



7521 Main Street, Suite 103
Omaha, Nebraska 68127

(402) 597-3100 P
(402) 597-2705 F

www.voicesforchildren.com

BOARD OF DIRECTORS

Lloyd Meyer, MArch
President

Tim Hron, MA, LIMHP
Vice President

Donna Hammack, MSED
Secretary

Steve Mitchell, MBA
Treasurer

Eric Nelson, MA
Immediate Past President

Michael Beverly Jr., MBA
Amy Boesen
Lorraine Chang, JD
Yolanda Chavez Nuncio, MEd
Jeremy Fitzpatrick, JD
Bobbi Hawk, MD
Eric Johnson
Daniel Padilla
Michael Socha
Katie Weitz, PhD

Aubrey Mancuso, MSW
Executive Director

March 8, 2017

To: Chairperson Ebke and Members of the Judiciary Committee
From: Juliet Summers, Policy Coordinator – Child Welfare and Juvenile Justice
Re: Neutral testimony regarding LB 556 – creating the offense of “prohibited juvenile offender”

Our children and youth need to be held accountable for their actions in a way that puts them on a path towards a brighter future and a productive adulthood. When youth receive the services, supervision, and supports they need to turn their lives around, our system should allow them to move forward into a successful adulthood through adequate sealing and setting aside of juvenile records. Providing for the sealing of records protects youth and communities by allowing young people who have paid their debt to society and stayed out of trouble a better chance to get an education and earn an honest living.

I am here to testify today in a neutral capacity regarding LB 556, specifically the provisions pertaining to the creation of a new offense of a “prohibited juvenile offender,” because as drafted, the bill does not take into account the potential of a juvenile to rehabilitate and have his or her record sealed. Voices for Children is concerned that, without amendment, the bill would undercut our state’s current sealed records statute and create separate classes of youth in the juvenile court: those who are eligible for full record sealing, and those who, based solely on the underlying offense, are not eligible for full record sealing and its related benefits.

The Nebraska juvenile code pertaining to the sealing of records is embodied in *Neb. Rev. Stat. §43-2,108 – §43-2,108.05*. The legal effect of such sealing is 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 sentenced, *be deemed never to have occurred.*”¹ Furthermore, 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.”²

However, the statute does permit law enforcement, including county attorneys, continued access to sealed records “in the investigation, prosecution, and sentencing of crimes.”³ This means that an officer coming upon a 21-year old with a firearm could look up an old sealed record, see that the underlying offense was for a charge listed in LB 556, and make the felony “prohibited juvenile offender” arrest. A county attorney could then functionally unseal the juvenile record for the purposes of prosecution on the new “prohibited juvenile offender” felony charge. In this regard, any youth charged in juvenile court with one of the listed offenses could not

¹ *Neb. Rev. Stat. §43-2,108.05(1)(a)*. Emphasis added.

² *Neb. Rev. Stat. §43-2,108.05(2)*

³ *Neb. Rev. Stat. §43-2,108.05(3)*

rely on the statutory promise that a sealed record would mean the adjudication had been “deemed never to have occurred”.

I met with Senator Halloran yesterday regarding this concern, and he has taken the following proposed amendment under consideration:

Sec. 7 (1) Except as provided in subsections (4) and (5) of this section, any person under the age of twenty-five years who possesses a firearm and who has previously been adjudicated an offender in juvenile court for an act which would constitute a violation of any offense listed in subsection (3) of this section, **and who has not had record of such adjudication sealed pursuant to Neb. Rev. Stat. 43-2,108.05**, commits the offense of possession of a firearm by a prohibited juvenile offender.

This amendment would clarify that a sealed record is a sealed record, regardless of the underlying charge. It would keep the discretion in a judge’s hands whether a young person has adequately rehabilitated, deserving a clean slate, or still presents a danger to society warranting further restrictions on liberty beyond the end of juvenile court jurisdiction.

I’d like to thank Senator Halloran for his thoughtful consideration of this recommendation. Thank you to the Committee for your time and attention, and I would respectfully ask you not to advance the bill without an amendment to this effect. I’d be happy to answer any questions.