

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 832

Introduced by Lautenbaugh, 18; at the request of the Governor.

Read first time January 13, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Treatment and Corrections Act; to
2 amend sections 29-3803, 29-3804, 29-4014, 47-123,
3 81-1850, 83-170, 83-1,109, 83-1,110, 83-1,118, 83-1,122,
4 83-1,123, 83-1,125, 83-4,111, 83-4,122, and 83-4,123,
5 Reissue Revised Statutes of Nebraska, sections 83-1,107
6 and 83-1,108, Revised Statutes Cumulative Supplement,
7 2012, and section 29-2204, Revised Statutes Supplement,
8 2013; to define and redefine terms; to change provisions
9 relating to reductions in sentence; to harmonize
10 provisions; to provide an operative date; and to repeal
11 the original sections.

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

1 Section 1. Section 29-2204, Revised Statutes Supplement,
2 2013, is amended to read:

3 29-2204 (1) Except when a term of life imprisonment is
4 required by law, in imposing an indeterminate sentence upon an
5 offender the court shall:

6 (a)(i) Until July 1, 1998, fix the minimum and maximum
7 limits of the sentence to be served within the limits provided by
8 law, except that when a maximum limit of life is imposed by the court
9 for a Class IB felony, the minimum limit may be any term of years not
10 less than the statutory mandatory minimum; and

11 (ii) Beginning July 1, 1998:

12 (A) Fix the minimum and maximum limits of the sentence to
13 be served within the limits provided by law for any class of felony
14 other than a Class IV felony, except that when a maximum limit of
15 life is imposed by the court for a Class IB felony, the minimum limit
16 may be any term of years not less than the statutory mandatory
17 minimum. If the criminal offense is a Class IV felony, the court
18 shall fix the minimum and maximum limits of the sentence, but the
19 minimum limit fixed by the court shall not be less than the minimum
20 provided by law nor more than one-third of the maximum term and the
21 maximum limit shall not be greater than the maximum provided by law;
22 or

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

1 (b) ~~Advise~~ For offenses committed prior to the operative
2 date of this act, advise the offender on the record the time the
3 offender will serve on his or her minimum term before attaining
4 parole eligibility and the time the offender will serve on his or her
5 maximum term before attaining mandatory release, assuming that no
6 good time for which the offender will be eligible is lost; ~~and or~~

7 (c) ~~Advise~~ For offenses committed on or after the
8 operative date of this act, advise the offender on the record ~~the~~
9 ~~time the offender will serve on his or her maximum term before~~
10 ~~attaining mandatory release assuming that no good time for which the~~
11 ~~offender will be eligible is lost.~~ as follows:

12 You are being sentenced to an indeterminate sentence with
13 both a minimum and maximum term. You may be eligible to have both
14 your minimum and maximum sentences reduced for good time and earned
15 time you obtain pursuant to the law which could result in a credit of
16 up to six months and thirty-six days credit against your sentence for
17 each year or a pro rata portion thereof that you are sentenced to
18 serve. However, regardless of good time or earned time obtained, you
19 cannot become parole eligible until you serve at least one half of
20 your minimum term.

21 The absence of, or error in, the advisement at the time
22 of sentencing shall have no effect on the sentence imposed by the
23 court. Upon notice to the court that the advisement was not given or
24 that the advisement contained errors, the court shall provide the
25 offender with a corrected written advisement.

1 ~~If any discrepancy exists between the statement of the~~
2 ~~minimum limit of the sentence and the statement of parole eligibility~~
3 ~~or between the statement of the maximum limit of the sentence and the~~
4 ~~statement of mandatory release, the statements of the minimum limit~~
5 ~~and the maximum limit shall control the calculation of the offender's~~
6 ~~term.~~ If the court imposes more than one sentence upon an offender or
7 imposes a sentence upon an offender who is at that time serving
8 another sentence, the court shall state whether the sentences are to
9 be concurrent or consecutive.

10 (2)(a) When the court is of the opinion that imprisonment
11 may be appropriate but desires more detailed information as a basis
12 for determining the sentence to be imposed than has been provided by
13 the presentence report required by section 29-2261, the court shall
14 commit an offender to the Department of Correctional Services for a
15 period not exceeding ninety days. The department shall conduct a
16 complete study of the offender during that time, inquiring into such
17 matters as his or her previous delinquency or criminal experience,
18 social background, capabilities, and mental, emotional, and physical
19 health and the rehabilitative resources or programs which may be
20 available to suit his or her needs. By the expiration of the period
21 of commitment or by the expiration of such additional time as the
22 court shall grant, not exceeding a further period of ninety days, the
23 offender shall be returned to the court for sentencing and the court
24 shall be provided with a written report of the results of the study,
25 including whatever recommendations the department believes will be

1 helpful to a proper resolution of the case. After receiving the
2 report and the recommendations, the court shall proceed to sentence
3 the offender in accordance with subsection (1) of this section. The
4 term of the sentence shall run from the date of original commitment
5 under this subsection.

