

LEGISLATIVE BILL 371

Approved by the Governor June 13, 1995

Introduced by Lindsay, 9, Hudkins, 21, Pedersen, 39, Fisher, 35, Will, 8, Abboud, 12, at the request of the Governor

AN ACT relating to crimes and offenses; to amend sections 28-105, 28-318, 28-320, 28-1205, 28-1206, 29-2257, 29-2525, 43-2,104, 43-2,105, 47-616, 83-1,107, 83-1,110, 83-1,116, 83-1,122, 83-1,123, 83-1,135, 83-4,114.01, and 83-925.07, Reissue Revised Statutes of Nebraska, and sections 28-101, 28-319, 28-416, 28-516, 28-1212.01, 28-1212.02, 29-2204, 29-2221, and 29-2262, Revised Statutes Supplement, 1994; to change provisions relating to penalties for felonies; to define and redefine terms; to change provisions relating to the Uniform Controlled Substances Act; to change provisions relating to and provide for the offenses of unauthorized use of a propelled vehicle, use of a deadly weapon to commit a felony, possession of a deadly weapon by a felon or fugitive, and assault on an officer using a motor vehicle; to change provisions relating to unlawful discharge of a firearm; to change provisions relating to probation officers; to change provisions relating to sentences, habitual criminals, incarceration, capital cases, and sexual assault; to change and eliminate provisions relating to juvenile courts, records of adjudications, good time, and parole; to provide for venue in certain cases involving theft; to provide for civil actions against persons convicted of terroristic threats; to change provisions relating to facilities and services for juveniles; to harmonize provisions; to provide operative dates; to provide severability; and to repeal the original sections.

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

Section 1. Section 28-101, Revised Statutes Supplement, 1994, is amended to read:

28-101. Sections 28-101 to 28-1348 and sections 28 and 31 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Section 28-105, Reissue Revised Statutes of Nebraska, is amended to read:

28-105. (1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into eight classes which are distinguished from one another by the following penalties which are authorized upon conviction:

- Class I felony.....Death
- Class IA felony.....Life imprisonment
- Class IB felony.....Maximum-life imprisonment
~~Minimum-ten years imprisonment~~
~~Minimum-twenty years imprisonment~~
- Class IC felony.....Maximum-fifty years imprisonment
Mandatory minimum-five years imprisonment
- Class ID felony.....Maximum-fifty years imprisonment
Mandatory minimum-three years imprisonment
- Class II felony.....Maximum-fifty years imprisonment
Minimum-one year imprisonment
- Class III felony.....Maximum-twenty years imprisonment, or
twenty-five thousand dollars fine, or both
Minimum-one year imprisonment
- Class IV felony.....Maximum-five years imprisonment, or ten
thousand dollars fine, or both
Minimum-none

(2) All sentences of imprisonment for Class IA, IB, IC, ID, II, and III felonies and sentences of one year or more for Class IV felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. Sentences of less than one year shall be served in the county jail except as provided in this subsection. If the department certifies that it has programs and facilities available for persons sentenced to terms of less than one year, the court may order that any sentence of six months or more be served in any institution under the jurisdiction of the department. Any such certification shall be given by the department to the State Court Administrator, who shall forward copies thereof to each judge having jurisdiction to sentence in felony cases.

(3) Nothing in this section shall limit the authority granted in

sections 29-2221 and 29-2222 to increase sentences for habitual criminals.

(4) A person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation.

Sec. 3. Section 28-318, Reissue Revised Statutes of Nebraska, is amended to read:

28-318. As used in sections 28-317 to 28-321, unless the context otherwise requires:

(1) Actor ~~shall mean~~ means a person accused of sexual assault;

(2) Intimate parts ~~shall mean~~ means the genital area, groin, inner thighs, buttocks, or breasts;

(3) Past sexual behavior ~~shall mean~~ means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;

(4) Serious personal injury ~~shall mean~~ means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;

(5) Sexual contact ~~shall mean~~ means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party;

(6) Sexual penetration ~~shall mean~~ means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen; and

(7) Victim ~~shall mean~~ means the person alleging to have been sexually assaulted;

(8) Without consent means:

(a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;

(b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and

(c) A victim need not resist verbally or physically where it would be useless or futile to do so; and

(9) Force or threat of force means (a) the use of physical force which overcomes the victim's resistance or (b) the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.

