

LEGISLATIVE BILL 394

Approved by the Governor February 7, 1984

Introduced by Kahle, 37; Sieck, 24; H. Peterson, 35;
L. Johnson, 15; Remmers, 1; Von Minden, 17;
Chronister, 18

AN ACT relating to county jails; to amend sections 29-2415, 47-102 to 47-104, 47-106, 47-107, 47-111, 47-112, 47-115, 47-306, 47-402, and 47-407, Reissue Revised Statutes of Nebraska, 1943, and sections 23-1703, 23-2801 to 23-2803, 23-2805, 23-2806, 23-2809, 33-117, 47-114, 47-120, and 47-121, Revised Statutes Supplement, 1982; to authorize certain counties to have a county board of corrections; to provide powers and duties; to change certain fees; to harmonize provisions; to eliminate provisions relating to the boarding of certain prisoners; and to repeal the original sections, and also sections 47-118 and 47-119, Revised Statutes Supplement, 1982.

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

Section 1. That section 23-1703, Revised Statutes Supplement, 1982, be amended to read as follows:

23-1703. Except in counties where a county board of corrections exists and has assumed responsibility over the jail pursuant to sections 23-2801 to 23-2806, having a population of one hundred fifty thousand or more inhabitants, the sheriff shall have charge and custody of the jail, and the prisoners of the same, and is required to receive those lawfully committed and to keep them himself or herself, or by his or her deputy jailer, until discharged by law.

Sec. 2. That section 23-2801, Revised Statutes Supplement, 1982, be amended to read as follows:

23-2801. It has been the declared policy of the State of Nebraska in the exercise of its police powers to foster and promote local control of local affairs. Highest ranking in this hierarchy of local matters is the supervision of law enforcement. The state provides a system of law enforcement and local officers to carry out the functions thereof on a day-to-day basis within such system. When shifting populations and modern day trends make particular divisions of responsibilities obsolete, it is incumbent on the Legislature to remedy such a situation when it arises on the county level. Because heavy concentrations of inhabitants in urban areas place too great a burden on the already heavy load of the office of sheriff and because modern day theories of criminal

corrections in high population density areas are best balanced in a public forum of open ideas and debate; it is in the interest of the people of the State of Nebraska that the Legislature establish a new structure of responsibility over the county jails and correctional facilities in certain heavily populated ~~all~~ counties and give other counties the discretion whether or not to employ such structure. Having more than one hundred fifty thousand inhabitants. Such a structure would enable county boards to constitute themselves as county boards of corrections in order to supply such open ideas and debate; while the sheriffs of such counties would be released to pursue more fully their primary duties as law enforcement officers.

Sec. 3. That section 23-2802, Revised Statutes Supplement, 1982, be amended to read as follows:

23-2802. In each county having a population of one hundred fifty thousand or more inhabitants, the county board shall also serve as the county board of corrections and in counties of less than one hundred fifty thousand inhabitants the county board may choose to serve as the county board of corrections. Any such county board of corrections shall have charge of the county jail and correctional facilities and of all persons by law confined in such jail or correctional facilities. Such county board of corrections shall comply with any rule prescribed by the district judges pursuant to sections 47-101 to 47-104.

Sec. 4. That section 23-2803, Revised Statutes Supplement, 1982, be amended to read as follows:

23-2803. The A county board which, by a majority vote of its members, elects to serve as the county board of corrections shall meet as the county board of corrections within sixty days after August 24, 1979 such election and shall meet at least once every sixty days thereafter. Such board of corrections shall hear arguments and make recommendations for the maintenance, supervision, control, and direction of the county jail and correctional facilities.

A county board which, by a majority vote of its members, elects to serve as the county board of corrections may elect to dissolve the county board of corrections by a majority vote of its members. Such election to dissolve the county board of corrections shall be made at least sixty days before the beginning of the fiscal year in which the sheriff would resume responsibility for the jail.

Sec. 5. That section 23-2805, Revised Statutes Supplement, 1982, be amended to read as follows:

23-2805. To aid the county board of corrections in accomplishing the purposes of sections 23-1723 and 23-2801 to ~~23-2808~~ 23-2806, there is hereby established the division of corrections under the jurisdiction of the board. The administrative officer of the division shall be the director of corrections, who shall be qualified by

education, training, and experience to perform the duties of such position. Except in counties having more than one hundred fifty thousand and less than three hundred thousand inhabitants, any member of the classified service of the sheriff's office on August 24, 1979 may transfer into the division of corrections with no break in continuous service or benefits to which he or she might have been entitled on such date, and any person who has so transferred may retransfer to the sheriff's office on the same basis. No person shall make such transfer more than once.

