

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 424**

Introduced by Ebke, 32; Craighead, 6; Hilkemann, 4; McCollister, 20.

Read first time January 13, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Department of Correctional Services; to  
2 amend sections 29-2204.02, 29-2262, 29-3803, 29-3804, 29-4014,  
3 47-123, 81-1850, 83-1,108, 83-1,109, 83-1,110, 83-1,118, 83-1,123,  
4 83-1,125, 83-4,111, 83-4,122, and 83-4,123, Reissue Revised Statutes  
5 of Nebraska, sections 83-170, 83-1,107, and 83-1,122, Revised  
6 Statutes Cumulative Supplement, 2016, and section 29-2204, Revised  
7 Statutes Cumulative Supplement, 2014, as amended by Laws 2015,  
8 LB605, section 60; to provide for earned time; to discontinue the  
9 use of good time as prescribed; to define a term; to harmonize  
10 provisions; to provide an operative date; and to repeal the original  
11 sections.  
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2204, Revised Statutes Cumulative Supplement,  
2 2014, as amended by Laws 2015, LB605, section 60, is amended to read:

3 29-2204 (1) Except when a term of life imprisonment is required by  
4 law, in imposing a sentence upon an offender for any class of felony  
5 other than a Class III, IIIA, or IV felony, the court shall fix the  
6 minimum and the maximum terms of the sentence to be served within the  
7 limits provided by law. The maximum term shall not be greater than the  
8 maximum limit provided by law, and:

9 (a) The minimum term fixed by the court shall be any term of years  
10 less than the maximum term imposed by the court; or

11 (b) The minimum term shall be the minimum limit provided by law.

12 (2) When a maximum term of life is imposed by the court for a Class  
13 IB felony, the minimum term fixed by the court shall be:

14 (a) Any term of years not less than the minimum limit provided by  
15 law; or

16 (b) A term of life imprisonment.

17 (3) When a maximum term of life is imposed by the court for a Class  
18 IA felony, the minimum term fixed by the court shall be:

19 (a) A term of life imprisonment; or

20 (b) Any term of years not less than the minimum limit provided by  
21 law after consideration of the mitigating factors in section 28-105.02,  
22 if the defendant was under eighteen years of age at the time he or she  
23 committed the crime for which he or she was convicted.

24 (4) When the court is of the opinion that imprisonment may be  
25 appropriate but desires more detailed information as a basis for  
26 determining the sentence to be imposed than has been provided by the  
27 presentence report required by section 29-2261, the court may commit an  
28 offender to the Department of Correctional Services. During that time,  
29 the department shall conduct a complete study of the offender as provided  
30 in section 29-2204.03.

31 (5) Except when a term of life is required by law, whenever the

1 defendant was under eighteen years of age at the time he or she committed  
2 the crime for which he or she was convicted, the court may, in its  
3 discretion, instead of imposing the penalty provided for the crime, make  
4 such disposition of the defendant as the court deems proper under the  
5 Nebraska Juvenile Code.

6 (6)(a) When imposing an indeterminate sentence upon an offender  
7 under this section, the court shall:

8 (i) Advise the offender on the record the time the offender will  
9 serve on his or her minimum term before attaining parole eligibility  
10 assuming that no earned ~~good~~ time for which the offender will be eligible  
11 is lost; and

12 (ii) Advise the offender on the record the time the offender will  
13 serve on his or her maximum term before attaining mandatory release  
14 assuming that no earned ~~good~~ time for which the offender will be eligible  
15 is lost.

16 (b) If any discrepancy exists between the statement of the minimum  
17 limit of the sentence and the statement of parole eligibility or between  
18 the statement of the maximum limit of the sentence and the statement of  
19 mandatory release, the statements of the minimum limit and the maximum  
20 limit shall control the calculation of the offender's term.

21 (c) If the court imposes more than one sentence upon an offender or  
22 imposes a sentence upon an offender who is at that time serving another  
23 sentence, the court shall state whether the sentences are to be  
24 concurrent or consecutive.

25 Sec. 2. Section 29-2204.02, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 29-2204.02 (1) Except when a term of probation is required by law as  
28 provided in subsection (2) of this section or except as otherwise  
29 provided in subsection (4) of this section, in imposing a sentence upon  
30 an offender for a Class III, IIIA, or IV felony, the court shall:

31 (a) Impose a determinate sentence of imprisonment within the

1 applicable range in section 28-105; and

2 (b) Impose a sentence of post-release supervision, under the  
3 jurisdiction of the Office of Probation Administration, within the  
4 applicable range in section 28-105.

5 (2) If the criminal offense is a Class IV felony, the court shall  
6 impose a sentence of probation unless:

7 (a) The defendant is concurrently or consecutively sentenced to  
8 imprisonment for any felony other than another Class IV felony;

9 (b) The defendant has been deemed a habitual criminal pursuant to  
10 section 29-2221; or

11 (c) There are substantial and compelling reasons why the defendant  
12 cannot effectively and safely be supervised in the community, including,  
13 but not limited to, the criteria in subsections (2) and (3) of section  
14 29-2260. Unless other reasons are found to be present, that the offender  
15 has not previously succeeded on probation is not, standing alone, a  
16 substantial and compelling reason.

17 (3) If a sentence of probation is not imposed, the court shall state  
18 its reasoning on the record, advise the defendant of his or her right to  
19 appeal the sentence, and impose a sentence as provided in subsection (1)  
20 of this section.