6 (b) In order to encourage the use of this procedure in
7 appropriate cases, all costs incurred during the period the defendant
8 is held in a state institution under this subsection shall be a
9 responsibility of the state and the county shall be liable only for
10 the cost of delivering the defendant to the institution and the cost
11 of returning him or her to the appropriate court for sentencing or
12 such other disposition as the court may then deem appropriate.

13 (3) Except when a term of life is required by law,
14 whenever the defendant was under eighteen years of age at the time he
15 or she committed the crime for which he or she was convicted, the
16 court may, in its discretion, instead of imposing the penalty
17 provided for the crime, make such disposition of the defendant as the
18 court deems proper under the Nebraska Juvenile Code. Until October 1,
19 2013, prior to making a disposition which commits the juvenile to the
20 Office of Juvenile Services, the court shall order the juvenile to be
21 evaluated by the office if the juvenile has not had an evaluation
22 within the past twelve months.

23 Sec. 2. Section 29-3803, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 29-3803 Any person who is imprisoned in a facility

1 operated by the Department of Correctional Services may request in
2 writing to the director final disposition of any untried indictment,
3 information, or complaint pending against him or her in this state.
4 Upon receiving any request from a prisoner for final disposition of
5 any untried indictment, information, or complaint, the director
6 shall:

7 (1) Furnish the prosecutor with a certificate stating the
8 term of commitment under which the prisoner is being held, the time
9 already served on the sentence, the time remaining to be served, the
10 credited earned time and good time, earned,—the time of the
11 prisoner's parole eligibility, and any decision of the Board of
12 Parole relating to the prisoner;

13 (2) Send by registered or certified mail, return receipt
14 requested, one copy of the request and the certificate to the court
15 in which the untried indictment, information, or complaint is pending
16 and one copy to the prosecutor charged with the duty of prosecuting
17 it; and

18 (3) Offer to deliver temporary custody of the prisoner to
19 the appropriate authority in the city or county where the untried
20 indictment, information, or complaint is pending.

21 Sec. 3. Section 29-3804, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 29-3804 The prosecutor in a city or county in which an
24 untried indictment, information, or complaint is pending shall be
25 entitled to have a prisoner, against whom he or she has lodged a

1 detainer and who is serving a term of imprisonment in any facility
2 operated by the Department of Correctional Services, made available
3 upon presentation of a written request for temporary custody or
4 availability to the director. The court having jurisdiction of such
5 indictment, information, or complaint shall duly approve, record, and
6 transmit the prosecutor's request. Upon receipt of the prosecutor's
7 written request the director shall:

8 (1) Furnish the prosecutor with a certificate stating the
9 term of commitment under which the prisoner is being held, the time
10 already served, the time remaining to be served on the sentence, the
11 credited earned time and good time, ~~earned,~~ the time of the
12 prisoner's parole eligibility, and any decision of the Board of
13 Parole relating to the prisoner; and

14 (2) Offer to deliver temporary custody of the prisoner to
15 the appropriate authority in the city or county where the untried
16 indictment, information, or complaint is pending in order that speedy
17 and efficient prosecution may be had.

18 Sec. 4. Section 29-4014, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 29-4014 Any person convicted of a crime requiring
21 registration as a sex offender pursuant to section 29-4003 and
22 committed to the Department of Correctional Services shall attend
23 appropriate sex offender treatment and counseling programming offered
24 by the department. Refusal to participate in such programming shall
25 not result in disciplinary action or a loss of good time or earned

1 time credit on the part of the offender but shall require a civil
2 commitment evaluation pursuant to section 83-174.02 prior to the
3 completion of his or her criminal sentence.

4 Sec. 5. Section 47-123, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 47-123 Inmate participation in community service projects
7 shall be voluntary and no extra good-time credit or earned-time
8 credit shall be given to inmates who participate in a community
9 service project. In no event shall an inmate's decision to
10 participate or not participate in a community service project have
11 any bearing on the granting of good-time credit.

12 Sec. 6. Section 81-1850, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 81-1850 (1) Upon request of the victim and at the time of
15 conviction of the offender, the county attorney of the jurisdiction
16 in which a person is convicted of a felony shall forward to the Board
17 of Parole, the Department of Correctional Services, the county
18 corrections agency, or the Department of Health and Human Services
19 the name and address of any victim, as defined in section 29-119, of
20 the convicted person. The board, the Department of Correctional
21 Services, the county corrections agency, or the Department of Health
22 and Human Services shall include the name in the file of the
23 convicted person, but the name shall not be part of the public record
24 of any parole hearings of the convicted person. Any victim, including
25 a victim who has waived his or her right to notification at the time

1 of conviction, may request the notification prescribed in this
2 section, as applicable, by sending a written request to the board,
3 the Department of Correctional Services, the county corrections
4 agency, or the Department of Health and Human Services any time after
5 the convicted person is incarcerated and until the convicted person
6 is no longer under the jurisdiction of the board, the county
7 corrections agency, or the Department of Correctional Services or, if
8 the person is under the jurisdiction of the Department of Health and
9 Human Services, within the three-year period after the convicted
10 person is no longer under the jurisdiction of the board, the county
11 corrections agency, or the Department of Correctional Services.

