

E AND R AMENDMENTS TO LB 354

Introduced by Slama, 1, Chairman Enrollment and Review

1           1. Strike the original sections and all amendments thereto and  
2 insert the following new sections:

3           Section 1. Section 43-260.04, Reissue Revised Statutes of Nebraska,  
4 is amended to read:

5           43-260.04 A juvenile pretrial diversion program shall:

6           (1) Be an option available for the county attorney or city attorney  
7 based upon his or her determination under this subdivision. The county  
8 attorney or city attorney may use the following information:

9           (a) The juvenile's age;

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

12          (c) The number and nature of previous offenses involving the  
13 juvenile;

14          (d) The dangerousness or threat posed by the juvenile to persons or  
15 property; or

16          (e) The recommendations of the referring agency, victim, and  
17 advocates for the juvenile;

18          (2) Permit participation by a juvenile only on a voluntary basis and  
19 shall include a juvenile diversion agreement described in section  
20 43-260.06;

21          (3) Allow the juvenile to consult with counsel prior to a decision  
22 to participate in the program;

23          (4) Be offered to the juvenile when practicable prior to the filing  
24 of a juvenile petition or a criminal charge but after the arrest of the  
25 juvenile or issuance of a citation to the juvenile if after the arrest or  
26 citation a decision has been made by the county attorney or city attorney  
27 that the offense will support the filing of a juvenile petition or

1 criminal charges;

2 (5) Provide screening services for use in creating a diversion plan  
3 utilizing appropriate services for the juvenile;

4 (6) Result in dismissal of the juvenile petition or criminal charges  
5 if the juvenile successfully completes the program;

6 (7) Be designed and operated to further the goals stated in section  
7 43-260.03 and comply with sections 43-260.04 to 43-260.07;~~and~~

8 (8) Require information received by the program regarding the  
9 juvenile to remain confidential unless a release of information is signed  
10 upon admission to the program or is otherwise authorized by law; ~~and -~~

11 (9)(a) Respond to a public inquiry in the same manner as if there  
12 were no information or records concerning participation in the diversion  
13 program. Information or records pertaining to participation in the  
14 diversion program shall not be disseminated to any person other than:

15 (i) A criminal justice agency as defined in section 29-3509;

16 (ii) The individual who is the subject of the record or any persons  
17 authorized by such individual; or

18 (iii) Other persons or agencies authorized by law.

19 (b) An individual, a person, or an agency requesting information  
20 subject to subdivision (9)(a) of this section shall provide the diversion  
21 program with satisfactory verification of his, her, or its identity.

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

24 43-2,108.01 (1) Sections 43-2,108.01 to 43-2,108.05 apply only to  
25 persons who were under the age of eighteen years when the offense took  
26 place and, after being taken into custody, arrested, cited in lieu of  
27 arrest, or referred for prosecution without citation, the county attorney  
28 or city attorney;

29 (a) Declined to file ~~(1) released the juvenile without filing a~~  
30 juvenile petition or criminal complaint;

31 (b) Offered ~~, (2) offered~~ juvenile pretrial diversion or mediation

1 to the juvenile under the Nebraska Juvenile Code;

2 (c) Filed ~~, (3) filed~~ a juvenile court petition describing the  
3 juvenile as a juvenile described in subdivision (1), (2), (3)(b), or (4)  
4 of section 43-247;

5 (d) Filed ~~, (4) filed~~ a criminal complaint in county court against  
6 the juvenile under state statute or city or village ordinance for  
7 misdemeanor or infraction possession of marijuana or misdemeanor or  
8 infraction possession of drug paraphernalia;

9 (e) Filed ~~, or (5) filed~~ a criminal complaint in county court  
10 against the juvenile for any other misdemeanor or infraction under state  
11 statute or city or village ordinance, other than for a traffic offense,  
12 when all offenses in the case are waiveable offenses; or that may be  
13 waived.

