

LEGISLATIVE BILL 1177

Approved by the Governor April 17, 1986

Introduced by Sieck, 24

AN ACT relating to persons with disabilities; to amend sections 8-206, 17-135, 21-610, 25-213, 25-21,152, 29-1822, 29-2537, 29-2540, 29-2541, 29-3205, 30-2902, 31-113, 42-103, 42-501, 42-502, 42-503, 43-604, 43-611, 43-620, 43-621, 43-631, 47-101, 55-106, 67-332, 68-1202, 75-321, 76-724, 77-1311, 77-1827, 77-1855, 79-1345, 79-2213, 83-112, 83-1,141, 83-1,142, 83-1,144, 83-1,144.01, 83-217, 83-218, 83-363, 83-381, 83-382, 83-386, 83-387, 83-389, 83-1101, 83-1103, 83-1104, 83-1108, 83-1112 to 83-1117, 83-1122, 83-1125, and 83-1128, Reissue Revised Statutes of Nebraska, 1943, sections 68-721, 71-901, 71-5858, 79-328, and 83-383, Revised Statutes Supplement, 1984, and sections 23-104.03 and 43-289, Revised Statutes Supplement, 1985; to change references to certain persons with disabilities; to harmonize provisions; to eliminate an obsolete provision; and to repeal the original sections, and also section 43-616.02, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 8-206, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-206. A corporation, created under the provisions of sections 8-201 to 8-226 shall have power:

(1) To receive trust funds for investment or in trust upon such terms and conditions as may be agreed upon; and to purchase, hold, and lease fire and burglar-proof and other vaults and safes from which a revenue may be derived;

(2) To accept and execute all such trusts as may be committed to it by any corporation, person, or persons, and to act as assignee, receiver, trustee, and depositor, and to accept and execute all such trusts as may be committed or referred to it by order, judgment, or decree of any court of record;

(3) To take, accept, and hold by the order,

judgment, or decree of any such court; or by gift, grant, assignment, transfer, devise, or bequest, any real or personal property in trust; to care for, manage, and convey the same in accordance with such trusts; and to execute and perform any and all such trusts;

(4) To act as agent or attorney-in-fact for any person or corporation, public or private;

(5) To act either by itself or jointly with any natural person or persons or with any other trust company or state or national bank doing business in this state as administrator of the estate of any deceased person, or as executor, or as guardian, of the property of any infant, ~~insane person, idiot person with mental retardation, person with a mental disorder~~, habitual drunkard, or person under any other disability, or as conservator, or as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person. ~~A~~ ; ~~PROVIDED, that~~ a corporation so appointed as administrator, executor, or guardian shall give a bond the same as is required by law for natural persons acting in the same capacity. No charge shall be allowed against such estate for legal services performed by an attorney who is a salaried employee of such corporation, or ~~where when~~ a portion of the charge for legal service is retained by such corporation. Any officer or employee of such corporation causing or consenting to such division of fee for legal service shall be guilty of contempt of court. No investments of such estate or property shall be made in the capital stock or securities of such corporation, or securities sold by such corporation. Such corporation shall not substitute any of the assets of such estate under its control for securities of such corporation or securities sold by such corporation. Any officer or employee of such corporation causing such substitution or consenting to such substitution shall be guilty of embezzlement;

(6) To loan money upon real estate and upon collateral security when the collateral would of itself be a legal investment for ~~the said such~~ corporation; and to borrow money, to execute and issue its notes payable at a future date, and to pledge its real estate, mortgages, or other securities therefor. No loan shall be made to any officer or director of ~~said such~~ corporation;

(7) To buy, hold, own, and sell government, state, county, and municipal bonds, bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate

credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, stock, warrants, bills of exchange, notes, mortgages, and other investment securities, negotiable and nonnegotiable, except bonds the interest on which has been in default for a period of two years next preceding the date of purchase, stock of any corporation that has not earned annual dividends of at least four per cent per annum for at least three years just prior to the date of such purchase, and stock of any corporation organized under sections 8-201 to 8-226;

(8) To purchase, own, or rent real estate needed in the conduct of the business and to erect thereon buildings deemed expedient and necessary, the cost of such real estate and buildings not to exceed forty per cent of the paid-up capital stock; and to purchase, own, and improve such other real estate as it may be required to bid in under foreclosure or in payment of other debts; and

(9) To perform all acts and exercise all powers connected with, belonging to or incident to, or necessary for the full and complete exercise and discharge of the rights, powers, and responsibilities hereinbefore granted, and all provisions of sections 8-201 to 8-226 shall be liberally construed. None of the powers hereby granted shall extend to or be construed to authorize any such corporation to conduct the business of banking, as defined in sections 8-101 to 8-1,121.

Sec. 2. That section 17-135, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

17-135. A second-class city shall have power to forbid, punish, and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed, or fermented liquor to any minor, ~~apprentice or insane, idiotic or distracted person, or habitual drunkard.~~

Sec. 3. That section 21-610, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-610. When any such organization shall have established in this state an institution for the care of children or persons who are incapacitated in any manner and such institution shall have been incorporated under the laws of Nebraska, such corporation shall have power to act either by itself or jointly with any natural person or persons (1) as administrator of the estate of any deceased person whose domicile was within the county in which the corporation is located or whose domicile is

was outside the State of Nebraska, ~~or~~ (2) as executor under a last will and testament or as guardian of the property of any infant, ~~insane person, idiot, or persons~~ person with mental retardation, person with a mental disorder, or person under other disability, or (3) as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person.

Sec. 4. That section 23-104.03, Revised Statutes Supplement, 1985, be amended to read as follows:

23-104.03. Each county shall have the authority (1) to plan, initiate, fund, maintain, administer, and evaluate facilities, programs, and services that meet the rehabilitation, treatment, care, training, educational, residential, diagnostic, evaluation, community supervision, and protective service needs of dependent, aged, blind, disabled, ill, or infirm, mentally ill, or mentally retarded persons, persons with a mental disorder, and persons with mental retardation domiciled in the county, (2) to purchase outright by installment contract or by mortgage with the power to borrow funds in connection with such contract or mortgage, hold, sell, and lease for a period of more than one year real estate necessary for use of the county to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, (3) to lease personal property necessary for such facilities, programs, and services, and such lease may provide for installment payments which extend over a period of more than one year, notwithstanding the provisions of section 23-132 or 23-916, (4) to enter into compacts with other counties, state agencies, other political subdivisions, and private nonprofit agencies to exercise and carry out the powers to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, and (5) to contract for such services from agencies, either public or private, which provide such services on a vendor basis. Compacts with other public agencies pursuant to subdivision (4) of this section shall be subject to the Interlocal Cooperation Act.

Sec. 5. That section 25-213, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-213. Except as provided in sections 76-288 to 76-298, if a person entitled to bring any action mentioned in this chapter, Chapter 23, article 24, the Nebraska Hospital-Medical Liability Act, and sections

81-8,209 to 81-8,239, except for a penalty or forfeiture, or for the recovery of the title or possession of lands, tenements, or hereditaments, or for the foreclosure of mortgages thereon, be, at the time the cause of action accrued, within the age of twenty years, insane a person with a mental disorder, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by this chapter after such disability shall be removed. ~~For 7 and for~~ the recovery of the title or possession of lands, tenements, or hereditaments, or for the foreclosure of mortgages thereon, every such person shall be entitled to bring such action within twenty years from the accrual thereof, but in no case longer than ten years, after the termination of such disability. Absence from the state, death, or other disability shall not operate to extend the period within which actions in rem shall be commenced by and against a nonresident or his or her representative.

