

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 869**

Introduced by Pansing Brooks, 28; Ebke, 32; Howard, 9; Morfeld, 46.

Read first time January 05, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend  
2 sections 43-2,108.01, 43-2,108.02, 43-2,108.03, 43-2,108.04, and  
3 43-2,108.05, Reissue Revised Statutes of Nebraska; to change  
4 provisions relating to the sealing of juvenile records; to provide  
5 for retroactivity; to increase a penalty; and to repeal the original  
6 sections.

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

1 Section 1. Section 43-2,108.01, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

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

22 (2) The changes made to sections 43-2,108.01 to 43-2,108.05 by this  
23 legislative bill shall be retroactive in application and shall apply to  
24 all persons otherwise eligible in accordance with the provisions of such  
25 sections.

26 Sec. 2. Section 43-2,108.02, Reissue Revised Statutes of Nebraska,  
27 is amended to read:

28 43-2,108.02 For a juvenile described in section 43-2,108.01, the  
29 county attorney or city attorney shall provide the juvenile with written  
30 notice, attached to any petition or complaint, that:

31 (1) States in developmentally appropriate language that the

1 juvenile's record will be automatically sealed if the petition is  
2 dismissed, if the juvenile has satisfactorily completed the diversion,  
3 mediation, probation, supervision, or other treatment or rehabilitation  
4 program provided under the Nebraska Juvenile Code, or if the juvenile has  
5 satisfactorily completed the diversion or sentence ordered by a county  
6 court or district court;

7 (2) ~~(1)~~ States in developmentally appropriate plain language that,  
8 if the record is not sealed as provided in subdivision (1) of this  
9 section, the juvenile or the juvenile's parent or guardian may file a  
10 motion to seal the record with the court when the juvenile reaches the  
11 age of majority or six months have passed since the case was closed,  
12 whichever occurs sooner has satisfactorily completed the diversion,  
13 mediation, probation, supervision, or other treatment or rehabilitation  
14 program provided under the Nebraska Juvenile Code or has satisfactorily  
15 completed the diversion or sentence ordered by a county court; and

16 (3) ~~(2)~~ Explains in developmentally appropriate plain language what  
17 sealing the record means.

18 Sec. 3. Section 43-2,108.03, Reissue Revised Statutes of Nebraska,  
19 is amended to read:

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

28 (2) If the county attorney or city attorney offered and a juvenile  
29 described in section 43-2,108.01 has agreed to pretrial diversion or  
30 mediation, the county attorney or city attorney shall notify the  
31 government agency responsible for the arrest or custody when the juvenile

1 has satisfactorily completed the resulting diversion or mediation.

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

11 (4) If a juvenile described in section 43-2,108.01 has  
12 satisfactorily completed the diversion, mediation, probation,  
13 supervision, or other treatment or rehabilitation program provided under  
14 the Nebraska Juvenile Code or if the juvenile has satisfactorily  
15 completed the diversion or sentence ordered by a county court or district  
16 court, the county attorney or city attorney shall notify the government  
17 agency responsible for the arrest, custody, citation in lieu of arrest,  
18 or referral for prosecution without citation and the court where the  
19 charge or juvenile court petition was filed or adjudicated.

20 (5) A government agency or court that receives ~~(4) Upon receiving~~  
21 notice under subsection (1), (2), or (3), or (4) of this section, ~~the~~  
22 government agency or court shall, upon such receipt, immediately seal all  
23 records housed at that government agency or court pertaining to the  
24 citation, arrest, record of custody, complaint, disposition, diversion,  
25 or mediation.

26 (6) When a juvenile described in section 43-2,108.01 whose records  
27 have not been automatically sealed as provided in subsection (1), (2),  
28 (3), or (4) of this section reaches the age of majority or six months  
29 have passed since the case was closed, whichever occurs sooner, such  
30 juvenile or his or her parent or guardian may file a motion in the court  
31 of record asking the court to seal the record pertaining to the offense

1 which resulted in disposition, adjudication, or diversion in juvenile  
2 court or diversion or sentence of the county or district court.

3 ~~(5) If a juvenile described in section 43-2,108.01 has~~  
4 ~~satisfactorily completed such juvenile's probation, supervision, or other~~  
5 ~~treatment or rehabilitation program provided under the Nebraska Juvenile~~  
6 ~~Code or has satisfactorily completed such juvenile's diversion or~~  
7 ~~sentence in county court:~~

8 ~~(a) The court may initiate proceedings pursuant to section~~  
9 ~~43-2,108.04 to seal the record pertaining to such disposition or~~  
10 ~~adjudication under the juvenile code or sentence of the county court; and~~

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

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

29 Sec. 4. Section 43-2,108.04, Reissue Revised Statutes of Nebraska,  
30 is amended to read:

31 43-2,108.04 (1) When a proceeding to seal the record is initiated,

1 the court shall promptly notify the county attorney or city attorney  
2 involved in the case that is the subject of the proceeding to seal the  
3 record of the proceedings, and shall promptly notify the Department of  
4 Health and Human Services of the proceedings if the juvenile whose record  
5 is the subject of the proceeding is a ward of the state at the time the  
6 proceeding is initiated or if the department was a party in the  
7 proceeding.

