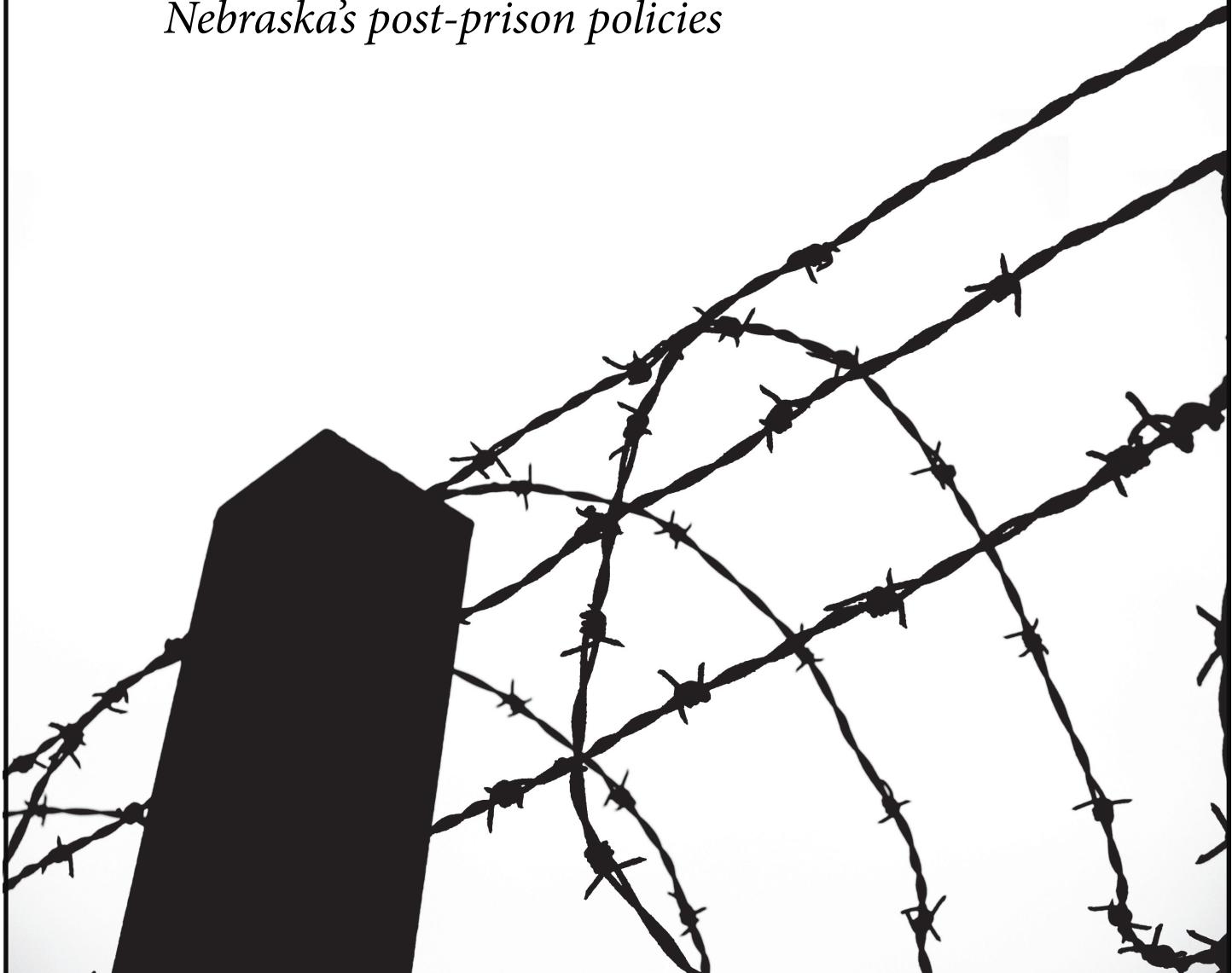


PRISONER REENTRY FAQ

*Frequently asked questions about
Nebraska's post-prison policies*



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Released and Restored

Introduction



Nebraska's nine prisons hold 4,782 men and women. Almost all of them will eventually be released.

