

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1154

Introduced by McKinney, 11.

Read first time January 19, 2022

Committee:

- 1 A BILL FOR AN ACT relating to criminal justice; to amend sections
2 83-1,107, 83-1,114, 83-1,135, 83-1,135.02, and 83-962, Revised
3 Statutes Cumulative Supplement, 2020; to provide duties for the
4 Department of Correctional Services; to change provisions relating
5 to good time and parole eligibility; to provide for rules and
6 regulations; to provide for applicability; to require reports; to
7 harmonize provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) For purposes of this section, alternative placement
2 means any placement of a committed offender outside of a facility for
3 part or all of a day, and includes, but is not limited to, furloughs and
4 releases under sections 83-183 and 83-184.

5 (2) On or before January 1, 2023, the department shall adopt and
6 promulgate rules and regulations to establish a process for a committed
7 offender to seek review of any revocation or interruption of any
8 alternative placement.

9 Sec. 2. On or before January 1, 2023, the department, in
10 consultation with the board, shall adopt and promulgate rules and
11 regulations to ensure that at all times at least eighty percent of
12 committed offenders who are eligible for placement in community
13 corrections or transitional housing are serving sentences in such
14 placements.

15 Sec. 3. Section 83-1,107, Revised Statutes Cumulative Supplement,
16 2020, is amended to read:

17 83-1,107 (1)(a) Within sixty days after initial classification and
18 assignment of any offender committed to the department, all available
19 information regarding such committed offender shall be reviewed and a
20 committed offender department-approved personalized program plan document
21 shall be drawn up. The document shall specifically describe the
22 department-approved personalized program plan and the specific goals the
23 department expects the committed offender to achieve. The document shall
24 also contain a realistic schedule for completion of the department-
25 approved personalized program plan. The department-approved personalized
26 program plan shall be developed with the active participation of the
27 committed offender. The department shall provide programs to allow
28 compliance by the committed offender with the department-approved
29 personalized program plan.

30 Programming may include, but is not limited to:

31 (i) Academic and vocational education, including teaching such

1 classes by qualified offenders;

2 (ii) Substance abuse treatment;

3 (iii) Mental health and psychiatric treatment, including criminal
4 personality programming;

5 (iv) Constructive, meaningful work programs; and

6 (v) Any other program deemed necessary and appropriate by the
7 department.

8 (b) A modification in the department-approved personalized program
9 plan may be made to account for the increased or decreased abilities of
10 the committed offender or the availability of any program. Any
11 modification shall be made only after notice is given to the committed
12 offender. The department may not impose disciplinary action upon any
13 committed offender solely because of the committed offender's failure to
14 comply with the department-approved personalized program plan, but such
15 failure may be considered by the board in its deliberations on whether or
16 not to grant parole to a committed offender.

17 (2)(a) The department shall reduce the term of a committed offender
18 by six months for each year of the offender's term and pro rata for any
19 part thereof which is less than a year.

20 (b) In addition to reductions granted in subdivision (2)(a) of this
21 section, the department shall reduce the term of a committed offender by
22 four ~~three~~ days on the first day of each month following a twelve-month
23 period of incarceration within the department during which the offender
24 has not been found guilty of (i) a Class I or Class II offense or (ii)
25 more than three Class III offenses under the department's disciplinary
26 code. Reductions earned under this subdivision shall not be subject to
27 forfeit or withholding by the department.

28 (c) The total reductions under this subsection shall be credited
29 from the date of sentence, which shall include any term of confinement
30 prior to sentence and commitment as provided pursuant to section
31 83-1,106, and shall be deducted from the maximum term, to determine the

1 date when discharge from the custody of the state becomes mandatory.

2 (3) While the offender is in the custody of the department,
3 reductions of terms granted pursuant to subdivision (2)(a) of this
4 section may be forfeited, withheld, and restored by the chief executive
5 officer of the facility with the approval of the director after the
6 offender has been notified regarding the charges of misconduct.

7 (4) The department shall ensure that a release or reentry plan is
8 complete or near completion when the offender has served at least eighty
9 percent of his or her sentence. For purposes of this subsection, release
10 or reentry plan means a comprehensive and individualized strategic plan
11 to ensure an individual's safe and effective transition or reentry into
12 the community to which he or she resides with the primary goal of
13 reducing recidivism. At a minimum, the release or reentry plan shall
14 include, but not be limited to, consideration of the individual's housing
15 needs, medical or mental health care needs, and transportation and job
16 needs and shall address an individual's barriers to successful release or
17 reentry in order to prevent recidivism. The release or reentry plan does
18 not include an individual's programming needs included in the
19 individual's personalized program plan for use inside the prison.