12 (2) A victim whose name appears in the file of the
13 convicted person shall be notified by the Board of Parole:

14 (a) Within ninety days after conviction of an offender,
15 of the tentative date of release and the earliest parole eligibility
16 date of such offender;

17 (b) Of any parole hearings or proceedings;

18 (c) Of any decision of the Board of Parole;

19 (d) When a convicted person who is on parole is returned
20 to custody because of parole violations; and

21 (e) If the convicted person has been adjudged a mentally
22 disordered sex offender or is a convicted sex offender, when such
23 person is released from custody or treatment.

24 Such notification shall be given in person, by
25 telecommunication, or by mail.

1 (3) A victim whose name appears in the file of the
2 convicted person shall be notified by the Department of Correctional
3 Services or a county corrections agency:

4 (a) When a convicted person is granted a furlough or
5 release from incarceration for twenty-four hours or longer or any
6 transfer of the convicted person to community status;

7 (b) When a convicted person is released into community-
8 based programs, including educational release and work release
9 programs. Such notification shall occur at the beginning and
10 termination of any such program;

11 (c) When a convicted person escapes or does not return
12 from a granted furlough or release and again when the convicted
13 person is returned into custody;

14 (d) When a convicted person is discharged from custody
15 upon completion of his or her sentence. Such notice shall be given at
16 least thirty days before discharge, when practicable;

17 (e) Of the (i) department's calculation of the earliest
18 parole eligibility date of the prisoner with all potential good time,
19 earned time, or disciplinary credits considered if the sentence
20 exceeds ninety days or (ii) county corrections agency's calculation
21 of the earliest release date of the prisoner. The victim may request
22 one notice of the calculation described in this subdivision. Such
23 information shall be mailed not later than thirty days after receipt
24 of the request;

25 (f) Of any reduction in the prisoner's minimum sentence;

1 and

2 (g) Of the victim's right to submit a statement as
3 provided in section 81-1848.

4 (4) A victim whose name appears in the file of a
5 convicted person shall be notified by the Department of Health and
6 Human Services:

7 (a) When a person convicted of an offense listed in
8 subsection (5) of this section becomes the subject of a petition
9 pursuant to the Nebraska Mental Health Commitment Act or the Sex
10 Offender Commitment Act prior to his or her discharge from custody
11 upon the completion of his or her sentence or within thirty days
12 after such discharge. The county attorney who filed the petition
13 shall notify the Department of Correctional Services of such
14 petition. The Department of Correctional Services shall forward the
15 names and addresses of victims appearing in the file of the convicted
16 person to the Department of Health and Human Services;

17 (b) When a person under a mental health board commitment
18 pursuant to subdivision (a) of this subsection escapes from an
19 inpatient facility providing board-ordered treatment and again when
20 the person is returned to an inpatient facility;

21 (c) When a person under a mental health board commitment
22 pursuant to subdivision (a) of this subsection is discharged or has a
23 change in disposition from inpatient board-ordered treatment;

24 (d) When a person under a mental health board commitment
25 pursuant to subdivision (a) of this subsection is granted a furlough

1 or release for twenty-four hours or longer; and

2 (e) When a person under a mental health board commitment
3 pursuant to subdivision (a) of this subsection is released into
4 educational release programs or work release programs. Such
5 notification shall occur at the beginning and termination of any such
6 program.

7 (5) Subsection (4) of this section applies to persons
8 convicted of at least one of the following offenses which is also
9 alleged to be the recent act or threat underlying the commitment of
10 such persons as mentally ill and dangerous or as dangerous sex
11 offenders as defined in section 83-174.01:

12 (a) Murder in the first degree pursuant to section
13 28-303;

14 (b) Murder in the second degree pursuant to section
15 28-304;

16 (c) Kidnapping pursuant to section 28-313;

17 (d) Assault in the first degree pursuant to section
18 28-308;

19 (e) Assault in the second degree pursuant to section
20 28-309;

21 (f) Sexual assault in the first degree pursuant to
22 section 28-319;

23 (g) Sexual assault in the second degree pursuant to
24 section 28-320;

25 (h) Sexual assault of a child in the first degree

1 pursuant to section 28-319.01;

2 (i) Sexual assault of a child in the second or third
3 degree pursuant to section 28-320.01;

4 (j) Stalking pursuant to section 28-311.03; or

5 (k) An attempt, solicitation, or conspiracy to commit an
6 offense listed in subdivisions (a) through (j) of this subsection.