Sec. 6. That section 23-2806, Revised Statutes Supplement, 1982, be amended to read as follows:

23-2806. No person in the employ of the office of the sheriff shall be reduced in rank or pay, suspended, removed, or deprived of any benefits accrued as of August 24, 1979 the effective date of this act, except as provided in the rules of the merit commission.

Sec. 7. That section 23-2809, Revised Statutes Supplement, 1982, be amended to read as follows:

23-2809. The county board of corrections may, pursuant to the Interlocal Cooperation Act, contract with any governmental unit for the purposes of implementing and complying with this act and may contract with any individual, firm, partnership, or corporation to provide goods or services essential to the operation and maintenance of the county jail.

Sec. 8. That section 29-2415, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2415. It shall be the duty of the county board to make the contracts for the employment of convicts as specified in section 29-2414, and the sheriff of the county, or such other person as may be charged with the administrative direction of the jail, shall collect the proceeds of all such labor, and after paying the board of such convicts and the expenses incident to such labor, to pay the balance to the county treasurer within ten days.

Sec. 9. That section 33-117, Revised Statutes Supplement, 1982, be amended to read as follows:

33-117. (1) The several sheriffs shall charge and collect fees as follows: Serving capias with commitment or bail bond and return, two dollars; serving search warrant, two dollars; arresting under search warrant, two dollars for each person so arrested; serving summons, subpoena in equity, order of attachment, order of replevin, writ of injunction, scire facias, citation, or other writ or mesne process and return thereof, one dollar for the first defendant and fifty cents for each of the other defendants in the same case; copy of summons, subpoena in equity, or order of attachment, fifty cents; serving subpoena for witness, each person served, fifty cents; taking and filing replevin bond or other indemnification to be furnished and approved by the

sheriff, one dollar; making a copy of any process, bond, or paper other than herein provided for, fifty cents; traveling expenses for each mile actually and necessarily traveled within or without their several counties in their official duties, three cents more per mile than the rate provided for county officers and employees in section 23-1112, except that the minimum fee shall be fifty cents when such service is made within two miles of the courthouse; and, as far as is expedient, all papers in the hands of the sheriff at any one time shall be served in one or more trips by the most direct route or routes and only one mileage fee shall be charged for a single trip, the total mileage cost to be computed as a unit for each trip and the combined mileage cost of each trip to be prorated among the persons or parties liable for the payment of same; levying writ of execution and return thereof, two dollars; levying writ of possession without the aid of the county, two dollars; levying writ of possession with the aid of the county, four dollars; summoning the grand jury, not including mileage to be paid by the county, ten dollars; summoning petit jury, not including mileage to be paid by the county, twelve dollars; summoning special jury for each person impaneled, fifty cents; calling jury for trial of a case or cause, fifty cents; serving notice of motion, other notice, or order of court, one dollar; executing writ of restitution and return, two dollars; calling inquest to appraise lands and tenements levied on by execution, one dollar; calling inquest to appraise goods and chattels taken by order of attachment or replevin, one dollar; advertisement of sale in newspaper in addition to the price of printing, one dollar; advertising in writing for sale of real or personal property, two dollars; executing writ of partition, four dollars; making deeds for land sold on execution or order of sale, two dollars; committing prisoner to prison, one dollar; commission on all money received and disbursed by him or her on execution or order of sale, order of attachment decree, or on sale of real or personal property shall be for each dollar, not exceeding four hundred dollars, six cents; for every dollar above four hundred dollars and not exceeding one thousand dollars, four cents; for every dollar above one thousand dollars, two cents; PROVIDED, in all cases where no money is received or disbursed by him or her no percentage shall be allowed; for guarding prisoners when it is actually necessary, four dollars per day, to be paid by the county, and where there are prisoners confined in the county jail, ten dollars shall be allowed the sheriff as jailer until January 1, 1983; except as provided in sections 47-118 to 47-121, for boarding prisoners, other than state prisoners, three dollars and fifty cents per day, in all counties where there is an average of less than fifty prisoners per day, computed on the basis of all kinds of prisoners, whether

city, county, state, federal, or any other class, confined in the jail; and ninety cents per day where there is an average of more than fifty such prisoners per day, and provided further, the fees for committing, guarding, confining, and the boarding of prisoners, other than state prisoners, in counties having a population of more than two hundred thousand inhabitants shall, until January 1, 1983, be governed by section 33-117-01 and after January 1, 1983, by section 47-121.

(2) The sheriff shall, on the first Tuesday in January, April, July, and October of each year, make a report to the county board showing (a) the different items of fees, except mileage, collected or earned, from whom, at what time, and for what service, (b) the total amount of such fees collected or earned by such officer since the last report, and (c) the amount collected or earned for the current year. He or she shall pay all fees earned to the county treasurer, who shall credit same to the general fund of the county.

