

LEGISLATIVE BILL 538

Approved by the Governor June 2, 2005

Introduced by Brashear, 4

AN ACT relating to criminal justice; to amend sections 28-929, 28-930, 47-621 to 47-625, 47-627, 47-630, 47-632, 71-1,148, and 83-4,142, Reissue Revised Statutes of Nebraska, and sections 28-931, 28-931.01, 29-2246, 29-2252, 29-2257, 29-2258, 29-2262.06, 29-2269, 81-1423, 81-1425, 83-1,102, 83-1,135, and 83-4,143, Revised Statutes Supplement, 2004; to change offenses relating to assaulting an officer; to change and eliminate provisions relating to probation, medical parole, intensive supervision probation, community corrections, parole, and incarceration work camps; to require fees as prescribed; to eliminate a duty of the Department of Health and Human Services Regulation and Licensure; to harmonize provisions; to repeal the original sections; and to outright repeal section 47-626, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 28-929, Reissue Revised Statutes of Nebraska, is amended to read:

28-929. (1) A person commits the offense of assault on an officer in the first degree if he or she intentionally or knowingly causes serious bodily injury to a peace officer, a probation officer, or an employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the first degree shall be a Class II felony.

Sec. 2. Section 28-930, Reissue Revised Statutes of Nebraska, is amended to read:

28-930. (1) A person commits the offense of assault on an officer in the second degree if he or she:

(a) Intentionally or knowingly causes bodily injury with a dangerous instrument to a peace officer, a probation officer, or an employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties; or

(b) Recklessly causes bodily injury with a dangerous instrument to a peace officer, a probation officer, or an employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the second degree shall be a Class III felony.

Sec. 3. Section 28-931, Revised Statutes Supplement, 2004, is amended to read:

28-931. (1) A person commits the offense of assault on an officer in the third degree if he or she intentionally, knowingly, or recklessly causes bodily injury to a peace officer, a probation officer, or an employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the third degree shall be a Class IIIA felony.

Sec. 4. Section 28-931.01, Revised Statutes Supplement, 2004, is amended to read:

28-931.01. (1) A person commits the offense of assault on an officer using a motor vehicle if he or she intentionally and knowingly causes bodily injury to a peace officer, a probation officer, or an employee of the Department of Correctional Services (a) by using a motor vehicle to run over or to strike such officer or employee or (b) by using a motor vehicle to collide with such officer's or employee's motor vehicle, while such officer or employee is engaged in the performance of his or her duties.

(2) Assault on an officer using a motor vehicle shall be a Class IIIA felony.

Sec. 5. Section 29-2246, Revised Statutes Supplement, 2004, is amended to read:

29-2246. ~~As used in~~ For purposes of the Nebraska Probation Administration Act and sections 43-2,123.01 and 83-1,102 to 83-1,104, unless the context otherwise requires:

(1) Association means the Nebraska District Court Judges Association;

(2) Court means a district court, county court, or juvenile court, ~~except a separate juvenile court~~ as defined in section 43-245;

(3) Office means the Office of Probation Administration;

(4) Probation means a sentence under which a person found guilty of a crime upon verdict or plea or adjudicated delinquent or in need of special supervision is released by a court subject to conditions imposed by the court and subject to supervision;

(5) Probationer means a person sentenced to probation;

(6) Probation officer means an employee of the system who supervises probationers and conducts presentence, predisposition, or other investigations as may be required by law or directed by a court in which he or she is serving or performs such other duties as authorized pursuant to section 29-2258, except unpaid volunteers from the community;

(7) Juvenile probation officer means any probation officer who supervises probationers of a separate juvenile court;

(8) Juvenile intake probation officer means an employee of the system who is called upon by a law enforcement officer in accordance with section 43-250 to make a decision regarding the furtherance of a juvenile's detention;

(9) Chief probation officer means the probation officer in charge of a probation district;

(10) System means the Nebraska Probation System; ~~and~~

(11) Administrator means the probation administrator; and

(12) Non-probation-based program or service means a program or service established within the district, county, or juvenile courts and provided to individuals not sentenced to probation who have been charged with or convicted of a crime for the purpose of diverting the individual from incarceration or to provide treatment for issues related to the individual's criminogenic needs. Non-probation-based programs or services include, but are not limited to, drug court programs established pursuant to section 24-1302 and the treatment of problems relating to substance abuse, mental health, sex offenses, or domestic violence.

