

LEGISLATIVE BILL 971

Approved by the Governor April 12, 1994

Introduced by Lindsay, 9; Fisher, 35

AN ACT relating to law enforcement; to amend sections 14-709, 23-1701.01, 81-1404, 81-1406, 81-1407, 81-1411, 81-1413, 81-1414, 81-1417, 81-1418, 81-1419, 81-1422, 81-1423, and 81-1439, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1403 and 81-1410, Revised Statutes Supplement, 1992; to change and eliminate provisions relating to the training of law enforcement officers and the responsibility for the Nebraska Law Enforcement Training Center; to change the powers and duties of and membership provisions relating to the Nebraska Police Standards Advisory Council and the Nebraska Commission on Law Enforcement and Criminal Justice; to eliminate a provision on transfer of property; to harmonize provisions; and to repeal the original sections, and also sections 81-1412 and 81-1427, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 14-709, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

14-709. Any person who is a sworn member of an organized and paid fire department of any city of the metropolitan class and who is an authorized arson investigator for such city in order to determine the cause, origin, and circumstances of fires, shall be classified as a peace officer while on duty and in the course of any such investigation. Such person shall possess the same powers of arrest, search, and seizure, and the securing and service of warrants as police officers of such city.

While on duty and in the course of any such investigation, such person may carry such weapons as may be necessary, but only if that person has satisfactorily completed a training program offered or approved by the Nebraska Law Enforcement Training Center Police Standards Advisory Council or equivalent training offered by such city and certified by the council. Such training need not include exposure to vehicle and traffic law, traffic control and accident investigation, or first aid.

Such person shall in addition have been an active member of an organized fire department for a minimum of six years, and shall meet the minimum qualifications and training standards established by the city for all firefighters.

Any person granted the powers enumerated in this section may exercise such powers only while on duty and during the course of investigating the cause, origin, and circumstances of a fire.

Sec. 2. That section 23-1701.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1701.01. (1) Each sheriff shall attend the Nebraska Law Enforcement Training Center and receive a certificate attesting to satisfactory completion of the Sheriff's Certification Course within eight months of taking office, unless such sheriff has already been awarded a certificate by the Nebraska Commission on Law Enforcement and Criminal Justice attesting to satisfactory completion of such course or unless such sheriff can demonstrate to the Nebraska Police Standards Advisory Council that his or her previous training and education is such that he or she will professionally discharge the duties of the office. Any sheriff in office prior to July 19, 1980, shall not be required to obtain a certificate attesting to satisfactory completion of the Sheriff's Certification Course, but shall otherwise be subject to this section. Each sheriff shall attend twenty hours of continuing education in criminal justice and law enforcement courses approved by the Nebraska Commission on Law Enforcement and Criminal Justice council each year following the first year of such sheriff's term of office. Such continuing education shall be offered through seminars, advanced education which may include college or university classes, or conferences and shall be of a type which has application to and seeks to maintain and improve the skills of the sheriffs in carrying out the responsibilities of their office.

(2) Unless a sheriff is able to show good cause for not complying with subsection (1) of this section or obtains a waiver of the training requirements from the council, any sheriff who violates subsection (1) of this section shall be punished by a fine equal to such sheriff's monthly salary. Each month in which such violation occurs shall constitute a separate offense.

Sec. 3. That section 81-1403, Revised Statutes Supplement, 1992, be

amended to read as follows:

81-1403. The commission may consult with the Nebraska Police Standards Advisory Council and Subject to review and approval by the commission, the council shall:

(1) Adopt and promulgate rules and regulations for the operation of the training center;

(2) Appoint and remove the director of the training center and Recommend to the commission the names of persons to be appointed to the position of director of the training center, delegate appropriate powers and duties to him or her and provide direct supervision of the director, and when warranted recommend to the commission that the director be removed for cause;

(3) Establish curricula and requirements for satisfactory completion of preemployment and advanced training programs;

(4) Issue certificates or diplomas attesting satisfactory completion of preemployment and advanced training programs;

