

LEGISLATIVE BILL 417

Passed over the Governor's veto May 20, 1975

Introduced by Luedtke, 28; Cavanaugh, 9

AN ACT relating to the Department of Correctional Services; to create divisions within the department; to provide and transfer functions, powers, duties, and responsibilities as prescribed; to harmonize provisions; to provide for a community-based pilot project in Omaha; to authorize the establishment of jail standards; to provide for the construction of certain facilities; to provide for planning; to amend sections 47-106, 47-110, 47-111, 47-204, 83-1,137, 83-1,138, 83-1,139, and 83-4,103, Reissue Revised Statutes of Nebraska, 1943, and sections 83-1,105 and 83-1,136, Revised Statutes Supplement, 1974; and to repeal the original sections.

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

Section 1. The Department of Correctional Services shall fulfill those functions of state government relating to the custody, study, care, discipline, training, and treatment of persons in correctional and detention institutions. There shall be separate divisions within the department to assist in fulfilling these functions. The divisions shall be the Division of Community-Centered Services, the Division of Juvenile Services, the Division of Administrative Services, and the Division of Adult Services. The Director of Correctional Services shall appoint a separate assistant director as head of each division, which appointments shall be made not later than July 1, 1978, and shall be empowered to remove the assistant director of any of the divisions at his discretion.

Sec. 2. The compensation of each assistant director shall be fixed by the director subject to availability of appropriations.

Sec. 3. Subject to the supervision and approval of the Director of Correctional Services, each assistant director shall have the following duties, powers, and responsibilities:

(1) To coordinate and direct all programs and facilities under his jurisdiction;

(2) To select and manage such staff and supervise the operation of such equipment as he may require;

(3) To make such revisions to internal systems in each division as may be necessary to promote economy and facilitate maximum utilization of existing correctional services and facilities;

(4) To cause any existing program and facilities to be utilized by or merged with those of any other division in order to provide for greater efficiency or achieve any economic advantage;

(5) To provide the Legislature and the Governor technical assistance, advice, and information concerning administrative operations within his division;

(6) To provide the Legislature and the Governor with recommendations for dealing with financial, management, and organization problems affecting his division; and

(7) To exercise all powers and perform all duties necessary and proper in carrying out his responsibilities.

Sec. 4. That section 83-1,136, Revised Statutes Supplement, 1974, be amended to read as follows:

~~83-1,136. There is hereby established a division within the Department of Correctional Services to be known as the Division of Juvenile Delinquency and to be headed by the Deputy Director for Juvenile Delinquency. Such deputy~~ The Director of Correctional Services shall appoint as assistant director of the Division of Juvenile Services any person who shall have a thorough academic background and broad practical experience in the field of institutionalized juvenile delinquents. He shall serve at the pleasure of the Director of Correctional Services; who shall fix his compensation;

Sec. 5. The Division of Juvenile Services shall standardize policies and procedures and prescribe and promulgate rules and regulations for all juvenile facilities in the state.

Sec. 6. That section 83-1,137, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~83-1,137. The Deputy Director for Juvenile Delinquency~~ assistant director of the Division of Juvenile Services shall:

(1) Develop specialized programs and services within the Division of Juvenile Delinquency Services for the guidance, treatment, and rehabilitation of juveniles committed to the division;

(2) Cooperate with the courts and all other agencies, public and private, which are concerned with the prevention or control of juvenile delinquency;

(3) Coordinate the programs and services of the division with the programs and services of other agencies, public and private, relating to the prevention and control of juvenile delinquency;

(4) Advise Cooperate with the Office of Parole Administration in the development of specialized and diversified community-based programs and services for the parole of juveniles; and

(5) Encourage the planning and implementation of a statewide program for the prevention and control of juvenile delinquency; and -

(6) Develop and supervise diagnostic and evaluation services for all juveniles within the division.

