LEGISLATIVE BILL 592

Introduced by Bolz, 29; Chambers, 11; Krist, 10; Mello, 5; Schumacher, 22; Seiler, 33.

Read first time January 21, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to corrections; to amend sections 71-907, 83-171, 83-173, 83-174.01, 83-180, 83-186.01, 83-188, 83-1,100, 83-1,107, 83-1,135, 83-903, 83-904, 83-922, 83-931, 83-932, 83-933, and 83-939, Reissue Revised Statutes of Nebraska; to redefine the term mentally ill and the term dangerous sex offender; to provide a duty for the Director of Correctional Services; to provide notice and change provisions regarding release of persons who are mentally ill and dangerous as prescribed; to change provisions relating to the Board of Parole, the Department of Correctional Services, and the Office of Parole Administration; to rename and transfer supervision of the Division of Community-Centered Services; to authorize and mandate the Department of Correctional Services to provide mental health care and establish certain release and reentry programs for mentally ill committed offenders; to make permanent a reentry planning pilot program; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 71-907, Reissue Revised Statutes of Nebraska, is amended to read:

71-907 Mentally ill means having a psychiatric or personality disorder that involves a severe or substantial impairment of a person's thought processes, sensory input, mood balance, memory, or ability to reason which substantially interferes with such person's ability to meet the ordinary demands of living or interferes with the safety or well-being of others.

Sec. 2. Section 83-171, Reissue Revised Statutes of Nebraska, is amended to read:

83-171 There is hereby created a Department of Correctional Services which shall:

(1) Maintain and administer facilities required for the custody, control, correctional treatment, and rehabilitation of persons committed to the department and for the safekeeping of such other persons as may be remanded to the department in accordance with law; and

(2) Supervise persons committed to the department on parole and administer parole services in the facilities and in the community; and

(2 3) Develop policies and programs for the correctional treatment and rehabilitation of persons committed to the department.

Sec. 3. Section 83-173, Reissue Revised Statutes of Nebraska, is amended to read:

83-173 The Director of Correctional Services shall:

(1) Supervise and be responsible for the administration of the Department of Correctional Services;

(2) Establish, consolidate, or abolish any administrative subdivision within the department and appoint and remove for cause the heads thereof and delegate appropriate powers and duties to them;

(3) Establish and administer policies and programs for the operation of the facilities in the department and for the custody, control, safety, correction, and rehabilitation of persons committed to the department;
(4) Appoint and remove the chief executive officer of each facility and delegate appropriate powers and duties to him or her;
(5) Appoint and remove employees of the department and delegate appropriate powers and duties to them;
(6) Adopt and promulgate rules and regulations for the management, correctional treatment, and rehabilitation of persons committed to the department, the administration of facilities, and the conduct of officers and employees under his or her jurisdiction;
(7) Designate the place of confinement of persons committed to the department subject to section 83-176;
(8) Establish and administer policies that ensure that complete and up-to-date electronic records are maintained for each person committed to the department, including, but not limited to, programming recommendations, program completions, and time spent in housing other than general population;
(9) Collect, develop, and maintain statistical information concerning persons committed to the department, sentencing practices, and correctional treatment as may be useful in penological research or in the development of treatment programs;
(10) Provide training programs designed to equip employees for duty in the facilities and related services of the department and to raise and maintain the educational standards and the level of performance of such employees;
(11) Notify law enforcement agencies of upcoming furloughs as required by section 83-173.01 and section 6 of this act;
(12) Issue or authorize the issuance of a warrant for the arrest of any person committed to the department who has escaped from the custody of the department; and
(13) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.
Sec. 4. Section 83-174.01, Reissue Revised Statutes of Nebraska, is
amended to read:

83-174.01 For purposes of sections 83-174 to 83-174.05:

(1) Dangerous sex offender means (a) a person who suffers from a mental illness which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of one or more sex offenses, and who is substantially unable to control his or her criminal behavior—or (b) a person with a personality disorder which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of two or more sex offenses, and who is substantially unable to control his or her criminal behavior;

(2) Likely to engage in repeat acts of sexual violence means the person's propensity to commit sex offenses resulting in serious harm to others is of such a degree as to pose a menace to the health and safety of the public;

(3) Person who suffers from a mental illness means an individual who has a mental illness as defined in section 71-907;

(4) Person with a personality disorder means an individual diagnosed with a personality disorder;

(4 5) Sex offense means any of the offenses listed in section 29-4003 for which registration as a sex offender is required; and

(5 6) Substantially unable to control his or her criminal behavior means having serious difficulty in controlling or resisting the desire or urge to commit sex offenses.

