

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 455

Introduced by Dw. Pedersen, 39

Read first time January 16, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to parole; to amend sections 83-170, 83-189,
2 83-1,107, 83-1,110, and 83-1,135, Reissue Revised
3 Statutes of Nebraska; to define terms; to change
4 membership on the Board of Parole; to change and
5 eliminate provisions relating to review and release; to
6 harmonize provisions; and to repeal the original
7 sections.

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

1 Section 1. Section 83-170, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 83-170. As used in the Nebraska Treatment and
4 Corrections Act, unless the context otherwise requires:

5 (1) Administrator shall mean the Parole Administrator;

6 (2) Board shall mean the Board of Parole;

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

13 (4) Department shall mean the Department of Correctional
14 Services;

15 (5) Director shall mean the Director of Correctional
16 Services;

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

20 (7) Good time shall mean any reduction of sentence
21 granted pursuant to sections 83-1,107 and 83-1,108;

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

25 (9) Minimum term shall mean the minimum sentence provided
26 by law or the minimum sentence imposed by a court, whichever is
27 longer;

28 (10) Nonviolent offender means a committed offender

1 convicted of an offense not included in subdivision (14) of this
2 section;

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

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

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

12 (14) Violent offender means a committed offender
13 convicted of and incarcerated for murder in the first degree
14 pursuant to section 28-303, murder in the second degree pursuant to
15 section 28-304, manslaughter pursuant to section 28-305, motor
16 vehicle homicide pursuant to section 28-306, assault in the first
17 degree pursuant to section 28-308, assault in the second degree
18 pursuant to section 28-309, terroristic threats pursuant to section
19 28-311.01, kidnapping pursuant to section 28-313, false
20 imprisonment in the first degree pursuant to section 28-314, sexual
21 assault in the first degree pursuant to section 28-319, sexual
22 assault in the second degree pursuant to section 28-320, sexual
23 assault of a child pursuant to section 28-320.01, incest under
24 section 28-703, arson in the first degree pursuant to section
25 28-502, arson in the second degree pursuant to section 28-503,
26 arson in the third degree pursuant to section 28-504, burglary
27 pursuant to section 28-507, using a deadly weapon to commit a
28 felony pursuant to section 28-1205, possession of a weapon by a

1 felon or fugitive from justice pursuant to section 28-1206,
2 unlawful discharge of a firearm pursuant to section 28-1212.02,
3 using an explosive material or destructive device to commit a
4 felony pursuant to section 28-1222, using an explosive material or
5 destructive device to damage or destroy property pursuant to
6 section 28-1223, use of explosive materials or destructive devices
7 to kill or injure any person pursuant to section 28-1224, unlawful
8 possession of explosive materials in the first degree pursuant to
9 section 28-1215, unlawful possession of explosive materials in the
10 second degree pursuant to section 28-1216, or unlawful sale of
11 explosive materials pursuant to section 28-1217.

12 Sec. 2. Section 83-189, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 83-189. The Board of Parole shall consist of five
15 full-time members to be appointed by the Governor. The members of
16 the board shall be of good character and judicious temperament.
17 The members of the board shall have all the powers and duties of
18 board members commencing on the date of appointment. The
19 appointments shall be subject to confirmation by the Legislature at
20 its next regular session following the appointments. At least one
21 member of the board shall be of an ethnic minority group, at least
22 one member shall be female, ~~and~~ at least one member and not more
23 than two members shall have a professional background in
24 corrections, probation, parole administration, or law enforcement,
25 and at least one member shall have a professional background in
26 mental health or substance abuse treatment.

27 One of the five members of the board shall be designated
28 as chairperson by the Governor. In addition to the chairperson's

1 duties as a member of the board as prescribed in subsection (1) of
2 section 83-192, he or she shall supervise the administration and
3 operation of the board and shall carry out the duties prescribed in
4 subsection (2) of such section.

5 Sec. 3. The Legislature affirms the importance of parole
6 as a program for the supervised release of inmates making the
7 transition from confinement to responsible citizenship. Therefor
8 the Legislature intends that all committed offenders should have
9 the opportunity to complete the final stages of their sentences on
10 parole.

11 Sec. 4. Section 83-1,107, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 83-1,107. (1)(a) Within sixty days after initial
14 classification and assignment of any offender committed to the
15 department, all available information regarding such committed
16 offender shall be reviewed and a committed offender
17 department-approved personalized program plan document shall be
18 drawn up. The document shall specifically describe the
19 department-approved personalized program plan and the specific
20 goals the department expects the committed offender to achieve.
21 The document shall also contain a realistic schedule for completion
22 of the department-approved personalized program plan. The
23 department-approved personalized program plan shall be fully
24 explained to the committed offender. During incarceration, the
25 committed offender shall comply with the department-approved
26 personalized program plan and the department shall provide programs
27 to allow compliance by the committed offender with the
28 department-approved personalized program plan.