(5) Revoke such certificates when a law enforcement officer is convicted of a felony and have the power to revoke such certificates at any time for good cause upon reasonable notice and hearing. The notice and hearing shall comply with due process procedures consistent with the Constitution of the United States. Good cause shall include, but not be limited to, (a) incompetence; (b) neglect of duty; (c) physical, mental, or emotional incapacity, (d) failure to comply with mandated certification requirements prescribed by the statutes of this state or rules and regulations adopted and promulgated by the commission, and (e) absence from employment as a law enforcement officer for at least a two-year period according to rules and regulations established by the council which shall include, but not be limited to, revocation for (a) incompetence, (b) neglect of duty, and (c) physical, mental, or emotional incapacity. Such rules and regulations shall include a procedure for hearing appeals of any person who feels that the revocation of his or her certificate was in error;

(6) Set the tuition and fees of the training center;

(7) Annually certify any school, public or private, providing a basic course of law enforcement training which complies with the qualifications and standards promulgated by the director council and offers training comparable to that offered by the training center;

(8) Extend the programs of the training center throughout the state on a regional basis; and

(9) Establish the qualifications and standards and provide the training required by section 81-1439; and

(10) Do all things necessary to carry out the purpose of the training center, except that functional authority for budget and personnel matters shall remain with the commission.

Sec. 4. That section 81-1404, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1404. The director of the Nebraska Law Enforcement Training Center shall devote full time to the duties of ~~his~~ the office and shall not engage in any other business or profession or hold any other public office. ~~He~~ The director shall be responsible to the commission through the council for the operation of the training center and the conducting of training programs. The director shall:

(1) Appoint and remove for cause such employees as may be necessary for the operation of the training center and delegate appropriate powers and duties to them;

(2) Conduct research for the purpose of evaluating and improving the effectiveness of law enforcement training programs;

(3) Consult with the Nebraska Police Standards Advisory Council council on all matters pertaining to the training center; and

(4) Advise the commission council concerning the operation and curricula of the training center and the formulation of training policy and procedures; and

(5) Issue diplomas to students who successfully complete the prescribed basic course of study who are not yet employed as law enforcement officers.

Sec. 5. That section 81-1406, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1406. There is hereby created the Nebraska Police Standards Advisory Council. The council shall be a special standing committee of the commission with the express purpose of overseeing the operation of the training center and ensuring that the policies of the state with respect to law enforcement training are carried out. The council shall act for the commission in all matters relating to law enforcement training and the training center but shall not have any other powers and duties with respect to

the commission or any of its duties. The council shall conduct regular meetings in order to facilitate the operation of the training center.

Sec. 6. That section 81-1407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1407. (1) The Nebraska Police Standards Advisory Council shall consist of five seven members appointed by the Governor. The Six of the members shall be full-time officers or employees of a law enforcement agency and shall include one representative chief of police or his or her designee from a city of the metropolitan or primary class, a representative from a first-class city, a representative from a second-class city chief of police or his or her designee from a city of the first class, a representative chief of police or his or her designee from a city of the second class or village, a county sheriff or his or her designee from a county having a population of forty thousand or more, a county sheriff or his or her designee from a county having a population of forty thousand or less, and a member of the Nebraska State Patrol. The seventh member shall be a member of the Jail Standards Board or a person from the public at large. The representative chief of police or his or her designee from a city of the metropolitan or primary class shall not be a regular member of the commission.

(2) The members of the council shall have serve for terms of four years each. Of the members first appointed, one shall serve for a term of one year, one shall serve for a term of two years, one shall serve for a term of three years, and two shall serve for a term terms of four years from January 1 next succeeding their appointment. Within ninety days after the effective date of this act, the Governor shall appoint the two additional members who shall serve for terms of four years from January 1 next succeeding their appointment. A member may be reappointed at the expiration of his or her term. Any vacancy occurring otherwise than by expiration of a term shall be filled, for the remainder of the unexpired term, in the same manner as the original appointment. The council shall select one of its members as chairman chairperson.