Sec. 7. That section 83-1,138, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1,138. The Division of Juvenile Delinquency Services shall have full supervision and control of the Youth Development Center-Kearney, the Youth Development Center-Geneva, and any other similar institution that may be established.

Sec. 8. That section 83-1,139, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1,139. The Deputy--Director--for--Juvenile Delinquency assistant director of the Division of Juvenile Services shall supervise and coordinate all activities in the field of juvenile parole, after-care, and field services within the state.

Sec. 9. The Director of Correctional Services shall appoint as assistant director of the Division of Community-Centered Services any person who shall have an appropriate background in community-based correctional programs and adequate training and experience in correctional administrative work.

Sec. 10. The Division of Community-Centered Services shall have the following powers, duties, and responsibilities:

(1) To organize and supervise all adult community release programs and facilities in the state, including all adult work release, educational release, and furlough programs, with the assistance of the Division of Adult Services;

(2) To coordinate all adult parole programs and services in the state and supervise the administration of such programs and services;

(3) To assist the Division of Adult Services with the coordination of volunteer programs within the adult correctional facilities;

(4) To coordinate and supervise community educational programs to increase community awareness and understanding of the community rehabilitative programs of the division; and

(5) To make such rules and regulations and perform all duties necessary to carry out the provisions of this section.

Sec. 11. The Office of Parole Administration shall be within the Division of Community-Centered Services. Subject to the supervision of the Community-Centered Services assistant director, the Parole Administrator shall be charged with the administration of: (1) Parole services in the community pursuant to the provisions of section 83-1.102, (2) the Uniform Act for Out-of-State Parolee Supervision; and (3) the Interstate Compact on Juveniles pursuant to the provisions of section 43-1001.

Sec. 12. The Division of Community-Centered Services shall plan and implement a community-based pilot project in the metropolitan Omaha region. This project shall:

(1) Provide effective coordination and proper utilization of community resources, volunteer services, and the components of the criminal justice system;

(2) Be developed in such a manner as to insure optimum utilization of all facilities based upon the needs of the region served and the availability of such facilities. New facilities shall be planned where necessary;

(3) Study all programs and report all activities to the Division of Community-Centered Services and the Director of Correctional Services to assist in future implementation of similar community-based projects on a statewide basis;

(4) Establish programs and provide facilities necessary to maximize diversion of convicted offenders from the Nebraska Penal and Correctional Complex, Division of Adult Services, into a community-based program of rehabilitation;

(5) Provide primary concern and emphasis on the development, application, and availability of such programs as will provide beneficial growth and development to the convicted person. Such programs shall include education, development and improvement of employable job skills, family counseling, and assistance for community reintegration; and

(6) Be completed by January 1, 1976.

Sec. 13. There is hereby established a program within the Division of Adult Services to be known as the Adult Diagnostic and Evaluation Services Program. The Director of Correctional Services shall appoint as head of the Adult Diagnostic and Evaluation Services Program any person who has the necessary training to work with individuals having antisocial attitudes and conduct and the practical experience for developing and implementing programs to accomplish rehabilitation of such individuals. The head of the Adult Diagnostic and Evaluation Services Program shall be known as the Adult Diagnostic and Evaluation Services Administrator.

Sec. 14. The Adult Diagnostic and Evaluation Services Program shall have the following powers, duties, and responsibilities:

(1) To establish programs for the observation, testing, and examination, both mental and physical, of adult individuals within the jurisdiction of the Department of Correctional Services;

(2) To recommend treatment for and disposition of adult individuals within the jurisdiction of the department; and

(3) To cooperate with the Division of Adult Services to establish and maintain rehabilitation programs for individuals committed or referred to any institution within the Division of Adult Services.

Sec. 15. The Director of Correctional Services shall appoint as assistant director of the Division of Adult Services any person who shall have an appropriate background in adult institutional correctional programs and adequate training and experience in correctional administrative work.