Sec. 4. Section 28-319, Revised Statutes Supplement, 1994, is amended to read:

28-319. (1) Any person who subjects another person to sexual penetration and (a) overcomes the victim by force; threat of force; express or implied, coercion; or deception without consent of the victim, or (b) who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, or (c) when the actor is nineteen years of age or older and the victim is less than sixteen years of age is guilty of sexual assault in the first degree.

(2) Sexual assault in the first degree is a Class II felony. The sentencing judge shall consider whether the actor caused serious personal injury to the victim in reaching a decision on the sentence.

(3) Any person who is found guilty of sexual assault in the first degree for a second time when the first conviction was pursuant to this section or any other state or federal law with essentially the same elements as this section shall be sentenced to not less than twenty-five years and shall not be eligible for parole.

Sec. 5. Section 28-320, Reissue Revised Statutes of Nebraska, is amended to read:

28-320. (1) Any person who subjects another person to sexual contact and (a) overcomes the victim by force; threat of force; express or implied, coercion; or deception without consent of the victim, or (b) who knew

or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree.

(2) Sexual assault shall be in the second degree and is a Class III felony if the actor shall have caused serious personal injury to the victim.

(3) Sexual assault shall be in the third degree and is a Class I misdemeanor if the actor shall not have caused serious personal injury to the victim.

Sec. 6. Section 28-416, Revised Statutes Supplement, 1994, is amended to read:

28-416. (1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), and (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class III felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IV felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), or (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center shall mean any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution,

carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), ~~or (8), (9), or (10)~~ of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) ~~Seven or more ounces~~ One hundred forty grams or more shall be guilty of a Class IB felony.

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) ~~(b)~~ At least one ounce but less than seven ounces ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) ~~Twenty-eight~~ One hundred forty grams or more shall be guilty of a Class ~~IB~~ IC felony; ~~or~~

(b) At least ten grams but less than twenty-eight grams but less than one hundred forty grams shall be guilty of a Class ~~IB~~ IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) Five hundred grams or more shall be guilty of a Class IB felony;

(b) One hundred grams or more but less than five hundred grams shall be guilty of a Class IC felony; or

(c) Twenty-eight grams or more but less than one hundred grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of at least seven ounces or more shall be guilty of a Class II felony.

(11) ~~(9)~~ Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class IIIA misdemeanor.

(12) ~~(10)~~ Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) ~~(11)~~ Any person knowingly or intentionally possessing marijuana weighing one ounce or less shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined one hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined two hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined three hundred dollars, and be imprisoned not to exceed seven days.

(14) ~~(12)~~ Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse conducted by one of the community mental health facilities as provided by Chapter 71, article 50, or other licensed drug treatment facility.

(15) ~~(13)~~ Any person convicted of violating subsection (1), (2), or (3) of this section shall only become eligible for parole upon the satisfactory attendance and completion of appropriate treatment and counseling on drug abuse, except that any person convicted of violating subsection (4), (5), (7), ~~or (8), (9), or (10)~~ of this section shall not be eligible for

parole prior to serving the mandatory minimum sentence.

(16) ~~(14)~~ A person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section or while in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

Sec. 7. Section 28-516, Revised Statutes Supplement, 1994, is amended to read:

28-516. (1) A person commits the offense of unauthorized operation of a propelled vehicle if he or she intentionally exerts unauthorized control over another's propelled vehicle by operating ~~the same it~~ without the owner's consent.

(2) Propelled vehicle shall mean an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

(3) It ~~shall be~~ is an affirmative defense to a prosecution under this section that the defendant reasonably believed that the owner would have authorized the use had he or she known of it.

(4) Unauthorized use of a propelled vehicle is a Class III misdemeanor for the first offense, a Class I misdemeanor for the second offense, and a Class IV felony for the third and any subsequent offenses.