14 (f) Filed a criminal complaint in county or district court for a  
15 felony offense under state law or a city or village ordinance that was  
16 subsequently transferred to juvenile court for ongoing jurisdiction.

17 (2) The changes made by this legislative bill to the relief set  
18 forth in sections 43-2,108.03 to 43-2,108.05 shall apply to all persons  
19 described in this section, as amended by this legislative bill, for  
20 offenses occurring prior to, on, or after the effective date of this act.

21 Sec. 3. Section 43-2,108.02, Reissue Revised Statutes of Nebraska,  
22 is amended to read:

23 43-2,108.02 (1) By January 1, 2020, the Supreme Court shall  
24 promulgate a ~~For a juvenile described in section 43-2,108.01, the county~~  
25 ~~attorney or city attorney shall provide the juvenile with written notice~~  
26 ~~that:~~

27 (a) States in developmentally appropriate language that, for a  
28 juvenile described in section 43-2,108.01, the juvenile's record will be  
29 automatically sealed if (i) no charges are filed as a result of the  
30 determination of the prosecuting attorney, (ii) the charges are  
31 dismissed, (iii) the juvenile has satisfactorily completed the diversion,

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

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

14 (c) ~~(2)~~ Explains in developmentally appropriate plain language what  
15 sealing the record means.

16 (2) For a juvenile described in section 43-2,108.01, the county  
17 attorney or city attorney shall attach a copy of the notice to any  
18 juvenile petition or criminal complaint.

19 Sec. 4. Section 43-2,108.03, Reissue Revised Statutes of Nebraska,  
20 is amended to read:

21 43-2,108.03 (1)(a) If a juvenile described in section 43-2,108.01  
22 was taken into custody, arrested, cited in lieu of arrest, or referred  
23 for prosecution without citation but no juvenile petition or criminal  
24 complaint was filed against the juvenile with respect to the arrest or  
25 custody, the county attorney or city attorney shall notify the government  
26 agency responsible for the arrest, custody, citation in lieu of arrest,  
27 or referral for prosecution without citation that no criminal charge or  
28 juvenile court petition was filed. The county attorney or city attorney  
29 shall provide written notification to the juvenile that no juvenile  
30 petition or criminal complaint was filed and provide the juvenile with  
31 the notice described in section 43-2,108.02.

1        (b) If a juvenile described in subdivision (1)(a) of this section  
2 discovers that his or her record was not automatically sealed, such  
3 juvenile may notify the county attorney, who shall cause the record to be  
4 sealed by providing the notice required by subdivision (1)(a) of this  
5 section.

6        (2)(a) If the county attorney or city attorney offered and a  
7 juvenile described in section 43-2,108.01 has agreed to pretrial  
8 diversion or mediation, the county attorney or city attorney shall notify  
9 the government agency responsible for the arrest or custody when the  
10 juvenile has satisfactorily completed the resulting diversion or  
11 mediation. At the time the juvenile is offered diversion or mediation,  
12 the county attorney or city attorney shall provide the notice described  
13 in section 43-2,108.02 to the juvenile. The county attorney or city  
14 attorney shall also provide written notification to the juvenile of his  
15 or her satisfactory or unsatisfactory completion of diversion or  
16 mediation.

17        (b) If a juvenile who was satisfactorily discharged from diversion  
18 or mediation discovers that his or her record was not automatically  
19 sealed, the juvenile may notify the county attorney, who shall cause the  
20 record to be sealed by providing the notice required by subdivision (2)  
21 (a) of this section.

22        (3)(a) If the juvenile was taken into custody, arrested, cited in  
23 lieu of arrest, or referred for prosecution without citation and charges  
24 were filed but the case was later dismissed by the court, the court shall  
25 seal the record as set forth in section 43-2,108.05. and any required  
26 pretrial diversion or mediation for any related charges have been  
27 completed and no related charges remain under the jurisdiction of the  
28 court, the county attorney or city attorney shall notify the government  
29 agency responsible for the arrest, custody, citation in lieu of arrest,  
30 or referral for prosecution without citation and the court where the  
31 charge or petition was filed that the charge or juvenile court petition

1 ~~was dismissed.~~

2 (b) If a juvenile described in subdivision (3)(a) discovers that his  
3 or her record was not automatically sealed, the juvenile may notify the  
4 court, which shall seal the record as set forth in section 43-2,108.05.