Sec. 16. The Division of Adult Services shall have the following powers, duties, and responsibilities:

(1) To establish, administer, and supervise the maximum and medium-minimum security institutions and the Nebraska Center for Women which contain adult offenders;

(2) To assist the Division of Community-Centered Services to establish, administer, and supervise all adult work release, educational release, and furlough programs;

(3) To make recommendations for the diagnostic and evaluation services to be provided adult offenders;

(4) To establish and maintain an Adult Diagnostic and Evaluation Services Program pursuant to sections 13 and 14 of this act;

(5) To establish and maintain a Chemical Dependency Rehabilitation Program pursuant to section 17 of this act; and

(6) To develop, coordinate, and implement with the assistance of the Division of Community-Centered Services volunteer programs within correctional facilities in its jurisdiction.

Sec. 17. There is hereby established a program within the Division of Adult Services to be known as the Chemical Dependency Rehabilitation Program. The Director of Correctional Services shall appoint as supervisor of such program a person who shall be designated as the Chemical Dependency Rehabilitation Supervisor and who shall have an academic background and broad practical experience and training in the area of alcoholism and drug abuse, and shall have at least one year of supervisory experience with an alcoholism or drug abuse program.

Sec. 18. Subject to the supervision of the assistant director of the Division of Adult Services, the supervisor shall have the following duties and responsibilities:

(1) To review the record of each inmate suspected of having a substance abuse problem and to interview and counsel any inmate whose personal history indicates such a problem;

(2) To require complete psychological testing of each inmate of the program by the Adult Diagnostic and Evaluation Services Program and determine a treatment plan for the inmate's recovery;

(3) To make available private counseling sessions and establish counseling groups;

(4) To encourage inmates to participate in self-help groups or associations and develop chemical dependency recovery programs;

(5) To coordinate all programs and facilities under his jurisdiction;

(6) To make periodic studies of the policies of other states regarding the levels of services being provided in this state in comparison with that of other states;

(7) To promote and conduct research on alcoholism and drug abuse;

(8) To select and manage such additional staff as he may request;

(9) To provide the Legislature and the Governor technical assistance, advice, and information concerning administrative operations; and

(10) To exercise all powers and perform all duties necessary and proper in carrying out his responsibilities.

Sec. 19. Subject to the supervision of the assistant director of Adult Services, the supervisor shall appoint counselors who shall provide therapy and counseling for inmates under the Adult Diagnostic and Evaluation Services Program and assist the supervisor in carrying out his duties. Such counselors shall be known as the chemical dependency rehabilitation counselors. The counselors shall have appropriate background to perform professional counseling in the treatment of chemical dependency. The compensation of the supervisor and the counselors of the Chemical Dependency Rehabilitation Program shall be fixed by the Director of Correctional Services subject to availability of appropriations.

Sec. 20. The Director of Correctional Services shall appoint as assistant director of the Division of Administrative Services any person who shall have a thorough academic background and practical experience in correctional administrative work.

Sec. 21. The Division of Administrative Services shall coordinate and supervise services available to all divisions of the Department of Correctional Services from a centralized location within the department. Such services shall include:

(1) Providing technical assistance on budget preparation, accounting procedures, federal funding administration, procurement, and inventory;

(2) Providing assistance in the total concept of human resource management involving staffing, recruitment, and evaluation, and establishing and maintaining in-service training programs for existing programs as well as future programs;

(3) Providing technical assistance in the planning and development of new capital construction projects and supervising maintenance functions for all facilities within the department;

(4) Providing data collection and analysis from Nebraska and other states to assist the director in the formulation of current and future corrections policy and to justify budgetary needs to implement policy decisions, and developing standards for evaluation of corrections programs to better evaluate social worth and budgetary performance; and

(5) Design and implementation of a comprehensive data record system for the disposition of the criminal records of adult offenders in the state.

Sec. 22. The Division of Administrative Services shall assist the Director of Correctional Services in the administration of criminal detention facility standards as described in this act.