Sec. 8. Section 28-1205, Reissue Revised Statutes of Nebraska, is amended to read:

28-1205. (1) Any person who uses a firearm, a knife, brass or iron knuckles, or any other deadly weapon to commit any felony which may be prosecuted in a court of this state, or any person who unlawfully possesses a firearm, a knife, brass or iron knuckles, or any other deadly weapon during the commission of any felony which may be prosecuted in a court of this state commits the offense of using firearms a deadly weapon to commit a felony.

(2)(a) Use of firearms a deadly weapon other than a firearm to commit a felony is a Class III felony.

(b) Use of a deadly weapon which is a firearm to commit a felony is a Class II felony.

(3) The ~~crime crimes~~ defined in this section shall be treated as a separate and distinct ~~offense offenses~~ from the felony being committed, and sentences imposed under the ~~provisions of~~ this section shall be consecutive to any other sentence imposed.

Sec. 9. Section 28-1206, Reissue Revised Statutes of Nebraska, is amended to read:

28-1206. (1) Any person who possesses any firearm with a ~~barrel less than eighteen inches in length~~ or brass or iron knuckles and who has previously been convicted of a felony or who is a fugitive from justice commits the offense of possession of firearms a deadly weapon by a felon or a fugitive from justice.

(2) Such felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3)(a) Possession of firearms a deadly weapon other than a firearm by a felon or a fugitive from justice or a felon is a Class IV felony.

(b) Possession of a deadly weapon which is a firearm by a felon or a fugitive from justice is a Class III felony.

Sec. 10. Section 28-1212.01, Revised Statutes Supplement, 1994, is amended to read:

28-1212.01. For purposes of section 28-1212.02:

(1) Aircraft shall mean any contrivance intended for and capable of transporting persons through the airspace;

(2) Inhabited shall mean currently being used for dwelling purposes, ~~and occupied;~~ and

(3) Occupied shall mean that a person is physically present in a building, motor vehicle, or aircraft.

Sec. 11. Section 28-1212.02, Revised Statutes Supplement, 1994, is amended to read:

28-1212.02. Any person who intentionally discharges a firearm at ~~and strikes with a projectile~~ an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited motor home as defined in section 71-4603, or inhabited camper unit as defined in section 60-1801 shall be guilty of a Class ~~IV~~ III felony.

Sec. 12. Section 29-2204, Revised Statutes Supplement, 1994, is amended to read:

29-2204. (1) Except as provided in subsection ~~(3)~~ of this section ~~and except~~ when a term of life is required by law, in imposing an indeterminate sentence upon an offender, the court shall:

(a) Fix the minimum and maximum limits of the sentence to be served within the limits provided by law, except that when a maximum limit of life is

imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum;

(b) Advise the offender on the record the time the offender will serve on his or her minimum term before attaining parole eligibility assuming that no good time for which the offender will be eligible is lost; and

(c) Advise the offender on the record the time the offender will serve on his or her maximum term before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and the maximum limit shall control the calculation of the offender's term. If the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.

(2)(a) When the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report required by section 29-2261, the court shall commit an offender to the Department of Correctional Services for a period not exceeding ninety days. The department shall conduct a complete study of the offender during that time, inquiring into such matters as his or her previous delinquency or criminal experience, social background, capabilities, and mental, emotional, and physical health and the rehabilitative resources or programs which may be available to suit his or her needs. By the expiration of the period of commitment or by the expiration of such additional time as the court shall grant, not exceeding a further period of ninety days, the offender shall be returned to the court for sentencing and the court shall be provided with a written report of the results of the study, including whatever recommendations the department believes will be helpful to a proper resolution of the case. After receiving the report and the recommendations, the court shall proceed to sentence the offender in accordance with subsection (1) of this section. The term of the sentence shall run from the date of original commitment under this subsection.

(b) In order to encourage the use of this procedure in appropriate cases, all costs incurred during the period the defendant is held in a state institution under this subsection shall be a responsibility of the state and the county shall be liable only for the cost of delivering the defendant to the institution and the cost of returning him or her to the appropriate court for sentencing or such other disposition as the court may then deem appropriate.

