

LEGISLATURE OF NEBRASKA  
 ONE HUNDRED THIRD LEGISLATURE  
 FIRST SESSION  
**LEGISLATIVE BILL 86**

Introduced by McGill, 26.

Read first time January 10, 2013

Committee:

A BILL

1 FOR AN ACT relating to juvenile confinement; to amend sections  
 2 83-4,124, 83-4,125, and 83-4,132, Reissue Revised  
 3 Statutes of Nebraska, and sections 43-2,108.05, 71-2453,  
 4 83-4,126, 83-4,131, and 83-4,133, Revised Statutes  
 5 Cumulative Supplement, 2012; to authorize inspection and  
 6 regulation of staff secure juvenile facilities by the  
 7 board as prescribed; to harmonize provisions; and to  
 8 repeal the original sections.  
 9 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 43-2,108.05, Revised Statutes  
2 Cumulative Supplement, 2012, is amended to read:

3                   43-2,108.05 (1) If the court orders the record of a  
4 juvenile sealed pursuant to section 43-2,108.04, the court shall:

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

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

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

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

25                   (e) Explain to the juvenile what sealing the record means

1 verbally if the juvenile is present in the court at the time the  
2 court issues the sealing order or by written notice sent by regular  
3 mail to the juvenile's last-known address if the juvenile is not  
4 present in the court at the time the court issues the sealing order.

5 (2) The effect of having a record sealed under section  
6 43-2,108.04 is that thereafter no person is allowed to release any  
7 information concerning such record, except as provided by this  
8 section. After a record is sealed, the person whose record was sealed  
9 can respond to any public inquiry as if the offense resulting in such  
10 record never occurred. A government agency and any other public  
11 office or agency shall reply to any public inquiry that no  
12 information exists regarding a sealed record. Except as provided in  
13 subsection (3) of this section, an order to seal the record applies  
14 to every government agency and any other public office or agency that  
15 has a record relating to the offense, regardless of whether it  
16 receives notice of the hearing on the sealing of the record or a copy  
17 of the order. Upon the written request of a person whose record has  
18 been sealed and the presentation of a copy of such order, a  
19 government agency or any other public office or agency shall seal all  
20 records pertaining to the offense.

21 (3) A sealed record is accessible to law enforcement  
22 officers, county attorneys, and city attorneys in the investigation,  
23 prosecution, and sentencing of crimes, to the sentencing judge in the  
24 sentencing of criminal defendants, and to any attorney representing  
25 the subject of the sealed record. Inspection of records that have

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

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

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

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

22 (e) Upon application, by the person who is the subject of  
23 the sealed record and by persons authorized by the person who is the  
24 subject of the sealed record who are named in that application;

25 (f) At the request of a party in a civil action that is

1 based on a case that has a sealed record, as needed for the civil  
2 action. The party also may copy the sealed record as needed for the  
3 civil action. The sealed record shall be used solely in the civil  
4 action and is otherwise confidential and subject to this section;

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

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

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

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

1 ask if an applicant had a record sealed and that an application for  
2 employment shall contain specific language that states that the  
3 applicant is not obligated to disclose a sealed record.

4 (6) Any person who violates this section may be held in  
5 contempt of court.

6 Sec. 2. Section 71-2453, Revised Statutes Cumulative  
7 Supplement, 2012, is amended to read:

8 71-2453 (1) Prescription drugs or devices which have been  
9 dispensed pursuant to a valid prescription and delivered to a  
10 Department of Correctional Services facility, a criminal detention  
11 facility, a juvenile detention facility, a staff secure juvenile  
12 facility, or a jail for administration to a prisoner, ~~or~~ detainee, or  
13 resident held at such facility or jail, but which are not  
14 administered to such prisoner or detainee, may be returned to the  
15 pharmacy from which they were dispensed under contract with the  
16 facility or jail for credit or for relabeling and redispensing and  
17 administration to another prisoner, ~~or~~ detainee, or resident held at  
18 such facility or jail pursuant to a valid prescription as provided in  
19 this section.

20 (2)(a) The decision to accept return of a dispensed  
21 prescription drug or device for credit or for relabeling and  
22 redispensing rests solely with the pharmacist at the contracting  
23 pharmacy.