21 (4) For any sentence of imprisonment for a Class III, IIIA, or IV  
22 felony for an offense committed on or after August 30, 2015, imposed  
23 consecutively or concurrently with (a) a sentence for a Class III, IIIA,  
24 or IV felony for an offense committed prior to August 30, 2015, or (b) a  
25 sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA  
26 felony, the court shall impose an indeterminate sentence within the  
27 applicable range in section 28-105 that does not include a period of  
28 post-release supervision, in accordance with the process set forth in  
29 section 29-2204.

30 (5) For any sentence of imprisonment for a misdemeanor imposed  
31 consecutively or concurrently with a sentence of imprisonment for a Class

1 III, IIIA, or IV felony for an offense committed on or after August 30,  
2 2015, the court shall impose a determinate sentence within the applicable  
3 range in section 28-106 unless the person is also committed to the  
4 Department of Correctional Services in accordance with section 29-2204  
5 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony  
6 committed prior to August 30, 2015, or (b) a sentence of imprisonment for  
7 a Class I, IA, IB, IC, ID, II, or IIA felony.

8 (6) If the defendant was under eighteen years of age at the time he  
9 or she committed the crime for which he or she was convicted, the court  
10 may, in its discretion, instead of imposing the penalty provided for the  
11 crime, make such disposition of the defendant as the court deems proper  
12 under the Nebraska Juvenile Code.

13 (7)(a) When imposing a determinate sentence upon an offender under  
14 this section, the court shall:

15 (i) Advise the offender on the record the time the offender will  
16 serve on his or her term of imprisonment before his or her term of post-  
17 release supervision assuming that no earned good ~~good~~ time for which the  
18 offender will be eligible is lost;

19 (ii) Advise the offender on the record the time the offender will  
20 serve on his or her term of post-release supervision; and

21 (iii) When imposing a sentence following revocation of post-release  
22 supervision, advise the offender on the record the time the offender will  
23 serve on his or her term of imprisonment, including credit for time  
24 served, assuming that no earned good ~~good~~ time for which the offender will be  
25 eligible is lost.

26 (b) If a period of post-release supervision is required but not  
27 imposed by the sentencing court, the term of post-release supervision  
28 shall be the minimum provided by law.

29 (c) If the court imposes more than one sentence upon an offender or  
30 imposes a sentence upon an offender who is at that time serving another  
31 sentence, the court shall state whether the sentences are to be

1 concurrent or consecutive.

2 (d) If the offender has been sentenced to two or more determinate  
3 sentences and one or more terms of post-release supervision, the offender  
4 shall serve all determinate sentences before being released on post-  
5 release supervision.

6 Sec. 3. Section 29-2262, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 29-2262 (1) When a court sentences an offender to probation, it  
9 shall attach such reasonable conditions as it deems necessary or likely  
10 to insure that the offender will lead a law-abiding life. No offender  
11 shall be sentenced to probation if he or she is deemed to be a habitual  
12 criminal pursuant to section 29-2221.

13 (2) The court may, as a condition of a sentence of probation,  
14 require the offender:

15 (a) To refrain from unlawful conduct;

16 (b) To be confined periodically in the county jail or to return to  
17 custody after specified hours but not to exceed the lesser of ninety days  
18 or the maximum jail term provided by law for the offense;

19 (c) To meet his or her family responsibilities;

20 (d) To devote himself or herself to a specific employment or  
21 occupation;

22 (e) To undergo medical or psychiatric treatment and to enter and  
23 remain in a specified institution for such purpose;

24 (f) To pursue a prescribed secular course of study or vocational  
25 training;

26 (g) To attend or reside in a facility established for the  
27 instruction, recreation, or residence of persons on probation;

28 (h) To refrain from frequenting unlawful or disreputable places or  
29 consorting with disreputable persons;

30 (i) To possess no firearm or other dangerous weapon if convicted of  
31 a felony, or if convicted of any other offense, to possess no firearm or

1 other dangerous weapon unless granted written permission by the court;

2 (j) To remain within the jurisdiction of the court and to notify the  
3 court or the probation officer of any change in his or her address or his  
4 or her employment and to agree to waive extradition if found in another  
5 jurisdiction;

6 (k) To report as directed to the court or a probation officer and to  
7 permit the officer to visit his or her home;

8 (l) To pay a fine in one or more payments as ordered;

9 (m) To pay for tests to determine the presence of drugs or alcohol,  
10 psychological evaluations, offender assessment screens, and  
11 rehabilitative services required in the identification, evaluation, and  
12 treatment of offenders if such offender has the financial ability to pay  
13 for such services;

14 (n) To perform community service as outlined in sections 29-2277 to  
15 29-2279 under the direction of his or her probation officer;

16 (o) To be monitored by an electronic surveillance device or system  
17 and to pay the cost of such device or system if the offender has the  
18 financial ability;

19 (p) To participate in a community correctional facility or program  
20 as provided in the Community Corrections Act;

21 (q) To successfully complete an incarceration work camp program as  
22 determined by the Department of Correctional Services;

23 (r) To satisfy any other conditions reasonably related to the  
24 rehabilitation of the offender;

25 (s) To make restitution as described in sections 29-2280 and  
26 29-2281; or

27 (t) To pay for all costs imposed by the court, including court costs  
28 and the fees imposed pursuant to section 29-2262.06.

29 (3) When jail time is imposed as a condition of probation under  
30 subdivision (2)(b) of this section, the court shall advise the offender  
31 on the record the time the offender will serve in jail assuming no earned

1 ~~good~~ time for which the offender will be eligible under section 47-502 is  
2 lost and assuming none of the jail time imposed as a condition of  
3 probation is waived by the court.