(3) No member of the council shall serve beyond the time when he or she holds the office or employment by reason of which he or she was initially eligible for appointment. A member may be removed from the council for cause upon notice and an opportunity to be heard at a public hearing before the Governor. After the hearing, the Governor shall file in the office of the Secretary of State a complete statement of the charges, his or her findings and disposition, together with a complete record of the proceedings.

Sec. 7. That section 81-1410, Revised Statutes Supplement, 1992, be amended to read as follows:

81-1410. The commission (1) The council shall adopt and promulgate rules and regulations governing admission to the training center with an effective date of January 1, 1995. The rules and regulations shall establish admission criteria which shall include, but not be limited to, (a) physical, mental, and emotional fitness and (b) disclosure of any criminal history. Upon adoption of the rules and regulations and the passage of their effective date, the prior admission criteria specified in subsection (2) of this section shall be revoked. The council may also adopt a priority system for admission to the training center.

(2) Until January 1, 1995, the council may admit an applicant to the training center for entry-level law enforcement certification when the applicant meets any one or more of the following criteria:

- (1) (a) The applicant is a citizen of the United States;
- (2) (b) The applicant will reach the age of twenty-one years prior to the completion of the training;
- (3) (c) The applicant has been fingerprinted and a search has been made of local, state, and national fingerprint files for disclosure of any criminal record and the results furnished to the training center;
- (4) (d) The applicant has a valid motor vehicle operator's or chauffeur's license;
- (5) (e) The applicant has vision correctable to 20/30 and has no evidence of an irreversible disease which will affect the person's sight;
- (6) (f) The applicant has normal hearing in each ear and has no evidence of an irreversible disease which will affect the person's hearing;
- (7) (g) The applicant has been pardoned or has never been convicted by any state or the United States of a crime punishable by imprisonment in a penitentiary for a term of one year or more or by any foreign government of a crime which would be punishable by imprisonment for a term of one year or more if committed in Nebraska or has had a conviction for such an offense overturned or reversed by a court of competent jurisdiction;
- (8) (h) The applicant possesses good character as determined by a thorough background investigation;

(9)(a)(i) (i) The applicant (i)(A) is a high school graduate or (ii) (B) possesses a general educational development certificate and (b) (ii) is able to read, write, and understand the English language at the eleventh grade level;

(10) (j) The applicant has not been convicted of driving while intoxicated in the two years immediately preceding admission; and

(11) (k) The applicant has been examined by a licensed physician six months or less prior to admission and has been certified by the physician to have met the physical requirements, as determined by the commission council, necessary to fulfill the responsibilities of a law enforcement officer and successfully complete the requirements for training.

In all cases in which it is necessary for the training center to acquire documents or other information to determine whether or not an applicant meets any of the requirements of this section subsection, the training center may require that such copies or other information be supplied by the applicant at his or her own expense.

Sec. 8. That section 81-1411, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1411. Upon the request of any sheriff, chief of police, or any other person having an equivalent title who is appointed or employed by the state or a subdivision thereof to exercise supervisory authority over law enforcement officers, the council may waive requirements for admission to the training center. commission may waive any or all of the requirements of section 81-1410 for admission to the training center upon a finding that:

(1) The shortage of individuals meeting the requirements of section 81-1410 is such that a failure to waive such requirements will result in an inability of a police agency to recruit law enforcement officers;

(2) The pay scale and other working conditions of such police agency are commensurate with the pay scale and working conditions of police agencies of other jurisdictions of comparable size and economic circumstances; and

(3) It is in the public interest to waive such requirements;

Sec. 9. That section 81-1413, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1413. Tuition, fees, and such other expenses incurred in the training of law enforcement officers shall be paid by their employer a law enforcement officer admitted to the training center shall be paid by the training center when the course the officer is attending is a course mandated by state law, a course prescribed by the council, or a course that has been funded by the training center through special external funding. Tuition, fees, and such other expenses incurred in the training of all other persons admitted to the training center shall be the responsibility of the person se admitted or his or her sponsoring agency.