7 (6) A victim whose name appears in the file of a
8 convicted person shall be notified by the Board of Pardons:

9 (a) Of any pardon or commutation proceedings; and

10 (b) If a pardon or commutation has been granted.

11 (7) The Board of Parole, the Department of Correctional
12 Services, the Department of Health and Human Services, and the Board
13 of Pardons shall adopt and promulgate rules and regulations as needed
14 to carry out this section.

15 (8) The victim's address and telephone number maintained
16 by the Department of Correctional Services, the Department of Health
17 and Human Services, the county corrections agency, or the Board of
18 Parole pursuant to subsection (1) of this section shall be exempt
19 from disclosure under public records laws and federal freedom of
20 information laws, as such laws existed on January 1, 2004.

21 Sec. 7. Section 83-170, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 83-170 As used in the Nebraska Treatment and Corrections
24 Act, unless the context otherwise requires:

25 (1) Administrator ~~shall mean~~ means the Parole

1 Administrator;

2 (2) Board ~~shall mean~~ means the Board of Parole;

3 (3) Committed offender ~~shall mean~~ means any person who,
4 under any provision of law, is sentenced or committed to a facility
5 operated by the department or is sentenced or committed to the
6 department other than a person adjudged to be as described in
7 subdivision (1), (2), (3)(b), or (4) of section 43-247 by a juvenile
8 court;

9 (4) Department ~~shall mean~~ means the Department of
10 Correctional Services;

11 (5) Director ~~shall mean~~ means the Director of
12 Correctional Services;

13 (6) Earned time means any reduction of sentence granted
14 pursuant to subdivisions (2)(b) and (c) of section 83-1,107 and
15 section 83-1,108;

16 ~~(6) (7)~~ Facility ~~shall mean~~ means any prison,
17 reformatory, training school, reception center, community guidance
18 center, group home, or other institution operated by the department;

19 ~~(7) (8)~~ Good time ~~shall mean~~ means any reduction of
20 sentence granted pursuant to ~~sections~~ subdivision (2)(a) of section
21 83-1,107 and section 83-1,108;

22 ~~(8) (9)~~ Maximum term ~~shall mean~~ means the maximum
23 sentence provided by law or the maximum sentence imposed by a court,
24 whichever is shorter;

25 ~~(9) (10)~~ Minimum term ~~shall mean~~ means the minimum

1 sentence provided by law or the minimum sentence imposed by a court,
2 whichever is longer;

3 ~~(10)~~(11) Pardon authority ~~shall mean~~means the power to
4 remit fines and forfeitures and to grant respites, reprieves,
5 pardons, or commutations;

6 ~~(11)~~(12) Parole term ~~shall mean~~means the time from
7 release on parole to the completion of the maximum term, reduced by
8 good time or earned time; and

9 ~~(12)~~(13) Person committed to the department ~~shall mean~~
10 means any person sentenced or committed to a facility within the
11 department.

12 Sec. 8. Section 83-1,107, Revised Statutes Cumulative
13 Supplement, 2012, is amended to read:

14 83-1,107 (1)(a) Within sixty days after initial
15 classification and assignment of any offender committed to the
16 department, all available information regarding such committed
17 offender shall be reviewed and a committed offender department-
18 approved personalized program plan document shall be drawn up. The
19 document shall specifically describe the department-approved
20 personalized program plan and the specific goals the department
21 expects the committed offender to achieve. The document shall also
22 contain a realistic schedule for completion of the department-
23 approved personalized program plan. The department-approved
24 personalized program plan shall be fully explained to the committed
25 offender. The department shall provide programs to allow compliance

1 by the committed offender with the department-approved personalized
2 program plan.

3 Programming may include, but is not limited to:

4 (i) Academic and vocational education, including teaching
5 such classes by qualified offenders;

6 (ii) Substance abuse treatment;

7 (iii) Mental health and psychiatric treatment, including
8 criminal personality programming; and

9 (iv) Constructive, meaningful work programs. ~~;~~ ~~and~~

10 ~~(v) Any other program deemed necessary and appropriate by~~
11 ~~the department.~~

12 (b) A modification in the department-approved
13 personalized program plan may be made to account for the increased or
14 decreased abilities of the committed offender or the availability of
15 any program. Any modification shall be made only after notice is
16 given to the committed offender. The department may not impose
17 disciplinary action upon any committed offender solely because of the
18 committed offender's failure to comply with the department-approved
19 personalized program plan, but such failure may be considered by the
20 board in its deliberations on whether or not to grant parole to a
21 committed offender.

22 ~~(2)(a) The~~ (2)(a)(i) In any case in which a committed
23 offender was sentenced for an offense committed before the operative
24 date of this act, the department shall reduce the term of a ~~the~~
25 committed offender by six months for each year of the committed

1 offender's term and pro rata for any part thereof which is less than
2 a year.

