

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 426

Introduced by Riepe, 12.

Read first time January 16, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Treatment and Corrections Act;
2 to amend sections 83-170, 83-173.01, 83-184, 83-1,100, 83-1,102,
3 83-1,110, 83-1,116, and 83-1,119, Reissue Revised Statutes of
4 Nebraska; to define a term; to provide for violent offenders; to
5 provide powers and duties for the Director of Correctional Services,
6 the Parole Administrator, the Board of Parole, and parole officers;
7 and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

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

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

5 (1) Administrator means ~~shall mean~~ the Parole Administrator;

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

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

12 (4) Department means ~~shall mean~~ the Department of Correctional
13 Services;

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

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

18 (7) Good time means ~~shall mean~~ any reduction of sentence granted
19 pursuant to sections 83-1,107 and 83-1,108;

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

22 (9) Minimum term means ~~shall mean~~ the minimum sentence provided by
23 law or the minimum sentence imposed by a court, whichever is longer;

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

26 (11) Parole term means ~~shall mean~~ the time from release on parole to
27 the completion of the maximum term, reduced by good time; ~~and~~

28 (12) Person committed to the department means ~~shall mean~~ any person
29 sentenced or committed to a facility within the department; and -

30 (13) Violent offender means any person convicted of any one or more
31 of the following crimes: Murder in the first degree; murder in the second

1 degree; manslaughter; assault in the first degree; kidnapping; sexual
2 assault in the first degree; or robbery.

3 Sec. 2. Section 83-173.01, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 83-173.01 Prior to releasing a violent offender, the Director of
6 Correctional Services shall ensure that such person is referred to the
7 Office of Parole Administration in order to be enrolled in an electronic
8 monitoring program. If a violent offender is to be released ~~Two weeks~~
9 prior to releasing a person convicted of a Class IA felony or sexual
10 assault in the first degree on furlough or parole, the Director of
11 Correctional Services shall deliver a copy of the release authorization
12 to at least one law enforcement agency in the jurisdiction in which such
13 person is authorized to temporarily reside two weeks prior to releasing
14 the violent offender.

15 Sec. 3. Section 83-184, Reissue Revised Statutes of Nebraska, is
16 amended to read:

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

25 (a) Visit a specifically designated place or places and return to
26 the same or another facility. An extension of limits may be granted to
27 permit a visit to a dying relative, attendance at the funeral of a
28 relative, the obtaining of medical services, the contacting of
29 prospective employers, or for any other reason consistent with the public
30 interest; or

31 (b) Work at paid employment or participate in a training program in

1 the community on a voluntary basis whenever:

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

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

9 (2) The wages earned by a person authorized to work at paid
10 employment in the community under the provisions of this section shall be
11 credited by the chief executive officer of the facility to such person's
12 wage fund. The director shall authorize the chief executive officer to
13 withhold up to five percent of such person's net wages. The funds
14 withheld pursuant to this subsection shall be remitted to the State
15 Treasurer for credit as provided in subsection (2) of section 33-157.

16 (3) A person authorized to work at paid employment in the community
17 under the provisions of this section may be required to pay, and the
18 director is authorized to collect, such costs incident to the person's
19 confinement as the director deems appropriate and reasonable. Collections
20 shall be deposited in the state treasury as miscellaneous receipts.

21 (4) The willful failure of a person to remain within the extended
22 limits of his or her confinement or to return within the time prescribed
23 to a facility designated by the director or to remove, damage, or
24 otherwise interfere with the effectiveness of the electronic monitoring
25 device may be deemed an escape from custody punishable as provided in
26 section 28-912.

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

1 (6) If a person committed to the department is a violent offender,
2 the release of such person under subdivision (1)(a) or (b) of this
3 section shall not be permitted unless such person is enrolled in an
4 electronic monitoring program for a period of not less than ninety days.
5 If the violent offender was sentenced prior to the effective date of this
6 act, the violent offender may be released ninety days prior to his or her
7 actual release date if he or she agrees to be enrolled in an electronic
8 monitoring program for a period of not less than ninety days. The
9 department may assess a fee to the violent offender to help defray the
10 cost of the monitoring program.

