

February 6, 2018

To: Chair Ebke and Members of the Judiciary Committee

From: Juliet Summers, Policy Coordinator – Child Welfare and Juvenile Justice

**Re: Opposition testimony regarding LB 990 – 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.

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.

*Neb. Rev. Stat. §43-2,108 – §43-2,108.05* pertain to the sealing of juvenile records. 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.*”<sup>1</sup> 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.”<sup>2</sup>

However, the statute does permit law enforcement, including county attorneys, continued access to sealed records “in the investigation, prosecution, and sentencing of crimes.”<sup>3</sup> This means that an officer coming upon a 21-year old with a firearm could look up an old sealed record and make the felony “prohibited juvenile offender” arrest.<sup>4</sup> A county attorney would 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

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

<sup>2</sup> *Neb. Rev. Stat. §43-2,108.05(2)*

<sup>3</sup> *Neb. Rev. Stat. §43-2,108.05(3)*

<sup>4</sup>We also wonder whether, in investigating for the purposes of charging the prohibited juvenile offender, if the officer asks the individual whether he had any criminal history, and he answers “no” as permitted by the sealed record statute, he could also be charged with providing false information.

listed offenses could not rely on the statutory promise that a sealed record would mean the adjudication had been “deemed never to have occurred”.

I believe the bill’s intent is to keep firearms out of the hands of young people who have demonstrated their dangerousness. But this bill, as drafted, contemplates adjudication on any felony as a charge that would give rise to the prohibited juvenile offender status. As you know, not all felonies are dangerous or violent. A 14 year old who shoplifts several pairs of designer jeans could meet the value threshold for felony theft. If this child makes amends and completes the orders of the court and probation, she should get the benefit of a fully sealed record during the critical period in which she will be applying to colleges and first full-time jobs.

I met with Senator Wayne yesterday regarding this concern, and asked him to take the following amendment under consideration:

On page 3, line 20: after the word “violence,” insert the following: “, **and who has not had record of such adjudication sealed pursuant to Neb. Rev. Stat. 43-2,108.05,**”

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 Wayne 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.