Sec. 6. That section 25-21,152, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-21,152. Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or ~~of~~ the estate of a decedent, an infant, ~~lunatic~~ person with a mental disorder, or insolvent, may have a declaration of rights or legal relation in respect thereto:

- (a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others; or
- (b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
- (c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

Sec. 7. That section 29-1822, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1822. A person who becomes ~~lunatic or insane~~ mentally incompetent after the commission of a crime or misdemeanor shall not be tried for the offense during the continuance of the ~~lunacy or insanity~~ incompetency. If, after the verdict of guilty, and before judgment pronounced, such person becomes ~~lunatic or insane~~ mentally incompetent, then no judgment shall be given while such ~~lunacy or insanity~~ incompetency

shall continue; and if, after judgment and before execution of the sentence, such person shall become ~~lunatic or insane~~ mentally incompetent, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the ~~insanity or lunacy~~ incompetency.

Sec. 8. That section 29-2537, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2537. If any convict under sentence of death shall appear to be ~~insane~~ mentally incompetent, the warden or sheriff having him or her in custody shall forthwith give notice thereof to a judge of the district court of the judicial district in which the convict was tried and sentenced, and such judge shall at once make such investigation as shall satisfy him or her as to whether a commission ought to be named to examine such convict.

If he or she shall determine that there is not sufficient reason for the appointment of a commission, he or she shall so find and refuse to suspend the execution of the convict. If the judge shall determine that a commission ought to be appointed to examine such convict, he or she shall make a finding to that effect and cause it to be entered upon the records of the district court in the county in which such convict was sentenced, and, if necessary, the judge shall suspend the execution and appoint the three superintendents of the state centers at Lincoln, Hastings, and Norfolk as a commission to examine such convict. The ~~and the~~ commission shall examine the convict with a view of determining to determine whether he or she is ~~sane or insane~~ mentally competent or mentally incompetent and shall report its findings in writing to such judge within ten days after its appointment. If for any reason any of such superintendents cannot serve in such capacity, the judge shall appoint in his or her place one of the assistant superintendents of such center. If two of the commission shall find the convict ~~insane~~ mentally incompetent, the judge shall suspend his or her execution until further order. Any time thereafter, when it shall be made to appear to the judge that the convict has become ~~sane~~ mentally competent, he or she shall appoint a commission in the manner ~~aforsaid~~ provided in this section, who shall make another investigation as to the ~~sanity~~ mental competency of the convict, and in case ~~said~~ such convict is again declared ~~insane~~ mentally incompetent his or her execution shall be suspended by the judge until further order. Such

proceedings may be had at such times as the judge shall order until it is either determined that the convict is same mentally competent or incurably insane mentally incompetent.

Sec. 9. That section 29-2540, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2540. If a female convict under sentence of death shall appear to be pregnant, the warden or sheriff shall in like manner notify the judge of the district court of the county in which she was sentenced, who shall in all things proceed as in the case of an insane a mentally incompetent convict.

Sec. 10. That section 29-2541, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2541. If the commission shall find that the female convict is with child pregnant, the judge shall suspend the execution of her sentence. At such time as it shall be determined that such woman is no longer pregnant, the judge shall appoint a time for her execution, which shall be carried into effect in the same manner as provided in the original sentence. The costs and expenses thereof shall be the same as those provided for in the case of an insane a mentally incompetent convict and shall be paid in the same manner.

Sec. 11. That section 29-3205, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-3205. Sections 29-3201 to 29-3210 do not apply to any person in this state confined as insane or mentally ill or as a defective delinquent or under sentence of death.

Sec. 12. That section 30-2902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2902. Whenever in the statutes of Nebraska, unless the context otherwise requires:

(1) The term incompetent person or insane person, or words of similar import occur they shall be taken to mean and apply to incapacitated person or incompetent person as used in this code; and

(2) The term guardian shall be taken to mean and include guardian or conservator as used in this code.

The Revisor of Statutes shall make corrections in the statutes necessitated by this section.

Sec. 13. That section 31-113, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

31-113. The county board on actual view of the premises shall fix and allow such compensation for land appropriated, and assess such damages as will in its judgment accrue from the construction of the improvement, to each person or corporation making application as provided by section 31-112, and without such application to each ~~idiot, insane~~ person with mental retardation, person with a mental disorder, or minor owning lands taken or affected by such improvement.

Sec. 14. That section 42-103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-103. Marriages are void (1) when either party has a husband or wife living at the time of the marriage, (2) when either party, at the time of marriage, is ~~insane or~~ mentally incompetent to enter into the marriage relation, and (3) when the parties stand in relation to each other of parents and children, grandparents and grandchildren, brother and sister of half as well as whole blood, first cousins when of whole blood, uncle and niece, and aunt and nephew. ~~This~~ This subdivision extends to illegitimate as well as legitimate children and relatives.

Sec. 15. That section 42-501, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-501. ~~Where~~ When either husband or wife is ~~insane mentally incompetent~~ and incapable of executing a mortgage relinquishing or encumbering his or her right to the homestead or any other real property of the other, the other may petition the district court of the county of his or her residence, or of the county where the real estate to be encumbered is situated, setting forth the facts and praying for an order authorizing the applicant or some other person to execute a mortgage and relinquish or encumber by ~~said~~ such mortgage the interest of the ~~insane mentally incompetent~~ person in ~~said~~ such homestead or other real estate. ~~The~~ The ~~PROVIDED,~~ that the court shall not authorize the execution of any mortgage on the homestead of the parties for an amount greater than is necessary to pay or redeem ~~from~~ the lien of an existing mortgage on ~~said~~ such homestead.

Sec. 16. That section 42-502, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-502. The petition shall be verified by the petitioner and filed in the office of the clerk of the district court of the proper county. A copy thereof, with the notice of the time at which such application will be heard by the court, ~~must~~ shall be served personally upon the ~~insane mentally incompetent~~ person in the same manner in which a summons is served, at least ten days prior to the time fixed for such hearing. Upon completed service, the court shall appoint some responsible attorney thereof guardian ad litem for the person alleged to be ~~insane mentally incompetent~~, who shall ascertain the propriety, good faith, and necessity of the prayer of the petitioner, and may resist the application by making any legal or equitable defense thereto. The guardian ad litem, ~~and he~~ shall be allowed by the court a reasonable compensation to be paid as are the other costs.

Sec. 17. That section 42-503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-503. Upon the hearing of the petition, if the court ~~if is~~ satisfied that it is made in good faith by the petitioner, ~~and~~ that he or she or some other person selected by the court is a proper person to exercise the power and make the mortgage, and that it is necessary and proper, the court shall enter a decree authorizing the execution of a mortgage for and in the name of such ~~insane mentally incompetent~~ husband or wife by the petitioner or such other person as the court may appoint.

Sec. 18. That section 43-289, Revised Statutes Supplement, 1985, be amended to read as follows:

43-289. In no case shall a juvenile committed under the terms of the Nebraska Juvenile Code be confined after he or she reaches the age of majority. The court may, when the health or condition of any juvenile adjudged to be within the terms of such code shall require it, cause the juvenile to be placed in a public hospital or institution for treatment or special care or in an accredited and suitable private hospital or institution which will receive the juvenile for like purposes. If the court finds any such juvenile to be a ~~mentally retarded~~ person with mental retardation, it may, upon attaching ~~the~~ a physician's certificate and ~~the~~ a report as to the mental capacity provided by section 83-221 of such person, commit such juvenile directly to an authorized and appropriate state or local facility or home.