Sec. 10. That section 81-1414, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1414. (1) On and after January 1, 1972, law enforcement officers already serving under permanent appointment shall not be required to meet any requirement of subsection (2) of this section as a condition of tenure or continued employment.

(2) On and after January 1, 1972, no person shall receive appointment as a law enforcement officer unless he or she has been awarded a certificate by the commission attesting to his satisfactory completion of the minimum curriculum of the training center as established by the commission council or has been awarded a certificate attesting to his satisfactory completion of a training program which the commission council finds equivalent thereto. Any person who has not been awarded such a certificate may receive an appointment conditioned on his satisfactory completion of such training within one year from the date of his appointment if he or she immediately applies for admission to the training center and enrolls in the next available basic training class. If such training is not completed within one year, his of the appointment, the person's employment shall not be renewed by appointment or otherwise and such person shall no longer be recognized as a law enforcement officer as defined in subdivision (3) of section 81-1401.

(3) On and after January 1, 1972, no law enforcement officer shall be promoted in rank unless he or she has been awarded a certificate by the director attesting to his satisfactory completion of such advanced training as the director council may require for the rank to which he or she is to be promoted.

(4) The At the direction of the council, the director shall issue a certificate attesting to a compliance with the requirements of subsection (2) or (3) of this section to any applicant who presents evidence of satisfactory completion of a training program, other than that of the training center, found by the director to be equivalent to that of the training center.

Sec. 11. That section 81-1417, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1417. (1) The Nebraska Commission on Law Enforcement and Criminal Justice shall consist of ~~seventeen~~ ~~nineteen~~ members. The membership shall include the Governor, the Attorney General, the Superintendent of the Nebraska State Patrol Law Enforcement and Public Safety, the Director of Correctional Services, the chief of police or director of public safety of a city of more than two hundred thousand population, the chief of police or director of public safety of a city of less than two hundred thousand population, a district court judge, a county sheriff, a county attorney, a county commissioner, a mayor or city manager, a person involved with the control or prevention of juvenile delinquency, the chairperson of the Nebraska Police Standards Advisory Council, and ~~five~~ ~~six~~ members, at least one of whom shall be a woman, from the public at large. The seven members of the council shall also be considered members of the commission acting as a special committee of the commission with limited powers and duties. A member of the commission may serve concurrently as a member of the council.

(2) The Governor may increase the membership of the commission at any time if such increase is necessary to comply with the provisions of any federal act providing funds for law enforcement or delinquency prevention purposes. Such members of the commission appointed by the Governor shall serve for a term terms of six years from January 1 next succeeding their appointments.

(3) Except for the Governor, the Attorney General, the Superintendent of the Nebraska State Patrol Law Enforcement and Public Safety, and the Director of Correctional Services, the members of the commission shall be appointed by the Governor. The membership of the commission shall represent varying geographic areas and large and small governmental subdivisions.

Sec. 12. That section 81-1418, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1418. (1) The members of the commission appointed by the Governor, except for the members of the Nebraska Police Standards Advisory Council, shall serve for a term terms of six years each. Of the members first appointed, four shall serve for a term terms of two years, four shall serve for a term terms of four years, and five shall serve for a term terms of six years from January 1 next succeeding their appointments. A member may be reappointed at the expiration of his or her term. Any vacancy occurring otherwise than by expiration of a term shall be filled, for the balance of the unexpired term, in the same manner as the original appointment.

(2) No member shall serve beyond the time when he or she holds the office, employment, or status by reason of which he or she was initially eligible for appointment. Any member of the commission appointed by the Governor may be removed from the commission for cause upon notice and an opportunity to be heard at a public hearing. One ~~PROVIDED~~, that one of the causes for removal shall be absence from three regularly scheduled meetings of the commission during any six-month period when the member has failed to advise the commission in advance of such meeting that he or she will be absent and stating a reason therefor.