Sec. 6. Any interlocal agreement authorized by subdivision (16) of section 29-2252 shall require the political subdivision party to the agreement to provide sufficient resources to cover all costs associated with the participation of probation personnel or use of probation resources other than costs covered by funds provided pursuant to section 29-2262.07 or substance abuse treatment costs covered by funds appropriated to the Community Corrections Council for such purpose.

Sec. 7. Section 29-2252, Revised Statutes Supplement, 2004, is amended to read:

29-2252. The administrator shall:

(1) Supervise and administer the office;

(2) Establish and maintain policies, standards, and procedures for the system, with the concurrence of the Supreme Court;

(3) Prescribe and furnish such forms for records and reports for the system as shall be deemed necessary for uniformity, efficiency, and statistical accuracy;

(4) Establish minimum qualifications for employment as a probation officer in this state and establish and maintain such additional qualifications as he or she deems appropriate for appointment to the system. Qualifications for probation officers shall be established in accordance with subsection (4) of section 29-2253. An ex-offender released from a penal complex or a county jail may be appointed to a position of deputy probation or parole officer. Such ex-offender shall maintain a record free of arrests, except for minor traffic violations, for one year immediately preceding his or her appointment;

(5) Establish and maintain advanced periodic inservice training requirements for the system;

(6) Cooperate with all agencies, public or private, which are concerned with treatment or welfare of persons on probation;

(7) Organize and conduct training programs for probation officers;

(8) Collect, develop, and maintain statistical information concerning probationers, probation practices, and the operation of the system;

(9) Interpret the probation program to the public with a view toward developing a broad base of public support;

(10) Conduct research for the purpose of evaluating and improving the effectiveness of the system;

(11) Adopt and promulgate such rules and regulations as may be necessary or proper for the operation of the office or system;

(12) Transmit a report during each even-numbered year to the Supreme Court on the operation of the office for the preceding two calendar years,

~~which~~ which shall include a historical analysis of probation officer workload, including participation in non-probation-based programs and services. The report shall be transmitted by the Supreme Court to the Governor and the Clerk of the Legislature;

(13) Administer the payment by the state of all salaries, travel, and actual and necessary expenses incident to the conduct and maintenance of the office;

(14) In consultation with the Community Corrections Council, use the funds provided under section 29-2262.07 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced probation-based programs and non-probation-based programs and services in which probation personnel or probation resources are utilized pursuant to an interlocal agreement authorized by subdivision (16) of this section and to purchase services to provide such programs aimed at enhancing adult probationer or non-probation-based program participant supervision in the community and treatment needs of probationers. ~~Such enhanced and non-probation-based program participants.~~ Enhanced probation-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs developed by or through the council that address a probationer's vocational, educational, mental health, behavioral, or substance abuse treatment needs; and

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

(16) Have the authority to enter into interlocal agreements in which probation resources or probation personnel may be utilized in conjunction with or as part of non-probation-based programs and services. Any such interlocal agreement shall comply with section 6 of this act; and

(17) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Each member of the Legislature shall receive a copy of the report required by subdivision (12) of this section by making a request for it to the administrator.

Sec. 8. Section 29-2257, Revised Statutes Supplement, 2004, is amended to read:

29-2257. The Nebraska Probation System is established which shall consist of the probation administrator, chief probation officers, probation officers, and support staff. The system shall be responsible for juvenile intake services, for presentence and other probation investigations, ~~and~~ for the direct supervision of persons placed on probation, ~~and~~ for non-probation-based programs and services authorized by an interlocal agreement pursuant to subdivision (16) of section 29-2252. The system shall be sufficient in size to assure that no probation officer carries a caseload larger than is compatible with adequate probation investigation or supervision. Probation officers shall be compensated with salaries substantially equal to other state employees who have similar responsibilities.

This provision for salary equalization shall apply only to probation officers and support staff and shall not apply to chief probation officers, the probation administrator, the chief deputy administrator, the deputy probation administrator, or any other similarly established management positions.