Sec. 23. That section 83-1,105, Revised Statutes Supplement, 1974, be amended to read as follows:

83-1,105. Except where a term of life is required by law, in imposing an indeterminate sentence upon the offender, the court may:

(1) Fix the minimum and maximum limits of the sentence, but the minimum limit fixed by the court shall

not be less than the minimum provided by law nor more than one-third of the maximum term, and the maximum limit shall not be greater than the maximum provided by law;

(2) Impose a definite term of years, in which event the maximum term of the sentence shall be the term imposed by the court and the minimum term shall be the minimum sentence provided by law; or

(3) Where the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report, commit an offender to the Division--of--Corrections Department of Correctional Services for a period not exceeding ninety days. For the purposes of this section offender shall mean both juveniles and adults. The division department shall conduct a complete study of the offender during that time, inquiring into such matters as his previous delinquency or criminal experience, his social background, his capabilities and his mental, emotional and physical health and the rehabilitative resources or programs which may be available to suit his needs. By the expiration of the period of commitment, or by the expiration of such additional time as the court shall grant, not exceeding a further period of ninety days, the offender shall be returned to the court for sentencing and the court shall be provided with a written report of the results of the study, including whatever recommendations the division department believes will be helpful to a proper resolution of the case. After receiving the report and the recommendations, the court shall proceed to sentence the offender in accordance with any applicable provision of law. The term shall run from the date of original commitment under this section. In order to encourage the use of this procedure in appropriate cases, all costs incurred during the period the defendant is held in a state institution under this subdivision shall be a responsibility of the state, and the county shall be liable only for the cost of delivering the defendant to the institution and the cost of returning him to the appropriate court for sentencing or such other disposition as the court may then deem appropriate.

Sec. 24. That section 83-4,103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-4,103. All appropriate state agencies, specifically including the Nebraska Psychiatric Institute, the University Hospital, and any agency providing psychiatric or psychological services, shall

cooperate with and assist the ~~Youth--Diagnostic--and Rehabilitation-Center~~ Department of Correctional Services in the performance of its duties.

Sec. 25. It is hereby declared to be the policy of the State of Nebraska that all criminal detention facilities in the state shall conform to certain minimum standards of construction, maintenance, and operation. The Department of Correctional Services shall administer the provisions of sections 25 to 33 of this act and other laws enacted relating to standards for criminal detention facilities.

Sec. 26. For the purposes of sections 25 to 33 of this act, criminal detention facility shall mean any institution operated by a political jurisdiction or a combination of jurisdictions for the careful keeping and rehabilitative needs of adult or juvenile criminal offenders, including the county jails, municipal jails, temporary holding units, and the facilities operated by the Department of Correctional Services.

Sec. 27. The Department of Correctional Services may employ such personnel as it shall deem necessary to carry out its functions and duties under sections 25 to 33 of this act and as may be authorized by appropriation of the Legislature.

Sec. 28. The Department of Correctional Services shall have the authority and responsibility:

(1) To provide consultation and technical assistance to local government officials with respect to criminal detention facilities;

(2) To visit and inspect such criminal detention facilities;

(3) To advise government officials, and the district judge for the district in which any criminal detention facility is located, of deficiencies in such facility and make recommendations for improvements;

(4) To submit written reports of such inspections to appropriate agencies and persons as set out in sections 30 to 33 of this act;

(5) To review and comment on plans for the construction and major modification or renovation of such criminal detention facilities;

(6) To develop minimum standards for the construction, maintenance, and operation of such criminal

detention facilities; and

(7) To perform such other duties as may be necessary to carry out the policy of the state regarding such criminal detention facilities as stated in sections 25 to 33 of this act.