The marriage of any juvenile committed to a state institution under the age of nineteen years shall not make such juvenile of the age of majority.

A juvenile committed to any such institution shall be subject to the control of the superintendent thereof, and the superintendent, with the advice and consent of the Department of Social Services or the Department of Public Institutions, whichever has supervision of the institution, shall adopt and promulgate rules and regulations for the promotion, paroling, and final discharge of residents such as shall be considered mutually beneficial for the institution and the residents. Upon final discharge of any resident, such department shall file a certified copy of the discharge with the court which committed the resident.

Sec. 19. That section 43-604, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-604. (1) Special education shall mean the provision of educational experiences and services through the use of special facilities and special adaptive classrooms, or either of the same, to provide special instruction to handicapped children or the supportive services necessary to diagnose, place, and maintain children in special education.

(2) Handicapped children shall mean either physically handicapped children, ~~educable mentally handicapped, mentally retarded,~~ behaviorally impaired children, children with specific learning disabilities, children with mental retardation, or such other children as shall be defined by the State Department of Education.

(3) Physically handicapped children shall mean children (a) who are residents of Nebraska, (b) who are visually handicapped, acoustically handicapped, defective in speech, cardiopathic, tubercular, cerebral palsied, orthopedically handicapped, or otherwise physically handicapped, and (c) who, by reason of their physical defects, are unable to attend regular public school classes, are not physically adapted to hold full-time membership in regular school facilities, or who, in order to profit from regular school instruction, need facilities and procedure not available in the regular public school classes attended by physically normal children. Such definition shall include the physically handicapped with mental retardation if, in the opinion of the examining physician, educational psychologist, psychologist, or psychiatrist, the

condition can be improved materially by education and treatment.

(4) ~~Educable mentally handicapped shall mean children of school age who, because of retarded intellectual development as determined by individual psychological examination and deficiencies in social adjustment, require additional supportive services in order to function profitably within regular educational programming.~~

(5) Behaviorally impaired children shall mean children with a serious condition exhibiting one or more of the characteristics specified in this subsection in sufficient frequency, duration, or intensity to require intervention for educational, social, or emotional growth and development. The term shall include children who are autistic. The behavioral impairment cannot be explained by intellectual, sensory, or health factors. The characteristics of behaviorally impaired children include:

(a) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(b) Inappropriate types of behavior or feelings under normal circumstances;

(c) A general pervasive mood of unhappiness or depression; or

(d) A tendency to develop physical symptoms or fears associated with personal or school problems.

(5) (6) Orthopedically handicapped children shall mean those whose locomotion, mobility, or use of limbs are impaired by crippling because of (a) congenital anomaly, (b) birth injury, (c) trauma, (d) tumor, (e) infection, (f) disease, or (g) other conditions such as fragile bones or cardiac impairment.

(6) (7) Specific learning disability children shall mean those children of school age who have a verified disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in an inability to listen, think, speak, write, spell, or do mathematical calculations. Such term ~~does~~ shall not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, ~~of~~ mental retardation, ~~or~~ emotional disturbance, or ~~of~~ educational disadvantage.

(7) (8) A mentally retarded child with mental retardation shall mean a child who would benefit from training or education in the areas of self-care, social adjustment to his or her immediate surroundings, and

vocationally related activities which will contribute to his or her economic usefulness in the home or in a specialized situation providing for activities such as sheltered work experience and a supervised living environment.

(8) (9) Multihandicapped children shall mean children who have two or more coincidental and educationally significant physical or psychological handicaps or both physical and psychological handicaps. This includes physically handicapped children with mental retardation if, in the opinion of the examining physician and psychologist, the child's condition can be improved materially by education and treatment.

Sec. 20. That section 43-611, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-611. Sufficient funds shall be appropriated by the Legislature to carry out ~~the provisions of sections 43-601 and 43-604 to 43-616-01 43-611.01~~, such funds to be channeled through the office of the State Department of Education. ~~The and the~~ department shall be authorized to expend such funds upon proper vouchers approved by the department and warrants issued by the Director of Administrative Services for (1) financial reimbursement to local school districts, educational service units, agencies, and parents or guardians, including full reimbursement for the amount expended pursuant to ~~sections section~~ 43-607 and ~~43-616-01~~ for actual transportation expenses per year for handicapped children and mentally retarded children with mental retardation, (2) instructional aids and consultative, supervisory, research, and testing services to local school districts, and (3) salaries, wages, maintenance, supplies, travel, and other expenses essential to carrying out the provisions for special education.

Sec. 21. That section 43-620, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-620. A public school district, combination of public school districts, educational service unit, or combination of educational service units may set up one or more approved schools for mentally retarded children with mental retardation. The control and supervision of such schools shall be under the governing body or bodies by which they were set up. Every ; PROVIDED, that every school shall comply with the rules and regulations as adopted and promulgated by the State Department of Education.

Sec. 22. That section 43-621, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-621. In determining the number and location of schools provided for by sections 43-620 to 43-624, a public school district, combination of public school districts, educational service unit, or combination of educational service units shall take into consideration the number and geographic distribution of mentally handicapped children with mental disabilities and the location and adequacy of other existing schools for such children. In setting up any such school, a public school district, combination of public school districts, educational service unit, or combination of educational service units shall specify the area to be served by it and each such area shall include a sufficient number of trainable mentally retarded children with mental retardation to assure the efficient operation of a sound training or educational program by the school. No such school shall be set up unless the necessary land and buildings and other structures are made available within the proposed area at no cost to the state, nor without the approval of the State Board of Education.

Sec. 23. That section 43-631, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-631. The administration of the medical center shall appoint a staff to supervise and coordinate the program established by sections 43-629 to 43-632. This staff shall consist of at least the following: (1) A clinical psychologist who has experience in counseling and working with handicapped children; (2) a pediatrician who is qualified and eligible in pediatrics with experience, ~~or~~ special education, or training in the treatment and care of mentally retarded and handicapped children and children with mental retardation; and (3) an educational services coordinator, who is trained and experienced in the education of handicapped children and the administration of appropriate programs for them. Expense of the program may include the employment of such other personnel and the purchase of such materials and equipment as are necessary to carry out the program, and the travel expenses of personnel, children, and their parents, and the cost of residential care of children, with mileage to be computed at the rate allowed in section 84-306.03 for state employees. The expense of the program shall be paid by the State of Nebraska, but

the parents or guardians of such multihandicapped children who are tested, treated, or cared for under this program, who are able wholly or in part to provide for their support and care, to the extent of their ability may be required to make payment therefor.