3 ~~(b)-(ii)~~ In addition to reductions granted in subdivision
4 ~~(2)(a)-(2)(a)(i)~~ of this section, the department shall reduce the
5 term of a committed offender by three days on the first day of each
6 month following a twelve-month period of incarceration within the
7 department during which the offender has not been found guilty of ~~(i)~~
8 (A) a Class I or Class II offense or ~~(ii)-(B)~~ more than three Class
9 III offenses under the department's disciplinary code. ~~Reductions~~
10 ~~earned under this subdivision shall not be subject to forfeit or~~
11 ~~withholding by the department.~~

12 ~~(c)-(iii)~~ The total reductions under this subsection
13 shall be credited from the date of sentence, which shall include any
14 term of confinement prior to sentence and commitment as provided
15 pursuant to section 83-1,106, and shall be deducted from the maximum
16 term, to determine the date when discharge from the custody of the
17 state becomes mandatory.

18 (b) In any case in which a committed offender is
19 sentenced for an offense, other than any of the following offenses,
20 committed on or after the operative date of this act, the department
21 shall reduce the term of a committed offender pursuant to subdivision
22 (2)(a) of this section:

23 (i) Murder in the second degree pursuant to section
24 28-304;

25 (ii) Manslaughter pursuant to section 28-305;

- 1 (iii) Assault in the first degree pursuant to section
2 28-308;
- 3 (iv) Kidnapping pursuant to section 28-313;
- 4 (v) Sexual assault in the first degree pursuant to
5 section 28-319;
- 6 (vi) Sexual assault of a child in the first degree
7 pursuant to section 28-319.01;
- 8 (vii) Robbery pursuant to section 28-324;
- 9 (viii) Murder of an unborn child in the second degree
10 pursuant to section 28-392;
- 11 (ix) Manslaughter of an unborn child pursuant to section
12 28-393;
- 13 (x) Assault of an unborn child in the first degree
14 pursuant to section 28-397;
- 15 (xi) Escape pursuant to subdivision (5)(b) of section
16 28-912;
- 17 (xii) Assault on an officer or a health care professional
18 in the first degree pursuant to section 28-929;
- 19 (xiii) Assault by a confined person pursuant to section
20 28-932;
- 21 (xiv) Confined person committing offenses against another
22 person pursuant to section 28-933; or
- 23 (xv) Using a deadly weapon to commit a felony pursuant to
24 section 28-1205.
- 25 (c)(i) In any case in which a committed offender is

1 sentenced for an offense listed in subdivision (2)(b) of this
2 section, committed on or after the operative date of this act, the
3 department shall reduce the term of a committed offender on a monthly
4 basis as follows:

5 (A) Fifteen days of earned time shall be awarded on the
6 first day of each month following a one-month period of incarceration
7 within the department during which the committed offender has not
8 been found guilty of a Class I or Class II offense or more than three
9 Class III offenses under the department's disciplinary code; and

10 (B) Fifteen days of earned time shall be awarded for
11 every full month of satisfactory participation in a department-
12 approved personalized program plan.

13 (ii) The total reductions under subdivision (2)(c)(i) of
14 this section shall be credited from the date of sentence, which shall
15 include any term of confinement prior to sentence and commitment as
16 provided pursuant to section 83-1,106 and shall be deducted from the
17 maximum term to determine the date when discharge from the custody of
18 the state becomes mandatory. A committed offender eligible for earned
19 time under this section shall not be eligible for earned time which
20 reduces the committed offender's sentence to less than fifty percent
21 of the sentence imposed.

22 (iii) The earned time pursuant to subdivision (2)(c)(i)
23 of this section of every committed offender shall be tallied monthly
24 and maintained by the facility where the term of imprisonment is
25 being served. A record of the earned time shall be sent to the

1 administrative office of the department and provided to the committed
2 offender on a yearly basis.

3 (3) While the offender is in the custody of the
4 department, reductions of terms granted pursuant to subdivision ~~(2)~~
5 ~~(a)~~(2) of this section may be forfeited, withheld, and restored by
6 the chief executive officer of the facility with the approval of the
7 director after the offender has been notified regarding the charges
8 of misconduct.

9 (4) The department shall make treatment programming
10 available to committed offenders as provided in section 83-1,110.01
11 and shall include continuing participation in such programming as
12 part of each offender's parolee personalized program plan.

13 (5)(a) Within thirty days after any committed offender
14 has been paroled, all available information regarding such parolee
15 shall be reviewed and a parolee personalized program plan document
16 shall be drawn up and approved by the Office of Parole
17 Administration. The document shall specifically describe the approved
18 personalized program plan and the specific goals the office expects
19 the parolee to achieve. The document shall also contain a realistic
20 schedule for completion of the approved personalized program plan.
21 The approved personalized program plan shall be fully explained to
22 the parolee. During the term of parole, the parolee shall comply with
23 the approved personalized program plan and the office shall provide
24 programs to allow compliance by the parolee with the approved
25 personalized program plan.

