

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1435**

Introduced by Dw. Pedersen, 39

Read first time January 20, 2000

Committee: Judiciary

A BILL

1 FOR AN ACT relating to corrections; to amend section 29-2252,  
2 Reissue Revised Statutes of Nebraska, and section  
3 29-2262, Revised Statutes Supplement, 1998; to adopt the  
4 Community-Based Alternative Sanctions Act; to eliminate  
5 the Community Correctional Facilities and Programs Act;  
6 to harmonize provisions; to repeal the original sections;  
7 to outright repeal sections 47-601, 47-602, and 47-604 to  
8 47-618, Reissue Revised Statutes of Nebraska, and section  
9 47-603, Revised Statutes Supplement, 1999; and to declare  
10 an emergency.  
11 Be it enacted by the people of the State of Nebraska,

1           Section 1.   Sections 1 to 11 of this act shall be known  
2 and may be cited as the Community-Based Alternative Sanctions Act.

3           Sec. 2.   (1) The Legislature finds that in Nebraska there  
4 is a critical lack of community-based sanctions for offenders. The  
5 Community-Based Alternative Sanctions Act will promote the  
6 development of structured programs and services that provide courts  
7 with alternatives to incarceration, enhance offender  
8 rehabilitation, reduce recidivism, and enhance public safety.

9           (2) The purposes of the act are to (a) facilitate and  
10 promote among the state, units of local government, and  
11 nongovernmental agencies the development of community-based  
12 alternative sanctions to incarceration and detention, (b) develop  
13 or enhance community-based programs and services necessary to meet  
14 offender rehabilitation needs, and (c) provide a procedure through  
15 which units of local government may apply for competitive grants to  
16 provide community-based alternative sanctions to incarceration and  
17 detention and may develop or enhance community-based programs and  
18 services necessary to meet offender rehabilitation needs.

19           (3) The additional purposes of the act are to develop  
20 programs and services for persons at the pretrial, presentence, and  
21 sentencing stages of the court process in adult court and at the  
22 preadjudication, predisposition, and disposition stages of the  
23 juvenile court process. These programs and services should (a)  
24 provide appropriate alternatives to incarceration and detention,  
25 (b) enhance local management of community-based alternative  
26 sanctions, (c) enhance local programs and services to offenders  
27 charged with or convicted or adjudicated of offenses, (d) use  
28 effective sanctions that are cost-efficient, promote

1 rehabilitation, reduce recidivism, and enhance public safety, and  
2 (e) hold offenders accountable to the community.

3 (4) The Board of Parole may also utilize the resources of  
4 community-based alternative sanctions programs and services to  
5 enhance rehabilitation and supervision of parolees.

6 (5) It is the policy of the State of Nebraska to  
7 establish and finance on a continuing basis, with appropriations  
8 from the General Fund and available federal and private funds,  
9 competitive grants to units of local government for community-based  
10 alternative sanctions programs and services.

11 (6) It is the intent of the Legislature that the Office  
12 of Probation Administration coordinate its efforts and work with  
13 all other state agencies to serve the maximum number of persons in  
14 the most efficient manner.

15 Sec. 3. For purposes of the Community-Based Alternative  
16 Sanctions Act:

17 (1) Administrator means the probation administrator;

18 (2) Community-based alternative sanctions plan means a  
19 written plan as described in section 5 of this act and submitted to  
20 the administrator for review as a prerequisite to consideration for  
21 receiving financial aid for community-based alternative sanctions  
22 programs or services; and

23 (3) Community-based alternative sanctions program or  
24 service means any program or service that imposes an appropriate  
25 sanction upon an offender for whom imprisonment may not be  
26 necessary or appropriate and includes, but is not limited to,  
27 probation, intensive supervision probation, community service,  
28 presentence or predisposition supervision, electronic monitoring,

1 day reporting, residential programming, victim restitution and  
2 restoration, substance abuse testing and treatment, general  
3 equivalency degree training, vocational education and job  
4 placement, supervised work release, and counseling.

5           Sec. 4.     (1) A unit of local government submitting a  
6 community-based alternative sanctions plan shall appoint a  
7 community-based alternative sanctions advisory board. Each  
8 advisory board shall consist of the following members:

9                   (a) One district or county court judge or his or her  
10 designee;

11                   (b) One probation officer;

12                   (c) The county attorney or his or her designee;

13                   (d) The public defender or his or her designee or an  
14 experienced criminal defense attorney;

15                   (e) A mental health professional or substance abuse  
16 counselor;

17                   (f) A representative of a local law enforcement agency or  
18 his or her designee;

19                   (g) A nonprofit community-based provider of programs or  
20 services; and

21                   (h) Two elected officials from separate units of local  
22 government.