24 (b) A dispensed prescription drug or device shall be  
25 properly stored and in the control of the facility or jail at all

1 times prior to the return of the drug or device for credit or for  
2 relabeling and redispensing. The drug or device shall be returned in  
3 the original and unopened labeled container dispensed by the  
4 pharmacist with the tamper-evident seal intact, and the container  
5 shall bear the expiration date or calculated expiration date and lot  
6 number of the drug or device.

7 (c) A prescription drug or device shall not be returned  
8 or relabeled and redispensed under this section if the drug or device  
9 is a controlled substance or if the relabeling and redispensing is  
10 otherwise prohibited by law.

11 (3) For purposes of this section:

12 (a) Administration has the definition found in section  
13 38-2807;

14 (b) Calculated expiration date has the definition found  
15 in section 71-2421;

16 (c) Criminal detention facility has the definition found  
17 in section 83-4,125;

18 (d) Department of Correctional Services facility has the  
19 definition of facility found in section 83-170;

20 (e) Dispense or dispensing has the definition found in  
21 section 38-2817;

22 (f) Jail has the definition found in section 47-117;

23 (g) Juvenile detention facility has the definition found  
24 in section 83-4,125;

25 (h) Prescription has the definition found in section

1 38-2840; ~~and~~

2 (i) Prescription drug or device has the definition found  
3 in section 38-2841; ~~and~~ -

4 (j) Staff secure juvenile facility has the definition  
5 found in section 83-4,125.

6 (4) The Jail Standards Board, in consultation with the  
7 Board of Pharmacy, shall adopt and promulgate rules and regulations  
8 relating to the return of dispensed prescription drugs or devices for  
9 credit, relabeling, or redispensing under this section, including,  
10 but not limited to, rules and regulations relating to (a) education  
11 and training of persons authorized to administer the prescription  
12 drug or device to a prisoner, ~~or~~ detainee, or resident, (b) the  
13 proper storage and protection of the drug or device consistent with  
14 the directions contained on the label or written drug information  
15 provided by the pharmacist for the drug or device, (c) limits on  
16 quantity to be dispensed, (d) transferability of drugs or devices for  
17 prisoners, ~~or~~ detainees, or residents between facilities, (e)  
18 container requirements, (f) establishment of a drug formulary, and  
19 (g) fees for the pharmacy to accept the returned drug or device.

20 (5) Any person or entity which exercises reasonable care  
21 in accepting, distributing, or dispensing prescription drugs or  
22 devices under this section or rules and regulations adopted and  
23 promulgated under this section shall be immune from civil or criminal  
24 liability or professional disciplinary action of any kind for any  
25 injury, death, or loss to person or property relating to such



1 activities.

2           Sec. 3. Section 83-4,124, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           83-4,124 (1) It is hereby declared to be the policy of  
5 the State of Nebraska that all criminal detention facilities ~~and~~  
6 ~~juvenile detention facilities in the~~ this state shall conform to  
7 certain minimum standards of construction, maintenance, and operation  
8 and that all juvenile detention facilities and staff secure  
9 facilities in this state shall conform to certain minimum standards  
10 relating to the operation and physical structure of such facilities  
11 and the care of, programs for, and discipline of juveniles at such  
12 facilities.

13           (2) To further such policy, the Jail Standards Board is  
14 hereby created. For administrative and budgetary purposes such board  
15 shall be within the Nebraska Commission on Law Enforcement and  
16 Criminal Justice. The board shall consist of the Director of  
17 Correctional Services or, if the Director of Correctional Services  
18 chooses not to serve on the board, a person appointed by the director  
19 to serve in lieu of the director, the State Fire Marshal or his or  
20 her designee, and ~~nine~~ ten appointive members, three of whom shall be  
21 from each of the three congressional districts, to be appointed by  
22 the Governor. The appointive members of the board shall be appointed  
23 from recommendation lists containing at least three names submitted  
24 by the Nebraska Association of County Officials, the Nebraska County  
25 Sheriffs Association, the Nebraska State Bar Association, and the

