

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 787

Introduced by McGill, 26.

Read first time January 05, 2012

Committee:

A BILL

1 FOR AN ACT relating to the Jail Standards Board; to amend sections
2 83-4,124, 83-4,125, and 83-4,132, Reissue Revised
3 Statutes of Nebraska, section 83-4,133, Revised Statutes
4 Cumulative Supplement, 2010, and sections 43-2,108.05,
5 71-2453, 83-4,126, and 83-4,131, Revised Statutes
6 Supplement, 2011; to authorize inspection and regulation
7 of staff secure facilities by the board as prescribed; to
8 harmonize provisions; and to repeal the original
9 sections.

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

1 Section 1. Section 43-2,108.05, Revised Statutes
2 Supplement, 2011, 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 facility, for an individual committed to it, placed with it,
15 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 Supplement,
7 2011, 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 facility, or
12 a jail for administration to a prisoner, ~~or~~ detainee, or resident
13 held at such facility or jail, but which are not administered to such
14 prisoner or detainee, may be returned to the pharmacy from which they
15 were dispensed under contract with the facility or jail for credit or
16 for relabeling and redispensing and administration to another
17 prisoner, ~~or~~ detainee, or resident held at such facility or jail
18 pursuant to a valid prescription as provided in this section.

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

23 (b) A dispensed prescription drug or device shall be
24 properly stored and in the control of the facility or jail at all
25 times prior to the return of the drug or device for credit or for

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

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

10 (3) For purposes of this section:

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

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

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

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

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

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

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

24 (h) Prescription has the definition found in section
25 38-2840; ~~and~~

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

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

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

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

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

3 83-4,124 (1) It is hereby declared to be the policy of
4 the State of Nebraska that all criminal detention facilities ~~and~~
5 ~~juvenile detention facilities in the~~ this state shall conform to
6 certain minimum standards of construction, maintenance, and operation
7 and that all juvenile detention facilities and staff secure
8 facilities in this state shall conform to certain minimum standards
9 relating to the operation and physical facilities of such facilities
10 and the care of, programs for, and discipline of juveniles at such
11 facilities.

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

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

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

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

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

7 83-4,125 For purposes of sections 83-4,124 to 83-4,134:

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

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

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

22 (c) Type III Facilities ~~shall mean~~ means criminal
 23 detention facilities used for the detention of persons beyond ninety-
 24 six hours; ~~and~~

25 (2) Juvenile detention facility ~~shall mean~~ means an

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

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

20 Sec. 5. Section 83-4,126, Revised Statutes Supplement,
21 2011, is amended to read:

22 83-4,126 (1) Except as provided in subsection (2) of this
23 section, the Jail Standards Board shall have the authority and
24 responsibility:

25 (a) To develop minimum standards for the construction,

1 maintenance, and operation of criminal detention facilities;

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

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

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

20 Sec. 6. Section 83-4,131, Revised Statutes Supplement,
21 2011, is amended to read:

22 83-4,131 Personnel of the Nebraska Commission on Law
23 Enforcement and Criminal Justice shall visit and inspect each
24 criminal detention facility, ~~and~~ juvenile detention facility, and
25 staff secure facility in the state, except correctional facilities

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

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

14 83-4,132 If an inspection under sections 83-4,124 to
15 83-4,134 discloses that the criminal detention facility, ~~or~~ juvenile
16 detention facility, or staff secure facility does not meet the
17 minimum standards established by the Jail Standards Board, the board
18 shall send notice, together with the inspection report, to the
19 governing body responsible for the facility. The appropriate
20 governing body shall promptly meet to consider the inspection report,
21 and the inspection personnel shall appear before the governing body
22 to advise and consult concerning appropriate corrective action. The
23 governing body shall then initiate appropriate corrective action
24 within six months ~~of~~ after the receipt of such inspection report or
25 may voluntarily close the facility or the objectionable portion

1 thereof.

2 Sec. 8. Section 83-4,133, Revised Statutes Cumulative
3 Supplement, 2010, is amended to read:

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

- 19 (1) Dismisses the petition of the Jail Standards Board;
20 (2) Directs that corrective action be initiated in some
21 form by the local governing body of the facility in question; or
22 (3) Directs that the facility be closed. An appeal from
23 the decision of the district court may be taken to the Court of
24 Appeals.

25 Sec. 9. Original sections 83-4,124, 83-4,125, and

1 83-4,132, Reissue Revised Statutes of Nebraska, section 83-4,133,
2 Revised Statutes Cumulative Supplement, 2010, and sections
3 43-2,108.05, 71-2453, 83-4,126, and 83-4,131, Revised Statutes
4 Supplement, 2011, are repealed.