23           (2) The community-based alternative sanctions advisory  
24 board shall hold public hearings on community-based alternative  
25 sanctions plans to be submitted to the unit of local government for  
26 approval and submission to the administrator. The community-based  
27 alternative sanctions advisory board shall assist the administrator  
28 in the review and monitoring of funded community-based alternative

1 sanctions programs or services and shall report in writing any  
2 allegations of noncompliance by such programs or services. The  
3 community-based alternative sanctions advisory board shall submit  
4 quarterly program and fiscal reports as required by the  
5 administrator.

6           Sec. 5. (1) A community-based alternative sanctions plan  
7 shall include:

8           (a) A description of the community, both geographic and  
9 demographic, and an identification of the target population and  
10 proposed service areas;

11           (b) An identification of the community's criminal and  
12 juvenile justice system's strengths, assets, and resources,  
13 including existing programs and services available to victims and  
14 offenders;

15           (c) An identification of the community's documented  
16 criminal and juvenile justice system issues, concerns, and  
17 problems;

18           (d) An identification of prioritized needs and preferred  
19 methods of addressing the community's documented criminal and  
20 juvenile justice system issues, concerns, and problems;

21           (e) A concise and documented statement of prioritized  
22 needs and of solutions and how they address the purposes of the  
23 Community-Based Alternative Sanctions Act;

24           (f) A statement of the goals, measurable objectives, and  
25 performance indicators of any proposed program or service;

26           (g) A description of proposed activities and a reasonable  
27 timetable for program or service implementation;

28           (h) A formal and realistic budget for any proposed

1 program or service, including a description of other funding  
2 sources such as, but not limited to, imposition of user fees to  
3 defray program costs;

4 (i) A plan for monitoring and evaluation of any proposed  
5 program or service; and

6 (j) Evidence of community cooperation, coordination,  
7 support, and commitment to the program or service proposed in the  
8 plan.

9 (2) The administrator shall, at least annually, award  
10 grants to units of local government for the implementation and  
11 operation of community-based alternative sanction programs  
12 identified in their plans.

13 (3) The administrator shall appoint a committee to  
14 review, approve, disapprove, modify, and select community-based  
15 alternative sanctions plans and grant applications for funding  
16 consideration. The committee shall consist of the following  
17 members or their designees:

18 (a) The administrator;

19 (b) The Director of Correctional Services;

20 (c) The chairperson of the Board of Parole;

21 (d) The Director of Health and Human Services;

22 (e) The Commissioner of Education;

23 (f) The Commissioner of Labor; and

24 (g) Three county officials, one to be selected from each  
25 congressional district by the Nebraska Association of County  
26 Officials.

27 (4) Any unit of local government with a plan approved by  
28 the committee shall be eligible to apply for competitive grants for

1 funding of programs and services identified in its plan. The  
2 committee shall review all eligible grant applications and award  
3 grants as it deems appropriate. Availability of funding is subject  
4 to appropriation by the Legislature. All grants awarded for  
5 community-based alternative sanctions programs or services shall  
6 provide that the administrator may suspend or revoke funding for  
7 any community-based alternative sanctions program or service not in  
8 compliance with the Community-Based Alternative Sanctions Act or  
9 rules and regulations adopted and promulgated under the act.

10         (5) The administrator shall monitor community-based  
11 alternative sanctions programs and services for compliance with the  
12 purposes of the act. The administrator shall develop and implement  
13 a public education program about community-based alternative  
14 sanctions, shall provide technical assistance, training, and  
15 education to the judiciary, to criminal and juvenile justice system  
16 agencies and personnel, to units of local government, and to  
17 nongovernmental agencies, and shall coordinate development of  
18 community-based alternative sanctions programs and services. The  
19 Office of Probation Administration shall serve as a clearinghouse  
20 for information regarding community-based alternative sanctions  
21 programs and services.

22         (6) Eligibility for continuation funding, subject to  
23 appropriation by the Legislature, for a community-based alternative  
24 sanctions program or service shall be contingent, at a minimum, on  
25 compliance by the program or service with the goals, standards, and  
26 procedures established in the plan and on an evaluation by the  
27 administrator of the effectiveness of the program or service. The  
28 community-based alternative sanctions advisory board shall submit

1 quarterly program and fiscal reports as required by the  
2 administrator.

3           Sec. 6. (1) Any eligible offender before a court may be  
4 placed in a community-based alternative sanctions program or  
5 service, where available, as a condition of release from custody or  
6 as a condition of probation or parole. The court may modify the  
7 sentence of an offender serving a sentence in a community-based  
8 alternative sanctions program or service in the same manner as if  
9 the offender had been placed on probation.

10           (2) The court may dictate the duration and conditions of  
11 the sentence in a community-based alternative sanctions program or  
12 service for any period of time consistent with then-existing law.