Nebraska prisons release over 2,000 inmates every year.¹

They return to their communities needing housing and jobs, but their prospects are often bleak. Many ex-prisoners lack a high school diploma and often have a history of substance abuse. Some have severe physical or mental disabilities. Without the stable social bonds and support networks crucial for a fresh start, the challenges facing former prisoners reentering society are daunting. Thus, it is not surprising that almost three in ten former state prisoners are back behind bars within three years.²

In Nebraska, a felony conviction has lasting legal ramifications that continue long after a sentence has been served. Convicted felons lose basic rights of citizenship -- the right to vote, hold public office, and own a firearm. They are also restricted in their ability to obtain occupational or professional licenses. These and other collateral consequences of a felony conviction are ongoing burdens, compounding the challenges inherent to reentry. Some of these rights can be restored via the passage of time, completion of parole, or through an executive or judicial act. Others can never be restored.

Nebraska's nine prisons hold 4,782 men and women.³ Almost all of them will eventually be released. Although the Department of Correctional Services annual budget is now over \$160 million, a relatively small percentage of those resources are invested in parole supervision and prisoner reentry.⁴ In fact, there is no central clearinghouse for information relevant to inmates leaving prison. This FAQ is a first attempt at gathering reentry information in one place.

Access to Criminal Records

Who can obtain criminal records?

Any member of the public can obtain criminal records. However, information regarding an arrest by a federal officer is subject to more restrictive dissemination requirements.⁵

What types of records can be disclosed to non-law enforcement agencies?

Most arrests and all convictions are public record.⁶

Is there a time limit after which criminal history information cannot be reported to non-law enforcement entities?

Arrests that do not result in charges and with no active court proceedings are not available to the public after one year; arrests for which diversion is completed are not available to the public after two years; and arrests for which charges were filed, but later dismissed by the court, are not available to the public after three years.⁷

Are there penalties for violating limitations on dissemination of criminal records?

Yes, any person who permits unauthorized access to, or disseminates nondisclosable criminal records, is guilty of a Class IV misdemeanor.⁸ Aggrieved persons may also bring actions to compel compliance, including, but not limited to, court order.⁹

Can arrest records be sealed or expunged?

Arrests due to an error by a law enforcement agency can be expunged upon proof by clear and convincing evidence by filing a motion with the court.¹⁰

What happens when an arrest record is expunged?

Expunged arrest records are destroyed.

Can criminal conviction records be sealed or expunged?

No. Adult criminal conviction records cannot be sealed or expunged. Convictions can be pardoned or “set aside,” but they cannot be erased entirely. If the court grants a set-aside request, the original conviction is nullified, but not expunged. Instead, an addendum is made to the original conviction noting that it has been set aside. Even a pardon will not expunge or seal a criminal record.

What does it mean to have a conviction “set aside”?

State law permits an offender sentenced to probation, or sentenced to pay a fine only, to petition the court to “set aside” the conviction. In determining whether to set aside the conviction, the court considers the behavior of the offender after sentencing, the likelihood that the individual will reoffend, and any other

information the court considers relevant. The court may set aside the conviction when, in the opinion of the court, the set-aside order will be “in the best interest of the offender and consistent with the public welfare.”¹¹

What is the effect of having a conviction set aside?

A set-aside order nullifies the conviction and removes “all civil disabilities and disqualifications imposed as a result of the conviction.” A conviction that has been set aside can still be used as a predicate offense to enhance a subsequent sentence, to impeach a witness, or to deny or revoke a law enforcement training certification. A set-aside order also does not relieve the obligation to register as a sex offender.¹²

Can juvenile criminal records be sealed or expunged?

If the offense occurred on or after July 15, 2010, juvenile records are automatically sealed when the juvenile turns 17 years of age, as long as the juvenile has successfully met the conditions set out by the court. Juveniles convicted before July 15, 2010 may petition the court for sealing under limited circumstances, including arrests in which no charges are filed and after the successful completion of probation of a diversion/treatment program. The court must hold a hearing if there is opposition to sealing and may also hold a hearing even in the absence of opposition. The court may grant sealing upon a finding of satisfactory rehabilitation.¹³

What is the effect of having a juvenile conviction sealed?