4 (4) Jail time may only be imposed as a condition of probation under  
5 subdivision (2)(b) of this section if:

6 (a) The court would otherwise sentence the defendant to a term of  
7 imprisonment instead of probation; and

8 (b) The court makes a finding on the record that, while probation is  
9 appropriate, periodic confinement in the county jail as a condition of  
10 probation is necessary because a sentence of probation without a period  
11 of confinement would depreciate the seriousness of the offender's crime  
12 or promote disrespect for law.

13 (5) In all cases in which the offender is guilty of violating  
14 section 28-416, a condition of probation shall be mandatory treatment and  
15 counseling as provided by such section.

16 (6) In all cases in which the offender is guilty of a crime covered  
17 by the DNA Identification Information Act, a condition of probation shall  
18 be the collecting of a DNA sample pursuant to the act and the paying of  
19 all costs associated with the collection of the DNA sample prior to  
20 release from probation.

21 Sec. 4. Section 29-3803, Reissue Revised Statutes of Nebraska, is  
22 amended to read:

23 29-3803 Any person who is imprisoned in a facility operated by the  
24 Department of Correctional Services may request in writing to the  
25 director final disposition of any untried indictment, information, or  
26 complaint pending against him or her in this state. Upon receiving any  
27 request from a prisoner for final disposition of any untried indictment,  
28 information, or complaint, the director shall:

29 (1) Furnish the prosecutor with a certificate stating the term of  
30 commitment under which the prisoner is being held, the time already  
31 served on the sentence, the time remaining to be served, the good time

1 earned or the accrued earned time, the time of the prisoner's parole  
2 eligibility, and any decision of the Board of Parole relating to the  
3 prisoner;

4 (2) Send by registered or certified mail, return receipt requested,  
5 one copy of the request and the certificate to the court in which the  
6 untried indictment, information, or complaint is pending and one copy to  
7 the prosecutor charged with the duty of prosecuting it; and

8 (3) Offer to deliver temporary custody of the prisoner to the  
9 appropriate authority in the city or county where the untried indictment,  
10 information, or complaint is pending.

11 Sec. 5. Section 29-3804, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13 29-3804 The prosecutor in a city or county in which an untried  
14 indictment, information, or complaint is pending shall be entitled to  
15 have a prisoner, against whom he or she has lodged a detainer and who is  
16 serving a term of imprisonment in any facility operated by the Department  
17 of Correctional Services, made available upon presentation of a written  
18 request for temporary custody or availability to the director. The court  
19 having jurisdiction of such indictment, information, or complaint shall  
20 duly approve, record, and transmit the prosecutor's request. Upon receipt  
21 of the prosecutor's written request the director shall:

22 (1) Furnish the prosecutor with a certificate stating the term of  
23 commitment under which the prisoner is being held, the time already  
24 served, the time remaining to be served on the sentence, the good time  
25 earned or the accrued earned time, the time of the prisoner's parole  
26 eligibility, and any decision of the Board of Parole relating to the  
27 prisoner; and

28 (2) Offer to deliver temporary custody of the prisoner to the  
29 appropriate authority in the city or county where the untried indictment,  
30 information, or complaint is pending in order that speedy and efficient  
31 prosecution may be had.

1           Sec. 6. Section 29-4014, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3           29-4014 Any person convicted of a crime requiring registration as a  
4 sex offender pursuant to section 29-4003 and committed to the Department  
5 of Correctional Services shall attend appropriate sex offender treatment  
6 and counseling programming offered by the department. Refusal to  
7 participate in such programming shall not result in disciplinary action  
8 or a loss of good-time credit or earned time ~~good-time credit~~ on the part  
9 of the offender but shall require a civil commitment evaluation pursuant  
10 to section 83-174.02 prior to the completion of his or her criminal  
11 sentence.

12           Sec. 7. Section 47-123, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14           47-123 Inmate participation in community service projects shall be  
15 voluntary and no extra good-time credit or earned time shall be given to  
16 inmates who participate in a community service project. In no event shall  
17 an inmate's decision to participate or not participate in a community  
18 service project have any bearing on the granting of good-time credit or  
19 earned time.

20           Sec. 8. Section 81-1850, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22           81-1850 (1) Upon request of the victim and at the time of conviction  
23 of the offender, the county attorney of the jurisdiction in which a  
24 person is convicted of a felony shall forward to the Board of Parole, the  
25 Department of Correctional Services, the county corrections agency, or  
26 the Department of Health and Human Services the name and address of any  
27 victim, as defined in section 29-119, of the convicted person. The board,  
28 the Department of Correctional Services, the county corrections agency,  
29 or the Department of Health and Human Services shall include the name in  
30 the file of the convicted person, but the name shall not be part of the  
31 public record of any parole hearings of the convicted person. Any victim,

1 including a victim who has waived his or her right to notification at the  
2 time of conviction, may request the notification prescribed in this  
3 section, as applicable, by sending a written request to the board, the  
4 Department of Correctional Services, the county corrections agency, or  
5 the Department of Health and Human Services any time after the convicted  
6 person is incarcerated and until the convicted person is no longer under  
7 the jurisdiction of the board, the county corrections agency, or the  
8 Department of Correctional Services or, if the person is under the  
9 jurisdiction of the Department of Health and Human Services, within the  
10 three-year period after the convicted person is no longer under the  
11 jurisdiction of the board, the county corrections agency, or the  
12 Department of Correctional Services.