13           (3) The court shall consider the following factors in  
14 determining offender eligibility for community-based alternative  
15 sanctions programs:

16           (a) The nature and circumstances of the offense;

17           (b) The offender's mental state at the time of the  
18 offense;

19           (c) The relationship, if any, between the offender and  
20 the victim;

21           (d) The nature and degree of the harm caused by the  
22 offense;

23           (e) The community's view of the gravity of the offense;

24           (f) The public concern generated by the offense;

25           (g) The age of the offender;

26           (h) The deterrent effect a particular sentence may have  
27 on the commission of the offense by others;

28           (i) The current incidence of the offense in the community

1 and in the state as a whole;

2 (j) The role of the offender in cases involving multiple  
3 offenders;

4 (k) The mental and emotional condition of the offender;

5 (l) The offender's physical condition;

6 (m) The offender's family ties and responsibilities;

7 (n) The offender's community ties;

8 (o) The offender's degree of dependence upon criminal  
9 activity for a livelihood;

10 (p) The offender's character and personal history;

11 (q) The offender's amenability to correction, treatment,  
12 and supervision;

13 (r) The offender's past criminal history;

14 (s) The offender's criminal history record information;

15 and

16 (t) The offender's past history of violence.

17 (4) An offender shall not be eligible for sentencing to a  
18 community-based alternative sanctions program if he or she is (a)  
19 convicted of a crime that results in serious bodily harm or death  
20 to another person, excluding offenses in which negligence was the  
21 primary element, (b) convicted of a crime involving the use of a  
22 firearm, or (c) a habitual criminal.

23 Sec. 7. The administrator, with input from  
24 community-based alternative sanctions advisory boards, shall  
25 develop a multiyear plan for the development and implementation of  
26 community-based alternative sanctions and programs statewide.

27 The administrator shall submit an annual report no later  
28 than January 15 of each year, commencing January 15, 2001, to the

1 Governor, the Supreme Court, and the Judiciary Committee of the  
2 Legislature. The report shall include, but not be limited to, the  
3 following information:

4 (1) The effectiveness of the community-based alternative  
5 sanctions programs and services in diverting offenders from  
6 incarceration and the development or enhancement of community-based  
7 alternative sanctions programs and services necessary to meet  
8 offender rehabilitation needs;

9 (2) Fiscal audits on the expenditure of state funds;

10 (3) Allegations of noncompliance by community-based  
11 alternative sanctions programs and services and the results of any  
12 investigations into such allegations; and

13 (4) Any other information the administrator deems  
14 appropriate.

15 Sec. 8. A unit of local government receiving funds under  
16 the Community-Based Alternative Sanctions Act may contract with a  
17 nongovernmental entity to operate or provide programs or services  
18 to a community-based alternative sanctions program or service.

19 Sec. 9. The administrator shall adopt and promulgate  
20 rules and regulations prescribing minimum standards for  
21 establishing, operating, and evaluating community-based alternative  
22 sanctions programs and services for the efficient administration  
23 and implementation of the Community-Based Alternative Sanctions  
24 Act. In formulating, adopting, and promulgating rules and  
25 regulations under the act, the administrator shall consider the  
26 differences among counties in population, geography, and  
27 availability of resources. The rules and regulations shall be  
28 submitted to the Supreme Court for approval.

1           Sec. 10.   The Office of Probation Administration shall  
2 provide necessary staff to carry out the duties and functions  
3 provided in the Community-Based Alternative Sanctions Act.

4           Sec. 11. Grant funds received under the Community-Based  
5 Alternative Sanctions Act by a unit of local government shall not  
6 be used to replace or supplant any federal or state funds currently  
7 being used for programs or services and shall not be used to  
8 develop, improve, or construct local correctional facilities,  
9 jails, or detention centers.

10          Sec. 12. Section 29-2252, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           29-2252. The administrator shall:

13           (1) Supervise and administer the office;

14           (2) Establish and maintain policies, standards, and  
15 procedures for the system, with the concurrence of the Supreme  
16 Court;

17           (3) Prescribe and furnish such forms for records and  
18 reports for the system as shall be deemed necessary for uniformity,  
19 efficiency, and statistical accuracy;

20           (4) Establish minimum qualifications for employment as a  
21 probation officer in this state and establish and maintain such  
22 additional qualifications as he or she deems appropriate for  
23 appointment to the system. Qualifications for probation officers  
24 shall be established in accordance with subsection (4) of section  
25 29-2253. An ex-offender released from a penal complex or a county  
26 jail may be appointed to a position of deputy probation or parole  
27 officer. Such ex-offender shall maintain a record free of arrests,  
28 except for minor traffic violations, for one year immediately

1 preceding his or her appointment;

2 (5) Establish and maintain advanced periodic inservice  
3 training requirements for the system;

