

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 890

Introduced by Bosn, 25.

Read first time January 03, 2024

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend
- 2 section 43-2,108.05, Revised Statutes Cumulative Supplement, 2022;
- 3 to provide for certified copies of sealed juvenile records to
- 4 attorneys as prescribed; to harmonize provisions; and to repeal the
- 5 original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-2,108.05, Revised Statutes Cumulative
2 Supplement, 2022, is amended to read:

3 43-2,108.05 (1) If the court orders the record of a juvenile sealed,
4 the court shall:

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

10 (b) Send notice of the order to seal the record (i) if the record
11 includes impoundment or prohibition to obtain a license or permit
12 pursuant to section 43-287, to the Department of Motor Vehicles, (ii) if
13 the juvenile whose record has been ordered sealed was a ward of the state
14 at the time the proceeding was initiated or if the Department of Health
15 and Human Services was a party in the proceeding, to such department, and
16 (iii) to law enforcement agencies, county attorneys, and city attorneys
17 referenced in the court record;

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

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

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

31 (2) The effect of having a record sealed is that thereafter no

1 person is allowed to release any information concerning such record,
2 except as provided by this section. After a record is sealed, the person
3 whose record was sealed can respond to any public inquiry as if the
4 offense resulting in such record never occurred. A government agency and
5 any other public office or agency shall reply to any public inquiry that
6 no information exists regarding a sealed record. Except as provided in
7 subsection (3) of this section, an order to seal the record applies to
8 every government agency and any other public office or agency that has a
9 record relating to the offense, regardless of whether it receives notice
10 of the hearing on the sealing of the record or a copy of the order. Upon
11 the written request of a person whose record has been sealed and the
12 presentation of a copy of such order, a government agency or any other
13 public office or agency shall seal all records pertaining to the offense.

14 (3)(a) {3} A sealed record is accessible to the individual who is
15 the subject of the sealed record and any persons authorized by such
16 individual, law enforcement officers, county attorneys, and city
17 attorneys in the investigation, prosecution, and sentencing of crimes, to
18 the sentencing judge in the sentencing of criminal defendants, to a judge
19 making a determination whether to transfer a case to or from juvenile
20 court, to any attorney representing the subject of the sealed record, and
21 to the Inspector General of Nebraska Child Welfare pursuant to an
22 investigation conducted under the Office of Inspector General of Nebraska
23 Child Welfare Act.

24 (b) Upon request, the clerk of the court shall provide certified
25 copies of such sealed record to any county attorney, city attorney, or
26 attorney representing the individual whose record has been sealed for
27 purposes of being offered:

28 (i) At a hearing on a motion to transfer a case to or from juvenile
29 court or district court under section 29-1816 or 43-274; or

30 (ii) In the prosecution of a subsequent offense.

31 (c) Inspection of records that have been ordered sealed under

1 section 43-2,108.04 may be made by the following persons or for the
2 following purposes:

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

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

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

15 (iv) ~~(d)~~ By the Department of Health and Human Services for purposes
16 of juvenile intake services, the preparation of case plans and reports,
17 the preparation of evaluations, compliance with federal reporting
18 requirements, or the supervision and protection of persons placed with
19 the department or for licensing or certification purposes under sections
20 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's
21 Residential Facilities and Placing Licensure Act;

22 (v) ~~(e)~~ By the individual who is the subject of the sealed record
23 and by persons authorized by such individual. The individual shall
24 provide satisfactory verification of his or her identity;

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

30 (vii) ~~(g)~~ By persons engaged in bona fide research, with the
31 permission of the court or the State Court Administrator, only if the

1 research results in no disclosure of the person's identity and protects
2 the confidentiality of the sealed record; or

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

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

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

23 (6) Any person who knowingly violates this section shall be guilty
24 of a Class V misdemeanor.

25 Sec. 2. Original section 43-2,108.05, Revised Statutes Cumulative
26 Supplement, 2022, is repealed.