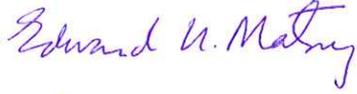


DIVISION OF CHILDREN AND FAMILY SERVICES  
Administrative Memo # 12-2011  
Replaces Administrative Memo #6-2010

To: All Children and Family Services Staff

From: Edward H. Matney, Policy Section Administrator   
Division of Children and Family Services

Approved by : Todd L. Reckling, Director   
Division of Children and Family Services (CFS)  
Department of Health and Human Services (DHHS)

Date: October 14, 2011

RE: Sealing of juvenile records, notification to courts when discharging a youth from OJS custody, school attendance, and other juvenile issues

Effective: Immediately

Duration: Until Modified or Repealed by the Nebraska Legislature

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Purpose: To provide further information to staff regarding legislation on juvenile/youth issues and, when applicable, provides instructions for implementation. This memo also provides further instructions on the sealing of juvenile records. Please note the underlined information is the new information being added to the memo.

Background: Statute which became effective on July 15, 2010, changed provisions related to youth crime, early intervention, parental involvement, school attendance, alternatives to detention, and sealing of juvenile records. This statute was introduced as LB 800 in the 101<sup>st</sup> Legislative Session and amended various sections of existing statute. Legislation passed in the 102<sup>nd</sup> Session (introduced as LB 463) further modified the provisions related to sealing the juvenile records and written notification to courts when a youth is discharged from OJS custody. This legislation became effective March 11, 2011.

The first four sections of this memo address changes to Nebraska law that require action on the part of DHHS staff. The remaining sections provide information on changes that may impact DHHS's work with children, youth, and families; however, those changes do not require specific action by DHHS staff in the field.

### Elimination of the Juvenile Review Panel

390 NAC 8-001.10 and 390 NAC 8-002 state that DHHS has 30 days in which to appeal a court order, and ten days to request a review by the Juvenile Review Panel. LB 800 eliminates the three-judge juvenile review panel. Instead, the law now provides that the Nebraska Court of Appeals will conduct the review of final orders or judgments from a juvenile court and that it will do so "in an expedited manner and shall render the judgment and write its opinion, if any, as speedily as possible."

#### Required Action:

- Upon receipt of a court's order of a plan for the care, placement, or services for a child that is different from DHHS's plan and that DHHS believes is not in the best interests of the child, the CFS Specialist or Supervisor must immediately contact DHHS-Legal and Regulatory Services to discuss the possibility of an appeal of the order and the possibility of a request to stay the order. DHHS has 30 days in which to appeal the order.
- Appeal of the order does not automatically stay the order. A party must request a stay. Therefore, when an order has been appealed, and there is a question regarding the status of the order (i.e., whether the order is stayed or must be implemented pending the appeal decision), the CFS Specialist or Supervisor must contact DHHS-Legal and Regulatory Services for direction.

### Placement of Status Offenders in Secure Detention

Effective January 1, 2013, LB 800 prohibits the placement into secure detention of a status offender who has violated a court order.

#### Required Action:

Although LB 800 allows a court to continue to issue such orders until January 1, 2013, effective immediately DHHS will not request an order for placement of a status offender into secure detention.

### Videoconferencing

LB 800 allows the use of videoconferencing as follows:

"All communications, notices, orders, authorizations, and requests authorized or required in the Nebraska Juvenile Code; all nonevidentiary hearings; and any evidentiary hearings approved by the court and by stipulation of all parties may be heard by the court telephonically or by videoconferencing in a manner that ensures the preservation of an accurate record."

Required Action: DHHS will agree to videoconferencing when the county attorney also agrees, and no DHHS attorney is involved. When an attorney from DHHS-Legal and Regulatory Services is involved, the CFS Specialist or Supervisor must refer the question regarding videoconferencing to that attorney.

### Sealing of Juvenile Records

LB 800 changes provisions relating to the sealing of juvenile criminal justice records. Sealing a record means that a record shall not be available to the public except upon an order of a court and upon good cause shown.

Youth may use the sealing process if they were under the age of eighteen years when the offense took place and the county/city attorney offered the youth pretrial diversion or mediation or filed a juvenile court petition under subdivision (1), (2), (3)(b), or (4) of section 43-247 or filed a criminal complaint in county court against the youth for a misdemeanor or infraction, other than for a traffic offense that may be waived, under the laws of this state or a city or village ordinance. The county attorney must provide information about this right to the youth. If a youth has satisfactorily completed his/her rehabilitation program (for example, completed diversion, probation, supervision, or other treatment), the youth, or the court on its own motion, may initiate proceedings to seal the juvenile record. The court must promptly notify the county or city attorney and DHHS of the proceedings, if the youth is a ward of the state or DHHS was a party in the case. After conducting a hearing, the court may order the youth's records to be sealed if it finds the youth has been rehabilitated to a satisfactory degree.