5 (4)(a) If a juvenile described in section 43-2,108.01 has  
6 satisfactorily completed the probation, supervision, or other treatment  
7 or rehabilitation program provided under the Nebraska Juvenile Code or if  
8 the juvenile has satisfactorily completed the probation or sentence  
9 ordered by a county court, the court shall seal the records as set forth  
10 in section 43-2,108.05.

11 (b) If a juvenile described in subdivision (4)(a) discovers that his  
12 or her record was not automatically sealed, the juvenile may notify the  
13 court, which shall seal the record as set forth in section 43-2,108.05.

14 (5) A government agency or court that receives (4) Upon receiving  
15 notice under subsection subdivision (1)(a) , or (2)(a) , or (3) of this  
16 section, the government agency or court shall, upon such receipt,  
17 immediately seal all records housed at that government agency or court  
18 pertaining to the citation, arrest, record of custody, complaint,  
19 disposition, diversion, or mediation.

20 (6) When a juvenile described in section 43-2,108.01 whose records  
21 have not been automatically sealed as provided in subsection (1), (2),  
22 (3), or (4) of this section reaches the age of majority or six months  
23 have passed since the case was closed, whichever occurs sooner, such  
24 juvenile or his or her parent or guardian may file a motion in the court  
25 of record asking the court to seal the record pertaining to the offense  
26 which resulted in disposition, adjudication, or diversion in juvenile  
27 court or diversion or sentence of the county court. The motion shall set  
28 forth the facts supporting the argument that the individual who is the  
29 subject of the juvenile petition or criminal complaint has been  
30 satisfactorily rehabilitated.

31 ~~(5) If a juvenile described in section 43-2,108.01 has~~

1 ~~satisfactorily completed such juvenile's probation, supervision, or other~~  
2 ~~treatment or rehabilitation program provided under the Nebraska Juvenile~~  
3 ~~Code or has satisfactorily completed such juvenile's diversion or~~  
4 ~~sentence in county court:~~

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

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

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

26 Sec. 5. Section 43-2,108.04, Reissue Revised Statutes of Nebraska,  
27 is amended to read:

28 43-2,108.04 (1) When a proceeding to seal the record is initiated,  
29 the court shall promptly notify the county attorney or city attorney  
30 involved in the case that is the subject of the proceeding to seal the  
31 record of the proceedings, and shall promptly notify the Department of

1 Health and Human Services of the proceedings if the juvenile whose record  
2 is the subject of the proceeding is a ward of the state at the time the  
3 proceeding is initiated or if the department was a party in the  
4 proceeding.

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

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

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

31 (5) After conducting a hearing in accordance with this section, the

1 court ~~shall~~ may order the record of the juvenile that is the subject of  
2 the motion be sealed if it finds by a preponderance of the evidence that  
3 the juvenile has been rehabilitated to a satisfactory degree. In  
4 determining whether the juvenile has been rehabilitated to a satisfactory  
5 degree, the court may consider all of the following:

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

7 ~~(b) The nature of the offense and the role of the juvenile in the~~  
8 ~~offense;~~

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

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

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

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

23 Sec. 6. Section 43-2,108.05, Reissue Revised Statutes of Nebraska,  
24 is amended to read:

25 43-2,108.05 (1) If the court orders the record of a juvenile sealed  
26 pursuant to section ~~43-2,108.04~~, the court shall:

27 (a) Order that all records, including any information or other data  
28 concerning any proceedings relating to the offense, including the arrest,  
29 taking into custody, petition, complaint, indictment, information, trial,  
30 hearing, adjudication, correctional supervision, dismissal, or other  
31 disposition or sentence, be deemed never to have occurred;

