

LEGISLATIVE BILL 677

Approved by the Governor April 20, 1994

Introduced by Chambers, 11

AN ACT relating to probation, parole, and pardons; to amend sections 83-189, 83-190, 83-1,126, 83-1,126.01, 83-1,129, and 83-1,130, Reissue Revised Statutes of Nebraska, 1943, section 83-1,118, Revised Statutes Supplement, 1992, and sections 29-2264, 83-188, 83-191, 83-192, 83-1,100, 83-1,100.01, 83-1,113, 83-1,127, and 83-1,127.01, Revised Statutes Supplement, 1993; to change provisions relating to the restoration of civil rights; to provide for applicability of the State Personnel System to Board of Parole employees; to change and eliminate provisions relating to the powers and duties of the Board of Parole and its employees, the Board of Pardons, the Office of Parole Administration, and the Department of Correctional Services; to change provisions relating to applications for pardons; to provide for transfer of certain items as prescribed; to change provisions relating to substance abuse therapy; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 29-2264, Revised Statutes Supplement, 1993, be amended to read as follows:

29-2264. (1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period thereof or is discharged from probation prior to the termination of the period thereof, the sentencing court shall issue an order releasing the offender from probation and such order shall in all felony cases restore the offender's civil rights, ~~the same as though a pardon had been issued.~~

(2) Whenever any person is convicted of a misdemeanor or felony and is placed on probation by the court or is sentenced to a fine only, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period thereof or after discharge from probation prior to the termination of the period thereof and after payment of any fine, petition the sentencing court to set aside the conviction.

(3) In determining whether to set aside the conviction, the court shall consider:

(a) The behavior of the offender after sentencing;
 (b) The likelihood that the offender will not engage in further criminal activity; and
 (c) Any other information the court considers relevant.

(4) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. Such order shall:

(a) Nullify the conviction; and
 (b) Remove all civil disabilities and disqualifications imposed as a result of the conviction, ~~the same as though a pardon had been issued.~~

(5) The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:

(a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;
 (b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;
 (c) Preclude proof of the conviction as evidence of the commission of the misdemeanor or felony, whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of the misdemeanor or felony in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved; or

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act.

(6) This section shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to June 11, 1993.

Sec. 2. That section 83-188, Revised Statutes Supplement, 1993, be amended to read as follows:

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

Sec. 3. That section 83-189, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-189. The Board of Parole shall consist of five full-time members to be appointed by the Governor, subject to confirmation by the legislature. The members of the board shall be of good character and judicious temperament. The members of the board shall have all the powers and duties of board members commencing on the date of appointment. The appointments shall be subject to confirmation by the legislature at its next regular session following the appointments. One of the five members of the board shall be designated as chairperson by the Governor. At least one member of the board shall be of an ethnic minority group, at least one member shall be female, and at least one member shall have a professional background in corrections.

One of the five members of the board shall be designated as chairperson by the Governor. In addition to the chairperson's duties as a member of the board as prescribed in subsection (1) of section 83-192, he or she shall supervise the administration and operation of the board and shall carry out the duties prescribed in subsection (2) of such section.

Sec. 4. That section 83-190, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-190. The members of the Board of Parole shall have a term of office of six years and until their successors are appointed, and have qualified, except that when the terms of the part-time members appointed prior to August 30, 1987, expire, the part-time positions shall be terminated, and at such time, two full-time members shall be appointed. The part-time members appointed prior to August 30, 1987, may be reappointed to the full-time positions. The successors to the full-time positions shall be appointed in the same manner as provided for the members first appointed, and a vacancy occurring before expiration of a term of office shall be similarly filled for the unexpired term. A member of the board may be reappointed. The members of the board may be removed only for disability, neglect of duty, or malfeasance in office by the Board of Pardons after a hearing. The Board of Pardons shall promptly file in the office of the Secretary of State a complete statement of the charges, its findings and disposition, and a complete record of the proceedings.

Sec. 5. That section 83-191, Revised Statutes Supplement, 1993, be amended to read as follows:

83-191. The members of the Board of Parole shall devote full time to their duties with such board and shall not engage in any other business or profession or hold any other public office. No member shall, at the time of his or her appointment or during his or her tenure, serve as the representative of any political party or of any executive committee or governing body thereof or as an executive officer or employee of any political party, organization, association, or committee. A member shall resign from the board upon filing as a candidate for any elective public office. Each member of the board shall receive an annual salary to be fixed by the Governor. On and after July 1, 1993, such salaries shall be paid in equal monthly portions.

