

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 955**

Introduced by Giese, 17.

Read first time January 14, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to correctional facilities; to amend  
2 sections 83-183.01 and 83-184, Reissue Revised Statutes  
3 of Nebraska; to adopt the Correctional Facility  
4 Reimbursement Act; to harmonize provisions; to provide an  
5 operative date; and to repeal the original sections.

6 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 Correctional Facility Reimbursement Act.

3           Sec. 2. For purposes of the Correctional Facility  
4 Reimbursement Act:

5           (1) (a) Assets means property, tangible or intangible,  
6 real or personal, belonging to or due a prisoner or former  
7 prisoner, including income or payments to such prisoner from  
8 social security, worker's compensation, veteran's compensation,  
9 pension benefits, previously earned salary or wages, except  
10 certain wages as provided in subdivision (b) of this subdivision,  
11 bonuses, annuities, retirement benefits, or from any other source  
12 whatsoever, but does not include any of the following:

13           (i) Money otherwise owing to a prisoner described in  
14 section 81-1836; and

15           (ii) The homestead of the prisoner as provided in section  
16 40-101.

17           (b) The disposition of wages earned by a person committed  
18 to the department shall be governed by sections 83-183.01 and  
19 83-184;

20           (2) Correctional facility means a facility or institution  
21 which houses a prisoner population under the jurisdiction of the  
22 department or under the jurisdiction of a political subdivision.  
23 Correctional facility includes an incarceration work camp as  
24 described in section 83-4,142, a community correctional facility  
25 or program as defined in section 47-621, an adult correctional

1 facility, a criminal detention facility as defined in section  
2 83-4,125, a juvenile detention facility as defined in section  
3 83-4,125, and a jail as defined in section 47-117;

4 (3) Cost of care means the cost to the department or  
5 a political subdivision for providing transportation, room, board,  
6 clothing, security, medical, and other normal living expenses of  
7 prisoners and the cost to the department or political subdivision  
8 for providing college-level classes or programs to prisoners, as  
9 determined by the department or political subdivision;

10 (4) Department means the Department of Correctional  
11 Services;

12 (5) Director means the Director of Correctional Services;

13 (6) Prisoner means any person who is under the  
14 jurisdiction of the department or a political subdivision and  
15 is either confined in any correctional facility or is under  
16 the continuing jurisdiction of the department or a political  
17 subdivision; and

18 (7) Prosecuting attorney means the Attorney General or an  
19 assistant attorney general, a county attorney or a deputy county  
20 attorney, or a city attorney or an assistant city attorney, as the  
21 case may be.

22 Sec. 3. (1) Not later than thirty days after the  
23 effective date of this act, the department shall develop a form  
24 which shall be used to obtain information from all prisoners  
25 regarding assets of the prisoners.

1           (2) The form shall be submitted to each person who is  
2 sentenced to imprisonment in this state on and after the operative  
3 date of this act. The form may be resubmitted to a prisoner for  
4 purposes of obtaining current information regarding assets of the  
5 prisoner.

6           (3) Every prisoner shall complete the form or provide  
7 for completion of the form, and the prisoner shall swear or affirm  
8 under oath that to the best of his or her knowledge the information  
9 provided is complete and accurate.

10           Sec. 4. The director, or the administrator of the  
11 correctional facility of a political subdivision, as the case  
12 may be, shall forward to the prosecuting attorney a report on each  
13 prisoner containing a completed form under section 3 of this act  
14 together with all other information available on the assets of  
15 the prisoner and an estimate of the total cost of care for that  
16 prisoner.

17           Sec. 5. (1) The prosecuting attorney shall investigate or  
18 cause to be investigated, as necessary, all reports received under  
19 section 4 of this act.

20           (2) If the prosecuting attorney, upon completing the  
21 investigation under subsection (1) of this section, has good cause  
22 to believe that a prisoner has sufficient assets to recover not  
23 less than ten percent of the estimated cost of care of the prisoner  
24 or ten percent of the estimated cost of care of the prisoner for  
25 two years, whichever is less, the prosecuting attorney shall seek

1 to secure reimbursement for the cost of care to the department or  
2 political subdivision, as the case may be, for that prisoner.

3 (3) Not more than ninety percent of the value of the  
4 assets of the prisoner may be used for purposes of securing costs  
5 and reimbursement under the Correctional Facility Reimbursement  
6 Act.

7 Sec. 6. (1) A prisoner shall fully cooperate with the  
8 department or political subdivision by providing complete financial  
9 information for purposes of the Correctional Facility Reimbursement  
10 Act.