Sec. 29. The Department of Correctional Services shall study and propose minimum standards for the construction, maintenance, and operation of criminal detention facilities in accordance with the Nebraska Administrative Procedures Act. In the development of such standards, the Department of Correctional Services shall consult with and seek the advice of the District Judges Association, the Nebraska Commission on Law Enforcement and Criminal Justice, local law enforcement agencies, the Department of Health, and the State Fire Marshal.

Sec. 30. Personnel of the Department of Correctional Services shall visit and inspect each criminal detention facility in the state at least annually for the purpose of determining the conditions of confinement, the treatment of prisoners, and whether such facilities comply with the minimum standards established by the department. A written report of each inspection shall be made within thirty days following such inspection to the appropriate governing body and the district judge responsible for the criminal detention facility involved. The report shall specify those areas in which the facility does not comply with the required minimum standards.

Sec. 31. If an inspection under this act discloses that the criminal detention facility does not meet the minimum standards established by the Department of Correctional Services, the department shall send notice, together with the inspection report, to the governing body responsible for the facility. A copy of such inspection report required by this act shall also be sent to the district judge of the judicial district in which such facility is located. The appropriate governing body and the district judge shall promptly meet to consider the inspection report, and the inspection personnel shall appear to advise and consult concerning appropriate corrective action. The governing body shall then initiate appropriate corrective action within six months of the receipt of such inspection report, or may voluntarily close the facility or the objectionable portion thereof.

Sec. 32. If such governing body fails to initiate corrective action within six months of the

receipt of such inspection report, fails to correct the disclosed conditions, or fails to close the facility or the objectionable portion thereof, the Department of Correctional Services is hereby authorized to petition the district court within the judicial district in which the facility is located to close such facility. Such petition shall include the inspection report regarding such facility. The local governing body shall then have thirty days to respond to such petition, and shall serve a copy of the response on the Department of Correctional Services by certified mail, return receipt requested. Thereafter, a hearing shall be held on the petition before the district court, and an order rendered by such court which:

(1) Dismisses the petition of the Department of Correctional Services;

(2) Directs that corrective action be initiated in some form by the local governing body of the facility in question; or

(3) Directs that the facility be closed. An appeal from the decision of the district court may be taken to the Supreme Court of Nebraska.

Sec. 33. The implementation of sections 25 to 33 of this act shall commence at the time minimum standards are developed and published in accordance with the Nebraska Administrative Procedures Act. Thereafter, inspections shall begin, but no criminal detention facility shall be closed within one year of the date of first filing of the minimum standards in the office of the Secretary of State. After one year from the date of first filing of the minimum standards, a facility may be closed for any violation of the minimum standards. Those standards relating to the construction of the facility itself, its plumbing, heating, and wiring systems, shall not be enforced so as to require the closing of any facility for a period of two years from the date of the first filing of the minimum standards unless such violations are of immediate danger to the safety of the prisoners or facility personnel, in which case such period shall be one year.

Sec. 34. That section 47-106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-106. The sheriff, or other officer performing the duties of sheriff, of each county of this state, shall procure, at the expense of the proper county, a suitable book to be called the jail register, in which

the sheriff, by himself or his jailer, shall enter (1) the name of each prisoner, with the date and cause of his or her commitment, (2) the date or manner of his or her discharge, (3) what sickness, if any, has prevailed in the jail during the year and if known, what were the causes of such disease, (4) whether any or what labor has been performed by the prisoners, and the value thereof, ~~(5) the practice, observed during the year, of whitewashing and cleaning the occupied cells or apartments, and the times and seasons of so doing,~~ (6) the habits of the prisoners as to personal cleanliness, diet and order, (7) (6) the operations of the rules and directions prescribed by the district judges, (8) (7) the means furnished prisoners of literary, moral and religious instruction, and of labor, and (9) (8) all other matters required by the rules, or in the discretion of such sheriff deemed proper. The sheriff, or other officer performing the duties of sheriff, shall carefully keep and preserve the jail register in the office of the jailer of his proper county, and at the expiration of his office shall deliver the same to his successor in office.