Sec. 6. That section 83-192, Revised Statutes Supplement, 1993, be amended to read as follows:

83-192. (1) The Board of Parole shall:

(a) ~~(1)~~ Determine the time of release on parole of committed offenders eligible for such release;

(b) ~~(2)~~ Fix the conditions of parole, revoke parole, issue or authorize the issuance of warrants for the arrest of parole violators, and impose other sanctions short of revocation for violation of conditions of parole;

(c) ~~(3)~~ Determine the time of discharge from parole;

(d) ~~(4)~~ Visit and inspect any facility, state or local, for the detention of persons charged with or convicted of an offense and for the safekeeping of such other persons as may be remanded to such facility in

accordance with law;

(5) Serve in an advisory capacity to the director in administering parole services within any facility and in the community;

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

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

(8) Recommend parole legislation to the Governor;

(9) (e) Within two years after the operative date of this act, implement objective parole risk-assessment criteria which shall be used by the members of the board as additional considerations in determining whether to grant or deny parole to any particular offender who is eligible for parole. For purposes of this subdivision, objective parole risk-assessment criteria shall mean criteria which statistically have been shown to be good predictors of risk to society of release on parole;

(f) Review the record of every committed offender as follows:

(i) (a) If a committed offender has a parole eligibility date within five years of his or her date of incarceration, his or her record shall be reviewed annually;

(ii) (b) If a committed offender has a parole eligibility date which is more than five but not more than ten years from his or her date of incarceration, his or her record shall be reviewed during the first year of incarceration, and when he or she is within three years of his or her earliest parole eligibility date, his or her record shall be reviewed annually;

(iii) (c) If a committed offender has a parole eligibility date which is more than ten but not more than thirty years from his or her date of incarceration, his or her record shall be reviewed during the first year of incarceration, every five years thereafter until he or she is within five years of his or her earliest parole eligibility date, and annually thereafter;

(iv) (d) If a committed offender has a parole eligibility date which is more than thirty years from his or her date of incarceration, his or her record shall be reviewed during his or her first, tenth, and twentieth year of incarceration, and when he or she is within five years of his or her earliest parole eligibility date, his or her record shall be reviewed annually; and

(v) (e) If a committed offender is serving a minimum life sentence, his or her record shall be reviewed during the first year of incarceration and every ten years thereafter until such time as the sentence is commuted. If such sentence is commuted, the committed offender's record shall be reviewed annually when he or she is within five years of his or her earliest parole eligibility date.

Such review shall include the circumstances of the offense, the presentence investigation report, the committed offender's previous social history and criminal record, his or her conduct, employment, and attitude during commitment, and the reports of such physical and mental examinations as have been made. The board shall meet with such committed offender and counsel him or her concerning his or her progress and prospects for future parole.

The review schedule shall be based on court-imposed sentences or statutory minimum sentences, whichever are greater. Nothing in such schedule shall prohibit the board from reviewing a committed offender's case at any time;

(10) Make rules and regulations for its own administration and operation; and

(11) (g) Appoint and remove all employees of the board as prescribed by the State Personnel System and delegate appropriate powers and duties to them; and

(h) Exercise all powers and perform all duties necessary and proper in carrying out its responsibilities of the board under the Nebraska Treatment and Corrections Act.

(2) The chairperson of the board shall:

(a) Supervise the administration and operation of the board;

(b) Serve in an advisory capacity to the director in administering parole services within any facility and in the community;

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

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

(e) Recommend parole legislation to the Governor;

(f) Adopt and promulgate rules and regulations for the administration and operation of the board; and

(g) Exercise all other powers and perform all other duties necessary and proper in carrying out his or her responsibilities as chairperson.

(3) The provisions of this section shall not prohibit a committed

offender from requesting that the board review his or her record, except that the board shall not be required to review a committed offender's record more than once a year.

Sec. 7. That section 83-1,100, Revised Statutes Supplement, 1993, be amended to read as follows:

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

- (1) The administration of parole services in the community;
- (2) The maintenance of all records and files associated with the Board of Parole; and
- ~~(3) Provision of available administrative staff support to the Board of Pardons and the Board of Parole to assist in carrying out their duties; and~~
- (3) ~~(4)~~ The daily supervision and training of staff members of the office.

Nothing in this section shall be construed to prohibit the office from maintaining daily records and files associated with the Board of Pardons.

Sec. 8. That section 83-1,100.01, Revised Statutes Supplement, 1993, be amended to read as follows:

83-1,100.01. All equipment, books, files, records, and other property in the possession of the Office of Parole Administration relating to the functions of the Board of Pardons and the Board of Parole, except records maintained by the Secretary of State, on November 1, 1992 the operative date of this act, are hereby transferred to the Office of Parole Administration Board of Pardons and the Board of Parole, as appropriate, as of such date.