The court shall provide verbal or written notice to the youth that his or her records are sealed. Subsequently, the court must order that the information or data be deemed never to have occurred and send notice of this order to any law enforcement agencies, county attorneys, city attorneys referenced in the court record and order that all original records of the case be sealed. Upon written request of the subject of the order and a copy of the order, a public office or agency shall seal all records related to the case. If a record is sealed under 43-2,108.04 no person is allowed to release any information concerning such record. After the 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. DHHS or any other government agency shall reply to any public inquiry that no information exists.

A sealed record shall be accessible to law enforcement officers, county attorneys, city attorneys, the sentencing judge in the prosecuting and sentencing of criminal defendants, and any attorney representing the subject of a sealed record. Inspection of the records may be done by the following persons:

- The court or any person allowed to inspect by order of the court for good cause shown;
- By the court, city attorney, or county attorney for the purposes of collection of any remaining parental support;
- Probation;
- Department of Correctional Services, Office of Juvenile Services, juvenile assessment center, a criminal detention center, or juvenile detention center for an individual committed or placed under their care.
- DHHS for purposes of child or youth intake services, preparation of case plans and reports, preparations of evaluations, the supervision and protection of persons placed with DHHS for licensing or certification purposes;
- The youth who is the subject of the sealed records;
- Party to a civil action based on the sealed records;
- Persons engaged in bona fide research; and
- By a law enforcement agency if a person whose record has been sealed applies for employment with a law enforcement agency.

A person, who, without legal authority, knowingly releases, disseminates, or makes available information from a sealed record may be held in contempt of court. However, DHHS may release, disseminate, or make available information from a sealed record in performance of its duties in supervising and protecting persons placed with DHHS.

In applications for employment, license, or other privileges, a person cannot be questioned about sealed records.

Required Action: Once the DHHS local office receives a court order to seal a juvenile record that information must be entered into N-Focus. To support DHHS staff in identifying records that have been sealed, changes in N-FOCUS were implemented on March 20, 2011. Attachment A contains the steps to seal a juvenile record on N-Focus.

L800 provides guidance that the only records that will be sealed are delinquency and status offense court cases. The court order will include the name of the youth as well as the Court Page and Docket Number that is to be sealed.

DHHS Local Office staff will be expected to take the steps outlined in Attachment A upon receipt of the Court Order to seal a juvenile record. The local office can determine the appropriate staff in their office to perform this action. Court orders to seal juvenile records that have already been received by Central Office prior to September 23, 2011 will be entered on N-Focus by Central Office. DHHS local office staff must forward a copy of the court order to seal a juvenile record to Patti Reddick so the appropriate action can be taken to also seal the record in the closed file record system.

If a DHHS staff member receives a request for records from someone other than the individuals listed above who have access or can inspect a sealed record; the DHHS staff member must contact DHHS Legal and Regulatory Services for direction; prior to making the contact with the requesting party. The staff member should check N-FOCUS to see if a court has entered an order sealing the records of the person they received the inquiry about.

#### Notification to Courts Regarding a Juvenile's Discharge

LB 463 has amended Neb. Rev. Stat. 43-412 to indicate that the Office of Juvenile Services shall provide the committing court with written notification of the juvenile's discharge within thirty days of a juvenile being discharged from the care and custody of the Office.

#### Required Action:

When a juvenile committed to the Office of Juvenile Services, who is discharged from parole, or is institutionally discharged from the YRTC; the case manager shall provide written notification to the committing court of the juvenile's discharge from the Office of Juvenile Services. The notification will be sent to the committing court within thirty days of the juvenile being discharged from the supervision of the Office of Juvenile Services. A copy of the notification shall be maintained in the youth's permanent file.

#### Pre-adjudication Physical and Mental Evaluation

LB 800 establishes a time frame for the court to conduct a hearing on the results of the pre-adjudication evaluation as follows:

Upon completion of the evaluation, the youth shall be returned to the court together with a written report of the results of the evaluation. The youth shall appear before the court for a hearing on the report of the evaluation results within ten days after the court receives the evaluation.

Required Action: None

### Evaluations with the Office of Juvenile Services

LB 800 establishes a time frame for the court to conduct a hearing on the results of an evaluation with the Office of Juvenile Services as follows:

A youth placed for evaluation with the Office of Juvenile Services shall be returned to the court upon the completion of the evaluation or at the end of thirty days, whichever comes first; and the court shall hold a hearing within ten days after the evaluation is completed and returned to the court by the office.