(3) Whenever Except when a term of life is required by law, 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. 13. Section 29-2221, Revised Statutes Supplement, 1994, is amended to read:

29-2221. (1) Whoever has been twice convicted of a crime, sentenced, and committed to prison, in this or any other state or by the United States or once in this state and once at least in any other state or by the United States, for terms of not less than one year each shall, upon conviction of a felony committed in this state, be deemed to be an habitual criminal and shall be punished by imprisonment in a Department of Correctional Services adult correctional facility for a term of not less than ten nor mandatory minimum term of ten years and a maximum term of not more than sixty years, except that:

(a) If the felony committed is in violation of section 28-303, 28-304, 28-308, 28-313, 28-319, 28-502, 28-929, or 28-1222, and at least one of the habitual criminal's prior felony convictions was for a violation of one of the sections listed in this subdivision or of a similar statute in another state or of the United States, the mandatory minimum term shall be twenty-five years and the maximum term not more than sixty years;

(b) If the felony committed is in violation of subsection (3) of section 28-306 and at least one of the prior convictions is in violation of subsection (3) of section 28-306 and the other is in violation of one of the sections set forth in subdivision (a) of this subsection or if the felony committed is in violation of one of the sections set forth in subdivision (a) of this subsection and both of the prior convictions are in violation of subsection (3) of section 28-306, the mandatory minimum term shall be twenty-five years and the maximum term not more than sixty years; and

(c) ~~If a~~ if no greater punishment is otherwise provided by statute, in which case the law creating the greater punishment shall govern.

(2) When punishment of an accused as an habitual criminal is sought, the facts with reference thereto shall be charged in the indictment or information which contains the charge of the felony upon which the accused is prosecuted, but the fact that the accused is charged with being an habitual criminal shall not be an issue upon the trial of the felony charge and shall not in any manner be disclosed to the jury. If the accused is convicted of a felony, and before sentence is imposed, a hearing shall be had before the court alone as to whether such person has been previously convicted of prior felonies. The court shall fix a time for the hearing and notice thereof shall be given to the accused at least three days prior thereto. At the hearing, if the court ~~shall find~~ finds from the evidence submitted that the accused has been convicted two or more times of felonies and sentences imposed therefor by the courts of this or any other state or by the United States, the court shall sentence such person so convicted as an habitual criminal.

(3) If the person so convicted ~~shall show~~ shows to the satisfaction of the court before whom such ~~which~~ the conviction was had that he or she was released from imprisonment upon either of such sentences upon a pardon granted for the reason that he or she was innocent, such conviction and sentence shall not be considered as such under ~~sections 29-2221 and this section and section 29-2222.~~

Sec. 14. Section 29-2257, Reissue Revised Statutes of Nebraska, 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 presentence and other probation investigations and for the direct supervision of persons placed on probation. 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. The probation administrator shall report to the Judiciary Committee of the Legislature no later than December 1, 1995, detailing the actions taken under this section, including a breakdown on the distribution of salary equalization money appropriated by the Ninety-fourth Legislature. First Session.

Sec. 15. Section 29-2262, Revised Statutes Supplement, 1994, is amended to read:

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. No offender shall be sentenced to probation if he or she is deemed to be an habitual criminal pursuant to section 29-2221.

(2) The court may, as a condition of ~~its~~ a sentence of probation, 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 47-610; 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 (2) of section 28-416~~ such section.

Sec. 16. Section 29-2525, Reissue Revised Statutes of Nebraska, is amended to read:

29-2525. In cases when the punishment is capital, no notice of appeal shall be required and within the time prescribed by section 25-1931 for the commencement of proceedings for the reversing, vacating, or modifying of judgments, the clerk of the district court in which the conviction was had shall notify the court reporter who shall prepare a bill of exceptions as in other cases and the clerk shall prepare and file with the Clerk of the Supreme Court a transcript of the record of the proceedings, for which no charge shall be made. The Clerk of the Supreme Court shall, upon receipt of the transcript, docket the appeal. No payment of a docket fee shall be required.