1 Police Officers Association of Nebraska. The appointive members of  
2 the board shall consist of: ~~(1)~~ (a) Two county commissioners or  
3 supervisors; ~~(2)~~ (b) one county sheriff; ~~(3)~~ (c) one municipal police  
4 chief; ~~(4)~~ (d) one member of the Nebraska State Bar Association; ~~(5)~~  
5 (e) two lay people; ~~(6)~~ (f) one person who at the time of his or her  
6 appointment is serving as an administrator responsible for the  
7 operation and maintenance of a juvenile detention facility; (g) one  
8 person who at the time of his or her appointment is serving as an  
9 administrator responsible for the operation and maintenance of a  
10 staff secure facility; and ~~(7)~~ (h) one person who at the time of his  
11 or her appointment is serving as an administrator or jailer  
12 responsible for the operation and maintenance of a criminal detention  
13 facility having an average daily population of greater than fifty  
14 persons. ~~The term of the district judge serving on July 20, 2002,~~  
15 ~~terminates on such date.~~

16 (3) The terms of office for all members initially  
17 appointed shall be three years. Upon completion of the initial term  
18 of the board, the Governor shall appoint one member from each  
19 congressional district for a term of one year, one member from each  
20 congressional district for a term of two years, and one member from  
21 each congressional district for a term of three years. Succeeding  
22 appointees shall be representative of the same congressional district  
23 and shall be appointed for terms of three years. An appointee to a  
24 vacancy occurring from an unexpired term shall serve out the term of  
25 his or her predecessor. Members whose terms have expired shall

1 continue to serve until their successors have been appointed. The  
2 member authorized by this legislative bill shall be appointed by the  
3 Governor within ninety days after the effective date of this act.

4 (4) The members of the board shall serve without  
5 compensation, but they shall be reimbursed for their actual expenses  
6 while engaged in the performance of their official duties as provided  
7 in sections 81-1174 to 81-1177.

8 Sec. 4. Section 83-4,125, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10 83-4,125 For purposes of sections 83-4,124 to 83-4,134:

11 (1) Criminal detention facility ~~shall mean~~ means any  
12 institution operated by a political subdivision or a combination of  
13 political subdivisions for the careful keeping or rehabilitative  
14 needs of adult or juvenile criminal offenders or those persons being  
15 detained while awaiting disposition of charges against them. Criminal  
16 detention facility ~~shall does not~~ include any institution operated by  
17 the Department of Correctional Services. Criminal detention  
18 facilities shall be classified as follows:

19 (a) Type I Facilities ~~shall mean~~ means criminal detention  
20 facilities used for the detention of persons for not more than  
21 twenty-four hours, excluding nonjudicial days;

22 (b) Type II Facilities ~~shall mean~~ means criminal  
23 detention facilities used for the detention of persons for not more  
24 than ninety-six hours, excluding nonjudicial days; and

25 (c) Type III Facilities ~~shall mean~~ means criminal

1 detention facilities used for the detention of persons beyond ninety-  
2 six hours; ~~and~~

3 (2) Juvenile detention facility ~~shall mean~~ means an  
4 institution operated by a political subdivision or political  
5 subdivisions for the secure detention and treatment of persons  
6 younger than eighteen years of age, including persons under the  
7 jurisdiction of a juvenile court, who are serving a sentence pursuant  
8 to a conviction in a county or district court or who are detained  
9 while waiting disposition of charges against them. Juvenile detention  
10 facility ~~shall~~ does not include any institution operated by the  
11 department; ~~and~~ -

12 (3) Staff secure juvenile facility means a juvenile  
13 residential facility operated by a political subdivision (a) which  
14 does not include construction designed to physically restrict the  
15 movements and activities of juveniles who are in custody in the  
16 facility; (b) in which physical restriction of movement or activity  
17 of juveniles is provided solely through staff; (c) which may  
18 establish reasonable rules restricting ingress to and egress from the  
19 facility; and (d) in which the movements and activities of individual  
20 juvenile residents may, for treatment purposes, be restricted or  
21 subject to control through the use of intensive staff supervision.  
22 Staff secure juvenile facility does not include any institution  
23 operated by the department.

24 Sec. 5. Section 83-4,126, Revised Statutes Cumulative  
25 Supplement, 2012, is amended to read:

1                   83-4,126 (1) Except as provided in subsection (2) of this  
2 section, the Jail Standards Board shall have the authority and  
3 responsibility:

4                   (a) To develop minimum standards for the construction,  
5 maintenance, and operation of criminal detention facilities;

6                   (b) To perform ~~such~~ other duties as may be necessary to  
7 carry out the policy of the state regarding ~~such~~ criminal detention  
8 facilities, ~~and~~ juvenile detention facilities, and staff secure  
9 juvenile facilities as stated in sections 83-4,124 to 83-4,134; and

10                  (c) Consistent with the purposes and objectives of the  
11 Juvenile Services Act, to develop standards for juvenile detention  
12 facilities and staff secure juvenile facilities, including, but not  
13 limited to, standards for physical facilities, care, programs, and  
14 disciplinary procedures, and to develop guidelines pertaining to the  
15 operation of such facilities.

