

LEGISLATIVE BILL 524

Approved by the Governor May 26, 1973

Introduced by Cavanaugh, 9, for the Governor

AN ACT to amend sections 83-189, 83-190, 83-191, and 83-1,119, Reissue Revised Statutes of Nebraska, 1943, and sections 83-1,111 and 83-1,120, Revised Statutes Supplement, 1972, relating to the Board of Parole; to increase the size of the Board of Parole as prescribed; to provide which of the members shall be full-time members; to provide when appointments to the board shall be made; to provide the terms for the members; to change parole procedures; to provide procedures; to provide the right to counsel; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 83-189, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-189. The Board of Parole shall consist of three five members to be appointed by the Governor subject to confirmation by the Legislature. The members of the board shall be of good character and judicious temperament. One of the three five members of the board shall be designated as chairman by the Governor. The new members of the board shall be appointed within ninety days after August-25, 1969 the effective date of this act for terms to commence on September 9, 1973. At least one member of the board shall be of a minority group and one member shall have a professional background in corrections.

Sec. 2. That section 83-190, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-190. The members of the Board of Parole shall have a term of office of six years and until their successors are appointed and have qualified, except that of the members first appointed the chairman shall be appointed for a term of six years, the other two full-time members shall be appointed for terms of four and five years respectively, and the other two part-time members shall be appointed for terms of two and four three years respectively. Their successors shall be

appointed in the same manner as provided for the members first appointed, and a vacancy occurring before expiration of a term of office shall be similarly filled for the unexpired term. A member of the board may be reappointed. The members of the board may be removed only for disability, neglect of duty, or malfeasance in office by the Board of Pardons after a hearing. The Board of Pardons shall promptly file in the office of the Secretary of State a complete statement of the charges, its findings and disposition, and a complete record of the proceedings.

Sec. 3. That section 83-191, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-191. (1) The chairman and two members of the Board of Parole shall devote full time to the their duties of his office with such board and shall not engage in any other business or profession or hold any other public office. Two members shall serve on a part-time basis. No member shall, at the time of his appointment or during his tenure, serve as the representative of any political party, or of any executive committee or governing body thereof, or as an executive officer or employee of any political party, organization, association, or committee. Each member of the board shall receive an annual salary to be fixed by the Governor.

(2) Notwithstanding any other provision of law to the contrary, part-time members of the Board of Parole shall be eligible to be employed by any state agency or department, other than the Division of Corrections.

Sec. 4. That section 83-1,111, Revised Statutes Supplement, 1972, be amended to read as follows:

83-1,111. (1) Every committed offender shall have a hearing before a majority of the members of the Board of Parole or a member or members designated by the board within sixty days before the expiration of his minimum term less any reductions. Every committed offender shall be interviewed within sixty days prior to his final parole hearing by a member of the Board of Parole. The hearing shall be conducted in an informal manner, but a complete record of the proceedings shall be made and preserved.

(2) The board shall render its decision regarding the committed offender's release on parole within a reasonable time after the hearing. The decision shall be by majority vote of the board. The decision shall be

based on the entire record before the board, which shall include the opinion of the member who presided at the hearing. If the board shall deny parole, written notification listing the reasons for such denial and the recommendations for correcting deficiencies which cause the denial shall be given to the committed offender within thirty days following the hearing.

(3) If the board fixes the release date, such date shall be not more than six months from the date of the committed offender's parole hearing, or from the date of last reconsideration of his case, unless there are special reasons for fixing a later release date.

(4) If the board defers the case for later reconsideration, the committed offender shall be afforded a parole hearing at least once a year until a release date is fixed. The board may order a reconsideration or a rehearing of the case at any time.

(5) If the board fixes no earlier release date, a committed offender's release on parole shall become mandatory at the expiration of his maximum term of imprisonment, less good time reductions allowed in accordance with the provisions of this act, or three months prior to discharge, whichever is earlier. Nothing herein shall require the mandatory parole of an offender who has violated a discretionary parole within twelve months of the date when his parole would otherwise be mandatory.

(6) The release of a committed offender on parole shall not be upon the application of the offender, but by the initiative of the Board of Parole. No application for release on parole made by a committed offender or on his behalf shall be entertained by the board. Nothing herein shall prohibit the Director of Corrections from recommending to the board that it consider an individual offender for release on parole.

Sec. 5. That section 83-1,119, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1,119. (1) Whenever a parole officer has reasonable cause to believe that a parolee has violated or is about to violate a condition of his parole but that he will not attempt to leave the jurisdiction and will not place lives or property in danger, the parole officer shall submit a written report to the Board of Parole which may, on the basis of such report and such further investigation as it may deem appropriate:

- (a) Dismiss the charge of violation;
- (b) Determine whether the parolee violated the conditions of his parole;
- (c) Revoke his parole in accordance with the provisions of this act; or
- (d) Issue a warrant for the arrest of the parolee.

(2) Whenever a parole officer has reasonable cause to believe that a parolee has violated or is about to violate a condition of his parole and that he will attempt to leave the jurisdiction or will place lives or property in danger, the parole officer shall arrest the parolee without a warrant and call on any peace officer to assist him in doing so.

(3) Whenever a parolee is arrested with or without a warrant, he shall be detained in a local jail or other detention facility. Immediately after such arrest and detention, the parole officer shall notify the Board of Parole and submit a written report of the reason for such arrest. A complete investigation shall be made by the parole administration and submitted to the parole board. After prompt consideration of such written report, the board shall order the parolee's release from detention or his continued confinement to await a final decision on the revocation of his parole.

Sec. 6. That section 83-1,120, Revised Statutes Supplement, 1972, be amended to read as follows:

83-1,120. Whenever a parolee is charged with a violation of his parole, he shall be entitled to a prompt decision hearing on such charge by the Board of Parole, which in no event shall occur more than thirty days after receipt of the parole officer's written report. At such hearing, the parolee shall be permitted to be present, to testify, to produce witnesses, to cross-examine adverse witnesses, and to introduce such other evidence as may be pertinent. The parolee shall be informed of his right to request counsel at such hearing, and if he thereafter makes such request, based on a timely and colorable claim (1) that he has not committed the alleged violation of the conditions upon which he is at liberty, or (2) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present, and upon consideration of whether or not the parolee appears to be

capable of speaking effectively for himself, the board in the exercise of a sound discretion may provide counsel unless retained counsel is available to the parolee. In every case when a request for counsel is refused, the grounds for refusal shall be stated in the record.

Sec. 7. That original sections 83-189, 83-190, 83-191, and 83-1,119, Reissue Revised Statutes of Nebraska, 1943, and sections 83-1,111 and 83-1,120, Revised Statutes Supplement, 1972, are repealed.

Sec. 8. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.