Sealed juvenile records do not show up on criminal background checks, as if the conviction never occurred. However, law enforcement agencies still have access to the records.

Where can the public go to search for an individual’s criminal history?

The State Patrol Criminal Identification Division oversees access to criminal records in Nebraska, including who has legal access to criminal records. Members of the public may request a conviction-only Record of Arrest and Prosecution (RAP) sheet.¹⁴

Are any state criminal records available on the internet?

Yes, the Department of Correctional Services maintains an online database listing currently incarcerated individuals.¹⁵

Where can the public go for information on state laws related to individuals with criminal histories?

Employers and service providers may obtain information from the State Attorney General regarding occupational bars, the licensing of individuals with criminal records in certain jobs, and state restrictions on ex-offenders to public benefits.¹⁶

Employment

Can employers ask job applicants about criminal convictions?

Yes.

Can employers ask job applicants about minor criminal convictions, like misdemeanors?

Yes.

Can employers consider arrests even if no charges were filed?

Yes.

Does Nebraska prohibit employment discrimination by employers based on arrest or conviction records?

No. Nebraska does not have a law regulating how employers consider a criminal record in evaluating potential employees.

What professional licenses can be affected by a conviction record?

Nebraska has no general law regulating consideration of conviction in licensure. Certain convictions may be grounds for denial, suspension, or revocation of a professional or occupational license, including pharmacy,¹⁷ real estate,¹⁸ and employment agency.¹⁹

How does a criminal conviction affect the ability to operate a franchise business?

Certain termination protections available to franchisees are rendered inapplicable when the alleged grounds for the termination is the conviction of the franchisee of a criminal offense directly related to the business.²⁰

Does Nebraska restrict people with criminal records from employment in the field of home health care?

Yes. An applicant for home health care employment must not have been convicted of a crime (in Nebraska or any other state) punishable by imprisonment for more than one year that is rationally related to the individual's fitness or capacity to work as a home health aide.²¹

Are there any state agencies that can help formerly incarcerated individuals find jobs?

Nebraska Workforce Development offers resources to community

service providers and individuals with criminal histories who are looking for assistance in finding employment.²²

Are there any programs that provide employers with insurance coverage as an incentive to hire ex-offenders?

Yes. The Federal Bonding Program provides fidelity bonding insurance coverage to former prisoners and other high-risk job applicants who are qualified, but fail to get jobs because regular commercial bonding is denied due to their backgrounds.²³

Are there incentives available for employers to hire individuals with a criminal history?

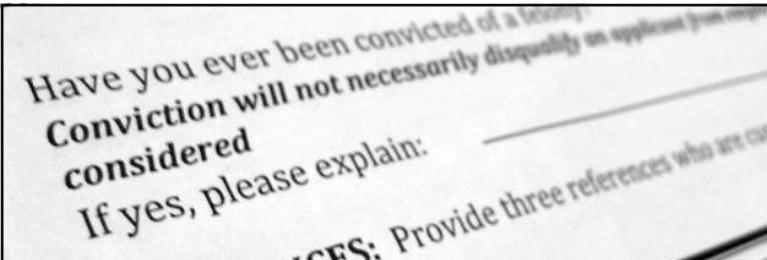
Yes. The Work Opportunity Tax Credit is a federal tax credit designed as an incentive for employers to hire individuals from eight different targeted groups: Temporary Assistance for Needy Families (TANF) recipients, veterans, ex-felons, high risk youth, summer youth, food stamp recipients, Social Security recipients, and vocational rehabilitation referrals.²⁴

What is a “Ban the Box” law?

“The Box” refers to the prominent checkbox on many job applications that ask individuals whether they have ever been convicted of a crime. “Ban the box” laws prohibit employers from inquiring about an individual’s criminal history on the initial application, delaying any potential criminal background check until later in the hiring process. So far, nine states and 50 municipalities have passed “ban the box” legislation. Despite past attempts (LB 913 in 2010 and LB 306 in 2013), Nebraska has not yet passed such a law. LB 932, which would restrict government agencies from performing criminal background checks until determining if an applicant meets minimum hiring standards, is currently pending.