16                  (2) The Jail Standards Board shall not have authority  
17 over or responsibility for correctional facilities that are  
18 accredited by a nationally recognized correctional association. A  
19 correctional facility that is accredited by a nationally recognized  
20 correctional association shall show proof of accreditation annually  
21 to the Jail Standards Board. For purposes of this subsection,  
22 nationally recognized correctional association includes, but is not  
23 limited to, the American Correctional Association or its successor.

24                  Sec. 6. Section 83-4,131, Revised Statutes Cumulative  
25 Supplement, 2012, is amended to read:

1           83-4,131 Personnel of the Nebraska Commission on Law  
2 Enforcement and Criminal Justice shall visit and inspect each  
3 criminal detention facility, ~~and—juvenile detention facility,~~ and  
4 staff secure juvenile facility in the state, except correctional  
5 facilities accredited by a nationally recognized correctional  
6 association pursuant to subsection (2) of section 83-4,126, for the  
7 purpose of determining the conditions of confinement, the treatment  
8 of persons confined in the facilities, and whether such facilities  
9 comply with the minimum standards established by the Jail Standards  
10 Board. A written report of each inspection shall be made within  
11 thirty days following such inspection to the appropriate governing  
12 body responsible for the criminal detention facility, ~~or—juvenile~~  
13 detention facility, or staff secure juvenile facility involved. The  
14 report shall specify those areas in which the facility does not  
15 comply with the required minimum standards.

16           Sec. 7. Section 83-4,132, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           83-4,132 If an inspection under sections 83-4,124 to  
19 83-4,134 discloses that the criminal detention facility, ~~or—juvenile~~  
20 detention facility, or staff secure juvenile facility does not meet  
21 the minimum standards established by the Jail Standards Board, the  
22 board shall send notice, together with the inspection report, to the  
23 governing body responsible for the facility. The appropriate  
24 governing body shall promptly meet to consider the inspection report,  
25 and the inspection personnel shall appear before the governing body

1 to advise and consult concerning appropriate corrective action. The  
2 governing body shall then initiate appropriate corrective action  
3 within six months ~~of~~after the receipt of such inspection report or  
4 may voluntarily close the facility or the objectionable portion  
5 thereof.

6 Sec. 8. Section 83-4,133, Revised Statutes Cumulative  
7 Supplement, 2012, is amended to read:

8 83-4,133 If the governing body of the juvenile detention  
9 facility, ~~or~~ criminal detention facility, or staff secure juvenile  
10 facility fails to initiate corrective action within six months after  
11 the receipt of such inspection report, fails to correct the disclosed  
12 conditions, or fails to close the criminal detention facility, ~~or~~  
13 juvenile detention facility, or staff secure juvenile facility or the  
14 objectionable portion thereof, the Jail Standards Board may petition  
15 the district court within the judicial district in which such  
16 facility is located to close the facility. Such petition shall  
17 include the inspection report regarding such facility. The local  
18 governing body shall then have thirty days to respond to such  
19 petition and shall serve a copy of the response on the Jail Standards  
20 Board by certified mail, return receipt requested. Thereafter, a  
21 hearing shall be held on the petition before the district court, and  
22 an order shall be rendered by such court which either:

- 23 (1) Dismisses the petition of the Jail Standards Board;  
24 (2) Directs that corrective action be initiated in some  
25 form by the local governing body of the facility in question; or

1                   (3) Directs that the facility be closed. An appeal from  
2 the decision of the district court may be taken to the Court of  
3 Appeals.

4                   Sec. 9. Original sections 83-4,124, 83-4,125, and  
5 83-4,132, Reissue Revised Statutes of Nebraska, and sections  
6 43-2,108.05, 71-2453, 83-4,126, 83-4,131, and 83-4,133, Revised  
7 Statutes Cumulative Supplement, 2012, are repealed.