Sec. 9. Section 29-2258, Revised Statutes Supplement, 2004, is amended to read:

29-2258. A district probation officer shall:

(1) Conduct juvenile intake interviews and investigations in accordance with section 43-253 utilizing a standardized juvenile detention screening instrument described in section 43-260.01;

(2) Make presentence and other investigations, as may be required by law or directed by a court in which he or she is serving;

(3) Supervise probationers in accordance with the rules and regulations of the office and the directions of the sentencing court;

(4) Advise the sentencing court, in accordance with the Nebraska Probation Administration Act and such rules and regulations of the office, of violations of the conditions of probation by individual probationers;

(5) Advise the sentencing court, in accordance with the rules and regulations of the office and the direction of the court, when the situation of a probationer may require a modification of the conditions of probation or when a probationer's adjustment is such as to warrant termination of probation;

(6) Provide each probationer with a statement of the period and conditions of his or her probation;

(7) Whenever necessary, exercise the power of arrest as provided in

section 29-2266;

(8) Establish procedures for the direction and guidance of deputy probation officers under his or her jurisdiction and advise such officers in regard to the most effective performance of their duties;

(9) Supervise and evaluate deputy probation officers under his or her jurisdiction;

(10) Delegate such duties and responsibilities to a deputy probation officer as he or she deems appropriate;

(11) Make such reports as required by the administrator, the judges of the probation district in which he or she serves, or the Supreme Court;

(12) Keep accurate and complete accounts of all money or property collected or received from probationers and give receipts therefor;

(13) Cooperate fully with and render all reasonable assistance to other probation officers;

(14) In counties with a population of less than twenty-five thousand people, participate in pretrial diversion programs established pursuant to sections 29-3601 to 29-3604 and juvenile pretrial diversion programs established pursuant to sections 43-260.02 to 43-260.07 as requested by judges of the probation district in which he or she serves, except that participation in such programs shall not require appointment of additional personnel and shall be consistent with the probation officer's current caseload;

(15) Participate, at the direction of the probation administrator pursuant to an interlocal agreement which meets the requirements of section 6 of this act, in non-probation-based programs and services;

(16) Perform such other duties not inconsistent with the Nebraska Probation Administration Act or the rules and regulations of the office as a court may from time to time direct; and

~~(16)~~ (17) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Sec. 10. Section 29-2262.06, Revised Statutes Supplement, 2004, is amended to read:

29-2262.06. (1) Except as otherwise provided in this section, whenever a district court or county court sentences an adult offender to probation, the court shall require the probationer to pay a one-time administrative enrollment fee and thereafter a monthly probation programming fee.

(2) Participants in non-probation-based programs or services in which probation personnel or probation resources are utilized pursuant to an interlocal agreement authorized by subdivision (16) of section 29-2252 and in which all or a portion of the costs of such probation personnel or such probation resources are covered by funds provided pursuant to section 29-2262.07 shall pay the one-time administrative enrollment fee described in subdivision (3)(a) of this section and the monthly probation programming fee described in subdivision (3)(c) of this section. In addition, the provisions of subsections (4), (7), and (10) of this section applicable to probationers apply to participants in non-probation-based programs or services. Any participant in a non-probation-based program or service who defaults on the payment of any such fees may, at the discretion of the court, be subject to removal from such non-probation-based program or service. This subdivision does not preclude a court or other governmental entity from charging additional local fees for participation in such non-probation-based programs and services or other similar non-probation-based programs and services.

~~(2)~~ (3) The court shall establish the administrative enrollment fee and monthly probation programming fees as follows:

(a) Adult probationers placed on either probation or intensive supervision probation and participants in non-probation-based programs or services shall pay a one-time administrative enrollment fee of thirty dollars. The fee shall be paid in a lump sum upon the beginning of probation supervision or participation in a non-probation-based program or service;

(b) Adult probationers placed on probation shall pay a monthly probation programming fee of twenty-five dollars, not later than the tenth day of each month, for the duration of probation; and

(c) Adult probationers placed on intensive supervision probation and participants in non-probation-based programs or services shall pay a monthly probation programming fee of thirty-five dollars, not later than the tenth day of each month, for the duration of probation or participation in a non-probation-based program or service.

~~(3)~~ (4) The court shall waive payment of the monthly probation programming fees in whole or in part if after a hearing a determination is made that such payment would constitute an undue hardship on the offender due to limited income, employment or school status, or physical or mental handicap. Such waiver shall be in effect only during the period of time that

the probationer or participant in a non-probation-based program or service is unable to pay his or her monthly probation programming fee.