13 (2) A victim whose name appears in the file of the convicted person  
14 shall be notified by the Board of Parole:

15 (a) Within ninety days after conviction of an offender, of the  
16 tentative date of release and the earliest parole eligibility date of  
17 such offender;

18 (b) Of any parole hearings or proceedings;

19 (c) Of any decision of the Board of Parole;

20 (d) When a convicted person who is on parole is returned to custody  
21 because of parole violations; and

22 (e) If the convicted person has been adjudged a mentally disordered  
23 sex offender or is a convicted sex offender, when such person is released  
24 from custody or treatment.

25 Such notification shall be given in person, by telecommunication, or  
26 by mail.

27 (3) A victim whose name appears in the file of the convicted person  
28 shall be notified by the Department of Correctional Services or a county  
29 corrections agency:

30 (a) When a convicted person is granted a furlough or release from  
31 incarceration for twenty-four hours or longer or any transfer of the

1 convicted person to community status;

2 (b) When a convicted person is released into community-based  
3 programs, including educational release and work release programs. Such  
4 notification shall occur at the beginning and termination of any such  
5 program;

6 (c) When a convicted person escapes or does not return from a  
7 granted furlough or release and again when the convicted person is  
8 returned into custody;

9 (d) When a convicted person is discharged from custody upon  
10 completion of his or her sentence. Such notice shall be given at least  
11 thirty days before discharge, when practicable;

12 (e) Of the (i) department's calculation of the earliest parole  
13 eligibility date of the prisoner with all potential good-time ~~good-time~~  
14 or disciplinary credits or earned time considered if the sentence exceeds  
15 ninety days or (ii) county corrections agency's calculation of the  
16 earliest release date of the prisoner. The victim may request one notice  
17 of the calculation described in this subdivision. Such information shall  
18 be mailed not later than thirty days after receipt of the request;

19 (f) Of any reduction in the prisoner's minimum sentence; and

20 (g) Of the victim's right to submit a statement as provided in  
21 section 81-1848.

22 (4) A victim whose name appears in the file of a convicted person  
23 shall be notified by the Department of Health and Human Services:

24 (a) When a person convicted of an offense listed in subsection (5)  
25 of this section becomes the subject of a petition pursuant to the  
26 Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act  
27 prior to his or her discharge from custody upon the completion of his or  
28 her sentence or within thirty days after such discharge. The county  
29 attorney who filed the petition shall notify the Department of  
30 Correctional Services of such petition. The Department of Correctional  
31 Services shall forward the names and addresses of victims appearing in

1 the file of the convicted person to the Department of Health and Human  
2 Services;

3 (b) When a person under a mental health board commitment pursuant to  
4 subdivision (a) of this subsection escapes from an inpatient facility  
5 providing board-ordered treatment and again when the person is returned  
6 to an inpatient facility;

7 (c) When a person under a mental health board commitment pursuant to  
8 subdivision (a) of this subsection is discharged or has a change in  
9 disposition from inpatient board-ordered treatment;

10 (d) When a person under a mental health board commitment pursuant to  
11 subdivision (a) of this subsection is granted a furlough or release for  
12 twenty-four hours or longer; and

13 (e) When a person under a mental health board commitment pursuant to  
14 subdivision (a) of this subsection is released into educational release  
15 programs or work release programs. Such notification shall occur at the  
16 beginning and termination of any such program.

17 (5) Subsection (4) of this section applies to persons convicted of  
18 at least one of the following offenses which is also alleged to be the  
19 recent act or threat underlying the commitment of such persons as  
20 mentally ill and dangerous or as dangerous sex offenders as defined in  
21 section 83-174.01:

22 (a) Murder in the first degree pursuant to section 28-303;

23 (b) Murder in the second degree pursuant to section 28-304;

24 (c) Kidnapping pursuant to section 28-313;

25 (d) Assault in the first degree pursuant to section 28-308;

26 (e) Assault in the second degree pursuant to section 28-309;

27 (f) Sexual assault in the first degree pursuant to section 28-319;

28 (g) Sexual assault in the second degree pursuant to section 28-320;

29 (h) Sexual assault of a child in the first degree pursuant to  
30 section 28-319.01;

31 (i) Sexual assault of a child in the second or third degree pursuant

1 to section 28-320.01;

2 (j) Stalking pursuant to section 28-311.03; or

3 (k) An attempt, solicitation, or conspiracy to commit an offense  
4 listed in subdivisions (a) through (j) of this subsection.

5 (6) A victim whose name appears in the file of a convicted person  
6 shall be notified by the Board of Pardons:

7 (a) Of any pardon or commutation proceedings; and

8 (b) If a pardon or commutation has been granted.

9 (7) The Board of Parole, the Department of Correctional Services,  
10 the Department of Health and Human Services, and the Board of Pardons  
11 shall adopt and promulgate rules and regulations as needed to carry out  
12 this section.

13 (8) The victim's address and telephone number maintained by the  
14 Department of Correctional Services, the Department of Health and Human  
15 Services, the county corrections agency, or the Board of Parole pursuant  
16 to subsection (1) of this section shall be exempt from disclosure under  
17 public records laws and federal freedom of information laws, as such laws  
18 existed on January 1, 2004.