8 (2) A party notified under subsection (1) of this section may file a  
9 response with the court within thirty days after receiving such notice.  
10 Any such response shall be served on all parties to the case. If the  
11 response objects to the sealing of a record, such response shall specify  
12 which factor or factors under subsection (5) of this section form the  
13 basis for the objection and shall set forth the facts supporting any  
14 argument that the juvenile has not been satisfactorily rehabilitated.

15 (3) If a party notified under subsection (1) of this section does  
16 not file a response with the court or files a response that indicates  
17 there is no objection to the sealing of the record, the court shall order  
18 that may: ~~(a) Order the record of the juvenile under consideration be~~  
19 ~~sealed without conducting a hearing on the motion; or (b) decide in its~~  
20 ~~discretion to conduct a hearing on the motion. If the court decides in~~  
21 ~~its discretion to conduct a hearing on the motion, the court shall~~  
22 ~~conduct the hearing within sixty days after making that decision and~~  
23 ~~shall give notice, by regular mail, of the date, time, and location of~~  
24 ~~the hearing to the parties receiving notice under subsection (1) of this~~  
25 ~~section and to the juvenile who is the subject of the record under~~  
26 ~~consideration.~~

27 (4) If a party receiving notice under subsection (1) of this section  
28 files a response with the court objecting to the sealing of the record,  
29 the court shall conduct a hearing on the motion within sixty days after  
30 the court receives the response. The court shall give notice, by regular  
31 mail, of the date, time, and location of the hearing to the parties

1 receiving notice under subsection (1) of this section and to the juvenile  
2 who is the subject of the record under consideration.

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

9 ~~(a) The age of the juvenile;~~

10 ~~(b) The nature of the offense and the role of the juvenile in the~~  
11 ~~offense;~~

12 (a) ~~(c)~~ The behavior of the juvenile after the disposition,  
13 adjudication, diversion, or sentence and the juvenile's response to  
14 diversion, mediation, probation, supervision, other treatment or  
15 rehabilitation program, or sentence;

16 (b) ~~(d)~~ The education and employment history of the juvenile; and

17 (c) ~~(e)~~ Any other circumstances that may relate to the  
18 rehabilitation of the juvenile.

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

26 Sec. 5. Section 43-2,108.05, Reissue Revised Statutes of Nebraska,  
27 is amended to read:

28 43-2,108.05 (1) If the court orders the record of a juvenile sealed  
29 pursuant to section 43-2,108.04, the court shall:

30 (a) Order that all records, including any information or other data  
31 concerning any proceedings relating to the offense, including the arrest,

1 taking into custody, petition, complaint, indictment, information, trial,  
2 hearing, adjudication, correctional supervision, dismissal, or other  
3 disposition or sentence, be deemed never to have occurred;

4 (b) Send notice of the order to seal the record (i) to the Nebraska  
5 Commission on Law Enforcement and Criminal Justice, (ii) if the record  
6 includes impoundment or prohibition to obtain a license or permit  
7 pursuant to section 43-287, to the Department of Motor Vehicles, (iii) if  
8 the juvenile whose record has been ordered sealed was a ward of the state  
9 at the time the proceeding was initiated or if the Department of Health  
10 and Human Services was a party in the proceeding, to such department, and  
11 (iv) to law enforcement agencies, county attorneys, and city attorneys  
12 referenced in the court record;

13 (c) Order all notified under subdivision (1)(b) of this section to  
14 seal all records pertaining to the offense;

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

18 (e) Explain to the juvenile using developmentally appropriate  
19 language what sealing the record means. The explanation shall be given  
20 verbally if the juvenile is present in the court at the time the court  
21 issues the sealing order and ~~or~~ by written notice sent by regular mail to  
22 the juvenile's last-known address if the juvenile is not present in the  
23 court at the time the court issues the sealing order. The sealing order  
24 shall include contact information for each government agency subject to  
25 the sealing order.

26 (2) The effect of having a record sealed ~~under section 43-2,108.04~~  
27 is that thereafter no person is allowed to release any information  
28 concerning such record, except as provided by this section. After a  
29 record is sealed, the person whose record was sealed can respond to any  
30 public inquiry as if the offense resulting in such record never occurred.  
31 A government agency and any other public office or agency shall reply to



1 any public inquiry that no information exists regarding a sealed record.  
2 Except as provided in subsection (3) of this section, an order to seal  
3 the record applies to every government agency and any other public office  
4 or agency that has a record relating to the offense, regardless of  
5 whether it receives notice of the hearing on the sealing of the record or  
6 a copy of the order. Upon the written request of a person whose record  
7 has been sealed and the presentation of a copy of such order, a  
8 government agency or any other public office or agency shall seal all  
9 records pertaining to the offense.

