

LEGISLATIVE BILL 882

Approved by the Governor June 10, 1997

Introduced by Engel, 17; Crosby, 29; Dierks, 40; Jones, 43; Kiel, 9; D. Pederson, 42; Robinson, 16; Schrock, 38; Vrtiska, 1; Wehrbein, 2; Witek, 31; Preister, 5; Abboud, 12; at the request of the Governor

AN ACT relating to correctional services; to amend sections 29-2262, 83-905, 83-925.05, and 83-925.06, Reissue Revised Statutes of Nebraska, and section 83-925.07, Revised Statutes Supplement, 1996; to create incarceration work camps; to provide duties for the Department of Correctional Services; to authorize the issuance of warrants for certain juveniles; to change oversight and control of the secure youth facility; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 29-2262, Reissue Revised Statutes of Nebraska, is amended to read:

- 29-2262. (1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life. No offender shall be sentenced to probation if he or she is deemed to be an habitual criminal pursuant to section 29-2221.
- (2) The court may, as a condition of a sentence of probation, require the offender:
- (a) To refrain from unlawful conduct;
 - (b) To be confined periodically in the county jail or to return to custody after specified hours but not to exceed (i) for misdemeanors, the lesser of ninety days or the maximum jail term provided by law for the offense and (ii) for felonies, one hundred eighty days;
 - (c) To meet his or her family responsibilities;
 - (d) To devote himself or herself to a specific employment or occupation;
 - (e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for such purpose;
 - (f) To pursue a prescribed secular course of study or vocational training;
 - (g) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;
 - (h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
 - (i) To have in his or her possession no firearm or other dangerous weapon unless granted written permission;
 - (j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment;
 - (k) To report as directed to the court or a probation officer and to permit the officer to visit his or her home;
 - (l) To pay a fine in one or more payments as ordered;
 - (m) To work, in lieu of or in addition to any fine, on public streets, parks, or other public property for a period not exceeding twenty working days. Such work shall be under the supervision of the probation officer or a law enforcement officer in the jurisdiction in which the work is performed;
 - (n) To pay for tests to determine the presence of drugs or alcohol, psychological evaluations, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;
 - (o) To perform community service as defined in section 29-2277;
 - (p) To be monitored by an electronic surveillance device or system and to pay the cost of such device or system if the offender has the financial ability;
 - (q) To participate in a community correctional facility or program as provided in section 47-610; or
 - (r) To successfully complete an incarceration work camp program as determined by the Department of Correctional Services; or
 - (~~r~~) (s) To satisfy any other conditions reasonably related to the rehabilitation of the offender.

(3) In all cases in which the offender is guilty of assault or battery and the victim is the offender's spouse, a condition of probation shall be mandatory counseling as provided by the Protection from Domestic Abuse Act.

(4) In all cases in which the offender is guilty of violating section 28-416, a condition of probation shall be mandatory treatment and counseling as provided by such section.

Sec. 2. The Department of Correctional Services shall develop and implement an incarceration work camp, to be completed no later than January 1, 2005, for adult criminal offenders to be placed in as a condition of a sentence of probation. It is the intent of the Legislature that the incarceration work camp serve to reduce prison overcrowding and to make prison bed space available for violent offenders. It is the further intent of the Legislature that the incarceration work camp serve the interests of society by promoting the rehabilitation of offenders and by deterring offenders from engaging in further criminal activity. To accomplish these goals, the incarceration work camp shall provide regimented, structured, disciplined programming, including all of the following: Work programs; vocational training; behavior management and modification; money management; substance abuse awareness, counseling, and treatment; and education, programming needs, and aftercare planning, which will increase the offender's abilities to lead a law-abiding, productive, and fulfilling life as a contributing member of a free society.