4 (6) Cooperate with all agencies, public or private, which  
5 are concerned with treatment or welfare of persons on probation;

6 (7) Organize and conduct training programs for probation  
7 officers;

8 (8) Collect, develop, and maintain statistical  
9 information concerning probationers, probation practices, and the  
10 operation of the system;

11 (9) Interpret the probation program to the public with a  
12 view toward developing a broad base of public support;

13 (10) Administer the duties and responsibilities set forth  
14 in the Community-Based Alternative Sanctions Act;

15 (11) Conduct research for the purpose of evaluating and  
16 improving the effectiveness of the system;

17 ~~(11)~~ (12) Adopt and promulgate such rules and regulations  
18 as may be necessary or proper for the operation of the office or  
19 system;

20 ~~(12)~~ (13) Transmit a report during each even-numbered  
21 year to the Supreme Court on the operation of the office for the  
22 preceding two calendar years, which report shall be transmitted by  
23 the Supreme Court to the Governor and the Clerk of the Legislature;

24 ~~(13)~~ (14) Administer the payment by the state of all  
25 salaries, travel, and actual and necessary expenses incident to the  
26 conduct and maintenance of the office; and

27 ~~(14)~~ (15) Exercise all powers and perform all duties  
28 necessary and proper to carry out his or her responsibilities.

1           Each member of the Legislature shall receive a copy of  
2 the report required by subdivision ~~(12)~~ (13) of this section by  
3 making a request for it to the administrator.

4           Sec. 13. Section 29-2262, Revised Statutes Supplement,  
5 1998, is amended to read:

6           29-2262. (1) When a court sentences an offender to  
7 probation, it shall attach such reasonable conditions as it deems  
8 necessary or likely to insure that the offender will lead a  
9 law-abiding life. No offender shall be sentenced to probation if  
10 he or she is deemed to be a habitual criminal pursuant to section  
11 29-2221.

12           (2) The court may, as a condition of a sentence of  
13 probation, require the offender:

14           (a) To refrain from unlawful conduct;

15           (b) To be confined periodically in the county jail or to  
16 return to custody after specified hours but not to exceed (i) for  
17 misdemeanors, the lesser of ninety days or the maximum jail term  
18 provided by law for the offense and (ii) for felonies, one hundred  
19 eighty days;

20           (c) To meet his or her family responsibilities;

21           (d) To devote himself or herself to a specific employment  
22 or occupation;

23           (e) To undergo medical or psychiatric treatment and to  
24 enter and remain in a specified institution for such purpose;

25           (f) To pursue a prescribed secular course of study or  
26 vocational training;

27           (g) To attend or reside in a facility established for the  
28 instruction, recreation, or residence of persons on probation;

1           (h) To refrain from frequenting unlawful or disreputable  
2 places or consorting with disreputable persons;

3           (i) To have in his or her possession no firearm or other  
4 dangerous weapon unless granted written permission;

5           (j) To remain within the jurisdiction of the court and to  
6 notify the court or the probation officer of any change in his or  
7 her address or his or her employment;

8           (k) To report as directed to the court or a probation  
9 officer and to permit the officer to visit his or her home;

10           (l) To pay a fine in one or more payments as ordered;

11           (m) To work, in lieu of or in addition to any fine, on  
12 public streets, parks, or other public property for a period not  
13 exceeding twenty working days. Such work shall be under the  
14 supervision of the probation officer or a law enforcement officer  
15 in the jurisdiction in which the work is performed;

16           (n) To pay for tests to determine the presence of drugs  
17 or alcohol, psychological evaluations, and rehabilitative services  
18 required in the identification, evaluation, and treatment of  
19 offenders if such offender has the financial ability to pay for  
20 such services;

21           (o) To perform community service as defined in section  
22 29-2277;

23           (p) To be monitored by an electronic surveillance device  
24 or system and to pay the cost of such device or system if the  
25 offender has the financial ability;

26           (q) To participate in a ~~community correctional facility~~  
27 ~~or program as provided in section 47-610~~ community-based  
28 alternative sanctions program or service as provided in section 6

1 of this act;

2           (r) To successfully complete an incarceration work camp  
3 program as determined by the Department of Correctional Services;  
4 or

5           (s) To satisfy any other conditions reasonably related to  
6 the rehabilitation of the offender.

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

10           Sec. 14. Original section 29-2252, Reissue Revised  
11 Statutes of Nebraska, and section 29-2262, Revised Statutes  
12 Supplement, 1998, are repealed.

13           Sec. 15. The following sections are outright repealed:  
14 Sections 47-601, 47-602, and 47-604 to 47-618, Reissue Revised  
15 Statutes of Nebraska, and section 47-603, Revised Statutes  
16 Supplement, 1999.

17           Sec. 16. Since an emergency exists, this act takes  
18 effect when passed and approved according to law.