20 (5)(a) The department shall make treatment programming available to
21 committed offenders as provided in section 83-1,110.01 and shall include
22 continuing participation in such programming as part of each offender's
23 parolee personalized program plan.

24 (b) Any committed offender with a mental illness shall be provided
25 with the community standard of mental health care. The mental health care
26 shall utilize evidence-based therapy models that include an evaluation
27 component to track the effectiveness of interventions.

28 (c) Any committed offender with a mental illness shall be evaluated
29 before release to ensure that adequate monitoring and treatment of the
30 committed offender will take place or, if appropriate, that a commitment
31 proceeding under the Nebraska Mental Health Commitment Act or the Sex

1 Offender Commitment Act will take place.

2 (6)(a) Within thirty days after any committed offender has been
3 paroled, all available information regarding such parolee shall be
4 reviewed and a case plan document shall be drawn up and approved by the
5 Division of Parole Supervision. The document shall specifically describe
6 the approved case plan and the specific goals the division expects the
7 parolee to achieve. The document shall also contain a realistic schedule
8 for completion of the approved case plan. The approved case plan shall be
9 developed with the active participation of the parolee. During the term
10 of parole, the parolee shall comply with the approved case plan and the
11 division shall provide programs to allow compliance by the parolee with
12 the approved case plan.

13 Programming may include, but is not limited to:

14 (i) Academic and vocational education;

15 (ii) Substance abuse treatment;

16 (iii) Mental health and psychiatric treatment, including criminal
17 personality programming;

18 (iv) Constructive, meaningful work programs;

19 (v) Community service programs; and

20 (vi) Any other program deemed necessary and appropriate by the
21 division.

22 (b) A modification in the approved case plan may be made to account
23 for the increased or decreased abilities of the parolee or the
24 availability of any program. Any modification shall be made only after
25 notice is given to the parolee. Intentional failure to comply with the
26 approved case plan by any parolee as scheduled for any year, or pro rata
27 part thereof, shall cause disciplinary action to be taken by the division
28 resulting in the forfeiture of up to a maximum of three months' good time
29 for the scheduled year.

30 (7) While the offender is in the custody of the board, reductions of
31 terms granted pursuant to subdivision (2)(a) of this section may be

1 forfeited, withheld, and restored by the director upon the recommendation
2 of the board after the offender has been notified regarding the charges
3 of misconduct or breach of the conditions of parole.

4 (8) Good time or other reductions of sentence granted under the
5 provisions of any law prior to July 1, 1996, may be forfeited, withheld,
6 or restored in accordance with the terms of the Nebraska Treatment and
7 Corrections Act.

8 (9) Pursuant to rules and regulations adopted by the probation
9 administrator and the director, an individualized post-release
10 supervision plan shall be collaboratively prepared by the Office of
11 Probation Administration and the department and provided to the court to
12 prepare individuals under custody of the department for post-release
13 supervision. All records created during the period of incarceration shall
14 be shared with the Office of Probation Administration and considered in
15 preparation of the post-release supervision plan.

16 Sec. 4. Section 83-1,114, Revised Statutes Cumulative Supplement,
17 2020, is amended to read:

18 83-1,114 (1) Whenever the board considers the release of a committed
19 offender who is eligible for release on parole, it shall order his or her
20 release unless there are substantial and compelling objective reasons ~~it~~
21 ~~is of the opinion~~ that his or her release should be deferred. ~~because:~~

22 (2) Substantial and compelling objective reasons are limited to the
23 following circumstances:

24 (a) The committed offender exhibits a pattern of ongoing behavior
25 while incarcerated indicating that the committed offender would be a
26 substantial risk to public safety, including Class I offenses under the
27 department's disciplinary code or additional criminal convictions;

28 (b) The committed offender refuses to participate in programming
29 ordered by the department to reduce the committed offender's risk. A
30 committed offender shall not be considered to have refused programming if
31 unable to complete programming due to factors beyond the committed

1 offender's control;

2 (c) There is verified objective evidence of substantial harm to a
3 victim that could not have been available for consideration at the time
4 of sentencing;

5 (d) The committed offender has threatened harm to another person if
6 released;