~~(4)~~ (5) If a probationer defaults in the payment of monthly probation programming fees or any installment thereof, the court may revoke his or her probation for nonpayment, except that probation shall not be revoked nor shall the offender be imprisoned for such nonpayment if the probationer is financially unable to make the payment, if he or she so states to the court in writing under oath, and if the court so finds after a hearing.

~~(5)~~ (6) If the court determines that the default in payment described in subsection ~~(4)~~ (5) of this section was not attributable to a deliberate refusal to obey the order of the court or to failure on the probationer's part to make a good faith effort to obtain the funds required for payment, the court may enter an order allowing the probationer additional time for payment, reducing the amount of each installment, or revoking the fees or the unpaid portion in whole or in part.

~~(6)~~ (7) No probationer or participant in a non-probation-based program or service shall be required to pay more than one monthly probation programming fee per month. This subsection does not preclude local fees as provided in subsection (2) of this section.

~~(7)~~ (8) The imposition of monthly probation programming fees in this section shall be considered separate and apart from the fees described in subdivisions (2)(m) and (o) of section 29-2262.

~~(8)~~ (9) Any adult probationer received for supervision pursuant to section 29-2637 or the Interstate Compact for Adult Offender Supervision shall be assessed both a one-time administrative enrollment fee and monthly probation programming fees during the period of time the probationer is actively supervised by Nebraska probation authorities.

~~(9)~~ (10) The probationer or participant in a non-probation-based program or service shall pay the fees described in this section to the clerk of the court. The clerk of the court shall remit all fees so collected to the State Treasurer for credit to the Probation Program Cash Fund.

Sec. 11. Section 29-2269, Revised Statutes Supplement, 2004, is amended to read:

29-2269. Sections 29-2246 to 29-2269 and section 6 of this act shall be known and may be cited as the Nebraska Probation Administration Act.

Sec. 12. Section 47-621, Reissue Revised Statutes of Nebraska, is amended to read:

47-621. For purposes of the Community Corrections Act:

(1) ~~Chief means the executive director of the Community Corrections Council;~~

~~(2)~~ Community correctional facility or program means a community-based or community-oriented facility or program which (a) is operated either by the state or by a contractor which may be a unit of local government or a nongovernmental agency, (b) may be designed to provide residential accommodations for ~~probationers or parolees~~ adult offenders, (c) provides programs and services to aid adult ~~probationers and parolees~~ offenders in obtaining and holding regular employment, enrolling in and maintaining participation in academic courses, participating in vocational training programs, utilizing the resources of the community to meet their personal and family needs, obtaining mental health, alcohol, and drug treatment, and participating in specialized programs that exist within the community, and (d) offers community supervision options, including, but not limited to, drug treatment, mental health programs, and day reporting centers;

~~(3)~~ (2) Council means the Community Corrections Council;

(3) Director means the executive director of the Community Corrections Council;

(4) Nongovernmental agency means any person, private nonprofit agency, corporation, association, labor organization, or entity other than the state or a political subdivision of the state; and

(5) Unit of local government means a county, city, village, or entity established pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.

Sec. 13. Section 47-622, Reissue Revised Statutes of Nebraska, is amended to read:

47-622. The Legislature declares that the policy of the State of Nebraska is that there shall be a coordinated effort to (1) establish community correctional programs across the state in order to divert adult felony offenders from the prison system and (2) provide necessary supervision and services to adult felony offenders with the goal of reducing the probability of criminal behavior while maintaining public safety. To further such policy, the Community Corrections Council is created. For administrative support and budgetary purposes only, the council shall be within the Nebraska

Commission on Law Enforcement and Criminal Justice.

Sec. 14. Section 47-623, Reissue Revised Statutes of Nebraska, is amended to read:

47-623. (1) The council shall include the following voting members:

(a) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice;

(b) The Director of Correctional Services;

(c) The chairperson of the Board of Parole;

(d) The Parole Administrator; and

(e) Seven members appointed by the Governor with the approval of a majority of the Legislature, consisting of: One representative from a list of persons nominated by the Nebraska Criminal Defense Attorneys Association; one representative from a list of persons nominated by the Nebraska County Attorneys Association; one full-time officer or employee of a law enforcement agency; one mental health and substance abuse professional; and from each congressional district, one provider of community-based behavioral health services.