What is a Certificate of Rehabilitation?

A Certificate of Rehabilitation is a resource some states offer to support reentry by lifting statutory bars to jobs, licenses, and housing, that result from a felony conviction. Certificates may be used to provide a way for qualified people with criminal records to demonstrate a commitment to rehabilitation. Six states -- Arizona, California, Nevada, New Jersey, New York, and Illinois -- currently have laws authorizing certificates of rehabilitation or other similar means of removing legal barriers to employment. Nebraska does not have such a law.



“The Box” refers to the checkbox on many job applications that ask individuals if they have ever been convicted of a crime. So far, nine states and 50 municipalities have passed laws restricting this practice.

Public Assistance & Housing

Are people with felony convictions eligible for Temporary Assistance for Needy Families (TANF) benefits in Nebraska?

Generally yes. However, certain kinds of felony convictions can disqualify individuals from TANF benefits.

What kind of felony convictions disqualify an individual from receiving TANF benefits?

Due to federal legislation, people with drug convictions dated after 1996 are ineligible to receive TANF benefits.

Are there any states where people with felony drug convictions can receive TANF benefits?

Yes, the federal legislation allows states to opt out of the ban. Many states have modified or eliminated the ban. Eleven states, including Nebraska,²⁵ have kept the ban in place in its entirety.

Are people with criminal records eligible for Supplemental Nutrition Assistance Program (SNAP) benefits?

Yes, with certain restrictions. A person becomes ineligible for SNAP benefits if he or she has three or more felony convictions for the possession or use of a controlled substance or has been convicted of a felony involving the sale or distribution of a controlled substance. A person with only one or two felony convictions for the possession or use of a controlled substance is eligible for SNAP benefits if he or she completes a substance abuse treatment program.²⁶

Does a criminal record disqualify an individual from receiving Medicaid assistance?

No. In fact, federal requirements mandate that individuals who entered prison on Medicaid must be returned to Medicaid eligibility upon release.

Are there federal laws that prohibit formerly incarcerated individuals from receiving public housing?

Yes. Federal law mandates that public housing authorities (PHAs) must deny public housing benefits to any individual who has been evicted from federally assisted housing for drug-related criminal

activity. This ban lasts for three years. Federal law also mandates that a PHA must deny public housing benefits to individuals with a pattern of illegal drug use that threatens the “health, safety, or right to peaceful enjoyment of the premises by other residents.”²⁷

Are there federal laws that permanently prohibit formerly incarcerated individuals from receiving public housing?

Yes. Any individual subject to a lifetime registration requirement under a state sex offender registration program is prohibited from receiving public housing benefits. In addition, individuals convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing are prohibited from future benefits.²⁸



Do Nebraska housing authorities consider felony convictions in its admission criteria?

Yes. In addition to the prohibitions mandated by federal law, local housing authorities are permitted to use their discretion in crafting policies regarding the admission of people with criminal records to public housing. Both the Lincoln and Omaha Housing authorities evaluate eligibility for vouchers and housing assistance on a case-by-case basis.²⁹

What kind of system do housing authorities in Nebraska use to determine the eligibility of applicants with criminal records?

Pursuant to federal regulations, both the Lincoln and Omaha Housing Authorities use a point system: 4 points for felonies, recent drug convictions and prostitution, 3 points for serious misdemeanors and drug offenses older than a year, and 2 or fewer points for all other misdemeanors and infractions. The evaluation period is two, three or five years depending on the severity of the offense.³⁰

Do local housing authorities consider arrests that did not lead to conviction in its admission criteria?

No. Neither the Lincoln or Omaha Housing authorities consider arrests that did not lead to conviction.