Sec. 3. (1) It is the intent of the Legislature that the court target the felony offender (a) who is experiencing his or her first prison sentence, (b) for whom the court finds that other conditions of a sentence of probation, in and of themselves, are not suitable, and (c) who, without the existence of an incarceration work camp, would, in all likelihood, be sentenced to prison. It is the further intent of the Legislature that prior offenders who were incarcerated for minor nonviolent offenses are not automatically ineligible to be placed in an incarceration work camp as a condition of a sentence of probation.

(2) When the court is of the opinion that imprisonment is appropriate, but that a brief and intensive period of incarceration may better serve the interests of society, the court may place an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of a sentence of probation. The court may consider such placement if the offender (a) is a male or female offender who is convicted as an adult, (b) is determined to be medically and mentally fit to participate, with allowances given for reasonable accommodation, (c) has not previously been incarcerated for a violent felony crime, and (d) has not demonstrated chronic violent behavior. Offenders convicted of a crime under sections 28-319 to 28-321 or of any capital crime are not eligible to be placed in an incarceration work camp.

Sec. 4. Upon successful completion of the incarceration work camp program, as determined by the Department of Correctional Services, the sentencing court may modify the offender's conditions of his or her sentence of probation, place the offender in an aftercare program, or discharge the offender.

Sec. 5. If the offender for any reason fails to successfully complete the incarceration work camp program, the sentencing court may impose any other sentence that the court may have originally imposed. Credit shall be given for time actually served in the incarceration work camp program.

Sec. 6. All costs incurred during the period the offender is committed to an incarceration work camp shall be the responsibility of the state, and the counties shall be liable only for the cost of returning the offender to the appropriate court for reimposition of sentence or such other disposition as the court may then deem appropriate.

Sec. 7. An annual progress report shall be provided to the Legislature ensuring that all programmatic objectives are being met. The report shall include an evaluation of the impact of the multi-treatment programs, including program costs, educational achievement, inmate disciplinary activity, probation release decision-making, and community reintegration on November 1 of the year following implementation.

Sec. 8. The Director of Health and Human Services shall have the authority, and may delegate the authority only to the Juvenile Services Director, to issue warrants for the arrest of juveniles who have absconded from a facility or program operated by the office or provided through a contract with the office. Any peace officer who arrests a juvenile on such a warrant shall detain the juvenile in an appropriate facility or program for juveniles until the office can take custody of the juvenile.

Sec. 9. Section 83-905, Reissue Revised Statutes of Nebraska, is

amended to read:

83-905. The Department of Correctional Services shall have oversight and general control of all state adult correctional institutions and the secure youth facility. ~~The Secure Youth Confinement Facility is a physically secure, coeducational facility designed to provide secure confinement, education, and treatment only for serious and chronic juvenile offenders who have been committed to the Department of Correctional Services for secure care. The Office of Juvenile Services shall have oversight and general control of all state juvenile correctional facilities.~~

Sec. 10. Section 83-925.05, Reissue Revised Statutes of Nebraska, is amended to read:

83-925.05. The Office of Juvenile Services shall:

(1) Coordinate the programs and services of the juvenile justice system with other governmental agencies and political subdivisions;

(2) Develop and use intake and assessment procedures for the evaluation of juveniles;

(3) Provide case management for juveniles;

(4) Provide secure facility and other alternative programs;

(5) Coordinate educational, vocational, and social counseling;

(6) Coordinate community-based services for juveniles and their families;

(7) Administer the youth rehabilitation and treatment centers; ~~and any secure facilities developed in the future;~~

(8) Supervise and coordinate juvenile parole and aftercare services; and

(9) Provide any other programs and services necessary to the juvenile justice system.