(2) The council shall include the following nonvoting members:

(a) The State Court Administrator;

(b) The probation administrator;

(c) Two members of the Legislature, appointed by the Executive Board of the Legislative Council; ~~and~~

(d) Two judges of the district court, appointed by the Chief Justice of the Supreme Court; and

(e) The Director of Health and Human Services or his or her designee.

(3) The terms of office for members initially appointed under subdivision (1)(e) of this section shall be three years. Upon completion of the initial terms of such members, the Governor shall appoint a representative from law enforcement and a mental health and substance abuse professional for terms of one year, a representative of the Nebraska Criminal Defense Attorneys Association, one provider of community-based behavioral health services from the first congressional district, and one provider of community-based behavioral health services from the third congressional district for terms of two years, and a representative of the Nebraska County Attorneys Association and a provider of community-based behavioral health services from the second congressional district for terms of three years. Succeeding appointees shall be appointed for terms of three years. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified.

(4) The council shall by majority vote elect a chairperson from among the members of the council.

(5) The members of the council shall be reimbursed for their actual and necessary expenses incurred while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

Sec. 15. Section 47-624, Reissue Revised Statutes of Nebraska, is amended to read:

47-624. The council shall:

(1) Develop standards for eligible community correctional facilities and programs in which offenders can participate, ~~through probation and parole,~~ taking into consideration the following factors:

(a) Qualifications of staff;

(b) Suitability of programs;

(c) Offender needs;

(d) Probation population;

(e) Parole population; and

(f) Other applicable criminal justice data;

(2) Develop and implement a plan to establish statewide operation and use of a continuum of community correctional facilities and programs;

(3) Develop, in consultation with the probation administrator and the Parole Administrator, standards for the use of community correctional facilities and programs by the Nebraska Probation System and the parole system;

(4) Develop, recommend, and review sentencing guidelines for adoption by the Supreme Court as set forth in section 47-630;

(5) Analyze and mandate the consistent use of offender risk assessment tools;

(6) Develop standards for eligibility of probationers and parolees in certain community correctional facilities and programs;

(7) Educate the courts and the Board of Parole about the availability and use of community correctional facilities and programs;

(8) Enter into contracts, if necessary, for carrying out the purposes of the Community Corrections Act;

(9) In order to ensure adequate funding for substance abuse treatment programs for probationers, consult with the probation administrator as provided in section 29-2262.07 and develop or assist with the development of programs as provided in subdivision (14) of section 29-2252;

(10) In order to ensure adequate funding for substance abuse treatment programs for parolees, consult with the Office of Parole Administration as provided in section 83-1,107.02 and develop or assist with the development of programs as provided in subdivision (8) of section 83-1,102;

(11) If necessary to perform the duties of the council, hire, contract for, or otherwise obtain the services of consultants, researchers, aides, and other necessary support staff; and

(12) Study substance abuse treatment services in and related to the criminal justice system, recommend improvements, and evaluate the implementation of improvements;

(13) Study, develop, and implement minimum standards for the development and use of community correctional facilities and programs;

(14) Develop and implement a plan for statewide use of community correctional facilities and programs; and

(15) Perform such other duties as may be necessary to carry out the policy of the state established in the act.

Sec. 16. Section 47-625, Reissue Revised Statutes of Nebraska, is amended to read:

47-625. (1) The Governor shall appoint the ~~chief~~ director of the council.

(2) The ~~chief~~ director shall:

(a) Supervise, develop, and oversee the actions and proceedings of the council;

(b) Ensure, by working in consultation with the council, consistency between sentencing guidelines and the availability of community correctional facilities and programs; and

(c) Administer contracts entered into by the council with community correctional facilities or programs.