Civil Rights

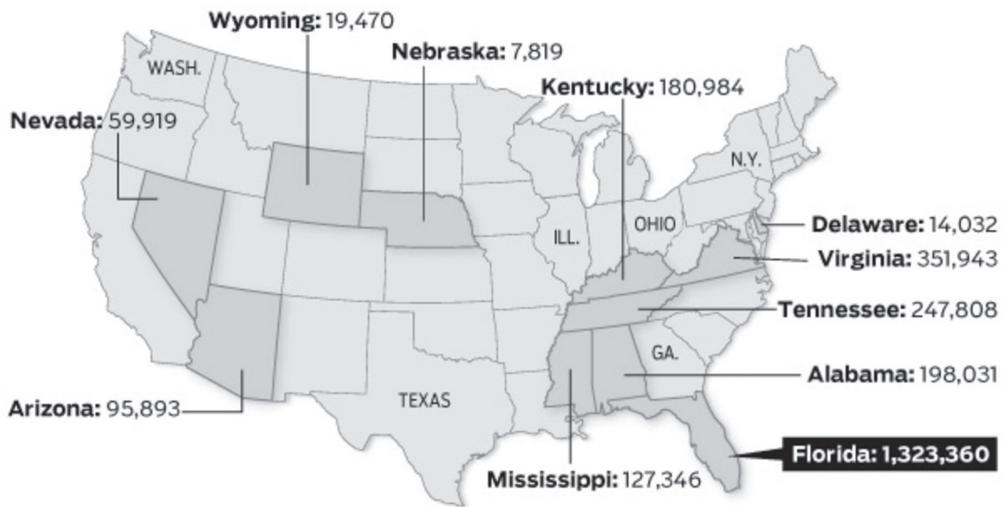
Does Nebraska take away the right to vote from individuals with criminal records?

At one time, Nebraskans with felony convictions lost their right to vote forever, but in 2005 the state law changed. Now, a person convicted of a felony can vote two years after the completion of his or her sentence, including any parole term. This same two-year voting restriction applies to individuals convicted of felonies in other states and federal offenders as well.³¹ A person who has been declared “not sound of mind” or has been convicted of treason cannot vote, “unless restored to civil rights.”³²

Can a convicted felon serve on juries or hold public office in Nebraska?

A convicted felon cannot serve on juries or “hold any office of honor, trust, or profit” unless the Board of Pardons grants him or her a warrant of discharge. In such case, the Board of Pardons can decide which civil rights to restore or continue to limit.³³ A person convicted of a felony in another state must be restored to jury and office-holding rights “under the laws of the state in which the felony was committed.”³⁴ These restrictions do not apply to an individual sentenced to a non-prison sentence.³⁵

of Former Prisoners Restricted From Voting in the 2010 Election



Nebraska is one of eleven states that revoke the civil rights of a convicted felon for some period of time after the completion of his or her sentence. Nebraska restores voting rights two years after an offender leaves prison.

Source: The Sentencing Project

Firearms

What happens to gun rights after a felony conviction?

Firearm rights are lost upon conviction of a felony in Nebraska. State firearm restrictions also apply to anyone in violation of a domestic violence protection order and/or to individuals convicted within the past seven years of a misdemeanor crime of domestic violence.³⁶

Is there any way for gun rights to be restored?

Firearm rights may be regained only if the Board of Pardons empowers the Governor to expressly authorize a pardoned individual to receive, possess, or transport guns in commerce.³⁷

How do federal gun laws apply to convicted felons in Nebraska?

Similarly, anyone who has been convicted of a felony is banned by federal law from possessing firearms or ammunition. Specifically, a person “convicted in any court of a crime punishable by imprisonment for a term exceeding one year” cannot possess a firearm. Federal gun rights can be restored by a state pardon, unless the pardon specifically forbids the restoration of gun rights. If the crime was prosecuted as a violation of federal law, there is no process in the federal system for restoration of those rights, short of a Presidential pardon or an executive order.³⁸

Driver's License Privileges

What crimes can result in suspension or revocation?

Motor vehicle homicide³⁹, and driving under the influence of alcohol or any drug can result in suspension or revocation.⁴⁰

What is the length of the suspension or revocation for a DUI conviction?