Sec. 24. That section 47-101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-101. The judges of the district courts of the several judicial districts of this state shall from time to time as they may deem necessary prescribe, in writing, rules for the regulation and government of the jails in the several counties within their respective districts, upon the following subjects: (1) The cleanliness of the prison and prisoners; (2) the classification of prisoners in regard to sex, age, and crime, and also persons ~~insane, idiots and lunatics,~~ with physical or mental disabilities; (3) beds and clothing; (4) warming, lighting, and ventilation of the prison; (5) the employment of medical and surgical aid when necessary; (6) employment, temperance, and instruction of the prisoners; (7) the supplying of each prisoner with a Bible; (8) the intercourse between prisoners and their counsel and other persons; (9) the punishment of prisoners for violation of the rules of the prison; and (10) such other matters as the judges may deem necessary to promote the welfare of the prisoners. ~~PROVIDED, such rules shall not be contrary to the laws of the state.~~

Sec. 25. That section 55-106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

55-106. All able-bodied citizens and able-bodied persons of foreign birth who have been admitted for permanent residence, who are more than seventeen and less than sixty years of age, and who are residents of this state, shall constitute the militia, subject to the following exemptions: (1) Persons exempt by the laws of the United States; (2) members of any regularly organized fire or police department of any city or village and retired ~~firemen~~ fire fighters who have served their full term in any fire company; but no member of the active militia shall be relieved from duty ~~because of his~~ by joining any such fire company or department; (3) judges, justices, and clerks of courts of record; registers of deeds; sheriffs; ministers of the gospel; officers and assistants of hospitals, prisons, and jails; and (4) ~~idiots, lunatics, paupers, vagabonds, confirmed alcoholics~~ persons with physical or

mental disabilities, persons addicted to the use of narcotic drugs or alcohol, and persons convicted of treason and sedition. All such exempted persons, except those enumerated in subdivisions (1) and (4) of this section, shall be available for military duty in case of war, insurrection, invasion, disaster, or imminent danger thereof.

Sec. 26. That section 67-332, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

67-332. (1) On application by or for a partner, the court shall decree a dissolution whenever:

(a) A partner has been declared a lunatic mentally incompetent in any judicial proceedings or is shown to be of unsound mind; 7

(b) A partner becomes in any other way incapable of performing his or her part of the partnership contract; 7

(c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business; 7

(d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself or herself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him or her; 7

(e) The business of the partnership can only be carried on at a loss; or 7

(f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under sections 67-327 and 67-328, an order of dissolution shall be decreed:

(a) After the termination of the specified term or particular undertaking; or 7

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

Sec. 27. That section 68-721, Revised Statutes Supplement, 1984, be amended to read as follows:

68-721. If, at any point in the state fiscal year, medical assistance funds are being expended at a rate that would exceed funds available for medical assistance expenditures for the fiscal year, the Director of Social Services shall impose a pro rata reduction of all allowable costs for optional services under the medical assistance program, except for costs

payable to Indian Health Service facilities which are subject to one hundred per cent federal reimbursement; costs which reflect manufacturers' actual cost of materials; skilled nursing care services for individuals twenty-one years of age and under; intermediate nursing care services for mentally retarded individuals with mental retardation; and inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals age sixty-five or older and age twenty-one and under in institutions for mental diseases. Such reduction shall be a percentage designed to bring the rate of expenditures into line with available funds.

If at any time such cuts for optional services amount to a pro rata reduction of ten per cent for such optional services covered by this section, the Director of Social Services shall impose a pro rata reduction on all services provided by medical assistance on an equal percentage for all such further reductions in payments.

For the purpose of this section, allowable costs shall mean the costs which may be paid to a provider for any goods or services covered by the medical assistance program prior to any adjustment due to payments available from other sources.

Sec. 28. That section 68-1202, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-1202. Social services may be provided on behalf of recipients with payments for such social services made directly to vendors. Social services shall include those mandatory and optional services to former, present, or potential welfare social services recipients provided for under the federal Social Security Act, as amended, and described by the State of Nebraska in the approved State Plan for Services. Such services may include, but shall not be limited to, foster care for children, child care, family planning, treatment for alcoholism and drug addiction, treatment for the mentally retarded persons with mental retardation, health-related services, protective services for children, homemaker services, employment services, foster care for adults, protective services for adults, transportation services, home management and other functional education services, housing improvement services, legal services, day care for adults, home delivered or congregate meals, and educational services.

Sec. 29. That section 71-901, Revised Statutes Supplement, 1984, be amended to read as follows:

71-901. (1) The Department of Health shall inquire into the whole system of public charities and methods and practices in the public and correctional institutions of the state, counties, and cities to ascertain the condition thereof from time to time by inspection or otherwise, especially of prisons, jails, infirmaries, public hospitals, including hospitals for the mentally ill and mentally retarded persons with a mental disorder and persons with mental retardation, and all correctional institutions, including the Youth Development Center-Kearney and the Youth Development Center-Geneva, and industrial schools.

(2) The Department of Health shall make at least one inspection every year of each state public and correctional institution, which inspection may be unannounced, and such inspections shall not require the permission of any director of the department or of the institution to be inspected. The inspection of state public and correctional institutions shall include an inspection of the dietary facilities at the institution.

(3) The Department of Health shall enforce ~~the provisions~~ of this section and all other statutes pertaining to public health and sanitation with respect to the public and correctional institutions of the state, counties, and cities. The Department of Health shall adopt, promulgate, and enforce necessary rules and regulations for carrying out the provisions of this section. It may also adopt and promulgate rules and regulations supplementing any of the provisions ~~herein~~ contained in this section but not inconsistent therewith.

(4) The Department of Health shall make an investigation and report to the Department of Social Services, within thirty days after receipt of the request by the Department of Social Services, of all facilities and programs of licensed providers of early childhood programs, as defined in section 71-1910, or applicants for licenses to provide such programs to determine if the place or places to be covered by such licenses meet standards of health and sanitation set by the Department of Health for the care and protection of the child or children who may be placed therein. The Department of Health may delegate this authority to qualified local environmental health personnel. The standards for health and sanitation for such early childhood programs shall be developed and implemented with the advice and approval of the Department of Social Services.

Sec. 30. That section 71-5858, Revised

Statutes Supplement, 1984, be amended to read as follows:

71-5858. Before issuing a certificate of need, the Certificate of Need Review Committee shall consider, in accordance with the appropriate criteria of sections 71-5852 to 71-5855, the need for (1) health care facilities, (2) services related to health care facilities, and (3) clinical equipment as projected in various state plans prepared by state agencies, including, but not limited to, the medical facilities construction and modernization program, mental health centers plan, programs for facilities and services for the mentally retarded persons with mental retardation, rehabilitation services program, the alcoholic and drug abuse programs, and special studies, surveys, and information.

Sec. 31. That section 75-321, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-321. Upon the death of an individual holder of a certificate or permit, or upon an individual certificate or permit holder being legally declared insane mentally incompetent, the authority conferred by such certificate shall continue with the legal representative of the deceased or insane mentally incompetent holder thereof for a period of one year from the date of ~~its~~ the holder's death or the declaration of insanity mental incompetency, after which the authority conferred thereby shall cease and the certificate or permit be revoked and canceled without further order of the commission, unless application has been made to transfer such authority, in which case the authority shall continue with the legal representative until there has been a final determination of the application. In - PROVIDED, that in the event that application is made by the legal representative not less than thirty days prior to the end of such period of one year, the commission may, at its discretion and for cause shown, allow the transfer of the authority to the executors, administrators, guardians, trustees, or other legal representatives of ~~said the~~ the deceased holder for a period to be fixed by the commission. In considering such application, pertinent orders or decrees of the court having jurisdiction over the estate of the decedent or insane mentally incompetent person may be deemed cause for the granting thereof. When the individual holder of a certificate or permit dies or is declared legally incompetent and an application is made to transfer the authority issued under the certificate or permit to his

or her legal representative, the commission may dispose of the application without hearing, if notice is given to all interested parties.