- 1 Programming may include, but is not limited to:
- 2 (i) Academic and vocational education;
- 3 (ii) Substance abuse treatment;
- 4 (iii) Mental health and psychiatric treatment, including
- 5 criminal personality programming;
- 6 (iv) Constructive, meaningful work programs; and
- 7 (v) Community service programs. ~~;~~ ~~and~~
- 8 ~~(vi) Any other program deemed necessary and appropriate~~
- 9 ~~by the office.~~
- 10 (b) A modification in the approved personalized program
- 11 plan may be made to account for the increased or decreased abilities
- 12 of the parolee or the availability of any program. Any modification
- 13 shall be made only after notice is given to the parolee. Intentional
- 14 failure to comply with the approved personalized program plan by any
- 15 parolee as scheduled for any year, or pro rata part thereof, shall
- 16 cause disciplinary action to be taken by the office resulting in the
- 17 forfeiture of up to a maximum of three months' good time for the
- 18 scheduled year.
- 19 (6) While the offender is in the custody of the board,
- 20 reductions of terms granted pursuant to subdivision ~~(2)(a)~~ (2) of
- 21 this section may be forfeited, withheld, and restored by the
- 22 administrator with the approval of the director after the offender
- 23 has been notified regarding the charges of misconduct or breach of
- 24 the conditions of parole. In addition, the board may recommend such
- 25 forfeitures of good time to the director.

1 (7) Good time or other reductions of sentence granted
2 under the provisions of any law prior to July 1, 1996, may be
3 forfeited, withheld, or restored in accordance with the terms of the
4 Nebraska Treatment and Corrections Act.

5 Sec. 9. Section 83-1,108, Revised Statutes Cumulative
6 Supplement, 2012, is amended to read:

7 83-1,108 (1) The board shall reduce, for good conduct in
8 conformity with the conditions of parole, a parolee's parole term by
9 ten days for each month of such term. The total of such reductions
10 shall be deducted from the maximum term, less good time or earned
11 time granted pursuant to section 83-1,107, to determine the date when
12 discharge from parole becomes mandatory.

13 (2) Reductions of the parole terms may be forfeited,
14 withheld, and restored by the board after the parolee has been
15 consulted regarding any charge of misconduct or breach of the
16 conditions of parole.

17 Sec. 10. Section 83-1,109, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 83-1,109 The chief executive officer of a facility shall
20 regularly report all good time and earned time and all forfeitures,
21 withholdings, ~~and~~ or restorations of good time or earned time to the
22 director. On the basis of such report, the director shall inform the
23 board and the administrator of all committed offenders who are
24 expected to become eligible for release on parole within the next
25 three months.

1 Sec. 11. Section 83-1,110, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 83-1,110 (1) ~~Every~~ A committed offender ~~shall be~~
4 sentenced for offenses committed before the operative date of this
5 act is eligible for parole when the offender has served one-half the
6 minimum term of his or her sentence as provided in ~~sections~~
7 subdivision (2)(a) of section 83-1,107 and section 83-1,108. The
8 ~~board shall conduct a parole review not later than sixty days prior~~
9 ~~to the date a committed offender becomes eligible for parole as~~
10 ~~provided in this subsection, except that if a committed offender is~~
11 ~~eligible for parole upon his or her commitment to the department, a~~
12 ~~parole review shall occur as early as is practical. No such reduction~~
13 ~~of sentence shall be applied to any sentence imposing a mandatory~~
14 ~~minimum term.~~

15 (2) A committed offender sentenced for offenses committed
16 on or after the operative date of this act shall be eligible for
17 parole when the offender has served the minimum term of his or her
18 sentence minus any good time or earned time reductions which have
19 been obtained. However, a committed offender will not become eligible
20 for parole until he or she has served at least one half of his or her
21 original minimum term.

22 ~~(2)~~ ~~Every~~ ~~(3)~~ A committed offender sentenced to
23 consecutive terms, whether received at the same time or at any time
24 during the original sentence, and sentenced for offenses committed
25 before the operative date of this act, shall be eligible for release

1 on parole when the offender has served the total of one-half the
2 minimum term as provided in ~~sections~~ subdivision (2)(a) of section
3 83-1,107 and section 83-1,108. The maximum terms shall be added to
4 compute the new maximum term which, less good time or earned time,
5 shall determine the date when discharge from the custody of the state
6 becomes mandatory.

7 (4) If a committed offender is sentenced to consecutive
8 terms, whether received at the same time or at any time during the
9 original sentence, based upon offenses occurring before, on, or after
10 the operative date of this act, then each term is calculated
11 separately as provided by subdivisions (2)(a) and (c) of section
12 83-1,107. The sentence for the offense occurring before the operative
13 date of this act shall be served first. The committed offender shall
14 become parole eligible when the offender has served his or her final
15 minimum term minus any good time and earned time obtained.