7 (e) There is objective evidence of post-sentencing conduct that the
8 committed offender would present a high risk to public safety if paroled;

9 (f) The committed offender is a suspect in an unsolved criminal case
10 that is being actively investigated;

11 (g) The committed offender has a pending felony charge or is subject
12 to a detainer request from another jurisdiction;

13 (h) The committed offender has not yet completed programming ordered
14 by the department to reduce the prisoner's risk, the programming is not
15 available in the community, and the risk cannot be adequately managed in
16 the community before completion;

17 (i) The committed offender fails to present a sufficient parole plan
18 adequately addressing the committed offender's identified risks and needs
19 to ensure that the committed offender will not present a risk to public
20 safety if released on parole. If a committed offender is denied parole
21 under this subdivision, the board must provide the committed offender a
22 detailed explanation of the deficiencies in the plan so that the
23 committed offender may address the deficiencies before the next review;
24 and

25 (j) The committed offender has received a psychological evaluation
26 in the past three years indicating the prisoner would present a high risk
27 to public safety if paroled.

28 ~~(a) There is a substantial risk that he or she will not conform to~~
29 ~~the conditions of parole;~~

30 ~~(b) His or her release would depreciate the seriousness of his or~~
31 ~~her crime or promote disrespect for law;~~

1 ~~(c) His or her release would have a substantially adverse effect on~~
2 ~~institutional discipline; or~~

3 ~~(d) His or her continued correctional treatment, medical care, or~~
4 ~~vocational or other training in the facility will substantially enhance~~
5 ~~his or her capacity to lead a law abiding life when released at a later~~
6 ~~date.~~

7 ~~(2) In making its determination regarding a committed offender's~~
8 ~~release on parole, the board shall give consideration to its decision~~
9 ~~guidelines as set forth in its rules and regulations and shall take into~~
10 ~~account each of the following factors:~~

11 ~~(a) The offender's personality, including his or her maturity,~~
12 ~~stability, and sense of responsibility and any apparent development in~~
13 ~~his or her personality which may promote or hinder his or her conformity~~
14 ~~to law;~~

15 ~~(b) The adequacy of the offender's parole plan;~~

16 ~~(c) The offender's ability and readiness to assume obligations and~~
17 ~~undertake responsibilities;~~

18 ~~(d) The offender's intelligence and training;~~

19 ~~(e) The offender's family status and whether he or she has relatives~~
20 ~~who display an interest in him or her or whether he or she has other~~
21 ~~close and constructive associations in the community;~~

22 ~~(f) The offender's employment history, his or her occupational~~
23 ~~skills, and the stability of his or her past employment;~~

24 ~~(g) The type of residence, neighborhood, or community in which the~~
25 ~~offender plans to live;~~

26 ~~(h) The offender's past use of narcotics or past habitual and~~
27 ~~excessive use of alcohol;~~

28 ~~(i) The offender's mental or physical makeup, including any~~
29 ~~disability or handicap which may affect his or her conformity to law;~~

30 ~~(j) The offender's prior criminal record, including the nature and~~
31 ~~circumstances, dates, and frequency of previous offenses;~~

1 ~~(k) The offender's attitude toward law and authority;~~

2 ~~(l) The offender's conduct in the facility, including particularly~~
3 ~~whether he or she has taken advantage of the opportunities for self-~~
4 ~~improvement, whether he or she has been punished for misconduct within~~
5 ~~six months prior to his or her hearing or reconsideration for parole~~
6 ~~release, whether any reductions of term have been forfeited, and whether~~
7 ~~such reductions have been restored at the time of hearing or~~
8 ~~reconsideration;~~

9 ~~(m) The offender's behavior and attitude during any previous~~
10 ~~experience of probation or parole and how recent such experience is;~~

11 ~~(n) The risk and needs assessment completed pursuant to section~~
12 ~~83-192; and~~

13 ~~(o) Any other factors the board determines to be relevant.~~

14 Sec. 5. Section 83-1,135, Revised Statutes Cumulative Supplement,
15 2020, is amended to read:

16 83-1,135 Sections 83-170 to 83-1,135.05 and sections 1 and 2 of this
17 act shall be known and may be cited as the Nebraska Treatment and
18 Corrections Act.

19 Sec. 6. Section 83-1,135.02, Revised Statutes Cumulative Supplement,
20 2020, is amended to read:

21 83-1,135.02 (1) It is the intent of the Legislature that the changes
22 made to the Nebraska Treatment and Corrections Act by Laws 2003, LB 46,
23 with respect to parole eligibility apply to all committed offenders under
24 sentence and not on parole on May 24, 2003, and to all persons sentenced
25 on and after such date.