Sec. 11. Section 83-925.06, Reissue Revised Statutes of Nebraska, is amended to read:

83-925.06. The Office of Juvenile Services shall design and make available programs and treatment services at the youth rehabilitation and treatment centers ~~and any secure confinement facility~~ for juvenile offenders. The programs and treatment services shall be based upon the individual or family assessment and evaluation process and treatment plan. Programs and treatment services shall address:

(1) Behavioral impairments, severe emotional disturbances, and other mental health or psychiatric disorders;

(2) Drug and alcohol addiction;

(3) Health and medical needs;

(4) Education, special education, and related services;

(5) Individual, group, and family counseling services as appropriate with any treatment plan related to subdivisions (1) through (4) of this section. Services shall also be made available for juveniles who have been physically or sexually abused;

(6) A case management and coordination process shall be designed which will assure appropriate reintegration of the juvenile to his or her family, school, and community. This process shall follow individualized planning which shall begin at intake and assessment. Structured programming shall be scheduled for all juveniles, ~~committed to secure confinement.~~ This programming shall include a strong academic program as well as classes in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance abuse awareness, physical education, job skills training, and job placement assistance. Participation shall be required of all juveniles, ~~committed to a secure confinement facility.~~ The goal of such structured programming shall be to provide the academic and life skills necessary for a juvenile to successfully return to his or her home and community upon release; ~~from the secure confinement facility;~~ and

(7) The design and delivery of treatment programs within the youth rehabilitation and treatment centers as well as any licensing or certification requirements, and the office shall follow the requirements as stated within Title XIX and Title IV-E of the federal Social Security Act, as amended, the Special Education Act, or other funding guidelines as appropriate. It is the intent of the Legislature that these funding sources shall be utilized to support service needs of eligible juveniles in residence at the youth rehabilitation and treatment centers.

Sec. 12. Section 83-925.07, Revised Statutes Supplement, 1996, is amended to read:

83-925.07. In developing its programs, the Office of Juvenile Services shall:

(1) Design the table of organization for the office by designing the functional specifications for the operation of the office and managing the

process of change as programs, functions, and services are transferred to the office;

(2) Develop risk and need assessment instruments for use in determining the need for detention or other placement at the time a juvenile enters the system. This shall include validating and pilot testing the instruments in selected jurisdictions;

(3) Develop a case classification process to include the establishment of classification program levels and case management standards for each program level. This shall include pilot testing the classification process with juveniles committed for placement;

(4) Plan for the construction of a secure confinement facility to serve juvenile offenders identified as in need of secure confinement in a county containing a city of the metropolitan class. A secure confinement facility shall mean a physically secure coeducational facility designed to provide secure confinement, education, and treatment for serious and chronic juvenile offenders who have been committed to the Office of Juvenile Services or the Department of Correctional Services for secure care;

(5) Develop a purchase-of-care system which will facilitate the development of a statewide community-based continuum of care with the involvement of the private sector and the local public sector. Care services may be purchased from private providers to provide a wider diversity of services. This system shall include accessing existing Title IV-E funds of the federal Social Security Act, as amended, new medicaid funds, and other funding sources to support eligible community-based services. Such services developed and purchased shall include, but not be limited to, evaluation services which shall be available on a geographically accessible basis across the state. The evaluation services available at the Youth Diagnostic and Rehabilitation Center pursuant to sections 83-4,100 to 83-4,104 shall be supplemented with purchased community-based evaluation services. The community-based evaluation services shall replace the evaluation services available at the Youth Diagnostic and Rehabilitation Center by December 31, 1999. All costs incurred during the period in which the juvenile is being evaluated shall be the responsibility of the state;

(6) (5) Develop a community-based assessment and evaluation process. A prototype community-based evaluation process shall be developed and pilot-tested in several jurisdictions. A residential evaluation program shall be established in a county containing a city of the metropolitan class;

(7) (6) Develop functional specifications for juvenile service centers and identify several demonstration sites. The risk assessment and community-based assessment and evaluation procedures may be pilot-tested at the juvenile service center demonstration sites; and

(8) (7) Identify and recommend the functional requirements for a management information system. The system shall be a unified, interdepartmental client information system which supports assessment.

Sec. 13. Original sections 29-2262, 83-905, 83-925.05, and 83-925.06, Reissue Revised Statutes of Nebraska, and section 83-925.07, Revised Statutes Supplement, 1996, are repealed.