

## LEGISLATIVE BILL 340

Approved by the Governor March 27, 2019

Introduced by Lathrop, 12.

A BILL FOR AN ACT relating to corrections; to amend sections 29-2262, 83-4,142, 83-4,144, 83-4,145, and 83-4,146, Reissue Revised Statutes of Nebraska, and section 83-4,143, Revised Statutes Cumulative Supplement, 2018; to change and eliminate provisions relating to incarceration work camps; to eliminate the incarceration work camp as a condition of probation; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 29-2262, Reissue Revised Statutes of Nebraska, is amended to read:

29-2262 (1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life. No offender shall be sentenced to probation if he or she is deemed to be a habitual criminal pursuant to section 29-2221.

(2) The court may, as a condition of a sentence of probation, require the offender:

- (a) To refrain from unlawful conduct;
  - (b) To be confined periodically in the county jail or to return to custody after specified hours but not to exceed the lesser of ninety days or the maximum jail term provided by law for the offense;
  - (c) To meet his or her family responsibilities;
  - (d) To devote himself or herself to a specific employment or occupation;
  - (e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for such purpose;
  - (f) To pursue a prescribed secular course of study or vocational training;
  - (g) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;
  - (h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
  - (i) To possess no firearm or other dangerous weapon if convicted of a felony, or if convicted of any other offense, to possess no firearm or other dangerous weapon unless granted written permission by the court;
  - (j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment and to agree to waive extradition if found in another jurisdiction;
  - (k) To report as directed to the court or a probation officer and to permit the officer to visit his or her home;
  - (l) To pay a fine in one or more payments as ordered;
  - (m) To pay for tests to determine the presence of drugs or alcohol, psychological evaluations, offender assessment screens, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;
  - (n) To perform community service as outlined in sections 29-2277 to 29-2279 under the direction of his or her probation officer;
  - (o) To be monitored by an electronic surveillance device or system and to pay the cost of such device or system if the offender has the financial ability;
  - (p) To participate in a community correctional facility or program as provided in the Community Corrections Act;
  - ~~(q) To successfully complete an incarceration work camp program as determined by the Department of Correctional Services;~~
  - ~~(q) (r)~~ To satisfy any other conditions reasonably related to the rehabilitation of the offender;
  - ~~(r) (s)~~ To make restitution as described in sections 29-2280 and 29-2281;
- or
- ~~(s) (t)~~ To pay for all costs imposed by the court, including court costs and the fees imposed pursuant to section 29-2262.06.

(3) When jail time is imposed as a condition of probation under subdivision (2)(b) of this section, the court shall advise the offender on the record the time the offender will serve in jail assuming no good time for which the offender will be eligible under section 47-502 is lost and assuming none of the jail time imposed as a condition of probation is waived by the court.

(4) Jail time may only be imposed as a condition of probation under subdivision (2)(b) of this section if:

(a) The court would otherwise sentence the defendant to a term of imprisonment instead of probation; and

(b) The court makes a finding on the record that, while probation is appropriate, periodic confinement in the county jail as a condition of probation is necessary because a sentence of probation without a period of confinement would depreciate the seriousness of the offender's crime or promote disrespect for law.

(5) In all cases in which the offender is guilty of violating section

28-416, a condition of probation shall be mandatory treatment and counseling as provided by such section.

(6) In all cases in which the offender is guilty of a crime covered by the DNA Identification Information Act, a condition of probation shall be the collecting of a DNA sample pursuant to the act and the paying of all costs associated with the collection of the DNA sample prior to release from probation.

Sec. 2. Section 83-4,142, Reissue Revised Statutes of Nebraska, is amended to read:

83-4,142 The Department of Correctional Services shall develop and implement an incarceration work camp for placement of felony offenders as a condition of a sentence of intensive supervision probation, as a transitional phase prior to release on parole, or as assigned by the Director of Correctional Services pursuant to subsection (2) of section 83-176. As part of the incarceration work camp, an intensive residential drug treatment program may be developed and implemented for felony offenders.