Sec. 9. That section 83-1,113, Revised Statutes Supplement, 1993, be amended to read as follows:

83-1,113. The Board of Parole and its employees shall have access at all reasonable times to any committed offender over whom the board may have jurisdiction and shall have means provided for communication with and observing the committed offender. The board shall be furnished such reports as it may require concerning the conduct and character of any committed offender and any other information deemed pertinent by the board in determining whether a committed offender should be paroled.

Sec. 10. That section 83-1,118, Revised Statutes Supplement, 1992, be amended to read as follows:

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

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

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

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

(5) Whenever any committed offender has completed the lawful requirements of the sentence, the director shall issue a certificate of discharge to the offender, and the certificate shall restore the civil rights of the offender, ~~as though a pardon had been issued.~~

Sec. 11. That section 83-1,126, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1,126. There is hereby created the Board of Pardons which shall consist of the Governor, Attorney General, and Secretary of State. The Governor shall be ~~chairman~~ chairperson of the board. The Secretary of State shall be secretary of the board and keep its records or designate such a record keeper.

Sec. 12. That section 83-1,126.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1,126.01. Any person in the custody of the Department of Correctional Services or under supervision of the Board of Parole shall be subject to the provisions of this act the Nebraska Treatment and Corrections Act. Any person eligible for immediate discharge or release pursuant to this act shall be so discharged or released no later than one hundred twenty days after August 24, 1995, subject to the approval of the Board of Pardons.

Sec. 13. That section 83-1,127, Revised Statutes Supplement, 1993, be amended to read as follows:

83-1,127. The Board of Pardons shall:

- (1) Exercise the pardon authority as defined in section 83-170 for

all criminal offenses except treason and cases of impeachment;

(2) Make rules and regulations for its own administration and operation;

(3) Appoint and remove its employees as prescribed by the State Personnel System and delegate appropriate powers and duties to them.

(4) Consult with the Board of Parole concerning applications for the exercise of pardon authority; and

(5) ~~(4)~~ Exercise all powers and perform all duties necessary and proper in carrying out its responsibilities under the provisions of the Nebraska Treatment and Corrections Act.

Sec. 14. That section 83-1,127.01, Revised Statutes Supplement, 1993, be amended to read as follows:

83-1,127.01. The department, subject to available resources, shall provide the following services all accounting, budgeting, and payroll services to the Board of Pardons and the Board of Parole at no expense to such boards.

~~(1) All accounting, budgeting, and payroll services;~~

~~(2) Administrative staff support;~~

~~(3) Furnished office space;~~

~~(4) Necessary operating expenses; and~~

~~(5) Necessary capital outlay.~~

Sec. 15. That section 83-1,129, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1,129. (1) Any person desiring the Board of Pardons to exercise its pardon authority shall file a written application with request an application from its secretary. The application shall be returned to the secretary and shall state the specific relief requested and such other information as is prescribed by the board.

(2) The application shall be considered with or without a hearing by the board at its next regular scheduled meeting, or within thirty days, whichever is earlier. If a hearing is held, it shall be conducted in an informal manner, but and a complete record of the proceedings shall be made and preserved according to the guidelines of the board.

Sec. 16. That section 83-1,130, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1,130. (1) After consideration of the application, and after such further investigations as it may deem appropriate, the Board of Pardons shall either grant or deny the relief requested, or grant such other relief as may be justified. The board may decline to accept further applications after the initial application for pardon from an offender for any prescribed amount of time, but in no case shall such time exceed two years. The board shall notify the offender in writing of any restriction for subsequent applications after the hearing on the initial application.

(2) The Board of Pardons may, in appropriate cases where when a person has been convicted of a felony, and has heretofore been granted a pardon by the appropriate authority of this state, or is hereafter granted a pardon for a conviction occurring prior to, on, or subsequent to August 25, 1969, empower the Governor to expressly authorize such person to receive, possess, or transport in commerce a firearm.

(3) All actions of the Board of Pardons shall be by majority vote and shall be filed in the office of the Secretary of State or the office designated by the Secretary of State.

Sec. 17. The substance abuse therapy required by section 28-416 shall be provided by the department prior to the first parole eligibility date of the committed offender. If the board finds that the department did not provide adequate access or availability to the committed offender prior to the first parole eligibility date, the board may waive the requirement of such section only if, as a condition of parole, the committed offender agrees to attend and complete therapy which is approved by the board.

Sec. 18. This act shall become operative on July 1, 1994.

Sec. 19. That original sections 83-189, 83-190, 83-1,126, 83-1,126.01, 83-1,129, and 83-1,130, Reissue Revised Statutes of Nebraska, 1943, section 83-1,118, Revised Statutes Supplement, 1992, and sections 29-2264, 83-188, 83-191, 83-192, 83-1,100, 83-1,100.01, 83-1,113, 83-1,127, and 83-1,127.01, Revised Statutes Supplement, 1993, are repealed.

Sec. 20. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.