19 Sec. 9. Section 83-170, Revised Statutes Cumulative Supplement,  
20 2016, is amended to read:

21 83-170 As used in the Nebraska Treatment and Corrections Act, unless  
22 the context otherwise requires:

23 (1) Administrator means the Parole Administrator;

24 (2) Board means the Board of Parole;

25 (3) Committed offender means any person who, under any provision of  
26 law, is sentenced or committed to a facility operated by the department  
27 or is sentenced or committed to the department other than a person  
28 adjudged to be as described in subdivision (1), (2), (3)(b), or (4) of  
29 section 43-247 by a juvenile court;

30 (4) Department means the Department of Correctional Services;

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

1        (6) Earned time means any reduction of sentence granted pursuant to  
2 section 83-1,107 and 83-1,108 for sentences imposed on or after the  
3 operative date of this act;

4        (7) (6) Facility means any prison, reformatory, training school,  
5 reception center, community guidance center, group home, or other  
6 institution operated by the department;

7        (8) (7) Good time means any reduction of sentence granted pursuant  
8 to sections 83-1,107 and 83-1,108 for sentences imposed prior to the  
9 operative date of this act;

10       (9) (8) Maximum term means the maximum sentence provided by law or  
11 the maximum sentence imposed by a court, whichever is shorter;

12       (10) (9) Minimum term means the minimum sentence provided by law or  
13 the minimum sentence imposed by a court, whichever is longer;

14       (11) (10) Pardon authority means the power to remit fines and  
15 forfeitures and to grant respites, reprieves, pardons, or commutations;

16       (12) (11) Parole term means the time from release on parole to the  
17 completion of the maximum term, reduced by good time or earned time;

18       (13) (12) Person committed to the department means any person  
19 sentenced or committed to a facility within the department;

20       (14) (13) Restrictive housing means conditions of confinement that  
21 provide limited contact with other offenders, strictly controlled  
22 movement while out of cell, and out-of-cell time of less than twenty-four  
23 hours per week; and

24       (15) (14) Solitary confinement means the status of confinement of an  
25 inmate in an individual cell having solid, soundproof doors and which  
26 deprives the inmate of all visual and auditory contact with other  
27 persons.

28       Sec. 10. Section 83-1,107, Revised Statutes Cumulative Supplement,  
29 2016, is amended to read:

30       83-1,107 (1)(a) Within sixty days after initial classification and  
31 assignment of any offender committed to the department, all available

1 information regarding such committed offender shall be reviewed and a  
2 committed offender department-approved personalized program plan document  
3 shall be drawn up. The document shall specifically describe the  
4 department-approved personalized program plan and the specific goals the  
5 department expects the committed offender to achieve. The document shall  
6 also contain a realistic schedule for completion of the department-  
7 approved personalized program plan. The department-approved personalized  
8 program plan shall be developed with the active participation of the  
9 committed offender. The department shall provide programs to allow  
10 compliance by the committed offender with the department-approved  
11 personalized program plan.

12 Programming may include, but is not limited to:

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

15 (ii) Substance abuse treatment;

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

18 (iv) Constructive, meaningful work programs; and

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

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

30 (2)(a) This subdivision applies to sentences imposed prior to the  
31 operative date of this act. The department shall reduce the term of a

1 committed offender by six months for each year of the offender's term and  
2 pro rata for any part thereof which is less than a year.

3 (b) This subdivision applies to sentences imposed on or after the  
4 operative date of this act. The department may apply earned time only to  
5 eligibility for parole or mandatory supervision. Earned time does not  
6 otherwise affect a committed offender's term. Earned time is a privilege  
7 and not a right. The department may grant earned time to a committed  
8 offender only if the department finds that the committed offender is  
9 actively engaged in a vocational or an educational program, in an  
10 industrial program or other work program, or in a treatment program,  
11 unless the department finds that the committed offender is not capable of  
12 participating in such a program. A committed offender may accrue earned  
13 time in an amount determined by the department that does not exceed  
14 fifteen days for each thirty days actually served for the diligent  
15 participation in a vocational or educational program provided to inmates  
16 by the department. For purposes of this subdivision, participation in  
17 vocational or an educational program includes the participation of the  
18 committed offender as a tutor or pupil. The department may not award  
19 earned time for the participation in a literacy program unless the  
20 department determines that the committed offender participated in good  
21 faith and with diligence as a tutor or pupil.

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

30 (d) ~~(c)~~ The total reductions under this subsection shall be credited  
31 from the date of sentence, which shall include any term of confinement

1 prior to sentence and commitment as provided pursuant to section  
2 83-1,106, and shall be deducted from the maximum term, to determine the  
3 date when discharge from the custody of the state becomes mandatory.

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

10 (4)(a) This subsection applies to sentences imposed on or after the  
11 operative date of this act. If a committed offender commits an offense or  
12 violates a rule of the department during the actual term of imprisonment  
13 of the committed offender in the department or in a transfer facility,  
14 the department may forfeit all or any part of the committed offender's  
15 accrued earned time or, in accordance with a policy adopted under  
16 subdivision (4)(c) of this section, place all or any part of the  
17 committed offender's accrued earned time under suspension. The department  
18 may not restore earned time forfeited under this subsection but may  
19 reinstate earned time suspended under this subsection, except that the  
20 department may restore earned time forfeited on a revocation that does  
21 not involve a new criminal conviction after the committed offender has  
22 served at least three months of good behavior in the facility subject to  
23 the policies established by the facility.

24 (b) On the revocation of parole or mandatory supervision of a  
25 committed offender, the committed offender shall forfeit all earned time  
26 previously accrued. Upon return to a Department of Correctional Services  
27 adult correctional facility, the committed offender may accrue new earned  
28 time for subsequent time served in the facility.