11 Sec. 4. Section 83-1,100, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 83-1,100 There is hereby created within the department the Office of
14 Parole Administration. The office shall consist of the Parole
15 Administrator, the field parole service, and all other office staff and
16 contractors. The office shall be responsible for the following:

17 (1) The administration of parole services in the community;

18 (2) The maintenance of all records and files associated with the
19 Board of Parole;

20 (3) The daily supervision and training of staff members of the
21 office; ~~and~~

22 (4) The assessment, evaluation, and supervision of individuals who
23 are subject to lifetime community supervision pursuant to section
24 83-174.03; and -

25 (5) The development, administration, and operation of an electronic
26 monitoring program which includes supervision of violent offenders as a
27 condition of furlough or parole through monitoring by electronic devices
28 which are capable of detecting and reporting a violent offender's
29 presence or absence at the violent offender's approved residence, place
30 of employment, or other approved activity.

31 Nothing in this section shall be construed to prohibit the office

1 from maintaining daily records and files associated with the Board of
2 Pardons.

3 Sec. 5. Section 83-1,102, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 83-1,102 The Parole Administrator shall:

6 (1) Supervise and administer the Office of Parole Administration;

7 (2) Establish and maintain policies, standards, and procedures for
8 the field parole service and the community supervision of sex offenders
9 pursuant to section 83-174.03;

10 (3) Divide the state into parole districts and appoint district
11 parole officers, deputy parole officers, if required, and such other
12 employees as may be required to carry out adequate parole supervision of
13 all parolees, prescribe their powers and duties, and obtain office
14 quarters for staff in each district as may be necessary;

15 (4) Cooperate with the Board of Parole, the courts, the Community
16 Corrections Division of the Nebraska Commission on Law Enforcement and
17 Criminal Justice, and all other agencies, public and private, which are
18 concerned with the treatment or welfare of persons on parole;

19 (5) Provide the Board of Parole and district judges with any record
20 of a parolee which it may require;

21 (6) Make recommendations to the Board of Parole or district judge in
22 cases of violation of the conditions of parole, issue warrants for the
23 arrest of parole violators when so instructed by the board or district
24 judge, notify the Director of Correctional Services of determinations
25 made by the board, and upon instruction of the board, issue certificates
26 of parole and of parole revocation to the facilities and certificates of
27 discharge from parole to parolees;

28 (7) Organize and conduct training programs for the district parole
29 officers and other employees;

30 (8) Use the funds provided under section 83-1,107.02 to augment
31 operational or personnel costs associated with the development,

1 implementation, and evaluation of enhanced parole-based programs and
2 purchase services to provide such programs aimed at enhancing adult
3 parolee supervision in the community and treatment needs of parolees.
4 Such enhanced parole-based programs include, but are not limited to,
5 specialized units of supervision, related equipment purchases and
6 training, and programs that address a parolee's vocational, educational,
7 mental health, behavioral health, or substance abuse treatment needs;

8 (9) Hire employees or contract with private entities to develop,
9 administer, and operate an electronic monitoring program which includes
10 supervision of violent offenders as a condition of furlough or parole
11 through monitoring by electronic devices which are capable of detecting
12 and reporting the violent offenders' presence or absence at a violent
13 offender's approved residence, place of employment, or other approved
14 activity;

15 (10 9) Ensure that any risk or needs assessment instrument utilized
16 by the system be periodically validated;

17 (11 10) Report annually to the Governor and electronically to the
18 Clerk of the Legislature beginning January 1, 2015, the number of parole
19 revocations and the number of technical violations of parole; and

20 (12 11) Exercise all powers and perform all duties necessary and
21 proper in carrying out his or her responsibilities.

