

LEGISLATIVE BILL 354

Approved by the Governor March 27, 2019

Introduced by Pansing Brooks, 28; Hansen, M., 26.

A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend sections 43-260.04, 43-2,108.01, 43-2,108.02, 43-2,108.03, 43-2,108.04, and 43-2,108.05, Reissue Revised Statutes of Nebraska; to change requirements for juvenile pretrial diversion programs; to change provisions relating to the sealing of juvenile records; to provide for retroactivity; to increase a penalty; to harmonize provisions; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

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

43-260.04 A juvenile pretrial diversion program shall:

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

- (a) The juvenile's age;
- (b) The nature of the offense and role of the juvenile in the offense;
- (c) The number and nature of previous offenses involving the juvenile;
- (d) The dangerousness or threat posed by the juvenile to persons or property; or
- (e) The recommendations of the referring agency, victim, and advocates for the juvenile;

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

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

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

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

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

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

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

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

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

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

(iii) Other persons or agencies authorized by law.

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

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

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

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

(b) Offered, (2) offered juvenile pretrial diversion or mediation to the juvenile under the Nebraska Juvenile Code;

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

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

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

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

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

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

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

(a) States in developmentally appropriate language that, for a juvenile described in section 43-2,108.01, the juvenile's record will be automatically sealed if (i) no charges are filed as a result of the determination of the prosecuting attorney, (ii) the charges are dismissed, (iii) the juvenile has satisfactorily completed the diversion, mediation, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code, or (iv) the juvenile has satisfactorily completed the county court diversion program, probation ordered by the court, or sentence ordered by the court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ~~(a) The age of the juvenile;~~
- ~~(b) The nature of the offense and the role of the juvenile in the offense;~~
- ~~(a) (c) The behavior of the juvenile after the disposition, adjudication, diversion, or sentence and the juvenile's response to diversion, mediation, probation, supervision, other treatment or rehabilitation program, or sentence;~~

(b) ~~(d)~~ The education and employment history of the juvenile; and
(c) ~~(e)~~ Any other circumstances that may relate to the rehabilitation of the juvenile.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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