Sec. 32. That section 76-724, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-724. Notwithstanding any more general or special law respecting sale or conveyance of lands, real estate, real or personal property, or any interests therein now or hereafter owned by any minor, ~~insane~~ mentally incompetent person, ~~or~~ any married person whose spouse is under guardianship or conservatorship, or any persons under conservatorship, the guardian of such minor or ~~insane~~ mentally incompetent person, ~~or~~ such married person with the guardian of such spouse, ~~or~~ the conservator of such persons, or any married person with the conservator of such spouse, may execute deeds or other instruments for the conveyance of any lands, real or personal property, or any interests therein of such minors, ~~or insane~~ mentally incompetent persons under guardianship, or such persons under conservatorship to the condemner for public purposes upon payment of just compensation by the condemner, or, in the event of condemnation, may agree and settle with the condemner for all damages or claims by reason of the taking of the property, and may give valid releases and discharges therefor.

Sec. 33. That section 77-1311, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1311. The county assessor, in addition to the other duties provided by law, shall (1) check and verify with the aid of his or her assistants all personal tax returns, and (2) annually revise the real estate assessment for the correction of errors and, where properties have been assessed as entities and afterward part or parts transferred to other parties, to set off and apportion to each its just and equitable portion of the actual valuation. ~~He~~ The county assessor shall have general supervision over and direction of the assessment of all property in his or her county. The county assessor shall obey all rules and regulations made under this chapter and the instructions sent out by the State Board of Equalization and Assessment or Tax Commissioner. It shall be the duty of the county assessor to examine the records in the office of the register of deeds and county clerk for the purpose of ascertaining whether mortgages on real estate and security interests on personal property, producing

mineral leases, title notes, contracts, and bills of sale, intended to operate as a lien in the county, have been fully and correctly listed. He or she shall add to the assessment roll all omitted mortgages, security interests, producing mineral leases, title notes, contracts, and bills of sale intended to operate as a lien and belonging to residents of his or her county, and not otherwise assessed, upon notice to the owner thereof or his or her agents. He or she shall examine the records in the office of the county judge and ascertain whether the property belonging to minors, insane and idiotic persons with mental retardation or a mental disorder, and estates of deceased persons has been fully and correctly listed, and shall add to or change any such assessments so that the same shall be fully assessed. He or she shall examine the records in the office of the clerk of the district court to ascertain whether any judgments or liens thereon filed, belonging to residents of his or her county, and not otherwise assessed, have been omitted from the assessment rolls. In case of any such omission, he or she shall add the same to the assessment roll after notice to the owner. He or she shall make up the assessment books as provided in section 77-1303. He or she shall work full time and his or her office shall be separate from that of the county clerk except in counties which do not elect a full-time assessor.

Sec. 34. That section 77-1827, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1827. The lands of idiots or insane persons with mental retardation or a mental disorder so sold, or any interest they may have in lands sold for taxes, may be redeemed at any time within five years after such sale.

Sec. 35. That section 77-1855, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1855. No action for the recovery of real estate sold for the nonpayment of taxes shall be brought after five years from the execution and recording of the treasurer's deed, unless the owner is at the time of the sale a minor, insane a mentally incompetent person, or a convict in the Department of Correctional Services adult correctional facility, in which case such action must be brought within five years after such disability is removed.

Sec. 36. That section 79-328, Revised Statutes Supplement, 1984, be amended to read as

follows:

79-328. The State Board of Education shall have the power and it shall be its duty:

(1) To appoint and fix the compensation of the Commissioner of Education;

(2) To remove the commissioner from office at any time for conviction of any crime involving moral turpitude or felonious act, for inefficiency, or for willful and continuous disregard of his or her duties as commissioner or of the directives of the board;

(3) Upon recommendation of the commissioner, to appoint and fix the compensation of a deputy commissioner and all professional employees of the board;

(4) To organize the State Department of Education into such divisions, branches, or sections as may be necessary or desirable to perform all its proper functions and to render maximum service to the board and to the state school system;

(5) To provide, through the commissioner and his or her professional staff, enlightened professional leadership, guidance, and supervision of the state school system, including educational service units. In order that the commissioner and his or her staff may carry out their duties, the board shall, through the commissioner: (a) Provide supervisory and consultative services to the schools of the state; (b) issue materials helpful in the development, maintenance, and improvement of educational facilities and programs; (c) establish rules and regulations which govern standards and procedures for the approval and legal operation of all schools in the state and for the accreditation of all schools requesting state accreditation. All public, private, denominational, or parochial schools shall either comply with the accreditation or approval requirements prescribed in this section and section 79-1247.02 or, for those schools which elect not to meet accreditation or approval requirements, the requirements prescribed in this section and subsections (2) to (4) of section 79-1701. Such standards and procedures shall be based upon the program of studies, guidance services, the number and preparation of teachers in relation to the curriculum and enrollment, instructional materials and equipment, science facilities and equipment, library facilities and materials, and health and safety factors in buildings and grounds. Rules and regulations which govern procedures and standards for private, denominational, and parochial schools which elect, pursuant to the procedures prescribed in subsections (2)

to (4) of section 79-1701, not to meet state accreditation or approval requirements shall be based upon evidence that such schools offer a program of instruction leading to the acquisition of basic skills in the language arts, mathematics, science, social studies, and health. Such rules and regulations may include a provision for the visitation of such schools and regular achievement testing of students attending such schools in order to insure that such schools are offering instruction in the basic skills listed in this subdivision. Any arrangements for visitation or testing shall be made through a parent representative of each such school. The results of such testing may be used as evidence that such schools are offering instruction in such basic skills, but shall not be used to measure, compare, or evaluate the competency of students at such schools; (d) establish rules for the approval of high schools for the collection of nonresident high school tuition money in accordance with the rules and regulations provided for in this subdivision, except that the State Board of Education shall approve a school for the collection of nonresident high school tuition money when a hardship would result to the students and a substantial effort is being made to comply with the rules and regulations established; (e) institute a statewide system of testing to determine the degree of achievement and accomplishment of all the students within the state's school systems, if it determines such testing would be advisable; (f) prescribe a uniform system of records and accounting for keeping adequate educational and financial records, for gathering and reporting necessary educational data, and for evaluating educational progress; (g) cause to be published laws and regulations governing the schools and the school lands and funds with explanatory notes for the guidance of those charged with the administration of the schools of the state; (h) approve teacher education programs conducted in Nebraska institutions of higher education designed for the purpose of certificating teachers and administrators; (i) approve teacher evaluation policies and procedures developed by school districts and educational service units; and (j) approve general plans and adopt educational policies, standards, rules, and regulations for carrying out the board's responsibilities and those assigned the State Department of Education by the Legislature;

(6) To adopt and promulgate rules and regulations for the guidance, supervision, and coordination of educational service units;

(7) To submit a biennial report to the Governor and the Clerk of the Legislature covering the actions of the board, the operations of the State Department of Education, and the progress and needs of the schools and to recommend such legislation as may be necessary to satisfy these needs;

(8) To cause to be prepared and distributed reports designed to acquaint school district officers, teachers, and patrons of the schools with the conditions and needs of the schools;

(9) To provide for consultation with professional educators and lay leaders for the purpose of securing advice deemed necessary in the formulation of policies and in the effectual discharge of its duties;

(10) To cause such studies, investigations, and reports to be made and such information assembled as are necessary for the formulation of policies, for making plans, for evaluating the state school program, and for the making of essential and adequate reports;

(11) To submit to the Governor and the Legislature a budget necessary to finance the state school program under its jurisdiction, including the internal operation and maintenance of the State Department of Education;