22 Sec. 6. Section 83-1,110, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 83-1,110 (1) Every committed offender shall be eligible for parole
25 when the offender has served one-half the minimum term of his or her
26 sentence as provided in sections 83-1,107 and 83-1,108. The board shall
27 conduct a parole review not later than sixty days prior to the date a
28 committed offender becomes eligible for parole as provided in this
29 subsection, except that if a committed offender is eligible for parole
30 upon his or her commitment to the department, a parole review shall occur
31 as early as is practical. No such reduction of sentence shall be applied

1 to any sentence imposing a mandatory minimum term.

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

9 (3) A committed offender who was convicted of a crime prior to the
10 effective date of this act but was sentenced on or after the effective
11 date of this act, who is a violent offender, and is eligible for parole
12 shall be subject to a mandatory electronic monitoring program as a
13 condition of his or her parole. Such violent offender shall be subject to
14 electronic monitoring for the length of time that he or she was
15 originally sentenced or a minimum of ninety days. If the violent offender
16 was sentenced prior to the effective date of this act, the violent
17 offender may be released ninety days prior to his or her actual release
18 date if he or she agrees to be enrolled in an electronic monitoring
19 program for a period of not less than ninety days. The administrator may
20 assess a fee to the violent offender to help defray the cost of the
21 monitoring program.

22 Sec. 7. Section 83-1,116, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 83-1,116 (1) When a committed offender is released on parole, the
25 board shall require as a condition of parole that the offender refrain
26 from engaging in criminal conduct and may require the offender to submit
27 to periodic testing for drug and alcohol use. The board may also require,
28 either at the time of the offender's release on parole or at any time
29 while the offender remains on parole, that the offender conform to any or
30 all of the following conditions of parole:

31 (a) Meet specified family responsibilities;

1 (b) Devote himself or herself to an approved employment;

2 (c) Remain in the geographic limits fixed in the certificate of
3 parole unless granted written permission to leave such limits;

4 (d) Report, as directed, to his or her district parole officer;

5 (e) Reside at the place fixed in the certificate of parole and
6 notify his or her district parole officer of any change in address or
7 employment;

8 (f) Submit himself or herself to available medical, psychological,
9 psychiatric, or other treatment;

10 (g) Refrain from associating with persons known to him or her to be
11 engaged in criminal activities or, without permission of his or her
12 district parole officer, with persons known to him or her to have been
13 convicted of a crime; ~~and~~

14 (h) Satisfy any other conditions specially related to the cause of
15 his or her offense and not unduly restrictive of his or her liberty or
16 conscience; and -

17 (i) If the committed offender is a violent offender, be subject to
18 an electronic monitoring program which includes supervision through
19 monitoring by electronic devices which are capable of detecting and
20 reporting the violent offender's presence or absence at the violent
21 offender's approved residence, place of employment, or other approved
22 activity.

23 (2) Before release on parole, a parolee shall be provided with a
24 certificate of parole setting forth the conditions of the parole.

25 Sec. 8. Section 83-1,119, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 83-1,119 (1) Whenever a parole officer has reasonable cause to
28 believe that a violent offender has violated or is about to violate a
29 condition of parole, including removal of, damage to, or otherwise
30 interfering with the effectiveness of an electronic monitoring device,
31 the parole officer shall call on any peace officer to assist him or her

1 in arresting the violent offender with or without a warrant.

2 (2 ~~1~~) For purposes of this subsection ~~section~~:

3 (a) Administrative sanction means additional parole requirements
4 imposed upon a parolee by his or her parole officer, with the full
5 knowledge and consent of the parolee, designed to hold the parolee
6 accountable for substance abuse or technical violations of conditions of
7 parole, including, but not limited to:

8 (i) Counseling or reprimand by the adult parole administration of
9 the department;

10 (ii) Increased supervision contact requirements;

11 (iii) Increased substance abuse testing;

12 (iv) Referral for substance abuse or mental health evaluation or
13 other specialized assessment, counseling, or treatment;

14 (v) Imposition of a designated curfew for a period to be determined
15 by the adult parole administration; and

16 (vi) Travel restrictions to stay within his or her county of
17 residence or employment unless otherwise permitted by the adult parole
18 administration;

19 (b) Substance abuse violation means a parolee's activities or
20 behaviors associated with the use of chemical substances or related
21 treatment services resulting in a violation of an original condition of
22 parole, including:

23 (i) Positive breath test for the consumption of alcohol if the
24 parolee is required to refrain from alcohol consumption;

25 (ii) Positive urinalysis for the illegal use of drugs;

26 (iii) Failure to report for alcohol testing or drug testing; and

27 (iv) Failure to appear for or complete substance abuse or mental
28 health treatment evaluations or inpatient or outpatient treatment; and

29 (c) Technical violation means a parolee's activities or behaviors
30 which create the opportunity for re-offending or diminish the
31 effectiveness of parole supervision resulting in a violation of an

1 original condition of parole, including, but not limited to:

2 (i) Moving traffic violations;

3 (ii) Failure to report to his or her parole officer;

4 (iii) Leaving the state without the permission of the Board of

5 Parole;

6 (iv) Failure to work regularly or attend training or school;

7 (v) Failure to notify his or her parole officer of change of address
8 or employment;

9 (vi) Frequenting places where controlled substances are illegally
10 sold, used, distributed, or administered; and

11 (vii) Failure to pay fines, court costs, restitution, or any fees
12 imposed pursuant to section 83-1,107.01 as directed.

13 (2) Whenever a parole officer has reasonable cause to believe that a
14 parolee has committed or is about to commit a substance abuse violation
15 or technical violation while on parole, but that the parolee will not
16 attempt to leave the jurisdiction and will not place lives or property in
17 danger, the parole officer shall either:

18 (a) Impose one or more administrative sanctions based upon the
19 parolee's risk level, the severity of the violation, and the parolee's
20 response to the violation. If administrative sanctions are to be imposed,
21 the parolee shall acknowledge in writing the nature of the violation and
22 agree upon the administrative sanction. The parolee has the right to
23 decline to acknowledge the violation. If he or she declines to
24 acknowledge the violation, the parole officer shall take action pursuant
25 to subdivision (2)(b) of this section. A copy of the report shall be
26 submitted to the Board of Parole; or

27 (b) Submit a written report to the Board of Parole, outlining the
28 nature of the parole violation, and request that formal revocation
29 proceedings be instituted against the parolee.

30 (3) Whenever a parole officer has reasonable cause to believe that a
31 parolee has violated or is about to violate a condition of parole by a

1 violation other than a substance abuse violation or a technical violation
2 and the parole officer has reasonable cause to believe that the parolee
3 will not attempt to leave the jurisdiction and will not place lives or
4 property in danger, the parole officer shall submit a written report to
5 the Board of Parole which may, on the basis of such report and such
6 further investigation as it may deem appropriate:

7 (a) Dismiss the charge of violation;

8 (b) Determine whether the parolee violated the conditions of his or
9 her parole;

10 (c) Revoke his or her parole in accordance with the Nebraska
11 Treatment and Corrections Act; or

12 (d) Issue a warrant for the arrest of the parolee.

13 (4) Whenever a parole officer has reasonable cause to believe that a
14 parolee has violated or is about to violate a condition of parole and
15 that the parolee will attempt to leave the jurisdiction or will place
16 lives or property in danger, the parole officer shall arrest the parolee
17 without a warrant and call on any peace officer to assist him or her in
18 doing so.

19 (5) Whenever a parolee or violent offender is arrested with or
20 without a warrant, he or she shall be detained in a local jail or other
21 detention facility. Immediately after such arrest and detention, the
22 parole officer shall notify the Board of Parole and submit a written
23 report of the reason for such arrest. A complete investigation shall be
24 made by the parole administration and submitted to the board. After
25 prompt consideration of such written report, the board shall order the
26 parolee's release from detention or continued confinement to await a
27 final decision on the revocation of parole.

28 (6) The Board of Parole ~~may~~ shall adopt and promulgate rules and
29 regulations to carry out this section.

30 Sec. 9. Original sections 83-170, 83-173.01, 83-184, 83-1,100,
31 83-1,102, 83-1,110, 83-1,116, and 83-1,119, Reissue Revised Statutes of

1 Nebraska, are repealed.