(3) Any future adjustment made to the reimbursement rate provided in subsection (1) of this section shall be deemed to apply to all provisions of law which refer to this section for the computation of mileage.

Sec. 10. That section 47-102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-102. The judges shall, as soon as may be, cause a copy of the rules to be delivered to the county boards in the several counties in their respective judicial districts. It shall be the duty of each board forthwith to cause the same to be printed, and to furnish the sheriff of its county or such other person as may be charged with the administrative direction of the jail with a copy of the rules for every room or cell of the jail, and to forward a copy of the rules by mail to the Auditor of Public Accounts, who shall carefully file away and preserve the same.

Sec. 11. That section 47-103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-103. The sheriff or such other person as may be charged with the administrative direction of the jail shall, immediately on the receipt of the rules, cause a copy thereof to be posted up and continued in some conspicuous place in every room or cell of the jail.

Sec. 12. That section 47-104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-104. The judges may, from time to time, as they may deem necessary, revise, alter, or amend the rules, and such revised, altered, or amended rules shall be printed and disposed of by the county board and the sheriff or such other person as may be charged with the administrative direction of the jail in the same manner as is directed by sections 47-102 and 47-103.

Sec. 13. The sheriff or such other person as may

be charged with the administration of the jail shall conform, in all respects, to the rules and directions as prescribed by the district judges pursuant to sections 47-101 and 47-104 which may be made and communicated to him or her by the county board.

Sec. 14. That section 47-106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-106. The sheriff or such other person as may be charged with the administrative direction of the jail, 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, he or she 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 habits of the prisoners as to personal cleanliness, diet, and order, (6) the operations of the rules and directions prescribed by the district judges, (7) the means furnished prisoners of literary, moral, and religious instruction, and of labor, and (8) all other matters required by the rules, or in the discretion of such sheriff person deemed proper. The sheriff or such other person as may be charged with the administrative direction of the jail, or other officer performing the duties of sheriff, shall carefully keep and preserve the jail register in the his or her office of the jailer of his proper county, and at the expiration of his or her office shall deliver the same to his the successor in office.

Sec. 15. That section 47-107, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-107. The sheriff or such other person as may be charged with the administrative direction of the jail, or other officer performing the duties of sheriff, shall, on or before November 1 in each year, make out in writing from the jail register a jail report, one copy of which report he or she shall forthwith file in the office of the clerk of the district court of the proper district and one copy with the county clerk of his the county, for the use of the county board thereof.

Sec. 16. 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, 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 or such other person as

may be charged with the administrative direction of the jail, 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 deputy or correctional officer shall be hired by the sheriff person whose duty it shall be to have charge of the female prisoners and perform those functions required of a deputy related to such duty, at a salary of not less than five hundred 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. 17. That section 47-112, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-112. In counties having a population in excess of two hundred thousand inhabitants where the jail is situated above the ground floor and requires an operator for an elevator to transfer the prisoners to and from said jail, there shall be a jail conductor to operate said elevator, to be appointed by the sheriff or such other person as may be charged with the administrative direction of the jail, who shall be paid such salary as the county board may think reasonable and proper by warrant drawn on the general fund.

Sec. 18. That section 47-114, Revised Statutes Supplement, 1982, be amended to read as follows:

47-114. The sheriff or such other person as may be charged with the administrative direction of the jail shall visit the jail in person and examine into the condition of each prisoner at least once in each month, and once during each term of the district court.

Sec. 19. That section 47-115, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-115. The jailer or keeper of the jail ~~shall~~, unless the sheriff elects to act as jailer in person or unless a county board of corrections exists and has assumed responsibility over the jail pursuant to sections 23-2801 to 23-2806, shall be a deputy appointed by the sheriff, and such jailer shall take the necessary oath before entering upon the duties of his or her office; PROVIDED, the sheriff shall in all cases be liable for the negligence and misconduct of the jailer, as of other deputies.