11 (2) The failure of a prisoner to fully cooperate as  
12 provided in subsection (1) of this section may be considered for  
13 purposes of a parole determination.

14 Sec. 7. (1) The prosecuting attorney may file a complaint  
15 in the court in which a prisoner was sentenced, stating that the  
16 prisoner is or has been a prisoner in a correctional facility, that  
17 there is good cause to believe that the prisoner has assets, and  
18 praying that the assets be used to reimburse the department or such  
19 political subdivision for the expenses incurred or to be incurred,  
20 or both, by the department or such political subdivision for the  
21 cost of care of the prisoner.

22 (2) Upon the filing of the complaint under subsection (1)  
23 of this section, the court shall issue an order to show cause why  
24 the prayer of the complainant should not be granted. The complaint  
25 and order shall be served upon the prisoner personally or, if

1 the prisoner is confined in a correctional facility, by registered  
2 mail addressed to the prisoner in care of the director or of  
3 the administrator of the correctional facility of such political  
4 subdivision where the prisoner is housed, as the case may be, at  
5 least thirty days before the date of hearing on the complaint and  
6 order.

7 (3) At the time of the hearing on the complaint and  
8 order, if it appears that the prisoner has any assets which could  
9 be subject to the claim of the department or political subdivision  
10 under the Correctional Facility Reimbursement Act, the court shall  
11 issue an order requiring any person, corporation, or other legal  
12 entity possessed or having custody of those assets to appropriate  
13 and apply the assets or a portion thereof toward reimbursing the  
14 department or political subdivision as provided for under the act.

15 (4) The amount of reimbursement under the act shall not  
16 be in excess of the per capita cost of care for maintaining  
17 prisoners in the correctional facility in which the prisoner is  
18 housed, and in no case shall such reimbursement exceed thirty-five  
19 dollars per day of incarceration.

20 (5) At the hearing on the complaint and order and before  
21 entering any order on behalf of the department or political  
22 subdivision against the prisoner, the court shall take into  
23 consideration any legal obligation of the prisoner to support  
24 a spouse, minor children, or other dependents and any moral  
25 obligation to support dependents to whom the prisoner is providing

1 or has in fact provided support and any outstanding civil judgments  
2 against the prisoner.

3 (6) If a person, corporation, or other legal entity  
4 neglects or refuses to comply with an order under subsection (3)  
5 of this section, the court shall order the person, corporation, or  
6 other legal entity to appear before the court at such time as the  
7 court may direct and to show cause why the person, corporation, or  
8 other legal entity should not be held in contempt of court.

9 (7) If, in the opinion of the court, the assets of the  
10 prisoner are sufficient to pay the cost of the proceedings under  
11 the act, the assets shall be liable for those costs upon order of  
12 the court.

13 (8) The department or political subdivision may recover  
14 the cost of care incurred or to be incurred, or both, by the  
15 department or political subdivision for the prisoner during the  
16 entire period or periods the prisoner is in a correctional  
17 facility. The department or political subdivision may commence  
18 proceedings under the act until the prisoner has been finally  
19 discharged on the sentence and is no longer under the jurisdiction  
20 of the department or political subdivision.

21 Sec. 8. (1) In seeking to secure reimbursement under the  
22 Correctional Facility Reimbursement Act, the prosecuting attorney  
23 may use any remedy, interim order, or enforcement procedure allowed  
24 by law or court rule, including an ex parte restraining order  
25 to restrain the prisoner or any other person or legal entity in

1 possession or having custody of the estate of the prisoner from  
2 disposing of certain property pending a hearing on an order to  
3 show cause why the particular property should not be applied to  
4 reimburse the department or political subdivision as provided for  
5 under the act.

6 (2) To protect and maintain assets pending resolution of  
7 an action under the act, the court, upon request, may appoint a  
8 receiver.

9 Sec. 9. A prosecuting attorney shall enforce the  
10 Correctional Facility Reimbursement Act, except that if the  
11 Attorney General is enforcing the act, he or she may request the  
12 prosecuting attorney of the political subdivision in which the  
13 prisoner was sentenced or the prosecuting attorney of the political  
14 subdivision in which any asset of a prisoner is located to make an  
15 investigation or assist in legal proceedings under the act.

16 Sec. 10. The sentencing judge, a county sheriff, the  
17 director, and the State Treasurer shall furnish to the prosecuting  
18 attorney all information and assistance possible to enable the  
19 prosecuting attorney to secure reimbursement for the department  
20 or a political subdivision under the Correctional Facility  
21 Reimbursement Act.

