

LEGISLATIVE BILL 627

Approved by the Governor June 10, 1993

Introduced by Abboud, 12; Bromm, 23; Byars, 30; Cudaback, 36; Elmer, 38; Fisher, 35; Hohenstein, 17; Hudkins, 21; Janssen, 15; Jones, 43; Pedersen, 39; Preister, 5; Schmitt, 41; Vrtiska, 1; Witek, 31; Haberman, 44; Chambers, 11; Ashford, 6

AN ACT relating to crimes and offenses; to amend section 29-2204, Reissue Revised Statutes of Nebraska, 1943, and section 29-2262, Revised Statutes Supplement, 1992; to provide for commitment of certain offenders to regimented inmate discipline units; to provide for review of the operation of the units as prescribed; to adopt the Community Correctional Facilities and Programs Act; to create a task force; to provide for an investigation; to eliminate provisions relating to proceedings pending prior to and orders and rules in effect on January 1, 1979; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections, and also sections 28-435 and 28-436, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 29-2204, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2204. (1) Except as provided in subsection ~~(2)~~ (3) of this section, in all cases when any person is convicted of any offense by this code declared criminal and made punishable by imprisonment in the Department of Correctional Services adult correctional facility, the court shall declare in its sentence for what period of time, within the respective periods prescribed by law, such convict shall be imprisoned at hard labor in the Department of Correctional Services adult correctional facility and shall determine and declare in its sentence whether any such convict shall be kept in solitary confinement in the cells of the Department of Correctional Services adult correctional facility, without labor, and, if so, for what period of time.

(2)(a) Commencing July 1, 1996, when the court is of the opinion that imprisonment may be appropriate, but that a brief and intensive period of incarceration may serve the interests of society by promoting the rehabilitation of the offender and by deterring the offender from engaging in further criminal activity, the court may commit an offender to the Department of Correctional Services for a period not exceeding one hundred eighty days for placement in a regimented inmate discipline unit followed by one year of intense parole supervision. The

court may consider such commitment if the offender (i) has been found guilty of a nonviolent crime, (ii) is seventeen years of age or older but younger than twenty-five years and has no physical or mental handicap that precludes strenuous physical activity, and (iii) has never before been sentenced to a period of incarceration for a felony offense in this or any other state or federal jurisdiction.

(b) Upon successful completion of the term of commitment, the offender shall be placed under the jurisdiction of the Board of Parole for a period of one year. All provisions of Chapter 83, article 1, relating to parole, except eligibility for parole, shall apply to the offender. If the parole of the offender is revoked, the offender shall be returned to the sentencing court for resentencing on the original conviction.

(c) If the offender for any reason fails to complete the program of regimented inmate discipline, the offender shall immediately be returned to the sentencing court for resentencing on the original conviction. Credit shall be given for time actually served in the program.

(d) All costs incurred during the period the offender is held in a regimented inmate discipline unit shall be the responsibility of the state, and the county shall be liable only for the cost of returning him or her to the appropriate court for resentencing or such other disposition as the court may then deem appropriate.

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

Sec. 2. That section 29-2262, Revised Statutes Supplement, 1992, be amended to read as follows:

29-2262. (1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life.

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

(a) To refrain from unlawful conduct;

(b) To be confined periodically in the county jail or to return to custody after specified hours but not to exceed (i) for misdemeanors, the lesser of ninety days or the maximum jail term provided by law for the offense and (ii) for felonies, one hundred eighty days;

(c) To meet his or her family responsibilities;

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

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

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

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

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

(i) To have in his or her possession no firearm or other dangerous weapon unless granted written permission;

(j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment;

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

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

(m) To work, in lieu of or in addition to any fine, on public streets, parks, or other public property for a period not exceeding twenty working days. Such work shall be under the supervision of the probation officer or a law enforcement officer in the jurisdiction in which the work is performed;

(n) To pay for tests to determine the presence of drugs or alcohol, psychological evaluations, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;

(o) To perform community service as defined in section 29-2277;

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

(q) To participate in a community correctional facility or program as provided in section 14 of this act; or

(r) To satisfy any other conditions reasonably related to the rehabilitation of the offender.