Sec. 13. That section 81-1419, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1419. The chairman chairperson of the commission shall be designated by the Governor to serve as such during at the pleasure of the Governor. The chairman chairperson shall be the chief executive officer of the commission, but may delegate such of his or her duties to the executive director as may be authorized by the commission.

Sec. 14. That section 81-1422, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1422. Nine Ten members of the commission shall constitute a quorum for the transaction of any business or the exercise of any power of the commission. The commission shall have the power to act by a majority of the members present at any meeting at which a quorum is in attendance.

Sec. 15. That section 81-1423, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1423. The commission shall have authority to:

(1) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under sections 81-1415 to 81-1426;

(2) Delegate to one or more of its members such powers and duties as it may deem proper;

(3) Coordinate and jointly pursue its activities with the Governor's

Policy Research Office;

(4) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(5) Plan improvements in the administration of criminal justice and promote their implementation;

(6) Make or encourage studies of any aspect of the administration of criminal justice;

(7) Conduct research and stimulate research by public and private agencies which shall be designed to improve the administration of criminal justice;

(8) Coordinate activities relating to the administration of criminal justice among agencies of state and local government;

(9) Cooperate with the federal and other state authorities concerning the administration of criminal justice;

(10) Accept and administer loans, grants, and donations from the United States, its agencies, the State of Nebraska, its agencies, and from other sources, public and private, for carrying out any of its functions, except that no communications equipment shall be acquired and no approval for acquisition of communications equipment shall be granted without receiving the written approval of the director of the division of communications of the Department of Administrative Services;

(11) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under sections 81-1415 to 81-1426 with agencies of state or local government, corporations, or persons;

(12) Acquire, hold, and dispose of personal property in the exercise of its powers;

(13) Conduct random annual audits of criminal justice agencies to verify the accuracy and completeness of criminal history record information maintained by such agencies and to determine compliance with laws and regulations dealing with the dissemination, security, and privacy of criminal history information;

(14) Do all things necessary to carry out its purposes and for the exercise of the powers granted in sections 81-1415 to 81-1426, except that no activities or transfers or expenditures of funds available to the agency shall be inconsistent with legislative policy as reflected in substantive legislation, legislative intent legislation, or appropriations legislation;

(15) Exercise budgetary and administrative control over the Crime Victim's Reparations Committee and the Jail Standards Board; and

(16) Appoint and remove for cause the director of the Nebraska Law Enforcement Training Center; and

(17) Do all things necessary to carry out sections 81-1843 to 81-1848.

Sec. 16. That section 81-1439, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1439. (1) The Nebraska Commission on Law Enforcement and Criminal Justice shall establish minimum physical, mental, educational, and moral qualifications for all members of any law enforcement reserve force. The commission shall also establish minimum training standards and be responsible for providing such training for all members. The commission shall delegate its responsibilities pursuant to this section to the Nebraska Police Standards Advisory Council.

(2) Individuals appointed to a law enforcement reserve force shall receive training through or under the supervision of the Nebraska Law Enforcement Training Center and shall achieve the minimum training standards within one year from the date of appointment. Such training may be provided by the Nebraska Law Enforcement Training Center training center through regional workshops, training sessions, or similar means of instruction anywhere in the state.

(3) The governing body establishing a law enforcement reserve force shall adopt and publish a reserve force manual setting forth the minimum qualifications, training standards, and standard operating procedures for such force and such higher qualifications, standards, and operating procedures as may actually be used.

Sec. 17. That original sections 14-709, 23-1701.01, 81-1404, 81-1406, 81-1407, 81-1411, 81-1413, 81-1414, 81-1417, 81-1418, 81-1419, 81-1422, 81-1423, and 81-1439, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1403 and 81-1410, Revised Statutes Supplement, 1992, and also sections 81-1412 and 81-1427, Reissue Revised Statutes of Nebraska, 1943, are repealed.