~~The Supreme Court shall expedite the rendering of its opinion on the appeal giving the matter priority over civil and noncapital criminal matters.~~

Sec. 17. Section 43-2,104, Reissue Revised Statutes of Nebraska, is amended to read:

43-2,104. After hearing, the court may grant the request and issue an order setting aside the adjudication under section 43-247 when in the opinion of the court the order will be in the best interest of the petitioner and consistent with the public welfare. ~~Such order shall nullify the adjudication.~~

Sec. 18. Section 43-2,105, Reissue Revised Statutes of Nebraska, is amended to read:

43-2,105. When the court issues an order setting aside the adjudication under section 43-247, the order shall also require that all records relevant to the adjudication be sealed. ~~Thereafter, such~~ Such records shall not be available to any person the public except upon the order of the court for good cause shown. The court order may include all records of the court, law enforcement officers, county attorneys, or any institution, person, or agency which may have such records. Notice of hearing to set aside the adjudication and seal the records shall be given to the county attorney and any person, agency, or institution that may be affected by such order by delivering by hand or by mailing a copy of the request by registered or certified mail, together with the order of the court which states the time for hearing, to the last-known address of such person, agency, or institution at least ten days before the date for hearing. Any person who fails to comply with the order of the court as provided for in section 43-2,104 or knowingly reveals information covered by such order may be held in contempt of court, except that this section does not prohibit law enforcement agencies from maintaining data to assist law enforcement officers, county attorneys, and sentencing judges in the investigation of crimes and the prosecution and sentencing of criminal defendants.

Sec. 19. Section 47-616, Reissue Revised Statutes of Nebraska, is amended to read:

47-616. 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 subsections (2) and (3) of section 83-1,107 and section 83-1,108 shall be forfeited.

Sec. 20. Section 83-1,107, Reissue Revised Statutes of Nebraska, is amended to read:

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

(b) A modification in the department-approved personalized program plan may be made to account for the increased or decreased abilities of the committed offender or the availability of any program. Any modification shall be made only after notice is given to the committed offender. Completion of the department-approved personalized program plan by any committed offender as scheduled for any year, or pro rata part thereof, shall entitle the committed offender to the earned good time of three months described in this section.

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

(3) The chief executive officer shall reduce the term of a committed offender up to an additional three months for each year of the offender's term and pro rata for any part thereof which is less than a year upon:

(a)(i) The committed offender's successful participation in or completion of a department-approved educational program or the awarding of a high school diploma while incarcerated;

(ii) The committed offender's having received a high school general educational development, or college diploma or the offender's successful completion of any other continuing educational program as offered by the department; or

(iii) The committed offender's successful participation in teaching an academic or vocational class offered by the department;

(b) The committed offender's successful completion of a department-approved substance abuse or addiction treatment program while he or she is incarcerated;

(c) The committed offender's successful completion of a department-approved criminal personality treatment program while he or she is incarcerated;

(d) The committed offender's demonstrated work ethic as shown by obtaining and maintaining regular employment in the correctional system;

(e) The committed offender's successful completion of a department-approved psychiatric counseling or treatment program while he or she is incarcerated; or

(f) The committed offender's successful completion of any other program deemed necessary and appropriate by the department.

The total of all such the reductions shall be credited from the date of sentence, which shall include any term of confinement prior to sentence and commitment as provided pursuant to section 83-1,106, and shall be deducted-

(a) From the minimum term; to determine the date of eligibility for release on parole; and

(b) From from the maximum term, to determine the date when discharge from the custody of the state becomes mandatory.

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

(3) (5) While the offender is in the custody of the board, reductions of such terms granted pursuant to subsections (2) and (3) of this section may be forfeited, withheld, and restored by the administrator with the

approval of the director after the offender has been consulted regarding the charges of misconduct or breach of the conditions of parole. In addition, the board may recommend such forfeitures of good time to the director.

(4) (6) Good time or other reductions of sentence granted under the provisions of any law prior to July 15, 1992 the operative date of this section, may be forfeited, withheld, or restored in accordance with the terms of the Nebraska Treatment and Corrections Act.

Sec. 21. Section 83-1,110, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,110. (1) Every committed offender shall be eligible for release on parole upon completion of the minimum term less good time. A committed offender shall be eligible for parole prior to the expiration of the minimum term whenever the sentencing judge or the judge's successor in office gives approval for the parole of such offender. Except as provided in subsections (3) and (4) of this section, every committed offender shall be eligible for parole when the offender has served one-half the minimum term of his or her sentence. No such reduction of sentence shall be applied to any sentence imposing a mandatory minimum term.