10 ~~(3) A sealed record is accessible to law enforcement officers,~~  
11 ~~county attorneys, and city attorneys in the investigation, prosecution,~~  
12 ~~and sentencing of crimes, to the sentencing judge in the sentencing of~~  
13 ~~criminal defendants, to a judge making a determination whether to~~  
14 ~~transfer a case to or from juvenile court, to any attorney representing~~  
15 ~~the subject of the sealed record, and to the Inspector General of~~  
16 ~~Nebraska Child Welfare pursuant to an investigation conducted under the~~  
17 ~~Office of Inspector General of Nebraska Child Welfare Act. Inspection of~~  
18 records that have been ordered sealed under section 43-2,108.04 may be  
19 made by the following persons or for the following purposes:

20 (a) Within the first five years following the date the record is  
21 sealed:

22 (i) By law enforcement officers, county attorneys, and city  
23 attorneys in the investigation, prosecution, and sentencing of crimes, by  
24 the sentencing judge in the sentencing of criminal defendants, by a judge  
25 making a determination whether to transfer a case to or from juvenile  
26 court, by any attorney representing the subject of the sealed record, and  
27 by the Inspector General of Nebraska Child Welfare pursuant to an  
28 investigation conducted under the Office of Inspector General of Nebraska  
29 Child Welfare Act;

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

1            (iii) ~~(b)~~ By the court, city attorney, or county attorney for  
2 purposes of collection of any remaining parental support or obligation  
3 balances under section 43-290;

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

11           (v) ~~(d)~~ By the Department of Health and Human Services for purposes  
12 of juvenile intake services, the preparation of case plans and reports,  
13 the preparation of evaluations, compliance with federal reporting  
14 requirements, or the supervision and protection of persons placed with  
15 the department or for licensing or certification purposes under sections  
16 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's  
17 Residential Facilities and Placing Licensure Act;

18           (vi) ~~By (e) Upon application, by the individual person who is the~~  
19 ~~subject of the sealed record and by persons authorized by such individual~~  
20 ~~the person who is the subject of the sealed record who are named in that~~  
21 ~~application;~~

22           (vii) ~~(f)~~ At the request of a party in a civil action that is based  
23 on a case that has a sealed record, as needed for the civil action. The  
24 party also may copy the sealed record as needed for the civil action. The  
25 sealed record shall be used solely in the civil action and is otherwise  
26 confidential and subject to this section;

27           (viii) ~~(g)~~ By persons engaged in bona fide research, with the  
28 permission of the court or the State Court Administrator, only if the  
29 research results in no disclosure of the individual's ~~person's~~ identity  
30 and protects the confidentiality of the sealed record; or

31           (ix) ~~(h)~~ By a law enforcement agency if an individual ~~a person~~ whose

1 record has been sealed applies for employment with the law enforcement  
2 agency; and -

3 (b) On or after five years following the date the record is sealed:

4 (i) By the individual who is the subject of the sealed record and by  
5 persons authorized by such individual;

6 (ii) By persons engaged in bona fide research, with the permission  
7 of the court or State Court Administrator, only if the research results  
8 in no disclosure of the individual's identity and protects the  
9 confidentiality of the sealed record; or

10 (iii) By the Inspector General of Nebraska Child Welfare pursuant to  
11 an investigation conducted under the Office of Inspector General of  
12 Nebraska Child Welfare Act.

13 (4) Nothing in this section prohibits the Department of Health and  
14 Human Services from releasing information from sealed records in the  
15 performance of its duties with respect to the supervision and protection  
16 of persons served by the department.

17 (5) In any application for employment, bonding, license, education,  
18 or other right or privilege, any appearance as a witness, or any other  
19 public inquiry, a person cannot be questioned with respect to any offense  
20 for which the record is sealed. If an inquiry is made in violation of  
21 this subsection, the person may respond as if the offense never occurred.  
22 Applications for employment shall contain specific language that states  
23 that the applicant is not obligated to disclose a sealed record.  
24 Employers shall not ask if an applicant has had a record sealed. The  
25 Department of Labor shall develop a link on the department's web site to  
26 inform employers that employers cannot ask if an applicant had a record  
27 sealed and that an application for employment shall contain specific  
28 language that states that the applicant is not obligated to disclose a  
29 sealed record.

30 (6) Any person who negligently, recklessly, or knowingly and  
31 intentionally violates this section shall be guilty of a Class V

1 ~~misdemeanor may be held in contempt of court.~~

2       Sec. 6.   Original sections 43-2,108.01, 43-2,108.02, 43-2,108.03,  
3 43-2,108.04, and 43-2,108.05, Reissue Revised Statutes of Nebraska, are  
4 repealed.