(12) To interpret its own policies, standards, rules, and regulations and, upon reasonable request, hear complaints and disputes arising therefrom;

(13) With the advice of the Department of Motor Vehicles, to adopt reasonable standards, not inconsistent with existing statutes, governing: (a) The general design, equipment, color, operation, and maintenance of any vehicle with a manufacturer's rated seating capacity of eleven or more passengers used for the transportation of school children; and (b) the equipment, operation, and maintenance of any vehicle with a capacity of ten or less passengers used for the transportation of school children, when such vehicles are either owned or operated, or owned and operated, by any school district or privately owned or operated under contract with any school district in this state. Similar standards are to be adopted for operators of such vehicles as to physical and mental qualities, driving skills and practices, and knowledge of traffic laws and regulations which relate to school bus transportation. Such rules and regulations shall by reference be made a part of any such contract with a school district. Any officer or employee of any school district who violates any of the regulations or fails to

include obligations to comply with the regulations in any contract executed by him or her on behalf of a school district shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to removal from office or employment. Any person operating a school bus under contract with a school district who fails to comply with any of such regulations shall be guilty of breach of contract and such contract shall be canceled after notice and hearing by the responsible officers of such school district;

(14) To accept, on behalf of the Nebraska School for the Visually Handicapped, on behalf of the Nebraska School for the Deaf, or on behalf of any school for mentally retarded children with mental retardation which is exclusively owned by the State of Nebraska and under the control and supervision of the State Department of Education, devises of real property or donations or bequests of other property, or both, if in its judgment any such devise, donation, or bequest is for the best interest of any such school or the students attending thereat, or both, and may cause any such real estate to be irrigated or otherwise improved when in its judgment it would be advisable to do so; and

(15) Upon acceptance of any devise, donation, or bequest as provided in this section, to administer and carry out such devise or bequest in accordance with the terms and conditions thereof. If not prohibited by the terms and conditions of any such devise, donation, or bequest, it may sell, convey, exchange, or lease property so devised, donated, or bequeathed upon such terms and conditions as it deems best and deposit all money derived from any such sale or lease in the State Department of Education Trust Fund.

Each member of the Legislature shall receive a copy of the report required by subdivision (7) of this section by making a request for it to the commissioner.

None of the duties prescribed in this section shall prevent the board from exercising such other duties as in its judgment may be necessary for the proper and legal exercise of its obligations.

Sec. 37. That section 79-1345, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1345. There is hereby established a State Department of Education Trust Fund which shall consist of all property, real or personal, acquired by donation, devise, or bequest by the Nebraska School for the Visually Handicapped, by the Nebraska School for the Deaf, or by any school for mentally retarded children

with mental retardation which is exclusively owned by the State of Nebraska and under the control and supervision of the State Department of Education and all money derived from the sale or lease of property donated, devised, or bequeathed to any such school. Out of money in such fund not restricted from such use by the terms of the donation, devise, or bequest, there shall be established an emergency cash fund of not to exceed five hundred dollars for immediate and unusual needs as may arise. Such cash fund shall be reimbursed from the trust fund for any expenditures. Any money in the State Department of Education Trust Fund available for investment shall be invested by the state investment officer pursuant to ~~the provisions of~~ sections 72-1237 to ~~72-1259~~ 72-1269, subject to the following exceptions: (1) No such investment need be made if, according to the terms of the donation, devise, or bequest, the State Board of Education is not limited to the expenditure of only the interest or income derived from the donation, devise, or bequest; and (2) no such investment shall be made if the will or instrument making such donation, devise, or bequest makes other provisions or directions as to investment and in such cases the state investment officer, acting for the State Board of Education, shall comply with the provisions or directions of such will or instrument if such provisions or directions are not inconsistent with the laws of this state.

Sec. 38. That section 79-2213, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-2213. When special education is provided by an educational service unit for handicapped children, as defined in section 43-604, ~~or trainable mentally retarded children, as defined in section 43-612,~~ the payments provided by sections 43-604 to 43-611, ~~or sections 43-612 to 43-616,~~ shall be made to such educational service unit.

Sec. 39. That section 83-112, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-112. (1) The Department of Public Institutions shall gather information as to the expenditures of charitable institutions in this and other countries, and regarding the best and most successful methods of caring for ~~the insane, imbecile, and other defective classes persons with mental retardation and persons with a mental disorder.~~

(2) The Department of Public Institutions shall encourage scientific investigation of the

treatment of insanity mental problems, epilepsy, and all other diseases and causes that contribute to defectiveness; mental disabilities by the medical staffs of the state medical institutions. The department shall provide forms for statistical returns to be made by the institutions. The department shall make an investigation of the conditions, causes, prevention, and cure of pauperism; insanity; epilepsy; imbecility; evil home conditions and environment; defectiveness; and degeneracy mental retardation, and mental disorders. The department shall give special attention to the methods of care, treatment, education, and improvement of the inmates of persons served by the institutions under its control; and shall exercise a careful supervision of the methods to the end that, so far as practicable, the best treatment and care known to modern science shall be given to the inmates; such persons and that the best methods of teaching, improving, and educating defectives such persons shall be used.

Sec. 40. That section 83-1,141, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1,141. (1) It is hereby declared to be the public policy of the State of Nebraska that a pattern of facilities, programs, and services should be available to meet the needs of each mentally retarded person with mental retardation so that a mentally retarded person with mental retardation may have access to facilities, programs, and services best suited to such person throughout the his or her life, of the mentally retarded person. The complexities of mental retardation require a coordination of the facilities, programs, and services of the various agencies of the State of Nebraska and those of the communities. Programs and facilities should be planned and provided as part of a continuum of service to mentally retarded persons with mental retardation.

(2) The Department of Public Institutions shall establish and staff an office of mental retardation and appoint a director for such office.

(3) The purposes of the office of mental retardation shall be to assist in the establishment and operation of community-based facilities, programs, and services for the comprehensive diagnosis, habilitation, care, training, transitional living, and recreation of persons throughout this state who suffer from mental retardation and related disorders, to provide consultative services throughout the state for mentally retarded persons with mental retardation and their

families, and to provide for a continued assessment of current facilities, programs, and services and future needs with respect thereto.

(4) There is hereby created an advisory committee to the office of mental retardation, which committee shall consist of seven persons appointed by the Governor. No more than three members shall be professionals in the field of mental retardation, and at least four members shall be lay citizens, one of whom shall be appointed from each of the four congressional districts as they existed on January 1, 1961. Of the initial members, three shall serve for three years, two for two years, and two for one year, as designated by the Governor in making the appointments. As the terms of initial members expire, their successors shall be appointed for terms of three years. Members shall be reimbursed for actual and necessary expenses incurred in carrying out their duties as provided in sections 84-306.01 to 84-306.05 for state employees.

(5) All departments of government which directly or indirectly have responsibilities in the area of care, treatment, custody, and diagnosis of the mentally retarded persons with mental retardation shall cooperate with the office of mental retardation by giving advice and assistance, if requested.

Sec. 41. That section 83-1,142, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1,142. (1) To carry out the policies and purposes of section 83-1,141, the director of the office of mental retardation shall provide a comprehensive and integrated statewide plan for facilities, programs, and services for mentally retarded persons with mental retardation, establish minimum standards for the operation of any facility or program providing services funded in whole or in part under the provisions of sections 83-1,141 to 83-1,146, provide such assistance as may be necessary to place a mentally retarded person with mental retardation in an appropriate facility or program, encourage research by public and private agencies, institutions of higher learning, and hospitals, in the interest of the elimination and amelioration of retardation and of the care and training of mentally retarded persons with mental retardation, and adopt and promulgate such rules and regulations as are necessary to carry out the provisions of sections 83-1,141 to 83-1,146. In adopting and promulgating standards, rules, and regulations, the director shall be governed by the provisions of Chapter 84, article 9.