29 (c) The department shall establish a policy regarding the suspension  
30 of earned time under subdivision (4)(a) of this section. The policy shall  
31 provide that:

1        (i) The department will consider the severity of a committed  
2 offender's offense or violation in determining whether to suspend all or  
3 part of a committed offender's earned time instead of forfeiting the  
4 committed offender's earned time; and

5        (ii) During any period that earned time is under suspension, earned  
6 time placed under suspension may not be used for purposes of granting  
7 privileges to a committed offender or to compute a committed offender's  
8 eligibility for parole or mandatory supervision.

9        (5) (4) The department shall ensure that a release or reentry plan  
10 is complete or near completion when the offender has served at least  
11 eighty percent of his or her sentence. For purposes of this subsection,  
12 release or reentry plan means a comprehensive and individualized  
13 strategic plan to ensure an individual's safe and effective transition or  
14 reentry into the community to which he or she resides with the primary  
15 goal of reducing recidivism. At a minimum, the release or reentry plan  
16 shall include, but not be limited to, consideration of the individual's  
17 housing needs, medical or mental health care needs, and transportation  
18 and job needs and shall address an individual's barriers to successful  
19 release or reentry in order to prevent recidivism. The release or reentry  
20 plan does not include an individual's programming needs included in the  
21 individual's personalized program plan for use inside the prison.

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

26        (b) Any committed offender with a mental illness shall be provided  
27 with the community standard of mental health care. The mental health care  
28 shall utilize evidence-based therapy models that include an evaluation  
29 component to track the effectiveness of interventions.

30        (c) Any committed offender with a mental illness shall be evaluated  
31 before release to ensure that adequate monitoring and treatment of the

1 committed offender will take place or, if appropriate, that a commitment  
2 proceeding under the Nebraska Mental Health Commitment Act or the Sex  
3 Offender Commitment Act will take place.

4 (7)(a) ~~(6)(a)~~ Within thirty days after any committed offender has  
5 been paroled, all available information regarding such parolee shall be  
6 reviewed and a parolee personalized program plan document shall be drawn  
7 up and approved by the Office of Parole Administration. The document  
8 shall specifically describe the approved personalized program plan and  
9 the specific goals the office expects the parolee to achieve. The  
10 document shall also contain a realistic schedule for completion of the  
11 approved personalized program plan. The approved personalized program  
12 plan shall be developed with the active participation of the parolee.  
13 During the term of parole, the parolee shall comply with the approved  
14 personalized program plan and the office shall provide programs to allow  
15 compliance by the parolee with the approved personalized program plan.

16 Programming may include, but is not limited to:

17 (i) Academic and vocational education;

18 (ii) Substance abuse treatment;

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

21 (iv) Constructive, meaningful work programs;

22 (v) Community service programs; and

23 (vi) Any other program deemed necessary and appropriate by the  
24 office.

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

1 three months' good time or suspension or forfeiture of up to three  
2 months' earned time for the scheduled year.

3 (8) ~~(7)~~ While the offender is in the custody of the board,  
4 reductions of terms granted pursuant to subdivisions (2)(a) and (b)  
5 ~~subdivision (2)(a)~~ of this section may be forfeited, suspended, withheld,  
6 and restored by the administrator with the approval of the director after  
7 the offender has been notified regarding the charges of misconduct or  
8 breach of the conditions of parole. In addition, the board may recommend  
9 such forfeitures of good time or suspensions or forfeitures of earned  
10 time to the director.

11 (9) ~~(8)~~ Good time or other reductions of sentence granted under ~~the~~  
12 ~~provisions of~~ any law prior to July 1, 1996, may be forfeited, withheld,  
13 or restored in accordance with the ~~terms of the~~ Nebraska Treatment and  
14 Corrections Act. Good time or other reductions of sentence granted under  
15 any law prior to the operative date of this act may be forfeited,  
16 withheld, or restored in accordance with the act.

17 (10) ~~(9)~~ Pursuant to rules and regulations adopted by the probation  
18 administrator and the director, an individualized post-release  
19 supervision plan shall be collaboratively prepared by the Office of  
20 Probation Administration and the department and provided to the court to  
21 prepare individuals under custody of the department for post-release  
22 supervision. All records created during the period of incarceration shall  
23 be shared with the Office of Probation Administration and considered in  
24 preparation of the post-release supervision plan.

25 Sec. 11. Section 83-1,108, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 83-1,108 (1) The board shall reduce, for good conduct in conformity  
28 with the conditions of parole, a parolee's parole term by ten days for  
29 each month of such term. The total of such reductions shall be deducted  
30 from the maximum term, less good time or earned time granted pursuant to  
31 section 83-1,107, to determine the date when discharge from parole

1 becomes mandatory.

2 (2) Reductions of the parole terms may be forfeited, suspended,  
3 withheld, and restored by the board after the parolee has been consulted  
4 regarding any charge of misconduct or breach of the conditions of parole.

5 Sec. 12. Section 83-1,109, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 83-1,109 The chief executive officer of a facility shall regularly  
8 report all good time and earned time and all forfeitures, withholdings,  
9 and restorations of good time and earned time to the director. On the  
10 basis of such report, the director shall inform the board and the  
11 administrator of all committed offenders who are expected to become  
12 eligible for release on parole within the next three months.

13 Sec. 13. Section 83-1,110, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15 83-1,110 (1) Every committed offender shall be eligible for parole  
16 when the offender has served one-half the minimum term of his or her  
17 sentence as provided in sections 83-1,107 and 83-1,108. The board shall  
18 conduct a parole review not later than sixty days prior to the date a  
19 committed offender becomes eligible for parole as provided in this  
20 subsection, except that if a committed offender is eligible for parole  
21 upon his or her commitment to the department, a parole review shall occur  
22 as early as is practical. No such reduction of sentence shall be applied  
23 to any sentence imposing a mandatory minimum term.