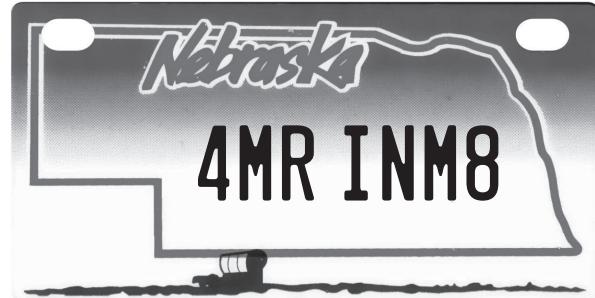
Length of revocation varies depending on the number of DUI convictions.⁴¹

Can an individual convicted of a DUI continue to drive during the revocation period?

Any individual convicted of a DUI who wishes to continue driving must obtain an ignition interlock permit (IPP) and install an ignition interlock device on his or her motor vehicle.⁴²

Are individuals with an IPP limited to driving for purposes of employment, education, and/or medical care?

No, legislation in 2013 removed these restrictions from IPPs. Individuals convicted of a DUI can now use an IPP to operate an ignition interlock-equipped vehicle in any context.⁴³



Can a driver's license revocation be reinstated early?

Any person whose license has been revoked for a period of 15 years or more may apply to the Department of Motor Vehicles for early reinstatement.⁴⁴

Will Nebraska accept prison documentation as the proof of identity in obtaining a state ID card after release?

The Department of Motor Vehicles will accept an ID card issued by the Department of Correctional Services as a secondary proof of identity, but requires a primary form of identification as well.

Adoptive & Foster Care

Do individuals convicted of a felony in Nebraska automatically lose custody of their children?

The federal Adoption and Safe Families Act (ASFA) requires state child welfare agencies to initiate termination of parental rights if a child is in foster care for 15 out of the previous 22 months. Nebraska has adopted two exceptions related to incarcerated parents. Parental rights in Nebraska will not be terminated if the child is being cared for by a relative, and the Department of Health and Human Services determines that filing such a petition would not be in the best interests of the child.⁴⁵

Does the federal law also apply to individuals with criminal records that want to adopt a child or become a foster parent?

Yes. ASFA mandates that states perform criminal record checks on prospective parents and bars individuals with certain convictions from becoming foster or adoptive parents. But ASFA allows states to substitute their own rules for the federal requirements in order to make individualized determinations about the suitability of applicants.

Does Nebraska consider criminal history records in barring people from becoming foster and/or adoptive parents?

Yes, for foster care. A conviction, admission, or substantial

evidence of offenses involving intentional bodily harm, crimes against children, or those involving moral turpitude which have a current bearing on the applicants' provision of foster care, is basis for denial or revocation of a foster care license.⁴⁶

No, for adoption. The preplacement or post-placement adoptive home study must include a criminal background check and a check of the child protection cases register for history of behavior which may endanger the health or morals of a child. However, the statute does not establish any legal barrier to adoption based on the results of the investigation.⁴⁷

Can applicants be barred by the convictions of other household members?

Yes, for foster care. Foster parent applicants can be barred by the criminal records of other adult household members. No, for adoption.⁴⁸

Does Nebraska restrict people from becoming foster parents for longer than required by federal law?

Yes, insofar as the foster care statutes leave the length of the bar up to the Department of Health and Human Services. However, as noted previously, denial or revocation of a foster care license applies only to crimes that have a current bearing on the applicants' provision of foster care.⁴⁹

Parole, Pardons, & Probation

What are the differences between parole, pardons, and probation?

Parole allows an incarcerated individual to complete their sentence in the community. A pardon means that an individual is forgiven from the legal consequences of a criminal conviction. Probation is ordered by a judge as an alternative to incarceration and allows the convicted person to remain in the community.

Who grants parole in Nebraska?

The Board of Parole. The board consists of five full-time members, appointed by the Governor to six-year terms.⁵⁰

What does the Board of Parole do?

The board reviews the status of committed offenders, determines when committed offenders are released on parole, fixes parole conditions, may revoke parole and issue warrants to arrest parole violators, and discharges an offender upon expiration of the parole term.

What happens after an offender is granted parole?