It is the intent of the Legislature that the incarceration work camp serve to reduce prison overcrowding and to make prison bed space available for violent offenders. It is the further intent of the Legislature that the incarceration work camp serve the interests of society by addressing the criminogenic needs of certain designated offenders and by deterring such offenders from engaging in further criminal activity. To accomplish these goals, the incarceration work camp shall provide regimented, structured, disciplined programming, including all of the following: Work programs; vocational training; behavior management and modification; money management; substance abuse awareness, counseling, and treatment; and education, programming needs, and aftercare planning, which will increase the offender's abilities to lead a law-abiding, productive, and fulfilling life as a contributing member of a free society.

Sec. 3. Section 83-4,143, Revised Statutes Cumulative Supplement, 2018, is amended to read:

83-4,143 (1) ~~It is the intent of the Legislature that the court target the felony offender (a) who is eligible and by virtue of his or her criminogenic needs is suitable to be sentenced to intensive supervision probation with placement at the incarceration work camp, (b) for whom the court finds that other conditions of a sentence of intensive supervision probation, in and of themselves, are not suitable, and (c) who, without the existence of an incarceration work camp, would, in all likelihood, be sentenced to prison.~~

~~(2) When the court is of the opinion that imprisonment is appropriate, but that a brief and intensive period of regimented, structured, and disciplined programming within a secure facility may better serve the interests of society, the court may place an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of a sentence of intensive supervision probation. The court may consider such placement if the offender (a) is a male or female offender convicted of a felony offense in a district court, (b) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (c) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-319 to 28-322.04 or of any capital crime are not eligible to be placed in an incarceration work camp.~~

~~(1) (3) It is also the intent of the Legislature that the Board of Parole may recommend placement of felony offenders at the incarceration work camp. The offenders recommended by the board shall be offenders currently housed at other Department of Correctional Services adult correctional facilities and shall complete the incarceration work camp programming prior to release on parole.~~

~~(2) (4) When the Board of Parole is of the opinion that a felony offender currently incarcerated in a Department of Correctional Services adult correctional facility may benefit from a brief and intensive period of regimented, structured, and disciplined programming immediately prior to release on parole, the board may direct placement of such an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of release on parole. The board may consider such placement if the felony offender (a) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (b) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-319 to 28-322.04 or of any capital crime are not eligible to be placed in an incarceration work camp.~~

~~(3) (5) The Director of Correctional Services may assign a felony offender to an incarceration work camp if he or she believes it is in the best interests of the felony offender and of society, except that offenders convicted of a crime under sections 28-319 to 28-322.04 ~~28-321~~ or of any capital crime are not eligible to be assigned to an incarceration work camp pursuant to this subsection.~~

Sec. 4. Section 83-4,144, Reissue Revised Statutes of Nebraska, is amended to read:

83-4,144 Upon successful completion of the incarceration work camp program, as determined by the Department of Correctional Services, the sentencing court may modify the offender's conditions of his or her sentence of probation, place the offender in an aftercare program, or discharge the offender. An offender placed in an incarceration work camp pursuant to a recommendation of the Board of Parole shall be released on parole upon

successful completion, as determined by the board, of the incarceration work camp program.

Sec. 5. Section 83-4,145, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-4,145 If the offender for any reason fails to successfully complete the incarceration work camp program, the sentencing court may impose any other sentence that the court may have originally imposed. An offender placed at the incarceration work camp pursuant to a recommendation of the Board of Parole who fails to successfully complete the incarceration work camp program shall be returned to the board for a rescission hearing. Credit shall be given for time actually served in the incarceration work camp program.~~

Sec. 6. Section 83-4,146, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-4,146 All costs incurred during the period the offender is committed to an incarceration work camp shall be the responsibility of the state, including . Counties shall be liable for the cost of transporting the offender to the incarceration work camp and for returning the offender to the appropriate court for reimposition of sentence or such other disposition as the court may then deem appropriate only if the offender is discharged for unsatisfactory performance from the incarceration work camp, except that the state shall be liable for the cost of transporting the offender to the incarceration work camp when such placement was made pursuant to a recommendation by the Board of Parole and for returning the offender to the appropriate Department of Correctional Services adult correctional facility if the offender is discharged for unsatisfactory performance from the incarceration work camp.~~

Sec. 7. Original sections 29-2262, 83-4,142, 83-4,144, 83-4,145, and 83-4,146, Reissue Revised Statutes of Nebraska, and section 83-4,143, Revised Statutes Cumulative Supplement, 2018, are repealed.