose record
14 was sealed can respond to any public inquiry as if the offense
15 resulting in such record never occurred. A government agency and
16 any other public office or agency shall reply to any public
17 inquiry that no information exists regarding a sealed record.
18 Except as provided in subsection (3) of this section, an order to
19 seal the record applies to every government agency and any other
20 public office or agency that has a record relating to the ease,
21 offense, regardless of whether it receives notice of the hearing
22 on the sealing of the record or a copy of the order. Upon the
23 written request of a person whose record has been sealed and the
24 presentation of a copy of such order, a government agency or any
25 other public office or agency shall seal all original records
26 relating to the ease, pertaining to the offense.

27 (3) A sealed record is ~~still~~ accessible to law

1 enforcement officers, county attorneys, and city attorneys, ~~and~~
2 ~~the sentencing judge~~ in the investigation, prosecution, and
3 sentencing of crimes, to the sentencing judge in the ~~and in the~~
4 ~~prosecution and sentencing of criminal defendants,~~ and to any
5 attorney representing the subject of the sealed record. Inspection
6 of records that have been ordered sealed under section 43-2,108.04
7 may be made ~~only~~ by the following persons or for the following
8 purposes:

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

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

14 ~~(b)~~ (c) By the Nebraska Probation System for purposes
15 of juvenile intake services, for presentence and other probation
16 investigations, and for the direct supervision of persons placed
17 on probation and by the Department of Correctional Services,
18 the Office of Juvenile Services, a juvenile assessment center, a
19 criminal detention facility, or a juvenile detention facility, for
20 an individual committed to it, placed with it, or under its care;

21 ~~(e)~~ (d) By the Department of Health and Human Services
22 for purposes of juvenile intake services, the preparation of case
23 plans and reports, the preparation of evaluations, compliance with
24 federal reporting requirements, or the supervision and protection
25 of persons placed with the department or for licensing or
26 certification purposes under sections 71-1901 to 71-1906.01 or
27 the Child Care Licensing Act;

1 ~~(d)~~ (e) Upon application, by the juvenile person who is
2 the subject of the sealed record and by ~~the person that is~~ persons
3 authorized by the person who is the subject of the sealed record
4 who are named in that application;

5 ~~(e)~~ (f) At the request of a party in a civil action that
6 is based on a case ~~the~~ that has a sealed record, ~~for which is the~~
7 ~~subject of a sealing order issued under section 43-2,108.04,~~ as
8 needed for the civil action. The party also may copy the sealed
9 record as needed for the civil action. The sealed record shall be
10 used solely in the civil action and is otherwise confidential and
11 subject to this section; ~~or~~

12 ~~(f)~~ (g) By persons engaged in bona fide research, with
13 the permission of the court, only if the research results in no
14 disclosure of a ~~juvenile's~~ the person's identity and protects the
15 confidentiality of the sealed record; ~~or-~~

16 (h) By a law enforcement agency if a person whose record
17 has been sealed applies for employment with the law enforcement
18 agency.

19 (4) No person shall knowingly release, disseminate, or
20 make available, for any purpose involving employment, bonding,
21 licensing, or education, to any person or to any department,
22 agency, or other instrumentality of the state or of any of
23 its political subdivisions, any information or other data
24 concerning any arrest, taking into custody, petition, complaint,
25 indictment, information, trial, hearing, adjudication, correctional
26 supervision, dismissal, or disposition, the record of which has
27 been sealed pursuant to section 43-2,108.04 and the release,

1 ~~dissemination, or making available of which is not expressly~~
2 ~~permitted by this section or court order.~~ Nothing in this
3 section shall ~~prohibit~~ prohibits the Department of Health and
4 Human Services from releasing, ~~disseminating, or making available~~
5 information from sealed records in the performance of its duties
6 with respect to the supervision and protection of persons served by
7 the department. Any person who violates this section may be held
8 in contempt of court.

9 (5) In any application for employment, bonding, license,
10 education, or other right or privilege, any appearance as a
11 witness, or any other public inquiry, a person cannot be questioned
12 with respect to any arrest or taking into custody offense for
13 which the record is sealed. If an inquiry is made in violation of
14 this subsection, the person may respond as if the sealed arrest
15 or taking into custody did not occur, and the person is not
16 subject to any adverse action because of the arrest or taking into
17 custody or the response. offense never occurred. Applications for
18 employment shall contain specific language that states that the
19 applicant is not obligated to disclose a sealed juvenile record,
20 ~~or sentence.~~ Employers shall not ask if an applicant has had
21 a juvenile record sealed. The Department of Labor shall develop
22 a link on the department's web site to inform employers that
23 employers cannot ask if an applicant had a juvenile record sealed
24 and that an application for employment shall contain specific
25 language that states that the applicant is not obligated to
26 disclose a sealed juvenile record, of arrest, custody, complaint,
27 disposition, diversion, adjudication, or sentence.

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

3 Sec. 12. Section 43-412, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 43-412 (1) Every juvenile committed to the Office of
6 Juvenile Services pursuant to the Nebraska Juvenile Code or
7 pursuant to subsection (3) of section 29-2204 shall remain
8 committed until he or she attains the age of nineteen or is
9 legally discharged.

10 (2) The discharge of any juvenile pursuant to the rules
11 and regulations or upon his or her attainment of the age of
12 nineteen shall be a complete release from all penalties incurred by
13 conviction or adjudication of the offense for which he or she was
14 committed.

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

19 Sec. 13. Section 43-416, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 43-416 The Office of Juvenile Services shall have
22 administrative authority over the parole function for juveniles
23 committed to a youth rehabilitation and treatment center and may
24 (1) determine the time of release on parole of committed juveniles
25 eligible for such release, (2) fix the conditions of parole,
26 revoke parole, issue or authorize the issuance of detainers for
27 the apprehension and detention of parole violators, and impose

1 other sanctions short of revocation for violation of conditions of
2 parole, and (3) determine the time of discharge from parole. The
3 office shall provide the committing court with written notification
4 of the juvenile's discharge from parole within thirty days of a
5 juvenile being discharged from the supervision of the office.

6 Sec. 24. Sections 6, 7, 8, 9, 10, 12, 13, and 25 of
7 this act become operative three calendar months after adjournment
8 of this legislative session. The rest of the sections of this act
9 become operative on their effective date.

10 Sec. 25. Original sections 43-412 and 43-416,
11 Reissue Revised Statutes of Nebraska, and sections 43-2,108.01,
12 43-2,108.02, 43-2,108.03, 43-2,108.04, and 43-2,108.05, Revised
13 Statutes Cumulative Supplement, 2010, are repealed.

14 2. Renumber the remaining sections and correct the
15 repealer section accordingly.