26 (2) It is the intent of the Legislature that the changes made to
27 sections 29-2262, 29-2266, 29-2281, 83-182.01, 83-183, 83-183.01, 83-184,
28 83-1,119, and 83-1,122 by Laws 2015, LB605, and sections 83-184.01,
29 83-1,100.02, and 83-1,100.03 apply to all committed offenders under
30 sentence, on parole, or on probation on August 30, 2015, and to all
31 persons sentenced on and after such date.

1 (3) It is the intent of the Legislature that the changes made to
2 sections 28-105, 29-2204.02, 29-2260, 29-2262, 29-2263, 29-2266, 29-2267,
3 29-2268, 47-401, 47-502, 83-187, 83-1,119, 83-1,122, and 83-1,122.01 by
4 Laws 2016, LB1094, and sections 29-2266.01 to 29-2266.03 and 83-1,135.03
5 apply to all committed offenders under sentence, on parole, or on
6 probation on or after April 20, 2016, and to all persons sentenced on and
7 after such date.

8 (4) It is the intent of the Legislature that the changes made to
9 sections 83-1,110.02 and 83-1,122.01 by Laws 2018, LB841, apply to all
10 committed offenders under sentence or on parole on or after July 19,
11 2018, and to all persons sentenced on and after such date.

12 (5) It is the intent of the Legislature that the changes made to
13 sections 83-1,107, 83-1,114, and 83-962 and sections 1 and 2 of this act
14 by this legislative bill apply to all committed offenders under sentence
15 or on parole on or after the effective date of this act and to all
16 persons sentenced on and after such date.

17 Sec. 7. Section 83-962, Revised Statutes Cumulative Supplement,
18 2020, is amended to read:

19 ~~83-962 (1) Until July 1, 2020, the Governor may declare a~~
20 ~~correctional system overcrowding emergency whenever the director~~
21 ~~certifies that the department's inmate population is over one hundred~~
22 ~~forty percent of design capacity.~~ Beginning July 1, 2020, a correctional
23 system overcrowding emergency shall exist whenever the director certifies
24 that the department's inmate population is over one hundred forty percent
25 of design capacity. The director shall so certify within thirty days
26 after the date on which the population first exceeds one hundred forty
27 percent of design capacity.

28 (2) During a correctional system overcrowding emergency, the board
29 shall immediately consider or reconsider committed offenders eligible for
30 parole who have not been released on parole.

31 (3) Upon such consideration or reconsideration, and for all other

1 consideration of committed offenders eligible for parole while the
2 correctional system overcrowding emergency is in effect, the board shall
3 order the release of each committed offender unless the board determines
4 ~~that it is of the opinion that such release should be deferred because:~~
5 ~~(a) The board has determined that it is more likely than not that the~~
6 ~~committed offender will not conform to the conditions of parole; (b) The~~
7 ~~board has determined that release of the committed offender would have a~~
8 ~~very significant and quantifiable effect on institutional discipline; or~~
9 ~~(c) The board has determined that there is a very substantial risk that~~
10 the committed offender will commit a violent act against a person.

11 ~~(4) In making the determination regarding the risk that a committed~~
12 ~~offender will not conform to the conditions of parole, the board shall~~
13 ~~take into account the factors set forth in subsection (2) of section~~
14 ~~83-1,114.~~

15 (4) (5) The board shall continue granting parole to offenders under
16 this section until the director certifies that the population is at
17 operational capacity. The director shall so certify within thirty days
18 after the date on which the population first reaches operational
19 capacity.

20 Sec. 8. (1) On or before January 1, 2023, the State Court
21 Administrator shall electronically submit a report to the Judiciary
22 Committee of the Legislature concerning the relationships between
23 demographic factors and sentencing outcomes.

24 (2) On or before January 1, 2023, the State Court Administrator, in
25 consultation with the Department of Correctional Services and the Board
26 of Parole, shall electronically submit a report to the Judiciary
27 Committee of the Legislature regarding strategies to ensure that
28 sentencing decisions are informed by individual risk assessment
29 information and programming availability.

30 Sec. 9. Original sections 83-1,107, 83-1,114, 83-1,135,
31 83-1,135.02, and 83-962, Revised Statutes Cumulative Supplement, 2020,

1 are repealed.