

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1021**

Introduced by Seiler, 33.

Read first time January 22, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to juveniles; to amend sections 43-2,108.03 and  
2 43-2,108.04, Revised Statutes Cumulative Supplement,  
3 2012; to change provisions relating to the sealing of  
4 records; and to repeal the original sections.  
5 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 43-2,108.03, Revised Statutes  
2 Cumulative Supplement, 2012, is amended to read:

3                   43-2,108.03 (1) If a juvenile described in section  
4 43-2,108.01 was taken into custody, arrested, cited in lieu of  
5 arrest, or referred for prosecution without citation but no juvenile  
6 petition or criminal complaint was filed against the juvenile with  
7 respect to the arrest or custody, the county attorney or city  
8 attorney shall notify the government agency responsible for the  
9 arrest, custody, citation in lieu of arrest, or referral for  
10 prosecution without citation that no criminal charge or juvenile  
11 court petition was filed.

12                   (2) If the county attorney or city attorney offered and a  
13 juvenile described in section 43-2,108.01 has agreed to pretrial  
14 diversion or mediation, the county attorney or city attorney shall  
15 notify the government agency responsible for the arrest or custody  
16 when the juvenile has satisfactorily completed the resulting  
17 diversion or mediation.

18                   (3) If the juvenile was taken into custody, arrested,  
19 cited in lieu of arrest, or referred for prosecution without citation  
20 and charges were filed but later dismissed and any required pretrial  
21 diversion or mediation for any related charges have been completed  
22 and no related charges remain under the jurisdiction of the court,  
23 the county attorney or city attorney shall notify the government  
24 agency responsible for the arrest, custody, citation in lieu of  
25 arrest, or referral for prosecution without citation and the court

1 where the charge or petition was filed that the charge or juvenile  
2 court petition was dismissed.

3 (4) Upon receiving notice under subsection (1), (2), or  
4 (3) of this section, the government agency or court shall immediately  
5 seal all records housed at that government agency or court pertaining  
6 to the citation, arrest, record of custody, complaint, disposition,  
7 diversion, or mediation.

8 (5) If a juvenile described in section 43-2,108.01 has  
9 satisfactorily completed such juvenile's probation, supervision, or  
10 other treatment or rehabilitation program provided under the Nebraska  
11 Juvenile Code or has satisfactorily completed such juvenile's  
12 diversion or sentence in county court:

13 (a) The court ~~may shall~~ initiate proceedings pursuant to  
14 section 43-2,108.04 to seal the record pertaining to such disposition  
15 or adjudication under the juvenile code or sentence of the county  
16 court; and

17 (b) If the juvenile has attained the age of seventeen  
18 years, the court shall initiate proceedings pursuant to section  
19 43-2,108.04 to seal the record pertaining to such disposition or  
20 adjudication under the juvenile code or diversion or sentence of the  
21 county court, except that the court is not required to initiate  
22 proceedings to seal a record pertaining to a misdemeanor or  
23 infraction not described in subdivision (4) of section 43-2,108.01  
24 under a city or village ordinance that has no possible jail sentence.  
25 Such a record ~~may shall~~ be sealed ~~under as set forth in~~ subsection

1 (6) of this section.

2 (6) If a juvenile described in section 43-2,108.01 has  
3 satisfactorily completed diversion, mediation, probation,  
4 supervision, or other treatment or rehabilitation program provided  
5 under the Nebraska Juvenile Code or has satisfactorily completed the  
6 diversion or sentence ordered by a county court and the court has not  
7 yet filed an order, the juvenile or the juvenile's parent or guardian  
8 may file a motion in the court of record asking the court to seal the  
9 record pertaining to the offense which resulted in such disposition,  
10 adjudication, or diversion of the juvenile court or diversion or  
11 sentence of the county court. If such a motion is filed, the court  
12 shall seal the record.

13 Sec. 2. Section 43-2,108.04, Revised Statutes Cumulative  
14 Supplement, 2012, is amended to read:

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

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

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

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

21                   (5) After conducting a hearing in accordance with this  
22 section, the court ~~may~~ shall order the record of the juvenile that is  
23 the subject of the motion be sealed if it finds that the juvenile has  
24 been rehabilitated to a satisfactory degree. In determining whether  
25 the juvenile has been rehabilitated to a satisfactory degree, the

1 court may consider all of the following:

2 (a) The age of the juvenile;

3 (b) The nature of the offense and the role of the  
4 juvenile in the offense;

5 (c) The behavior of the juvenile after the disposition,  
6 adjudication, diversion, or sentence and the juvenile's response to  
7 diversion, mediation, probation, supervision, other treatment or  
8 rehabilitation program, or sentence;

9 (d) The education and employment history of the juvenile;  
10 and

11 (e) Any other circumstances that may relate to the  
12 rehabilitation of the juvenile.

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

20 Sec. 3. Original sections 43-2,108.03 and 43-2,108.04,  
21 Revised Statutes Cumulative Supplement, 2012, are repealed.