Sec. 35. That section 47-110, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-110. It shall be the duty of the county board at the expense of the respective counties to provide suitable means for warming the jail and its cells or apartments, and provide frames and mattresses for beds, ~~night-buckets~~ and such other permanent fixtures and repairs as may be prescribed by the district judges. The board shall have power to appoint a physician to the jail when it deems it necessary, and shall pay to such physician an annual or other salary as it may think reasonable and proper, which salary shall be drawn out of the county treasury. Such medical officer, or any physician or surgeon who is employed in the jail, shall make a report in writing whenever required by the board, district judges or grand jury.

Sec. 36. That section 47-111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-111. In every county jail where there is a female prisoner, ~~a matron shall be~~ twenty-four hour supervision shall be provided by a matron appointed by the county board, whose duty it shall be to have entire charge of the female prisoners, and the board may also in its discretion appoint such matron when there is a sick prisoner or one that is a minor under the age of sixteen.

Such matrons shall be under the direction of the sheriff, shall take the necessary oath before entering upon the duties of the office, and shall be paid by the board from the county treasury only for the time actually engaged; Provided, that in counties having a population in excess of two hundred thousand inhabitants, a matron deputy or correctional officer shall be appointed hired by the sheriff whose duty it shall be to have entire charge of the female prisoners and perform those functions required of a deputy related to such duty, at a salary of not less than one five hundred twenty-five dollars per month, which salary shall be drawn out of the county treasury. Such matron, deputy or correctional officer shall, when required, report to the board or district judges.

Sec. 37. That section 47-204, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-204. The officer in charge of any municipal jail shall keep a written record which shall show the name of each person confined, the date of the commencement and termination of his confinement, the nature of the charge against him, and the medical service provided. Such officer shall keep such further records and-for-such-periods-of-time as may be prescribed by the rules of the district judge or judges. The records so kept shall be subject to the inspection of any person and to the public generally and shall be kept for such periods of time as may be prescribed by the rules of the State Records Administrator.

Sec. 38. (1) The Department of Correctional Services is hereby authorized to revise program statements, develop physical plans, and initiate construction for two medium-minimum facilities with a total project cost not to exceed nine million dollars.

The revised program statements and physical plans shall provide for one medium-minimum security correctional facility to be located in Lancaster County and an additional facility to be located in Douglas County.

(2) The correctional facility to be located in Lancaster County may be built at the present site of the men's reformatory in Lincoln, Nebraska, and shall be designed to house two hundred persons. The ancillary services shall be designed to provide for future expansion to serve an additional fifty persons. Total project cost for the medium-minimum correctional facility to be located in Lancaster County shall not exceed five million dollars. Construction shall begin not later than

July 1, 1976.

(3) The medium-minimum correctional facility to be located in Douglas County shall be designed to house one hundred seventy-five persons. Ancillary services shall be designed to provide for future expansion to serve an additional twenty-five persons. Total project cost for the medium-minimum correctional facility to be located in Douglas County shall not exceed four million dollars. It is the intent of the Legislature that construction begin not later than January 1, 1977.

(4) The Department of Correctional Services shall develop a program statement and preliminary plans for a maximum security facility designed to accommodate not more than two hundred fifty persons. The program statement shall include an assessment of the current facility's location and structure, and a determination as to the adequacy of such facility when compared to complete replacement and relocation.

(5) In planning the construction of these new correctional facilities, consideration shall be given to providing separate, noncell-type housing units. Each correctional facility shall also include adequate space for administrative offices, kitchen, and dining facilities, and other space necessary for the efficient operation of the facility.

Sec. 39. That original sections 47-106, 47-110, 47-111, 47-204, 83-1,137, 83-1,138, 83-1,139, and 83-4,103, Reissue Revised Statutes of Nebraska, 1943, and sections 83-1,105 and 83-1,136, Revised Statutes Supplement, 1974, are repealed.