Required Action: None

### Controlled Substance

LB 800 amends Nebraska law related to controlled substances, allowing the court to impound the Motor Vehicle Operator's License for persons 18 years of age or younger or to prohibit such persons from obtaining a license for a period of time. The court can also require drug education, community service, and a drug assessment; the sanctions available to the court depend on the number of previous offenses.

Required Action: None

### Probation

Probation officers are authorized to exercise power of temporary custody if there is reasonable cause to believe that a youth has violated or is about to violate his or her probation and that the youth will attempt to leave the jurisdiction or to place lives or property in danger.

When a probation officer has reasonable cause to believe that a youth subject to probation has committed or is about to commit a substance abuse violation or a noncriminal violation, but will not leave the jurisdiction and not place lives or property in danger, the probation office shall impose one or more administrative sanctions (e.g., counseling, increased supervision, travel restriction, or evaluation) or submit a written report to the adjudicating court.

When a probation officer has cause to believe that a youth has violated a condition of probation other than a substance abuse violation and will not leave the jurisdiction and not place lives or property in danger, the probation officer shall submit a written report to the adjudicating court.

When a probation officer has cause to believe that the youth has violated probation and will attempt to leave the jurisdiction or to place lives or property in danger, the probation officer shall take the youth into temporary custody and may call on a peace officer for assistance.

Immediately after detention, the probation officer shall notify the county attorney and submit a written report. The county attorney shall release the youth from the supervision of the probation officer or file a motion to revoke probation.

Required Action: None

### Civil Citation Pilot Program

This pilot program applies to counties containing a city of the metropolitan class. A civil citation is a noncriminal notice which cannot result in a criminal record.

A peace officer who has reasonable grounds to believe a youth has committed a misdemeanor offense, other than one that involves a firearm, sexual assault, or domestic violence, may issue the youth a civil citation. Upon issuing this citation, the peace officer shall send a copy of this citation to the county attorney, juvenile assessment center, and parents or guardian. The youth shall then report to the juvenile assessment center and may be required to participate in community service or other services such as family counseling or substance abuse services. If the youth fails to comply with this citation or is issued a third or subsequent citation, a peace officer shall take the youth into temporary custody.

Required Action: None

#### Truancy or Excessive Absenteeism

Custody by a Peace Officer: LB 800 permits a peace officer to take a child into temporary custody without a warrant or order of the court when the officer has reasonable grounds to believe the child is truant from school. LB 800 also establishes procedures relating to temporary custody, disposition, and custody requirements. Finally, LB 800 also requires that, when a child is taken into temporary custody based on the officer's belief that the child is truant, the officer must deliver the child to the school in which the child is enrolled.

Court-ordered Consequences for Parents: When a child is adjudicated under 43-247(3)(a) due to excessive absenteeism from school, the juvenile court may issue the parents or guardians of the child a fine not to exceed \$500 for each offense or order the parents or guardians to complete specified hours of community service. The court may require that all or part of the service be performed for a public school district or nonpublic school if the court finds that service in the school is appropriate under the circumstances.

Violation of Compulsory Attendance Law: LB 800 requires that all school districts have a written policy on excessive absenteeism developed in collaboration with the county attorney of the county in which the principal office of the school district is located. The policy must state the number of absences or the hourly equivalent upon the occurrence of which the school must render all services in its power to compel the child to attend some public, private, denominational, or parochial school, which the person having control of the child may designate, in an attempt to address the problem of excessive absenteeism. The number of absences in the policy may not exceed five days per quarter or the hourly equivalent. School districts may use excused and unexcused absences for purposes of the policy. Examples of services to be provided: educational evaluation, educational counseling, and investigation by school staff of reasons for excessive absenteeism and discussion with the family regarding services to remedy the conditions.

Required Action: None

#### Report of Excessive Absenteeism to the County Attorney

LB 800 requires that when a child is absent more than 20 days per year or the hourly equivalent, the attendance officer must file a report with the county attorney in the county where the person resides. The county attorney may file a complaint against the person violating the mandatory-attendance statute.

Required Action: None

Task Force for Evaluation and Recommendations to Reduce Excessive Absenteeism

Schools are required to make regular reports on excessive absenteeism. LB 800 creates the Truancy Intervention Task Force, which will consist of the probation administrator or designee, commissioner of education or designee, and DHHS chief executive officer or designee. The purpose of the task force is to study and evaluate the data contained in the reports required by LB 800 and to develop recommendations to reduce incidents of excessive absenteeism.

Required Action: None by field staff