24 (2) Every committed offender sentenced to consecutive terms, whether  
25 received at the same time or at any time during the original sentence,  
26 shall be eligible for release on parole when the offender has served the  
27 total of one-half the minimum term as provided in sections 83-1,107 and  
28 83-1,108. The maximum terms shall be added to compute the new maximum  
29 term which, less good time or earned time, shall determine the date when  
30 discharge from the custody of the state becomes mandatory.

31 Sec. 14. Section 83-1,118, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 83-1,118 (1) If, in the opinion of the board, a parolee does not  
3 require guidance or supervision, the board may dispense with and  
4 terminate such supervision.

5 (2) The board may discharge a parolee from parole at any time if  
6 such discharge is compatible with the protection of the public and is in  
7 the best interest of the parolee.

8 (3) The board shall discharge a parolee from parole when the time  
9 served in the custody of the department and the time served on parole  
10 equal the maximum term less good time or earned time.

11 (4) The department shall discharge a committed offender from the  
12 custody of the department when the time served in the facility equals the  
13 maximum term less good time or earned time.

14 (5) Upon completion of the lawful requirements of the sentence, the  
15 department shall provide the parolee or committed offender with a written  
16 notice regarding his or her civil rights. The notice shall inform the  
17 parolee or committed offender that voting rights are restored two years  
18 after completion of the sentence. The notice shall also include  
19 information on restoring other civil rights through the pardon process,  
20 including application to and hearing by the Board of Pardons.

21 (6) The Board of Parole may discharge a parolee from parole when  
22 such parolee is under the supervision of another state's correctional  
23 institution and such offender has reached the expiration date of his or  
24 her Nebraska parole term.

25 Sec. 15. Section 83-1,122, Revised Statutes Cumulative Supplement,  
26 2016, is amended to read:

27 83-1,122 (1) If the board finds that the parolee has engaged in  
28 criminal conduct, the board may order revocation of the parolee's parole.

29 (2) If the board finds that the parolee did violate a condition of  
30 parole but is of the opinion that revocation of parole is not  
31 appropriate, the board may order that:

- 1 (a) The parolee receive a reprimand and warning;
- 2 (b) Parole supervision and reporting be intensified;
- 3 (c) Good time granted pursuant to section 83-1,108 be forfeited or  
4 withheld or earned time granted pursuant to section 8-1,108 be forfeited  
5 or suspended;
- 6 (d) The parolee serve a custodial sanction of up to thirty days in a  
7 correctional facility or a contract facility as defined in section  
8 83-1,119; or
- 9 (e) The parolee be required to conform to one or more additional  
10 conditions of parole which may be imposed in accordance with the Nebraska  
11 Treatment and Corrections Act.
- 12 (3) Cumulative custodial sanctions in a correctional facility or a  
13 contract facility under this section and section 83-1,119 shall not  
14 exceed sixty days. If a parolee has previously received sixty days of  
15 cumulative custodial sanctions before the current violation, the board  
16 shall either order revocation of the parolee's parole or one or more of  
17 the other sanctions described in subsection (2) of this section.
- 18 (4) Time spent in custodial sanctions under this section and section  
19 83-1,119 shall be credited to the parolee's sentence.
- 20 Sec. 16. Section 83-1,123, Reissue Revised Statutes of Nebraska, is  
21 amended to read:
- 22 83-1,123 (1) A parolee whose parole is revoked shall be recommitted  
23 to the department until discharge from the custody of the state becomes  
24 mandatory or until reparaoled by the board.
- 25 (2) The time from the date of the parolee's declared delinquency  
26 until the date of arrest for the custody of the board shall not be  
27 counted as any portion of the time served.
- 28 (3) A parolee whose parole has been revoked shall be considered by  
29 the board for reparaole at any time in the same manner as any other  
30 committed offender eligible for parole.
- 31 (4) Except in the case of a parolee who has left the jurisdiction or

1 his or her place of residence, action revoking a parolee's parole and  
2 recommitting the parolee for violation of the conditions of parole must  
3 be taken before the expiration of the parole term less good time or  
4 earned time. A parolee who has left the jurisdiction or his or her place  
5 of residence shall be treated as a parole violator and, when apprehended,  
6 shall be subject to recommitment or to supervision for the balance of the  
7 parole term as of the date of the violation.

8 Sec. 17. Section 83-1,125, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 83-1,125 (1) If a warrant or detainer is placed against a committed  
11 offender by a court, parole agency, or other authority of this or any  
12 other jurisdiction, the administrator shall inquire before such offender  
13 becomes eligible for parole whether the authority concerned intends to  
14 execute or withdraw the warrant or detainer when the offender is  
15 released.

16 (2) If the authority notifies the administrator that it intends to  
17 execute the warrant or detainer when the offender is released, the  
18 administrator shall advise the authority concerned of the sentence under  
19 which the offender is held, the time of parole eligibility, any decision  
20 of the board relating to the offender, and the nature of the offender's  
21 adjustment during imprisonment and shall give reasonable notice to such  
22 authority of the offender's release date.

23 (3) The board may parole an offender who is eligible for release to  
24 a warrant or detainer. If an offender is paroled to such a warrant or  
25 detainer, the board may provide, as a condition of release, that if the  
26 charge or charges on which the warrant or detainer is based are  
27 dismissed, or are satisfied after conviction and sentence, prior to the  
28 expiration of the offender's parole term, the authority to whose warrant  
29 or detainer the offender is released shall return the offender to serve  
30 the remainder of the parole term or such part as the board may determine.