Sec. 5. Section 83-180, Reissue Revised Statutes of Nebraska, is amended to read:

83-180 (1) When a physician designated by the Director of Correctional Services finds that a person committed to the department suffers from a physical disease or defect, or when a physician or psychologist designated by the director finds that a person committed to the department suffers from a mental illness as defined in section 71-907 disease or defect, the chief executive officer of the facility may order
such person to be segregated from other persons in the facility. If the
physician or psychologist is of the opinion that the person cannot be
given proper treatment in that facility, the director may arrange for his
or her transfer for examination, study, and treatment to any medical-
correctional facility or to another institution in the Department of
Health and Human Services where proper treatment is available. A person
who is so transferred shall remain subject to the jurisdiction and
custody of the Department of Correctional Services and shall be returned
to the department when, prior to the expiration of his or her sentence,
treatment in such facility is no longer necessary.

(2) When the physician or psychologist designated by the Director of
Correctional Services finds that a person committed to the department
suffers from a physical or mental disease or defect or mental illness
which in his or her opinion cannot be properly treated in any facility or
institution in the Department of Health and Human Services, the director
may arrange for his or her transfer for treatment to a hospital or
psychiatric facility outside the department. The director shall make
appropriate arrangements with other public or private agencies for the
transportation to, and for the care, custody, and security of the person
in, such hospital or psychiatric facility. While receiving treatment in
such hospital or psychiatric facility, the person shall remain subject to
the jurisdiction and custody of the Department of Correctional Services
and shall be returned to the department when, prior to the expiration of
his or her sentence, such hospital or psychiatric treatment is no longer
necessary.

(3) The director shall adopt and promulgate rules and regulations to
establish evidence-based criteria which the department shall use to
identify any person nearing release that should be evaluated to determine
whether he or she is a mentally ill and dangerous person as defined in
section 71-908. When two psychiatrists designated by the director
Director of Correctional Services find that a person about to be released
or discharged from any facility is a mentally ill and dangerous person as defined in section 71-908 suffers from a mental disease or defect of such a nature that his or her release or discharge will endanger the public safety or the safety of the offender, the director shall transfer him or her to, or if he or she has already been transferred, permit him or her to remain in, a psychiatric facility in the Department of Health and Human Services and shall promptly commence proceedings under the Nebraska Mental Health Commitment Act applicable to the civil commitment and detention of persons suffering from such disease or defect.

(4) The director shall adopt and promulgate rules and regulations to ensure that all persons who are incarcerated receive a full mental health screening within the first two weeks of intake to determine whether or not an inmate is mentally ill as defined in section 71-907. Such determination shall be reflected in the inmate's individualized treatment plan and shall include adequate mental health treatment. If, at any point during his or her incarceration, an inmate is found to be mentally ill, such determination shall be reflected in the inmate's individualized treatment plan and shall include adequate mental health treatment.

Sec. 6. Two weeks prior to releasing a person on furlough who has been evaluated by the department as potentially mentally ill and dangerous, the director shall deliver a copy of the release authorization to at least one law enforcement agency in the jurisdiction in which such person is authorized to temporarily reside.

Sec. 7. (1) At least ninety days prior to the release from incarceration or civil commitment or the termination of probation or parole supervision of a person who has been evaluated by the department as potentially mentally ill and dangerous, the agency with jurisdiction over the person shall provide notice to the Attorney General, the Nebraska State Patrol, the prosecuting county attorney, and the county attorney in the county in which the person is incarcerated, supervised, or committed.
(2) The board shall also provide notice to the Attorney General, the Nebraska State Patrol, the prosecuting county attorney, and the county attorney in the county in which the person is incarcerated or committed within five days after scheduling a parole hearing for a person who has been evaluated by the department as potentially mentally ill and dangerous.

(3) A county attorney shall, no later than forty-five days after receiving notice of the pending release of a person pursuant to this section, notify the Attorney General whether the county attorney intends to initiate civil commitment proceedings against the person upon his or her release from custody.