Sec. 20. That section 47-120, Revised Statutes Supplement, 1982, be amended to read as follows:

47-120. Commencing January 1, 1983, the county board or county board of corrections serving pursuant to Chapter 23, article 28, shall provide proper quarters and adequate equipment for the preparation and serving of all meals furnished to all prisoners confined in the county jail. The county sheriff shall have full charge and control of such services and the county board shall provide

for all washing, fuel, lights, and clothing for prisoners, subject to the right of the county to be paid by the state for state prisoners at the rate of three dollars and fifty cents per day, and subject to the right of the county to be paid by the city or federal government for city or federal prisoners at actual cost to the county. Supplies of every nature entering into the furnishing of meals, washing, fuel, lights, and clothing to the prisoners confined in the county jail shall be purchased and provided, under the direction of the county sheriff. Payment for all purchases shall only be made by the county board on the original invoices submitted by the sheriff of goods, supplies, and services, setting forth, (1) that the invoice correctly describes the goods as to quality and quantity, (2) that the same have been received and are in the custody of the affiant, (3) that they have been or will be devoted exclusively to the purposes authorized in this section, and (4) that the price charged is reasonable and just. Commencing January 1, 1983, the county sheriff shall no longer be reimbursed for boarding prisoners under section 33-117, but nothing in this section shall be construed to restrict the sheriff in employing necessary personnel and from otherwise carrying out his or her duties in operation of the jail.

Sec. 21. That section 47-121, Revised Statutes Supplement, 1982, be amended to read as follows:

47-121. The county board of each county and the county board of corrections serving pursuant to Chapter 23, article 28, confining state prisoners within its jails shall receive three dollars and fifty cents per day for boarding such prisoners. Such boards are hereby authorized to provide such meals, fuel, lights, washing, and clothing as may be necessary for the comfort of such prisoners while in custody in their county. The sheriff or ~~jailer~~ county board of corrections shall, on the first day of January, April, July, and October of each year, make a report in writing to the Director of Administrative Services of the number of state prisoners in custody in such county for the last three months before making ~~his or her~~ its report, when committed, and for what time, the amount due the county board for boarding such prisoner or prisoners, the amount of clothing furnished each prisoner and the costs of the same, and the amount expended for washing, lights, and fuel, for that quarter, which amount shall be sworn to by the sheriff or ~~jailer~~ a designated representative of the county board of corrections before the clerk of the county of which he or she is sheriff or ~~jailer~~, and certified to under his or her seal. Thereupon the director shall quarterly draw his or her warrant upon the State Treasurer for the amount due to the county treasurer of the county, and the amount drawn shall be credited to the general fund of the county. When conditions require a constant guard to be kept to prevent

the escape of prisoners confined therein, the sheriff shall be allowed actual costs per day for guarding or procuring guard for such prisoners, which shall be paid to him or her quarterly by the governmental unit responsible for the commitment of the prisoner.

Sec. 22. That section 47-306, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-306. Where such county and such city shall unite in the construction and maintenance of a jail, or in the purchase of land for farm or other purposes and erect public buildings thereon, the sheriff of such county or such other person as may be charged with the administrative direction of the jail and the chief police officer of such city shall jointly conduct and manage said jail for the detention of prisoners and said land for the employment of prisoners, except as otherwise provided by agreement between such county and city; PROVIDED, where any such county or any such city shall build such jail or purchase such land independently of the other, such county or such city as does not own or manage a jail for the detention of prisoners, or land for the employment of prisoners, shall have the right to contract with the other for its use, with payment made as provided in any such contract.

Sec. 23. That section 47-402, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-402. The privilege of leaving the jail as set forth in section 47-401 shall be granted only by written order of the sentencing court, after conferring with the chief of police, ~~or~~ county sheriff, or such other person as may be charged with the administrative direction having charge of the jail, specifically setting forth the terms and conditions of the privilege granted. The prisoner may petition the court for such privilege at the time of sentencing, or thereafter, and, in the discretion of the court, may renew his or her petition. The court may withdraw the privilege at any time by written order entered with or without prior notice.

Sec. 24. That section 47-407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

47-407. The court may arrange with the chief of police, ~~or~~ sheriff, or such other person as may be charged with the administrative direction of the jail in a city or county other than the one in which the sentencing court is located for the employment of the prisoner in the other county, and for the prisoner while so employed to be in the custody of such sheriff or chief of police, but in all other respects to be and continue subject to the order of the sentencing court. If the prisoner was convicted in a court in another city or county, the court of record having jurisdiction may, at the request or with the concurrence of the sentencing court, make all determinations and orders under sections 47-401 to 47-411 as might otherwise be made by the sentencing court after the prisoner is received at

the jail.

Sec. 25. That original sections 29-2415, 47-102 to 47-104, 47-106, 47-107, 47-111, 47-112, 47-115, 47-306, 47-402, and 47-407, Reissue Revised Statutes of Nebraska, 1943, and sections 23-1703, 23-2801 to 23-2803, 23-2805, 23-2806, 23-2809, 33-117, 47-114, 47-120, and 47-121, Revised Statutes Supplement, 1982, and also sections 47-118 and 47-119, Revised Statutes Supplement, 1982, are repealed.