(3) In all cases in which the offender is guilty of assault or battery and the victim is the offender's spouse, a condition of probation shall be mandatory counseling as provided by the Protection from Domestic Abuse Act.

(4) In all cases in which the offender is guilty of violating section 28-416, a condition of probation shall be mandatory treatment and counseling as provided by subsection (12) of section 28-416.

Sec. 3. No later than July 1, 1996, the Director of Correctional Services shall establish a program for the confinement of offenders who are required to serve not more than one hundred eighty days in a regimented inmate discipline unit pursuant to subsection (2) of section 29-2204. Offenders committed to the Department of Correctional Services participating in the program shall be required to engage in strenuous labor and physical exercise as well as educational, chemical dependency, and mental health programs determined by department personnel to be suitable.

If the director determines that an offender committed to the department for participation in the program is medically or psychologically unsuitable for the program or is not complying with the rules adopted by the department governing conduct of participants, the

director shall end the offender's participation in the program, place the offender in a suitable and convenient facility under the jurisdiction of the department, and make written request for the sentencing court to reassume custody of the offender. If the court does not reassume custody and remove the offender from the custody of the department before the tenth day after the department's mailing of such a written request to the court, the county in which the sentencing judge presides shall pay the per diem cost of maintaining the offender within any suitable and convenient facility designated by the department.

It is the intent of the Legislature that the department develop recommendations for the implementation of regimented inmate discipline units consisting of two components:

(1) A community component utilizing existing structures within a community; and

(2) A correctional component to be an adjunct to an existing correctional facility.

Recommendations shall be forwarded by the department to the Legislature not later than July 1, 1994.

Sec. 4. The Judiciary Committee of the Legislature shall annually, beginning July 1, 1997, review the operation of the regimented inmate discipline units established under section 3 of this act. Such review shall be comprehensive and shall include, but not be limited to, the number of offenders assigned to the units in the previous twelve months, the ages and offenses of such offenders, the activities and programs required of or provided for such offenders, the staffing of the units, the number of requests under section 3 of this act in the previous twelve months for a sentencing court to reassume custody, the reasons therefor, and the outcomes of such requests, the costs of the units, and any other material the committee deems relevant. The committee shall report the results of such annual review to the Legislative Council.

Sec. 5. Sections 5 to 22 of this act shall be known and may be cited as the Community Correctional Facilities and Programs Act.

Sec. 6. It is the purpose of the Community Correctional Facilities and Programs Act to encourage flexibility in the development of community correctional facilities and programs by the Department of Correctional Services, units of local government, and nongovernmental agencies and to encourage the use of such facilities and programs by sentencing courts. It is the further purpose of the act to provide a procedure through which units of local government and nongovernmental agencies may provide adult correctional services to the department and to sentencing courts.

Sec. 7. For purposes of the Community Correctional Facilities and Programs Act:

(1) Community correctional facility or program shall mean a community-based or community-oriented facility or program which (a) is operated either by a unit of local government, the department, or a nongovernmental agency, (b) may be designed to provide residential accommodations for offenders, and (c) provides programs and services to

aid offenders in obtaining and holding regular employment, in enrolling in and maintaining academic courses, in participating in vocational training programs, in utilizing the resources of the community to meet their personal and family needs, in obtaining mental health, alcohol, and drug treatment, and in participating in whatever specialized programs exist within the community;

(2) Corrections board shall mean the governing body of any unit of local government or a board which may be appointed by the governing body of any unit of local government to carry out the act;

(3) Department shall mean the Department of Correctional Services;

(4) Director shall mean the Director of Correctional Services;

(5) Nongovernmental agency shall mean any person, private nonprofit agency, corporation, association, labor organization, or entity other than the state or a political subdivision;

(6) Offender shall mean any person who has been convicted of a felony or misdemeanor but shall not include any person who has been found to be an habitual criminal under section 29-2221, has been convicted of a crime of violence, or has been convicted of the knowing and intentional manufacture, distribution, delivery, or dispensing of a controlled substance in violation of the Uniform Controlled Substances Act; and

(7) Unit of local government shall mean a county, city, village, or joint entity established pursuant to the Interlocal Cooperation Act.