1 Programming may include, but is not limited to:

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

4 (ii) Substance abuse treatment;

5 (iii) Mental health and psychiatric treatment, including
6 criminal personality programming;

7 (iv) Constructive, meaningful work programs; and

8 (v) Any other program deemed necessary and appropriate by
9 the department.

10 (b) A modification in the department-approved
11 personalized program plan may be made to account for the increased
12 or decreased abilities of the committed offender or the
13 availability of any program. Any modification shall be made only
14 after notice is given to the committed offender. ~~Intentional~~
15 ~~failure to comply with the department-approved personalized program~~
16 ~~plan by any committed offender as scheduled for any year, or pro~~
17 ~~rata part thereof, shall cause disciplinary action to be taken by~~
18 ~~the department resulting in the forfeiture of up to a maximum of~~
19 ~~three months' good time for the scheduled year.~~

20 (2) The chief executive officer of a facility shall
21 reduce the term of a committed offender by six months for each year
22 of the offender's term and pro rata for any part thereof which is
23 less than a year.

24 The total reductions shall be credited from the date of
25 sentence, which shall include any term of confinement prior to
26 sentence and commitment as provided pursuant to section 83-1,106,
27 and shall be deducted from the maximum term, to determine the date
28 when discharge from the custody of the state becomes mandatory.

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

7 (4) While the offender is in the custody of the board,
8 reductions of terms granted pursuant to subsection (2) of this
9 section may be forfeited, withheld, and restored by the
10 administrator with the approval of the director after the offender
11 has been consulted regarding the charges of misconduct or breach of
12 the conditions of parole. In addition, the board may recommend
13 such forfeitures of good time to the director.

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

18 Sec. 5. Section 83-1,110, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 83-1,110. (1) ~~Except as provided in subsections (3) and~~
21 ~~(4) of this section, every~~ Every committed offender shall be
22 eligible for parole when the offender has served one-half the
23 minimum term of his or her sentence as provided in sections
24 83-1,107 and 83-1,108. The board shall hold a parole hearing not
25 later than thirty days prior to the date a committed offender
26 becomes eligible for parole as provided in this subsection. No
27 such reduction of sentence shall be applied to any sentence
28 imposing a mandatory minimum term.

1 (2) ~~Except as provided in subsections (3) and (4) of this~~
2 ~~section, every~~ Every committed offender sentenced to consecutive
3 terms, whether received at the same time or at any time during the
4 original sentence, shall be eligible for release on parole when the
5 offender has served the total of one-half the minimum ~~terms~~ term as
6 provided in sections 83-1,107 and 83-1,108. The maximum terms
7 shall be added to compute the new maximum term which, less good
8 time, shall determine the date when discharge from the custody of
9 the state becomes mandatory.

10 (3) The board shall parole a nonviolent offender as soon
11 as possible after he or she reaches initial parole eligibility as
12 provided in subsections (1) and (2) of this section. Participation
13 in educational and treatment programming shall be included as part
14 of each nonviolent offender's parole plan and shall not be a
15 condition of consideration for parole unless the board determines
16 otherwise.

17 (4)(a) The Legislature finds that (i) the duty of the
18 board is to protect public safety when considering parole for
19 violent offenders and (ii) there is great value in returning
20 violent offenders back to their home communities under the guidance
21 and supervision of parole officials prior to the completion of
22 their sentences.

23 (b) The board shall consider granting parole to violent
24 offenders when the board determines parole is appropriate,
25 considering at a minimum each violent offender's institutional
26 record of participating in institutional programming and in
27 avoiding disciplinary infractions.

28 (c) The department shall make educational and treatment

1 programming available to violent offenders and shall include
2 continuing participation in such programming as part of each
3 violent offender's parole plan. A committed offender who has been
4 found guilty of a violation of the rules and regulations of the
5 department for drug or alcohol use pursuant to sections 83-4,109 to
6 83-4,123 shall not be eligible for parole for twelve months
7 following the imposition of the disciplinary action.

8 (4) A committed offender shall not be eligible for parole
9 if the offender refuses to comply with the department-approved
10 personalized program plan as stipulated in section 83-1,107.

11 Sec. 6. Section 83-1,135, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 83-1,135. Sections 83-170 to 83-1,135 and section 3 of
14 this act shall be known and may be cited as the Nebraska Treatment
15 and Corrections Act.

16 Sec. 7. Original sections 83-170, 83-189, 83-1,107,
17 83-1,110, and 83-1,135, Reissue Revised Statutes of Nebraska, are
18 repealed.