22 Sec. 11. (1) The costs of any investigations and  
23 of securing any reimbursements under the Correctional Facility  
24 Reimbursement Act shall be paid from the reimbursements secured  
25 under the act, and the balance of the reimbursements shall be

1 credited to the General Fund.

2 (2) The State Treasurer may determine the amount due  
3 the department or a political subdivision in cases under the act  
4 and render statements thereof, and such sworn statements shall be  
5 considered prima facie evidence of the amount due.

6 Sec. 12. Section 83-183.01, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 83-183.01 A person committed to the department, who is  
9 earning at least minimum wage and is employed pursuant to sections  
10 81-1827 and 83-183, shall have his or her wages set aside by  
11 the chief executive officer of the facility in a separate wage  
12 fund. The director shall adopt and promulgate rules and regulations  
13 which will protect ~~the inmate's~~ such person's rights to due  
14 process, provide for hearing as necessary before the Crime Victim's  
15 Reparations Committee, and govern the disposition of a ~~confined~~  
16 such person's gross monthly wage minus required payroll deductions  
17 and payment of necessary work-related incidental expenses for the  
18 following purposes:

19 (1) For the support of families and dependent relatives  
20 of ~~the respective inmates,~~ such persons;

21 (2) For the discharge of any legal obligations, including  
22 judgments for restitution;

23 (3) To pay all or a part of the cost of their board,  
24 room, clothing, medical, dental, and other correctional services,  
25 if funds collected under the Correctional Facilities Reimbursement

1 Act are insufficient;

2 (4) To provide for funds payable to the person committed  
3 to the department upon his or her release;

4 (5) For the actual value of state property intentionally  
5 or willfully and wantonly destroyed by such person during his or  
6 her commitment;

7 (6) For reasonable costs incurred in returning such  
8 person to the facility to which he or she is committed in the event  
9 of escape; and

10 (7) For deposit in the Victim's Compensation Fund.

11 Sec. 13. Section 83-184, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 83-184 (1) When the conduct, behavior, mental attitude,  
14 and conditions indicate that a person committed to the department  
15 and the general society of the state will be benefited, and there  
16 is reason to believe that the best interests of the people of the  
17 state and the person committed to the department will be served  
18 thereby, in that order, and upon the recommendation of the Board  
19 of Parole in the case of each committed offender, the Director of  
20 Correctional Services may authorize such person, under prescribed  
21 conditions, to:

22 (a) Visit a specifically designated place or places and  
23 return to the same or another facility. An extension of limits  
24 may be granted to permit a visit to a dying relative, attendance  
25 at the funeral of a relative, the obtaining of medical services,

1 the contacting of prospective employers, or for any other reason  
2 consistent with the public interest; or

3 (b) Work at paid employment or participate in a training  
4 program in the community on a voluntary basis whenever:

5 (i) Such paid employment will not result in the  
6 displacement of employed workers, or be applied in skills, crafts,  
7 or trades in which there is a surplus of available gainful labor in  
8 the locality, or impair existing contracts for services; and

9 (ii) The rates of pay and other conditions of employment  
10 will not be less than those paid or provided for work of similar  
11 nature in the locality in which the work is to be performed.

12 (2) The wages earned by a person authorized to work  
13 at paid employment in the community under the provisions of this  
14 section shall be credited by the chief executive officer of the  
15 facility to such person's wage fund.

16 (3) A person authorized to work at paid employment in  
17 the community under the provisions of this section may be required  
18 to pay, and the Director of Correctional Services is authorized to  
19 collect, such costs incident to the person's confinement as the  
20 Director of Correctional Services deems appropriate and reasonable,  
21 if funds collected under the Correctional Facilities Reimbursement  
22 Act are insufficient. Collections shall be deposited in the state  
23 treasury as miscellaneous receipts.

24 (4) The willful failure of a person to remain within  
25 the extended limits of his or her confinement or to return within

1 the time prescribed to a facility designated by the Director  
2 of Correctional Services may be deemed an escape from custody  
3 punishable as provided in section 28-912.

4 (5) No person employed in the community under the  
5 provisions of this section or otherwise released shall, while  
6 working in such employment in the community or going to or from  
7 such employment or during the time of such release, be deemed to be  
8 an agent, employee, or servant of the state.

9 Sec. 14. This act becomes operative on July 1, 2011.

10 Sec. 15. Original sections 83-183.01 and 83-184, Reissue  
11 Revised Statutes of Nebraska, are repealed.