Sec. 8. Section 83-186.01, Reissue Revised Statutes of Nebraska, is amended to read:

83-186.01 (1) The Legislature finds that:

(a) Research reveals that children who have parents involved in their lives perform better academically and socially in school, experience fewer mental health and substance abuse issues, and are less likely to commit serious crime;

(b) Strategies to address family stability and intergenerational poverty are specifically needed for children with incarcerated parents; and

(c) Research reveals that family-based reentry planning, including relationship development and housing and employment strategies, results in lower recidivism and greater family economic stability.

(2) The Department of Correctional Services shall implement a two-year pilot program for the purpose of providing in Nebraska adult correctional facilities an evidence-based program of parent education, early literacy, relationship skills development, and reentry planning involving family members of incarcerated parents prior to their release. Incarcerated parents of children between birth and five years of age shall have priority for
participation in the program. The department may award a contract to
operate the pilot program. Such contract shall be based on competitive
bids as provided in sections 73-101 to 73-105. The department shall track
data related to program participation and recidivism.

(3) It is the intent of the Legislature to appropriate two hundred fifty thousand dollars from the General Fund to the department annually in each of fiscal years 2013-14 and 2014-15 for purposes of funding the pilot program required by this section.

Sec. 9. Section 83-188, Reissue Revised Statutes of Nebraska, is amended to read:

83-188 There is hereby created the Board of Parole. For administrative purposes only, the board shall be within the Board of Pardons. Nothing in the Nebraska Treatment and Corrections Act shall be construed to give the director or the Board of Pardons any authority, power, or responsibility over the Board of Parole, its employees, or the exercise of its functions under the provisions of the act. The employees of the Board of Parole shall be covered by the State Personnel System.

Sec. 10. Section 83-1,100, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

(4) The assessment, evaluation, and supervision of individuals who are subject to lifetime community supervision pursuant to section 83-174.03.
Nothing in this section shall be construed to prohibit the office from maintaining daily records and files associated with the Board of Pardons.

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

83-1,107 (1)(a) Within sixty days after initial classification and assignment of any offender committed to the department, all available information regarding such committed offender shall be reviewed and a committed offender department-approved personalized program plan document shall be drawn up. The document shall specifically describe the department-approved personalized program plan and the specific goals the department expects the committed offender to achieve. The document shall also contain a realistic schedule for completion of the department-approved personalized program plan. The department-approved personalized program plan shall be fully explained to the committed offender. The department shall provide programs to allow compliance by the committed offender with the department-approved personalized program plan.

Programming may include, but is not limited to:

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

(ii) Substance abuse treatment;

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

(iv) Constructive, meaningful work programs; and

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

(b) A modification in the department-approved personalized program plan may be made to account for the increased or decreased abilities of the committed offender or the availability of any program. Any modification shall be made only after notice is given to the committed offender. The department may not impose disciplinary action upon any
committed offender solely because of the committed offender's failure to comply with the department-approved personalized program plan, but such failure may be considered by the board in its deliberations on whether or not to grant parole to a committed offender.

(2)(a) The department shall reduce the term of a committed offender by six months for each year of the offender's term and pro rata for any part thereof which is less than a year.

(b) In addition to reductions granted in subdivision (2)(a) of this section, the department shall reduce the term of a committed offender by three days on the first day of each month following a twelve-month period of incarceration within the department during which the offender has not been found guilty of (i) a Class I or Class II offense or (ii) more than three Class III offenses under the department's disciplinary code. Reductions earned under this subdivision shall not be subject to forfeit or withholding by the department.

(c) The total reductions under this subsection shall be credited from the date of sentence, which shall include any term of confinement prior to sentence and commitment as provided pursuant to section 83-1,106, and shall be deducted from the maximum term, to determine the date when discharge from the custody of the state becomes mandatory.

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

(4) The department shall ensure that a release or reentry plan is complete or near completion when the offender has served at least eighty percent of his or her sentence. For purposes of this subsection, release or reentry plan means a comprehensive and individualized strategic plan to ensure an individual's safe and effective transition or reentry into the community to which he or she resides with the primary goal of
reducing recidivism. At a minimum, the release or reentry plan shall include, but not be limited to, consideration of the individual's housing needs, medical or mental health care needs, and transportation and job needs and shall address an individual's barriers to successful release or reentry in order to prevent recidivism. The release or reentry plan does not include an individual's programming needs included in the individual's personalized program plan for use inside the prison.