31 (4) If a person paroled to a warrant or detainer is thereafter

1 sentenced and placed on probation, or released on parole in another  
2 jurisdiction, prior to the expiration of the parole term less good time  
3 or earned time in this state, the board may permit the person to serve  
4 the remainder of the parole term or such part as the board may determine  
5 concurrently with the person's new probation or parole term. Such  
6 concurrent terms may be served in either of the two jurisdictions, and  
7 supervision shall be administered in accordance with the Interstate  
8 Compact for Adult Offender Supervision.

9 Sec. 18. Section 83-4,111, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 83-4,111 (1) The department shall adopt and promulgate rules and  
12 regulations to establish criteria for justifiably and reasonably  
13 determining which rights and privileges an inmate forfeits upon  
14 commitment and which rights and privileges an inmate retains.

15 (2) Such rules and regulations shall include, but not be limited to,  
16 criteria concerning (a) disciplinary procedures and a code of offenses  
17 for which discipline may be imposed, (b) disciplinary segregation, (c)  
18 grievance procedures, (d) good-time credit, (e) earned time, (f) mail and  
19 visiting privileges, and (g) ~~(f)~~ rehabilitation opportunities.

20 (3) The rules and regulations adopted pursuant to sections 83-4,109  
21 to 83-4,123 shall in no manner deprive an inmate of any rights and  
22 privileges to which he or she is entitled under other provisions of law  
23 or under policies adopted in a correctional facility.

24 Sec. 19. Section 83-4,122, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 83-4,122 In disciplinary cases which may involve the imposition of  
27 disciplinary isolation, ~~or~~ the loss of good-time credit, or the  
28 forfeiture or suspension of earned time, the director shall establish  
29 disciplinary procedures consistent with the following principles:

30 (1) Any person or persons who initiate a disciplinary charge against  
31 an inmate shall not determine the disposition of the charge. The director

1 may establish one or more disciplinary boards to hear and determine  
2 charges. To the extent possible, a person representing the treatment or  
3 counseling staff of the institution or facility shall participate in  
4 determining the disposition of the disciplinary case;

5 (2) An inmate charged with a violation of department rules of  
6 behavior shall be given notice of the charge including a statement of the  
7 misconduct alleged and of the rules such conduct is alleged to violate.  
8 Such notice shall be given at least twenty-four hours before a hearing on  
9 the matter is held;

10 (3) An inmate charged with a violation of rules shall be entitled to  
11 a hearing on that charge at which time he or she shall have an  
12 opportunity to appear before and address the person or persons deciding  
13 the charge. The individual bringing the charge shall also appear at such  
14 hearing;

15 (4) The person or persons determining the disposition of the charge  
16 may also summon to testify any witnesses or other persons with relevant  
17 knowledge of the incident. The inmate charged shall be permitted to  
18 question any person so summoned and shall be allowed to call witnesses  
19 and present documentary evidence in his or her defense when permitting  
20 him or her to do so will not be unduly hazardous to institutional safety  
21 or correctional goals. The person or persons determining the disposition  
22 of charges shall state his, her, or their reasons in writing for refusing  
23 to call a witness;

24 (5) If the charge is sustained, the inmate charged shall be entitled  
25 to a written statement of the decision by the persons determining the  
26 disposition of the charge, which statement shall include the basis for  
27 the decision and the disciplinary action, if any, to be imposed;

28 (6) A change in work, education, or other program assignment shall  
29 not be used for disciplinary purposes;

30 (7) The inmate charged shall be entitled to an adequate opportunity  
31 to prepare a defense. Such opportunity shall include the right to

1 assistance and advice in preparing and presenting a defense from any  
2 inmate in general population or staff member at the institution where the  
3 hearing is held. Such inmate or staff member may serve in such an  
4 advisory capacity for the inmate so charged;

5 (8) Any hearing conducted pursuant to this section shall be tape  
6 recorded, and such recording shall be preserved for a period of six  
7 months; and

8 (9) The standard of proof to sustain the charge shall be substantial  
9 evidence.

10 Sec. 20. Section 83-4,123, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 83-4,123 Nothing in sections 83-4,109 to 83-4,123 shall be construed  
13 as to restrict or impair an inmate's free access to the courts and  
14 necessary legal assistance in any cause of action arising under such  
15 sections or to judicial review for disciplinary cases which involve the  
16 imposition of disciplinary isolation, ~~or~~ the loss of good-time credit, or  
17 the forfeiture or suspension of earned time in accordance with the  
18 Administrative Procedure Act. Such judicial review may only be invoked  
19 after completion of any review of the hearing prescribed by section  
20 83-4,122 by the department.

21 Sec. 21. This act becomes operative on October 1, 2017.

22 Sec. 22. Original sections 29-2204.02, 29-2262, 29-3803, 29-3804,  
23 29-4014, 47-123, 81-1850, 83-1,108, 83-1,109, 83-1,110, 83-1,118,  
24 83-1,123, 83-1,125, 83-4,111, 83-4,122, and 83-4,123, Reissue Revised  
25 Statutes of Nebraska, sections 83-170, 83-1,107, and 83-1,122, Revised  
26 Statutes Cumulative Supplement, 2016, and section 29-2204, Revised  
27 Statutes Cumulative Supplement, 2014, as amended by Laws 2015, LB605,  
28 section 60, are repealed.