Sec. 17. Section 47-627, Reissue Revised Statutes of Nebraska, is amended to read:

47-627. The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice shall develop and maintain a uniform crime data analysis system in Nebraska which shall include, but need not be limited to, the number of offenses, arrests, charges, probation admissions, probation violations, probation discharges, admissions to and discharges from the Department of Correctional Services, parole reviews, parole hearings, releases on parole, parole violations, and parole discharges. The data shall be categorized by statutory crime. The data shall be collected from the Board of Parole, the State Court Administrator, the Department of Correctional Services, the Office of Parole Administration, the Office of Probation Administration, the Nebraska State Patrol, counties, local law enforcement, and any other entity associated with criminal justice. The council, the ~~chief~~ director, and the Supreme Court shall have access to such data to implement the Community Corrections Act and to develop guidelines pursuant to section 47-630.

Sec. 18. Section 47-630, Reissue Revised Statutes of Nebraska, is amended to read:

47-630. (1) In order to facilitate the purposes of the Community Corrections Act, the Supreme Court shall by court rule adopt guidelines for sentencing of persons convicted of certain crimes. The guidelines shall provide that courts are to consider community correctional programs and facilities in sentencing designated offenders, with the goal of reducing dependence on incarceration as a sentencing option for nonviolent offenders.

(2) The guidelines shall specify appropriate sentences for the designated offenders in consideration of factors set forth by rule. The Supreme Court may provide that a sentence in accordance with the guidelines constitutes a rebuttable presumption.

(3) The guidelines ~~for felony drug offenses~~ shall be developed and presented to the Supreme Court ~~by July 1, 2004, and thereafter~~ for such felony offenses and on such time schedule as the Supreme Court ~~finds~~ and the council deem appropriate.

(4) The council shall develop and periodically review the guidelines and, when appropriate, recommend amendments to the guidelines.

Sec. 19. Section 47-632, Reissue Revised Statutes of Nebraska, is amended to read:

47-632. The Community Corrections Uniform Data Analysis Fund is created. The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice shall administer the fund which shall consist of funds collected pursuant to section 47-633 and such other funds as the Legislature may direct. The fund shall only be used to support operations and analysis relating to the implementation and coordination of the uniform analysis of crime data pursuant to the Community Corrections Act. 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.

Sec. 20. Section 71-1,148, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,148. The department, upon recommendation of the board, shall adopt and promulgate rules and regulations as deemed necessary to implement sections ~~28-1437 to 28-1439.01~~, 71-1,142 to 71-1,151, 71-2401 to 71-2405, and 71-2501 to 71-2512, the Mail Service Pharmacy Licensure Act, the Nebraska Drug Product Selection Act, and the Uniform Controlled Substances Act. The minimum standards and requirements for the practice of pharmacy, including dispensing pursuant to a delegated dispensing permit, shall be consistent with the minimum standards and requirements established by the department for pharmacy licenses under the Health Care Facility Licensure Act.

Sec. 21. Section 81-1423, Revised Statutes Supplement, 2004, is amended to read:

81-1423. The commission shall have authority to:

(1) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under sections 81-1415 to 81-1426;

(2) Delegate to one or more of its members such powers and duties as it may deem proper;

(3) Coordinate and jointly pursue its activities with the Governor's Policy Research Office;

(4) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(5) Plan improvements in the administration of criminal justice and promote their implementation;

(6) Make or encourage studies of any aspect of the administration of criminal justice;

(7) Conduct research and stimulate research by public and private agencies which shall be designed to improve the administration of criminal justice;

(8) Coordinate activities relating to the administration of criminal justice among agencies of state and local government;

(9) Cooperate with the federal and other state authorities concerning the administration of criminal justice;

(10) Accept and administer loans, grants, and donations from the United States, its agencies, the State of Nebraska, its agencies, and other sources, public and private, for carrying out any of its functions, except that no communications equipment shall be acquired and no approval for acquisition of communications equipment shall be granted without receiving the written approval of the Director of Communications of the Department of Administrative Services;

(11) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under sections 81-1415 to 81-1426 with agencies of state or local government, corporations, or persons;

(12) Acquire, hold, and dispose of personal property in the exercise of its powers;

(13) Conduct random annual audits of criminal justice agencies to verify the accuracy and completeness of criminal history record information maintained by such agencies and to determine compliance with laws and regulations dealing with the dissemination, security, and privacy of criminal history information;

(14) Do all things necessary to carry out its purposes and for the exercise of the powers granted in sections 81-1415 to 81-1426, except that no activities or transfers or expenditures of funds available to the commission shall be inconsistent with legislative policy as reflected in substantive legislation, legislative intent legislation, or appropriations legislation;

(15) Exercise budgetary and administrative control over the Crime Victim's Reparations Committee, and the Jail Standards Board; ~~and the Community Corrections Council;~~

(16) Appoint and remove for cause the director of the Nebraska Law Enforcement Training Center; ~~and~~

(17) Provide budgetary and administrative support to the Community Corrections Council; and

(18) Do all things necessary to carry out sections 81-1843 to 81-1851.