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

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

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

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

23 (2) The effect of having a record sealed ~~under section 43-2,108.04~~  
24 is that thereafter no person is allowed to release any information  
25 concerning such record, except as provided by this section. After a  
26 record is sealed, the person whose record was sealed can respond to any  
27 public inquiry as if the offense resulting in such record never occurred.  
28 A government agency and any other public office or agency shall reply to  
29 any public inquiry that no information exists regarding a sealed record.  
30 Except as provided in subsection (3) of this section, an order to seal  
31 the record applies to every government agency and any other public office

1 or agency that has a record relating to the offense, regardless of  
2 whether it receives notice of the hearing on the sealing of the record or  
3 a copy of the order. Upon the written request of a person whose record  
4 has been sealed and the presentation of a copy of such order, a  
5 government agency or any other public office or agency shall seal all  
6 records pertaining to the offense.

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

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

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

24 (c) By the Nebraska Probation System for purposes of juvenile intake  
25 services, for presentence and other probation investigations, and for the  
26 direct supervision of persons placed on probation and by the Department  
27 of Correctional Services, the Office of Juvenile Services, a juvenile  
28 assessment center, a criminal detention facility, a juvenile detention  
29 facility, or a staff secure juvenile facility, for an individual  
30 committed to it, placed with it, or under its care;

31 (d) By the Department of Health and Human Services for purposes of

1 juvenile intake services, the preparation of case plans and reports, the  
2 preparation of evaluations, compliance with federal reporting  
3 requirements, or the supervision and protection of persons placed with  
4 the department or for licensing or certification purposes under sections  
5 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's  
6 Residential Facilities and Placing Licensure Act;

7 (e) ~~By Upon application, by the individual person~~ who is the subject  
8 of the sealed record and by persons authorized by such individual. The  
9 individual shall provide satisfactory verification of his or her identity  
10 ~~the person who is the subject of the sealed record who are named in that~~  
11 ~~application;~~

12 (f) At the request of a party in a civil action that is based on a  
13 case that has a sealed record, as needed for the civil action. The party  
14 also may copy the sealed record as needed for the civil action. The  
15 sealed record shall be used solely in the civil action and is otherwise  
16 confidential and subject to this section;

17 (g) By persons engaged in bona fide research, with the permission of  
18 the court or the State Court Administrator, only if the research results  
19 in no disclosure of the person's identity and protects the  
20 confidentiality of the sealed record; or

21 (h) By a law enforcement agency if the individual ~~a person~~ whose  
22 record has been sealed applies for employment with the law enforcement  
23 agency.

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

28 (5) In any application for employment, bonding, license, education,  
29 or other right or privilege, any appearance as a witness, or any other  
30 public inquiry, a person cannot be questioned with respect to any offense  
31 for which the record is sealed. If an inquiry is made in violation of

1 this subsection, the person may respond as if the offense never occurred.  
2 Applications for employment shall contain specific language that states  
3 that the applicant is not obligated to disclose a sealed record.  
4 Employers shall not ask if an applicant has had a record sealed. The  
5 Department of Labor shall develop a link on the department's web site to  
6 inform employers that employers cannot ask if an applicant had a record  
7 sealed and that an application for employment shall contain specific  
8 language that states that the applicant is not obligated to disclose a  
9 sealed record.

10 (6) Any person who knowingly violates this section shall be guilty  
11 of a Class V misdemeanor ~~may be held in contempt of court.~~

12 Sec. 7. Original sections 43-260.04, 43-2,108.01, 43-2,108.02,  
13 43-2,108.03, 43-2,108.04, and 43-2,108.05, Reissue Revised Statutes of  
14 Nebraska, are repealed.

15 2. On page 1, strike beginning with the last comma in line 3 through  
16 "files" in line 5 and insert "; to change requirements for juvenile  
17 pretrial diversion programs".