(2) If community-based programs or services are not available and the director determines that such programs or services cannot reasonably be provided locally in an area of the state where such programs or services for mentally retarded persons with mental retardation are necessary, the director may enter into agreements with other departments or agencies of the State of Nebraska, counties, cities, other political subdivisions, agencies created under the Interlocal Cooperation Act, and private organizations providing facilities, programs, or services for mentally retarded persons with mental retardation, contract with educational service units and counties that have established offices of mental retardation or organizations designated by such counties to assist in the administration of local and regional services and programs, provide programs or services, and exercise all powers and perform all duties necessary and proper in carrying out the responsibilities of his or her office.

(3) Any public agency defined by section 23-2203 may enter into agreements and compacts to form cooperative undertakings or separate legal entities under the provisions of the Interlocal Cooperation Act for the purpose of entering into agreements on a regional basis with the director for providing facilities, programs, and services for the mentally retarded persons with mental retardation. Each public agency having taxing authority may levy and collect taxes within its geographical unit in an amount not to exceed one and seven-tenths cents on each one hundred dollars on the actual valuation of all taxable property except intangible property for the purpose of funding programs within sections 83-1,141 to 83-1,146.

Additional money needed for the funding of such programs may be obtained from taxes levied and collected under the general fund levy of any public agency having taxing authority.

Sec. 42. That section 83-1,144, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1,144. Persons receiving services from community-based facilities for the mentally retarded persons with mental retardation which receive financial assistance pursuant to sections 83-1,141 to 83-1,146 shall be responsible for the cost of such services in the same manner as are patients receiving care at the Beatrice State Developmental Center. Provisions of law now in effect or hereafter enacted relating to the responsibility of patients and relatives for the cost

and determination of ability to pay for care at Beatrice also shall apply to persons receiving services pursuant to sections 83-1,141 to 83-1,146.

Sec. 43. That section 83-1,144.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1,144.01. If a mentally retarded person with mental retardation, who is a resident of a state institution, is unable to adapt to the treatment given in such institution and the Director of Public Institutions shall determine that continued residence in such facility shall no longer benefit ~~the mentally retarded~~ such person, he or she may arrange for the release of such person to the care of the parent or guardian. The institution from which such person was released shall develop methods for the care, treatment, and training of such person while in the care of ~~its~~ his or her parent or guardian. The county from which the institution would have been entitled to recover the cost of the care, treatment, and training of such person if he or she had not been released under ~~the provisions of~~ this section shall reimburse the parent or guardian of such person for such cost. The Director of Public Institutions shall adopt and promulgate reasonable rules and regulations for administering ~~the provisions of~~ this section.

Sec. 44. That section 83-217, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-217. The Nebraska institution for mentally retarded children with mental retardation and adults requiring residential care shall be known and designated as the Beatrice State Developmental Center.

Sec. 45. That section 83-218, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-218. The Beatrice State Developmental Center shall provide residential care and humane treatment for those persons with mental retardation who ~~are so mentally retarded as to~~ require residential care, shall study to improve their condition, shall classify them, and shall furnish such training in industrial, mechanical, agricultural, and academic subjects as they may be capable of learning. Whenever the Department of Public Institutions determines that continued residence in the Beatrice State Developmental Center is no longer necessary for the welfare, care, treatment, or training of such person, it shall have authority to discharge or transfer such person as provided in section 83-387. The

Department of Public Institutions shall discharge any person from the Beatrice State Developmental Center without requiring sterilization of such person, if the discharge satisfies the requirements of this section, notwithstanding any court order, judgment, or decree rendered prior to December 25, 1969, requiring sterilization as a condition of discharge.

Sec. 46. That section 83-363, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-363. As used in this act, unless the context otherwise requires:

(1) Department shall mean the Department of Public Institutions;

(2) Director shall mean the Director of Public Institutions;

(3) State institution shall mean the state hospitals at Lincoln, Norfolk, and Hastings, the Beatrice State Developmental Center, and such other institutions as may hereafter be established by the Legislature for the care and treatment of ~~the mentally ill and mentally retarded persons with a mental disorder~~ or mental retardation;

(4) Relative shall mean the spouse of a patient; or, if the patient has no spouse and is under the age of majority at the time he or she is admitted, the parents of a patient in a state institution; and

(5) Parents shall mean either or both of a patient's natural parents unless such patient has been legally adopted by other parents, in which case parents shall mean either or both of the adoptive parents.

Sec. 47. That section 83-381, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-381. As used in this act, unless the context otherwise requires:

(1) ~~Mentally retarded person~~ Person with mental retardation shall mean any person of subaverage general intellectual functioning which is associated with a significant impairment in adaptive behavior;

(2) Director shall mean the Director of Public Institutions or such person or agency within the Department of Public Institutions as the director may designate; and

(3) Residential facility shall mean an institution specified under section 83-217 to provide residential care by the State of Nebraska for ~~mentally retarded persons with mental retardation~~.

Sec. 48. That section 83-382, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

83-382. Except as provided in sections 43-617 and 43-618, the Department of Public Institutions shall have jurisdiction of the admission of mentally retarded persons with mental retardation to a residential facility. Applications for admission to a residential facility shall be filed with the director.

Sec. 49. That section 83-383, Revised Statutes Supplement, 1984, be amended to read as follows:

83-383. (1) An application for admission shall be made in writing by one of the following persons:

(a) If the person applying for admission has a court-appointed guardian, the application shall be made by the guardian; and

(b) If the person applying for admission does not have a court-appointed guardian and has not reached the age of majority, as established by section 38-101, as such section may from time to time be amended, the application shall be made by both parents if they are living together; or by the parent having custody of such person if both parents are not then living or are not then living together.

(2) The county court of the county of residence of any mentally retarded person with mental retardation or the county court of the county in which a state residential facility is located shall have authority to appoint a guardian for any mentally retarded person with mental retardation upon the petition of the husband, wife, parent, person standing in loco parentis to the mentally retarded such person, a county attorney, or any official of the Department of Public Institutions authorized by the director. If the guardianship proceedings are initiated by an official of the Department of Public Institutions, the costs thereof may be taxed to and paid by the Department of Public Institutions if the mentally retarded person with mental retardation is without means to pay the costs. The Department of Public Institutions shall pay such costs upon presentation of a proper claim by the judge of the county court in which the proceedings were initiated. The costs of such proceedings shall include court costs, attorneys' fees, sheriffs' fees, psychiatric fees, and other necessary expenses of the guardianship.

Sec. 50. That section 83-386, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-386. The director shall examine all information concerning the person for whom admission is requested and shall determine therefrom whether the person is a mentally retarded person with mental retardation and whether residence in the residential facility is necessary for the welfare, care, treatment, or training of such person. Such determination shall be made in writing and shall set forth the reasons for the determination. If at any time it shall become necessary, for want of room or other cause, to discriminate in the admission of mentally retarded persons with mental retardation to residential facilities, the selection shall be made as follows: (1) Persons whose care is necessary in order to protect themselves or the public health and safety; (2) persons who are most likely to be benefited thereby; (3) persons shall next be admitted in the order in which their applications for admission have been filed with the director; and (4) when cases are equally meritorious, in all other respects, an indigent person, or a person from an indigent family, shall be given preference.