(5)(a) The department shall make treatment programming available to committed offenders as provided in section 83-1,110.01 and shall include continuing participation in such programming as part of each offender's parolee personalized program plan.

(b) Any committed offender with a mental illness or mental disability shall be provided with appropriate mental health care. The mental health care shall utilize evidenced-based therapy models that include an evaluation component to track the effectiveness of interventions.

(c) Any committed offender with a mental illness or mental disability shall be evaluated before release to ensure that adequate monitoring and programming of the committed offender will take place or, if appropriate, that commitment proceeding under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act will take place.

(6)(a) Within thirty days after any committed offender has been paroled, all available information regarding such parolee shall be reviewed and a parolee personalized program plan document shall be drawn up and approved by the Office of Parole Administration. The document shall specifically describe the approved personalized program plan and the specific goals the office expects the parolee to achieve. The document shall also contain a realistic schedule for completion of the approved personalized program plan. The approved personalized program plan shall be fully explained to the parolee. During the term of parole, the parolee shall comply with the approved personalized program plan and
the office shall provide programs to allow compliance by the parolee with
the approved personalized program plan.

Programming may include, but is not limited to:

(i) Academic and vocational education;
(ii) Substance abuse treatment;
(iii) Mental health and psychiatric treatment, including criminal
personality programming;
(iv) Constructive, meaningful work programs;
(v) Community service programs; and
(vi) Any other program deemed necessary and appropriate by the
office.

(b) A modification in the approved personalized program plan may be
made to account for the increased or decreased abilities of the parolee
or the availability of any program. Any modification shall be made only
after notice is given to the parolee. Intentional failure to comply with
the approved personalized program plan by any parolee as scheduled for
any year, or pro rata part thereof, shall cause disciplinary action to be
taken by the office resulting in the forfeiture of up to a maximum of
three months' good time for the scheduled year.

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

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

Sec. 12. Section 83-903, Reissue Revised Statutes of Nebraska, is
amended to read:
The Board of Parole Department of Correctional Services, in consultation with the department Board of Parole, shall develop a reentry program for individuals incarcerated in a department correctional facility, individuals who have been discharged from a department correctional facility within the prior eighteen months, and parolees. The Office of Parole Administration department shall hire a reentry program administrator to develop and oversee the reentry program and additional staff as needed to implement the reentry program. The purpose of the reentry program is to facilitate a standard systemwide program of reentry for individuals leaving correctional facilities or transitioning off community supervision. The primary objectives of the reentry program are to reduce recidivism, to identify, assess, and provide treatment options for individuals with mental illness, to increase public safety, and to improve the overall transition of the individual from the criminal justice system into the community.

Sec. 13. Section 83-904, Reissue Revised Statutes of Nebraska, is amended to read:

83-904 (1) The Vocational and Life Skills Program is created within the Office of Parole Administration Department of Correctional Services, in consultation with the department Board of Parole. The program shall provide funding to aid in the establishment and provision of community-based vocational training and life skills training for adults who are incarcerated, formerly incarcerated, or serving a period of supervision on either probation or parole.

(2) The Vocational and Life Skills Programming Fund is created. The fund shall consist of appropriations from the Legislature, funds donated by nonprofit entities, funds from the federal government, and funds from other sources. Up to thirty percent of the fund may be used for staffing the reentry program created under section 12 of this act 83-903 and to provide treatment to individuals preparing for release from incarceration. At least seventy percent of the fund shall be used to
provide grants to community-based organizations, community colleges, federally recognized or state-recognized Indian tribes, or nonprofit organizations that provide vocational and life skills programming and services to adults and juveniles who are incarcerated, who have been incarcerated within the prior eighteen months, or who are serving a period of supervision on either probation or parole. The office, in awarding grants, shall give priority to programs, services, or training that results in meaningful employment, and no money from the fund shall be used for capital construction. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings from investment of money in the fund shall be credited to the fund.