Sec. 22. Section 81-1425, Revised Statutes Supplement, 2004, is amended to read:

81-1425. The executive director of the commission shall:

(1) Supervise and be responsible for the administration of the policies established by the commission;

(2) Establish a Jail Standards subdivision within the commission and establish, consolidate, or abolish any other administrative subdivision within the commission and appoint and remove for cause the heads thereof, and delegate appropriate powers and duties to them;

(3) Establish and administer projects and programs for the operation of the commission;

(4) Appoint and remove employees of the commission and delegate appropriate powers and duties to them;

(5) Make rules and regulations for the management and the administration of policies of the commission and the conduct of employees under his or her jurisdiction;

(6) Collect, develop, maintain, and analyze statistical information, records, and reports as the commission may determine relevant to its functions, including, but not limited to, the statistical information set forth in section 47-627;

(7) Prior to August 1, 2001, review and analyze all cases involving criminal homicide committed on or after April 20, 1973. The review and analysis shall examine (a) the facts, including mitigating and aggravating circumstances, (b) to the extent such can be ascertained, the race, gender, religious preference, and economic status of the defendant and of the victim, (c) the charges filed, (d) the result of the judicial proceeding in each case, and (e) the sentence imposed. Upon the completion of such review, the report of such shall be transmitted to the Governor, the Clerk of the Legislature, and the Chief Justice of the Supreme Court. The review and analysis shall be updated as new cases of criminal homicide occur. The commission shall update such report annually to the parties named in this subdivision;

(8) Transmit monthly to the commission a report of the operations of the commission for the preceding calendar month;

(9) Execute and carry out the provisions of all contracts, leases, and agreements authorized by the commission with agencies of federal, state, or local government, corporations, or persons;

(10) ~~Establish a community corrections division within the commission;~~

~~(11)~~ Perform such additional duties as may be assigned to him or her by the commission, by the chairperson of the commission, or by law; and

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

Sec. 23. Section 83-1,102, Revised Statutes Supplement, 2004, is amended to read:

83-1,102. The Parole Administrator shall:

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

(2) Establish and maintain policies, standards, and procedures for the field parole service;

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

(4) Cooperate with the Board of Parole, the courts, the Community Corrections Council, and all other agencies, public and private, which are concerned with the treatment or welfare of persons on parole;

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

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

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

(8) In consultation with the Community Corrections Council, use the funds provided under section 83-1,107.02 to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced parole-based programs and purchase services to provide such programs aimed at enhancing adult parolee supervision in the community and treatment needs of parolees. Such enhanced parole-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs developed by or through the council that address a parolee's vocational, educational, mental health, behavioral, or substance abuse treatment needs; ~~and~~

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

(10) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Sec. 24. Section 83-1,135, Revised Statutes Supplement, 2004, is amended to read:

83-1,135. Sections 83-170 to 83-1,135 and sections 25 and 26 of this act shall be known and may be cited as the Nebraska Treatment and Corrections Act.

Sec. 25. (1) A committed offender who is otherwise eligible for parole, who is not under sentence of death or of life imprisonment, and who because of an existing medical or physical condition is determined by the department to be terminally ill or permanently incapacitated may be considered for medical parole by the board. A committed offender may be eligible for medical parole in addition to any other parole. The department shall identify committed offenders who may be eligible for medical parole based upon their medical records.

(2) The board shall decide to grant medical parole only after a review of the medical, institutional, and criminal records of the committed offender and such additional medical evidence from board-ordered examinations or investigations as the board in its discretion determines to be necessary. The decision to grant medical parole and to establish conditions of release on medical parole in addition to the conditions stated in subsection (3) of this section is within the sole discretion of the board.

(3) As conditions of release on medical parole, the board shall require that the committed offender agree to placement for medical treatment and that he or she be placed for a definite or indefinite period of time in a hospital, a hospice, or another housing accommodation suitable to his or her medical condition, including, but not limited to, his or her family's home, as specified by the board.