16 (5) If a committed offender is sentenced to concurrent
17 terms, whether received at the same time or at any time during the
18 original sentence, based upon offenses occurring before, on, or after
19 the operative date of this act, then the terms shall be calculated
20 separately as provided by subdivisions (2)(a) and (c) of section
21 83-1,107 and the offender shall become eligible for parole at the
22 expiration of the greater of the minimum terms minus any good time
23 and earned time obtained.

24 Sec. 12. Section 83-1,118, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 83-1,118 (1) If, in the opinion of the board, a parolee
2 does not require guidance or supervision, the board may dispense with
3 and terminate such supervision.

4 (2) The board may discharge a parolee from parole at any
5 time if such discharge is compatible with the protection of the
6 public and is in the best interest of the parolee.

7 (3) The board shall discharge a parolee from parole when
8 the time served in the custody of the department and the time served
9 on parole equal the maximum term less good time, earned time, or a
10 combination thereof.

11 (4) The department shall discharge a committed offender
12 from the custody of the department when the time served in the
13 facility equals the maximum term less good time, earned time, or a
14 combination thereof.

15 (5) Upon completion of the lawful requirements of the
16 sentence, the department shall provide the parolee or committed
17 offender with a written notice regarding his or her civil rights. The
18 notice shall inform the parolee or committed offender that voting
19 rights are restored two years after completion of the sentence. The
20 notice shall also include information on restoring other civil rights
21 through the pardon process, including application to and hearing by
22 the Board of Pardons.

23 (6) The Board of Parole may discharge a parolee from
24 parole when such parolee is under the supervision of another state's
25 correctional institution and such offender has reached the expiration

1 date of his or her Nebraska parole term.

2 Sec. 13. Section 83-1,122, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 83-1,122 (1) If the board finds that the parolee has
5 engaged in criminal conduct, used drugs or alcohol, or refused to
6 submit to a drug or alcohol test while on parole, the board may order
7 revocation of the parolee's parole.

8 (2) If the board finds that the parolee did violate a
9 condition of parole but is of the opinion that revocation of parole
10 is not appropriate, the board may order that:

11 (a) The parolee receive a reprimand and warning;

12 (b) Parole supervision and reporting be intensified;

13 (c) Good time or earned time granted pursuant to section
14 83-1,108 be forfeited or withheld; or

15 (d) The parolee be required to conform to one or more
16 additional conditions of parole which may be imposed in accordance
17 with the Nebraska Treatment and Corrections Act.

18 Sec. 14. Section 83-1,123, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 83-1,123 (1) A parolee whose parole is revoked shall be
21 recommitted to the department until discharge from the custody of the
22 state becomes mandatory or until reparaoled by the board.

23 (2) The time from the date of the parolee's declared
24 delinquency until the date of arrest for the custody of the board
25 shall not be counted as any portion of the time served.

1 (3) A parolee whose parole has been revoked shall be
2 considered by the board for reparole at any time in the same manner
3 as any other committed offender eligible for parole.

4 (4) Except in the case of a parolee who has left the
5 jurisdiction or his or her place of residence, action revoking a
6 parolee's parole and recommitting the parolee for violation of the
7 conditions of parole must be taken before the expiration of the
8 parole term less good time or earned time. A parolee who has left the
9 jurisdiction or his or her place of residence shall be treated as a
10 parole violator and, when apprehended, shall be subject to
11 recommitment or to supervision for the balance of the parole term as
12 of the date of the violation.

13 Sec. 15. Section 83-1,125, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 83-1,125 (1) If a warrant or detainer is placed against a
16 committed offender by a court, parole agency, or other authority of
17 this or any other jurisdiction, the administrator shall inquire
18 before such offender becomes eligible for parole whether the
19 authority concerned intends to execute or withdraw the warrant or
20 detainer when the offender is released.

21 (2) If the authority notifies the administrator that it
22 intends to execute the warrant or detainer when the offender is
23 released, the administrator shall advise the authority concerned of
24 the sentence under which the offender is held, the time of parole
25 eligibility, any decision of the board relating to the offender, and

1 the nature of the offender's adjustment during imprisonment and shall
2 give reasonable notice to such authority of the offender's release
3 date.

4 (3) The board may parole an offender who is eligible for
5 release to a warrant or detainer. If an offender is paroled to such a
6 warrant or detainer, the board may provide, as a condition of
7 release, that if the charge or charges on which the warrant or
8 detainer is based are dismissed, or are satisfied after conviction
9 and sentence, prior to the expiration of the offender's parole term,
10 the authority to whose warrant or detainer the offender is released
11 shall return the offender to serve the remainder of the parole term
12 or such part as the board may determine.