Sec. 8. Any unit of local government may establish, maintain, and operate such community correctional facilities and programs as it deems necessary to serve the needs of any or all of the following:

(1) The unit of local government;

(2) Offenders who are assigned by the department to the facility or program on a contractual basis; and

(3) Offenders sentenced to the facility or program by a sentencing court in accordance with the guidelines provided for in section 15 of this act.

Any unit of local government may contract for services with any nongovernmental agency or another unit of local government for the purpose of providing services to offenders.

It is the intent of the Legislature that units of local government not use jails for purposes of community correctional facilities and programs.

Sec. 9. The governing body of any unit of local government may establish, by resolution or ordinance, a corrections board which may be advisory or functional. If a corrections board is established by resolution or ordinance, the governing body may delegate to such corrections board any powers necessary to accomplish the purposes of the Community Correctional Facilities and Programs Act.

The Attorney General shall provide advice and technical assistance to corrections boards. Corrections boards may also call upon the department for advice and technical assistance.

Sec. 10. (1) A unit of local government or, if established, a corrections board may establish and enforce standards for the operation of a community correctional facility or program and for the conduct of offenders in the facility or program. The unit of local government or, if established, the corrections board shall, in conjunction with the department or the judges of the district court judicial district in which the facility or program will be located, establish procedures for screening offenders who are to be placed in any community correctional facility or program operated by the unit of local government. Such procedures may include the use of an objective risk assessment scale to classify offenders in terms of their risk to the public.

(2) The unit of local government or, if established, the corrections board may accept, reject, or reject after acceptance the placement of any offender in a community correctional facility or program under the jurisdiction of the unit or board, pursuant to any contract or agreement with the department. If an offender is rejected by the unit of local government or the board after initial acceptance, the offender shall remain in the community correctional facility or program for a reasonable period of time pending receipt by the facility or program of appropriate orders from the sentencing court or the department for the transfer of such offender. The sentencing court may make appropriate orders for the transfer of such offender to the department and to resentence such offender and impose any sentence which might originally have been imposed without increasing the length of the original sentence.

Sec. 11. Any nongovernmental agency may establish, maintain, and operate a community correctional facility or program for the purpose of providing services to a unit of local government or to the department. The establishment of any community correctional facility or program by a nongovernmental agency shall be subject to approval by the county board of the county in which the proposed facility or program is to be located if not within the corporate limits of a city or village or the governing body of the city or village in which the proposed facility or program is to be located. Approval or denial of the establishment of such facility or program by the unit of local government shall be made only after consultation with the corrections board if one has been established.

Sec. 12. Any nongovernmental agency may enter into contracts or agreements to provide services with units of local government or the department. The contracts or agreements shall be entered into pursuant to guidelines or standards adopted by the department or by the governing board of the city or village or, if the facility or program is not within the corporate limits of a city or village, the governing board of the county in which the facility or program will be located. Such contracts or agreements shall provide for strict accountability procedures and practices for the conduct and supervision of offenders assigned, transferred, or sentenced to such nongovernmental agency. The contracts or agreements

shall also provide that, if a residential facility is maintained, the nongovernmental agency will perform periodic and unscheduled chemical tests to determine whether drugs are used by offenders in the facility.

Sec. 13. (1) A nongovernmental agency may establish and enforce standards for the operation of a community correctional facility or program and for the conduct of offenders in the facility or program. The agency shall, in conjunction with the department or the judges of the district court judicial district in which the facility or program will be located, establish procedures for screening offenders who are to be placed in any community correctional facility or program operated by the agency. Such procedures may include the use of an objective risk assessment scale to classify offenders in terms of their risk to the public.

(2) The nongovernmental agency may accept, reject, or reject after acceptance the placement of any offender in a community correctional facility or program under the jurisdiction of the agency, pursuant to any contract or agreement with a unit of local government or the department. If an offender is rejected by the nongovernmental agency after initial acceptance, the offender shall remain in the community correctional facility or program for a reasonable period of time pending receipt by the facility or program of appropriate orders from the sentencing court or the department for the transfer of such offender. The sentencing court may make appropriate orders for the transfer of such offender to the department and to resentence such offender and impose any sentence which might originally have been imposed without increasing the length of the original sentence.