Sec. 51. That section 83-387, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-387. At such time as the director determines that continued residence in a residential facility will no longer benefit the mentally retarded a person with mental retardation, he or she shall arrange for the discharge or transfer of such person from the residential facility. The director shall give reasonable notice to the person authorized to make an application for admission for such person under subdivision subsection (1) of section 83-383 that he or she intends to discharge or transfer such person. The director shall also be responsible for the placement of such person in any other available program or facility and in the development of other methods for the care, treatment, and training of such person.

Sec. 52. That section 83-389, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-389. A person admitted to a residential facility under the provisions of this act shall be immediately discharged from the residential facility after notice of intention to remove the mentally retarded person with mental retardation has been given by the person authorized to make an application for admission under subdivision subsection (1) of section 83-383 and the normal discharge procedures are

completed.

Sec. 53. That section 83-1101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1101. It is hereby declared that the State of Nebraska recognizes the capacity of all of its citizens, including those who are mentally retarded persons with mental retardation, to be personally and socially productive. The state further recognizes its obligation to mentally retarded persons with mental retardation to provide for and encourage them to receive services from appropriate available treatment programs so that they may achieve a greater measure of independence and fulfillment and more fully enjoy their rights of citizenship.

Sec. 54. That section 83-1103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1103. Client shall mean any mentally retarded person with mental retardation who seeks habilitation under the provisions of sections 83-1101 to 83-1139 or any person for whom such habilitation is sought.

Sec. 55. That section 83-1104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1104. Comprehensive evaluation team shall mean a group of persons with special training and experience in the assessment of needs and provision of services for mentally retarded persons with mental retardation, and such group shall include persons qualified to provide social, psychological, and medical services. This group shall be appointed by the presiding judge of the district court who shall determine such group's length of appointment and shall consist of at least three experts who have no personal interest in the proceedings, with experience in the field of mental retardation. The appointees may include a physician, psychologist, social worker, educator, community-based mental retardation staff person, or a facility staff person.

Sec. 56. That section 83-1108, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1108. Facility or facilities shall mean the Beatrice State Developmental Center or other institution in the state under the jurisdiction of the department specifically designated for the care and treatment of mentally retarded citizens with mental

retardation.

Sec. 57. That section 83-1112, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1112. Mental retardation ~~or mentally retarded~~ shall mean a state of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which originates in the developmental period.

Sec. 58. That section 83-1113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1113. Psychologist shall mean a person with a doctoral degree in psychology who is licensed in the State of Nebraska with at least two years' experience in the assessment of needs and provision of services for mentally retarded persons with mental retardation.

Sec. 59. That section 83-1114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1114. Physician shall mean a person with a doctoral degree in medicine who is duly licensed to practice medicine in the State of Nebraska with experience in the assessment of needs and provision of services for mentally retarded persons with mental retardation.

Sec. 60. That section 83-1115, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1115. Social worker shall mean a person with a masters degree in social work and with at least two years' experience in the assessment of needs and provision of services for mentally retarded persons with mental retardation.

Sec. 61. That section 83-1116, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1116. Educator shall mean a person with a masters degree in education with at least two years' experience in the assessment of needs and provision of services for mentally retarded persons with mental retardation.

Sec. 62. That section 83-1117, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1117. Petitioner shall mean any person on whose information a verified petition is filed under sections 83-1101 to 83-1139 alleging that the client is

mentally retarded a person with mental retardation and is not receiving adequate and appropriate habilitative programs and services to meet the needs of the client.

Sec. 63. That section 83-1122, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1122. Superintendent shall mean the individual who has overall management responsibility at any facility receiving mentally retarded persons with mental retardation under the provisions of sections 83-1101 to 83-1139 or the designee of such superintendent.

Sec. 64. That section 83-1125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1125. (1) Any person believing a person is mentally retarded a person with mental retardation and not receiving adequate and appropriate habilitative programs and services to meet the his or her needs of a client, may communicate his or her belief to the county attorney for the county in which the client is found. Should the county attorney concur in such belief, the county attorney may cause a petition to be drafted for a determination of mental retardation and assessment of the needs of such client. Such petition shall be executed under oath and filed with the clerk of the court where the client may be found. The petition shall assert that the petitioner believes that the client is mentally retarded, a person with mental retardation and the petitioner believes that the parent, guardian, or person acting in loco parentis has failed or is unable to secure adequate and appropriate habilitative programs and services to meet the needs of the client. The petition shall set forth the alleged facts upon which the above assertions are based, the names and addresses, if known, of any witnesses who allege relevant facts, and, if known, the names and addresses of the nearest relative or guardian of the client.

(2) The court shall review the petition filed under subsection (1) of this section and if the court finds reasonable cause to believe that the client might be mentally retarded a person with mental retardation and is not receiving adequate and appropriate habilitation programs and services, the court shall, within seventy-two hours of the filing of the petition, appoint a representative for the client and issue an order that such client be examined by a comprehensive evaluation team. Notice of such order and a copy of the petition shall be sent to the client and his or her

representative who shall be appointed by the court. If the client and his or her representative fail to comply with the order for evaluation within five days, excluding Saturdays, Sundays, and holidays, after the date set by the order for the client to be evaluated, the comprehensive evaluation team shall notify the court of the failure to appear, along with the alleged factual situation which is the cause for noncompliance, and the court may order the client or the client's representative to show cause why he or she should not be found in contempt of court. The court may issue subpoenas for witnesses to appear before such team and, on their failure to appear, the court may take the same steps to compel attendance as if the proceedings were before the court. For purposes of appeal, this shall be considered a final order.

Sec. 65. That section 83-1128, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1128. If, after a hearing, the court finds that the client is not mentally retarded a person with mental retardation or that he or she is not in need of habilitation programs and services, the court shall order the petition dismissed with costs to be paid by the county. If the court finds that the client is mentally retarded a person with mental retardation and is in need of habilitation programs and services, then the court shall forward its findings and a report of assessment of the client's needs to the community-based mental retardation region in which the client resides. The court shall require that within ten days of the receipt of the court's findings and report, the executive director of the mental retardation region shall certify in writing to the court whether such programs and services are available to the client in the community-based program and, if such programs and services are not immediately available to the client, if they could be reasonably made available to the client within ninety days.

Sec. 66. That original sections 8-206, 17-135, 21-610, 25-213, 25-21,152, 29-1822, 29-2537, 29-2540, 29-2541, 29-3205, 30-2902, 31-113, 42-103, 42-501, 42-502, 42-503, 43-604, 43-611, 43-620, 43-621, 43-631, 47-101, 55-106, 67-332, 68-1202, 75-321, 76-724, 77-1311, 77-1827, 77-1855, 79-1345, 79-2213, 83-112, 83-1,141, 83-1,142, 83-1,144, 83-1,144.01, 83-217, 83-218, 83-363, 83-381, 83-382, 83-386, 83-387, 83-389, 83-1101, 83-1103, 83-1104, 83-1108, 83-1112 to 83-1117, 83-1122, 83-1125, and 83-1128, Reissue Revised Statutes

of Nebraska, 1943, sections 68-721, 71-901, 71-5858, 79-328, and 83-383, Revised Statutes Supplement, 1984, and sections 23-104.03 and 43-289, Revised Statutes Supplement, 1985, and also section 43-616.02, Reissue Revised Statutes of Nebraska, 1943, are repealed.