13 (4) If a person paroled to a warrant or detainer is
14 thereafter sentenced and placed on probation, or released on parole
15 in another jurisdiction, prior to the expiration of the parole term
16 less good time or earned time in this state, the board may permit the
17 person to serve the remainder of the parole term or such part as the
18 board may determine concurrently with the person's new probation or
19 parole term. Such concurrent terms may be served in either of the two
20 jurisdictions, and supervision shall be administered in accordance
21 with the Interstate Compact for Adult Offender Supervision.

22 Sec. 16. Section 83-4,111, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 83-4,111 (1) The department shall adopt and promulgate
25 rules and regulations to establish criteria for justifiably and

1 reasonably determining which rights and privileges an inmate forfeits
2 upon commitment and which rights and privileges an inmate retains.

3 (2) Such rules and regulations shall include, but not be
4 limited to, criteria concerning (a) disciplinary procedures and a
5 code of offenses for which discipline may be imposed, (b)
6 disciplinary segregation, (c) grievance procedures, (d) good-time
7 credit, (e) earned time credit, (f) mail and visiting privileges, and
8 ~~(f)~~ (g) rehabilitation opportunities.

9 (3) The rules and regulations adopted pursuant to
10 sections 83-4,109 to 83-4,123 shall in no manner deprive an inmate of
11 any rights and privileges to which he or she is entitled under other
12 provisions of law or under policies adopted in a correctional
13 facility.

14 Sec. 17. Section 83-4,122, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 83-4,122 In disciplinary cases which may involve the
17 imposition of disciplinary isolation or the loss of good-time or
18 earned-time credit, the director shall establish disciplinary
19 procedures consistent with the following principles:

20 (1) Any person or persons who initiate a disciplinary
21 charge against an inmate shall not determine the disposition of the
22 charge. The director may establish one or more disciplinary boards to
23 hear and determine charges. To the extent possible, a person
24 representing the treatment or counseling staff of the institution or
25 facility shall participate in determining the disposition of the

1 disciplinary case;

2 (2) An inmate charged with a violation of department
3 rules of behavior shall be given notice of the charge including a
4 statement of the misconduct alleged and of the rules such conduct is
5 alleged to violate. Such notice shall be given at least twenty-four
6 hours before a hearing on the matter is held;

7 (3) An inmate charged with a violation of rules shall be
8 entitled to a hearing on that charge at which time he or she shall
9 have an opportunity to appear before and address the person or
10 persons deciding the charge. The individual bringing the charge shall
11 also appear at such hearing;

12 (4) The person or persons determining the disposition of
13 the charge may also summon to testify any witnesses or other persons
14 with relevant knowledge of the incident. The inmate charged shall be
15 permitted to question any person so summoned and shall be allowed to
16 call witnesses and present documentary evidence in his or her defense
17 when permitting him or her to do so will not be unduly hazardous to
18 institutional safety or correctional goals. The person or persons
19 determining the disposition of charges shall state his, her, or their
20 reasons in writing for refusing to call a witness;

21 (5) If the charge is sustained, the inmate charged shall
22 be entitled to a written statement of the decision by the persons
23 determining the disposition of the charge, which statement shall
24 include the basis for the decision and the disciplinary action, if
25 any, to be imposed;

1 (6) A change in work, education, or other program
2 assignment shall not be used for disciplinary purposes;

3 (7) The inmate charged shall be entitled to an adequate
4 opportunity to prepare a defense. Such opportunity shall include the
5 right to assistance and advice in preparing and presenting a defense
6 from any inmate in general population or staff member at the
7 institution where the hearing is held. Such inmate or staff member
8 may serve in such an advisory capacity for the inmate so charged;

9 (8) Any hearing conducted pursuant to this section shall
10 be tape recorded, and such recording shall be preserved for a period
11 of six months; and

12 (9) The standard of proof to sustain the charge shall be
13 substantial evidence.

14 Sec. 18. Section 83-4,123, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 83-4,123 Nothing in sections 83-4,109 to 83-4,123 shall
17 be construed as to restrict or impair an inmate's free access to the
18 courts and necessary legal assistance in any cause of action arising
19 under such sections or to judicial review for disciplinary cases
20 which involve the imposition of disciplinary isolation or the loss of
21 good-time or earned-time credit in accordance with the Administrative
22 Procedure Act. Such judicial review may only be invoked after
23 completion of any review of the hearing prescribed by section
24 83-4,122 by the department.

25 Sec. 19. This act becomes operative on August 1, 2014.

1 Sec. 20. Original sections 29-3803, 29-3804, 29-4014,
2 47-123, 81-1850, 83-170, 83-1,109, 83-1,110, 83-1,118, 83-1,122,
3 83-1,123, 83-1,125, 83-4,111, 83-4,122, and 83-4,123, Reissue Revised
4 Statutes of Nebraska, sections 83-1,107 and 83-1,108, Revised
5 Statutes Cumulative Supplement, 2012, and section 29-2204, Revised
6 Statutes Supplement, 2013, are repealed.