Sec. 14. (1) A sentencing judge may sentence a nonviolent misdemeanor offender to a nonresidential community correctional facility or program operated by a unit of local government or a nongovernmental agency. A sentencing judge may sentence a nonviolent felony offender to a residential or nonresidential community correctional facility or program operated by a unit of local government or a nongovernmental agency. Such facilities and programs may be utilized for persons who are awaiting sentence, for persons who have been sentenced, including sentences for probation, and for nonviolent offenders whose parole has been revoked.

(2) A person charged with a nonviolent misdemeanor offense and sentenced to probation may be required by the court as a condition of probation to participate in a nonresidential community correctional facility or program operated by a unit of local government or a nongovernmental agency.

(3) A person charged with a nonviolent felony offense and sentenced to probation may be required by the court as a condition of probation to participate in a residential or a nonresidential community correctional facility or program operated by a unit of local government or a nongovernmental agency.

Sec. 15. (1) The chief probation officer of the affected probation district and the unit of local government or nongovernmental agency operating a community correctional facility or program shall recommend guidelines for the use of any such facility or program. Such

guidelines shall be approved by the presiding judge of the district court judicial district in which the facility or program will be located and the probation administrator prior to the use of such facility or program by the sentencing judges. The presiding judge of the district court judicial district shall submit any proposed guidelines for the use of any facility or program operated by a nongovernmental agency to the governing body of all units of local government in the district for their review and recommendations.

(2) Prior to entering into an agreement or contract with any nongovernmental agency, the governing body of the affected unit of local government shall submit such agreement or contract to the presiding judge of the district court judicial district in which the facility or program is located for review and recommendations.

(3) Prior to the placement of an offender in any community correctional facility or program operated by a nongovernmental agency, the sentencing judge shall notify or cause to be notified the law enforcement agencies of affected units of local government concerning the identity of the offender to be placed.

(4) A probation officer may include in the presentence report to the sentencing judge recommendations for the utilization of any community correctional facility or program which has been approved pursuant to this section.

(5) A probation officer shall supervise all community corrections clients that are sentenced to participate in community correctional facilities or programs as a condition of probation.

Sec. 16. The director may establish community correctional facilities and programs as alternatives or as supplements to state correctional facilities for the custody, control, care, and treatment of offenders. For state facilities designed for community correctional programs, the department shall obtain approval of the city or village in which the facility will be located or, if the facility or program will be outside the corporate limits of a city or village, the county in which the facility or program will be located. The unit of local government shall hold a public hearing on the location of such facility prior to any such grant of approval.

Sec. 17. (1) Each community correctional facility or program operated by a unit of local government or a nongovernmental agency with which the department contracts for services shall meet approved minimum standards established in rules and regulations adopted by the department.

(2) Pursuant to a contract with a unit of local government or a nongovernmental agency operating a community correctional facility or program, the director may transfer any offender to such community correctional facility or program if in his or her judgment the correction of such offender will be better served by such transfer and if the unit of local government or the nongovernmental agency consents.

(3) Prior to entering into any agreement or contract with any nongovernmental agency, the director shall submit such agreement or contract to the governing body of the affected unit of local government for

its review and recommendations.

(4) Prior to the placement of an offender in any community correctional facility or program operated by a nongovernmental agency, the director shall notify or cause to be notified the law enforcement agencies of the affected units of local government concerning the identity of the offender to be placed.

Sec. 18. Funds appropriated for transitional placements in community correctional facilities and programs shall be expended by the department only on the conditions that (1) the governing body of the affected unit of local government shall be notified of any proposed transitional placement within the unit of local government and (2) the governing body may accept, reject, or reject after acceptance any offender placed by the department in any community correctional facility within the unit of local government.

Sec. 19. (1) A sentence, assignment, or transfer of an offender to a community correctional facility or program operated by the department, a unit of local government, or a nongovernmental agency shall be conditioned on the entrance of the offender into a contract or agreement with the department, unit of local government, or nongovernmental agency. This requirement shall apply to, but not be limited to, offenders directly sentenced to a community correctional facility or program and to offenders transferred to such a facility or program from the department. The contract or agreement may provide for a percentage or amount of money received from employment of the offender to be set aside to pay family support if appropriate, to establish a savings account or fund to be utilized by the offender upon release, and to be used for any other requirements which the parties deem necessary, including reimbursement to the appropriate unit of local government or nongovernmental agency to help defray the cost of residential services for such offender.