If an offender is granted parole, he or she is referred to the Parole Administration Office within the Department of Correctional Services to obtain approved residence and employment.

Who grants pardons in Nebraska?

The authority to grant pardons is vested in the Board of Pardons⁵¹, which is composed of the Governor, Secretary of State, and Attorney General.⁵² The Governor acts as chair.⁵³

What can the Board of Pardons do?

The board has the power to (1) remit fines and forfeitures, (2) grant respites, (3) grant reprieves, (4) grant pardons, and (5) grant commutations, in all cases of conviction for offenses against the laws of the State of Nebraska, except for treason and cases of impeachment.⁵⁴

What does a pardon do?

A pardon restores civil rights lost due to a felony conviction,⁵⁵ including the right to vote, the right to be a juror, the right to hold public office, and the right to hold certain licenses (liquor and public health and welfare licenses). However, a felony offender may only regain firearm privileges if the Board of Pardons empowers the Governor to "expressly" authorize the individual to receive, possess, or transport in commerce a firearm.⁵⁶

Who is eligible for a pardon?

Any convicted felon, 10 years from final discharge, including payment of any associated fines. For misdemeanors, the time

limit for a pardon is three years. Persons convicted under federal law or the laws of another state are ineligible for a pardon or a discharge.⁵⁷

How does a person with a criminal history attain a pardon?

Eligible individuals with a criminal history must apply for a pardon. The Board of Pardons will consider the application and conduct further investigation as it deems appropriate. Then, the board makes the decision to grant or deny relief by majority vote.⁵⁸ The board holds open hearings quarterly, and the entire process takes about one year.⁵⁹

Who handles probation in Nebraska?

The Office of Probation Administration. The State Probation Administrator is appointed by the Governor.⁶⁰

What does the Office of Probation do?

Under the structure of the Nebraska Supreme Court, the Office of Probation Administration provides central management of probation services, offers sentencing alternatives, conducts investigations, and assists those on probation with supervision and support.

What reentry resources are available within the corrections system itself?

The Department of Correctional Services has a special Reentry Furlough program in addition to standard reentry assistance.

What is the Reentry Furlough program?

This program allows offenders who have been program compliant, demonstrated stable institutional behavior, and deemed low risk by Department of Correctional Services staff, to temporarily live outside prison prior to their parole or release date. The program may include restitution, drug and alcohol testing, community-based treatment opportunities, itineraries, electronic monitoring, and other conditions necessary for their successful participation in the program. Such supervised pre-release is designed to help prisoners re-acclimate to society.⁶¹

What is the standard reentry assistance the Department of Correctional Services provides?

The Corrections Reentry program focuses on a variety of reentry issues, including substance abuse, mental health, housing, employment, education, mentoring, transportation, criminal thinking, vocational, and parenting/family reunification needs. To accomplish these goals, the Department of Correctional Services partners with community-based service providers, including the Department of Health and Human Services and the Department of Labor, along with faith-based prison ministries and other social service entities.⁶²

Community Service Providers



What is a “Community Service Provider”?

Community Service Providers are private, non-governmental organizations that assist formerly incarcerated individuals with employment, education, training, substance abuse treatment, medical care, mental health issues, and financial assistance.

What kind of Community Service Providers are available in Nebraska?

The Adult Parole Administration keeps records of Community Service Providers that provide a variety of services to parolees across the state. An exhaustive list of these resources can be accessed here: <http://www.corrections.nebraska.gov/pdf/LRO%20Resource%20Summary%202013.pdf>

Metro Community College has also developed a Reentry Initiative Resource Handbook which can be accessed at: <http://jjpf.co.douglas.ne.us/images/stories/Final2.pdf>

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⁴⁹ Neb. Rev. Stat. § 43-107 and 474 Neb. Admin. Code ch. 6, § 003.25A.

⁵⁰ Board of Parole. <http://www.parole.state.ne.us/>

⁵¹ Board of Pardons. <http://www.pardons.state.ne.us/>

⁵² Neb. Const. art. IV, § 13

⁵³ Neb. Rev. Stat. § 83-1,126

⁵⁴ Neb. Const. art. IV, § 13

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