(4) The parole term of a medical parolee shall be for the remainder of his or her sentence as reduced by any adjustment for good conduct pursuant to the Nebraska Treatment and Corrections Act.

Sec. 26. (1) If during the term of medical parole the medical condition of a medical parolee improves to the extent that he or she is no longer eligible for medical parole, the board may order that he or she be returned to the custody of the department to await a hearing to determine whether the medical parole should be revoked.

(2) If medical parole is revoked due to improvement in the medical condition of the parolee, he or she shall serve the balance of his or her sentence with credit for time served on medical parole and without forfeiture of any credits accrued for good conduct pursuant to the Nebraska Treatment and Corrections Act prior to medical parole.

(3) If a medical parolee whose medical parole is revoked due to improvement in his or her medical condition would otherwise be eligible for parole or any other release program, he or she may be considered for such release program.

(4) In addition to revocation of medical parole pursuant to subsection (1) of this section, medical parole may also be revoked for violation of any condition of the medical parole established by the board.

Sec. 27. Section 83-4,142, Reissue Revised Statutes of Nebraska, is amended to read:

83-4,142. The Department of Correctional Services shall develop and implement an incarceration work camp, to be completed no later than January 1, 2005, for ~~adult criminal~~ felony offenders to be placed in as a condition of a sentence of intensive supervision probation. As part of the incarceration work camp, an intensive residential drug treatment program may be developed and implemented for felony offenders.

It is the intent of the Legislature that the incarceration work camp serve to reduce prison overcrowding and to make prison bed space available for

violent offenders. It is the further intent of the Legislature that the incarceration work camp serve the interests of society by ~~promoting the rehabilitation of offenders~~ addressing the criminogenic needs of certain designated offenders on intensive supervision probation and by deterring such offenders from engaging in further criminal activity. To accomplish these goals, the incarceration work camp shall provide regimented, structured, disciplined programming, including all of the following: Work programs; vocational training; behavior management and modification; money management; substance abuse awareness, counseling, and treatment; and education, programming needs, and aftercare planning, which will increase the offender's abilities to lead a law-abiding, productive, and fulfilling life as a contributing member of a free society.

Sec. 28. Section 83-4,143, Revised Statutes Supplement, 2004, is amended to read: of Nebraska, is amended to read:

83-4,143. (1) It is the intent of the Legislature that the court target the felony offender (a) who is ~~experiencing his or her first prison sentence~~ eligible and by virtue of his or her criminogenic needs is suitable to be sentenced to intensive supervision probation with placement at the incarceration work camp, (b) for whom the court finds that other conditions of a sentence of intensive supervision probation, in and of themselves, are not suitable, and (c) who, without the existence of an incarceration work camp, would, in all likelihood, be sentenced to prison. ~~It is the further intent of the Legislature that prior offenders who were incarcerated for minor nonviolent offenses are not automatically ineligible to be placed in an incarceration work camp as a condition of a sentence of probation.~~

(2) When the court is of the opinion that imprisonment is appropriate, but that a brief and intensive period of ~~incarceration~~ regimented, structured, and disciplined programming within a secure facility may better serve the interests of society, the court may place an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of a sentence of intensive supervision probation. The court may consider such placement if the offender (a) is a male or female offender who is convicted as an adult convicted of a felony offense in a district court, (b) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (c) has not previously been incarcerated for a violent felony crime. ~~and (d) has not demonstrated chronic violent behavior.~~ Offenders convicted of a crime under sections 28-319 to 28-321 or of any capital crime are not eligible to be placed in an incarceration work camp.

Sec. 29. Original sections 28-929, 28-930, 47-621 to 47-625, 47-627, 47-630, 47-632, 71-1,148, and 83-4,142, Reissue Revised Statutes of Nebraska, and sections 28-931, 28-931.01, 29-2246, 29-2252, 29-2257, 29-2258, 29-2262.06, 29-2269, 81-1423, 81-1425, 83-1,102, 83-1,135, and 83-4,143, Revised Statutes Supplement, 2004, are repealed.

Sec. 30. The following section is outright repealed: Section 47-626, Reissue Revised Statutes of Nebraska.