(2) In a community correctional facility or program, the primary obligation for obtaining employment shall be on the offender, but the Department of Labor shall provide assistance in obtaining employment for offenders participating in a community correctional facility or program.

Sec. 20. If an offender fails to remain within the limits of his or her confinement or to return within the time prescribed to a community correctional facility to which he or she was assigned or transferred or if any offender who participates in a community correctional program leaves his or her place of employment or, having been recommended by the director or the probation administrator to be returned to a correctional institution, neglects or fails to do so, the offender shall be deemed to have escaped from custody and all reductions in sentence authorized by sections 83-1,107 and 83-1,108 shall be forfeited.

Sec. 21. (1) When the administrator of a community correctional facility or any other appropriate supervising authority has reason to believe that an offender placed in a community correctional facility has violated any rule or condition of his or her placement in that

facility or any term of his or her probation under section 15 of this act or cannot be safely housed in the facility, the administrator or other authority shall certify to the sentencing court or the department the facts which are the basis for his or her belief and execute a transfer order to any sheriff, deputy sheriff, police officer, or officer of the Nebraska State Patrol which authorizes the sheriff, deputy sheriff, police officer, or officer of the Nebraska State Patrol to transport the offender to the county jail in the county in which the community correctional facility is located. The offender shall be confined in such county jail pending a determination by the appropriate court or executive authorities as to whether or not the offender may remain in the community correctional facility. An offender so confined may apply for bond only when he or she has been confined due to an alleged violation of a condition of probation contemplated by section 15 of this act.

(2) If the sentencing court determines that the offender should not remain in the community correctional facility, the court may make appropriate orders for the transfer of such offender from the county jail to a correctional facility operated by the department and to resentence such offender and impose any sentence which might originally have been imposed without increasing the length of the original sentence.

Sec. 22. Proceedings under the Community Correctional Facilities and Programs Act shall not be subject to the Administrative Procedure Act.

Sec. 23. (1) There is hereby established a task force consisting of the following members:

(a) The chairpersons of the Appropriations Committee and the Judiciary Committee of the Legislature;

(b) Two members of the Legislature appointed by the chairperson of the Executive Board of the Legislative Council in addition to the chairpersons listed in subdivision (a) of this subsection;

(c) The Director of Correctional Services or his or her designee;

(d) The Attorney General or his or her designee;

(e) The chairperson of the Board of Parole; and

(f) The members appointed by the Governor under subsection (2) of this section.

(2) The task force shall include the following members appointed by the Governor:

(a) One member of the Crime Victim's Reparations Committee;

(b) One judge of the district court;

(c) One county attorney or former county attorney;

(d) One public defender or one former public defender; and

(e) One probation officer.

(3) The chairperson of the Judiciary Committee of the Legislature shall be the chairperson of the task force. Members of the task force shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174

to 81-1177. Members described in subsection (2) of this section shall be appointed by the Governor within thirty days after the operative date of this section. The task force shall cease to exist on December 31, 1994.

(4) The task force shall investigate the impact on crime rates and prison populations and the fiscal requirements to carry out the policies proposed in Legislative Bill 627 as introduced in the Ninety-third Legislature, First Session, 1993, and the report of the Governor's Task Force on Prison Alternatives and the recommendations contained in the report. The investigation shall include, but not be limited to, an assessment of mandatory minimum sentencing, drug-free zones, boot camps, elimination of probation and parole, and the increase of penalties for certain crimes. The task force shall also review the recommendations of the Governor's Task Force on Prison Alternatives, including the role of community corrections, intensive probation, and parole and increased availability of education and treatment.

Sec. 24. Sections 1 to 22 and 26 of this act shall become operative three calendar months after the adjournment of this legislative session. The other sections of this act shall become operative on their effective date.

Sec. 25. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 26. That original section 29-2204, Reissue Revised Statutes of Nebraska, 1943, and section 29-2262, Revised Statutes Supplement, 1992, and also sections 28-435 and 28-436, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 27. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.