(3) The office, in consultation with the department Board of Parole, shall adopt and promulgate rules and regulations to carry out the Vocational and Life Skills Program. The rules and regulations shall include, but not be limited to, a plan for evaluating the effectiveness of programs, services, and training that receive funding and a reporting process for aid recipients. The reentry program administrator shall report quarterly to the Governor and the Clerk of the Legislature beginning October 1, 2014, on the distribution and use of the aid distributed under the Vocational and Life Skills Program, including how many individuals received programming, the types of programming, the cost per individual for each program, service, or training provided, how many individuals successfully completed their programming, and information on any funds that have not been used. The report to the Clerk of the Legislature shall be submitted electronically. Any funds not distributed to community-based organizations, community colleges, federally recognized or state-recognized Indian tribes, or nonprofit organizations under this subsection shall be retained by the department to be distributed on a competitive basis under the Vocational and Life Skills
Program. These funds shall not be expended by the department for any other purpose.

Sec. 14. Section 83-931, Reissue Revised Statutes of Nebraska, is amended to read:

83-931 The Chairperson of the Board of Parole Director of Correctional Services shall have power to appoint as assistant director of the Bureau Division of Community-Centered Services any person who has an appropriate academic background and adequate training and experience in corrections.

Sec. 15. Section 83-932, Reissue Revised Statutes of Nebraska, is amended to read:

83-932 The Bureau Division of Community-Centered Services shall:

(1) Cooperate with the Board of Parole and the Office of Parole Administration in the coordination of Coordinate all adult parole programs and services in the state and supervise the administration of such programs and services;

(2) Cooperate with the Division of Adult Services of the Department of Correctional Services in the coordination of volunteer programs in the adult correctional facilities;

(3) Coordinate and supervise community educational programs to increase community awareness and understanding of the community rehabilitative programs of the bureau division; and

(4) Perform all duties necessary to carry out the provisions of this section.

Sec. 16. Section 83-933, Reissue Revised Statutes of Nebraska, is amended to read:

83-933 The Office of Parole Administration shall be within the Board of Parole Division of Community-Centered Services. Subject to the supervision of the chairperson of the Board of Parole assistant director of the division, the Parole Administrator shall be charged with the administration of parole services in the community pursuant to the
provisions of section 83-1,102, implementation and administration of the
Interstate Compact for Adult Offender Supervision as it affects parolees,
community supervision of sex offenders pursuant to section 83-174.03, and
supervision of parolees either paroled in Nebraska and supervised in
another state or paroled in another state and supervised in Nebraska,
pursuant to the compact.

Sec. 17. Section 83-1,135, Reissue Revised Statutes of Nebraska, is
amended to read:

83-1,135 Sections 83-170 to 83-1,135 and sections 6, 7, 12, 13, 14,
15, and 16 of this act shall be known and may be cited as the Nebraska
Treatment and Corrections Act.

Sec. 18. Section 83-922, Reissue Revised Statutes of Nebraska, is
amended to read:

83-922 The Department of Correctional Services shall fulfill those
functions of state government relating to the custody, study, care,
discipline, training, and treatment of persons in correctional and
detention institutions. There shall be separate divisions within the
department to assist in fulfilling these functions. The divisions shall
be the Division of Community-Centered Services, the Division of
Administrative Services, and the Division of Adult Services. The Director
of Correctional Services shall appoint an assistant director as head of
each division and may remove or change the powers and responsibilities of
the assistant director of any of the divisions at his or her discretion.

Sec. 19. Section 83-939, Reissue Revised Statutes of Nebraska, is
amended to read:

83-939 The Division of Adult Services shall:

(1) Establish, administer, and supervise all correctional facilities
designed to house adult offenders;

(2) Establish and maintain the Adult Diagnostic and Evaluation
Services Program;

(3) Cooperate Develop and coordinate with the Bureau assistance of
the Division of Community-Centered Services, in the coordination of
volunteer programs within adult correctional facilities; and

(4) Perform any other duties assigned by the Director of
Correctional Services.

Sec. 20. Original sections 71-907, 83-171, 83-173, 83-174.01,
83-180, 83-186.01, 83-188, 83-1,100, 83-1,107, 83-1,135, 83-903, 83-904,
83-922, 83-931, 83-932, 83-933, and 83-939, Reissue Revised Statutes of
Nebraska, are repealed.