(2) Every Except as provided in subsections (3) and (4) of this section, every committed offender sentenced to consecutive terms, whether received at the same time or at any time during the original sentence, shall be eligible for release on parole when the offender has served the total of one-half the minimum terms, less good time. The maximum terms shall be added to compute the new maximum term which, less good time, shall determine the date when discharge from the custody of the state becomes mandatory.

(3) A committed offender who has been found guilty of a violation of the rules and regulations of the department for drug or alcohol use pursuant to sections 83-4.109 to 83-4.123 shall not be eligible for parole for twelve months following the imposition of the disciplinary action.

(4) A committed offender shall not be eligible for parole if the offender refuses to comply with the department-approved personalized program plan as stipulated in section 83-1.107.

Sec. 22. Section 83-1,116, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,116. (1) When a committed offender is released on parole, the Board of Parole shall require as a condition of his parole that he parole that the offender refrain from engaging in criminal conduct and may require the offender to submit to periodic testing for drug and alcohol use. The board may also require, either at the time of his the offender's release on parole or at any time while he the offender remains on parole, that he the offender conform to any of the following conditions of parole:

- (a) Meet his specified family responsibilities;
- (b) Devote himself or herself to an approved employment;
- (c) Remain in the geographic limits fixed in his the certificate of parole, unless granted written permission to leave such limits;
- (d) Report, as directed, to his or her district parole officer;
- (e) Reside at the place fixed in his the certificate of parole and notify his or her district parole officer of any change in his address or employment;
- (f) Submit himself or herself to available medical, psychological, psychiatric, or other treatment;
- (g) Refrain from associating with persons known to him or her to be engaged in criminal activities or, without permission of his or her district parole officer, with persons known to him or her to have been convicted of a crime; and
- (h) Satisfy any other conditions specially related to the cause of his or her offense and not unduly restrictive of his or her liberty or conscience.

(2) Before release on parole, a parolee shall be provided with a certificate of parole setting forth the conditions of his the parole.

Sec. 23. Section 83-1,122, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,122. (1) If the board finds that the parolee has engaged in criminal conduct, used drugs or alcohol, or refused to submit to a drug or alcohol test while on parole, the board may order revocation of the parolee's parole.

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

- (a) (1) The parolee receive a reprimand and warning;
- (b) (2) Parole supervision and reporting be intensified;
- (c) (3) Good time granted pursuant to section 83-1,108 be forfeited

or withheld; or

(d) (4) The parolee be required to conform to one or more additional conditions of parole which may be imposed in accordance with the Nebraska Treatment and Corrections Act.

Sec. 24. Section 83-1,123, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,123. (1) A parolee whose parole is revoked shall be recommitted to the department until discharge from the custody of the state becomes mandatory or until reparaoled by the board.

(2) The time from the date of the parolee's declared delinquency until the date of arrest for the custody of the board shall not be counted as any portion of the time served.

(3) A parolee whose parole has been revoked shall be considered by the board for reparole at any time in the same manner as any other committed offender eligible for parole, except that no offender whose parole has been revoked as a result of a conviction of a felony committed while on parole shall receive another parole on the original sentence.

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

Sec. 25. Section 83-1,135, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,135. Sections 83-170 to 83-1,135 and section 29 of this act shall be known and may be cited as the Nebraska Treatment and Corrections Act.

Sec. 26. Section 83-4,114.01, Reissue Revised Statutes of Nebraska, is amended to read:

83-4,114.01. (1) The chief executive officer of each facility of the department shall be responsible for the discipline of inmates who reside in such facility. No inmate shall be punished except upon the order of the chief executive officer of the facility, and no punishment shall be imposed otherwise than in accordance with this section.

(2) Except in flagrant or serious cases, punishment for misconduct shall consist of deprivation of privileges. In cases of flagrant or serious misconduct, the chief executive officer may order that an inmate's reduction of term as provided in subsections (2) and (3) of section 83-1,107 be forfeited or withheld and also that the inmate be confined in disciplinary segregation. During the period of disciplinary segregation, such inmate shall be put on an adequate and healthful diet. An inmate in disciplinary segregation shall be visited at least once every eight hours. No cruel, inhuman, or corporal punishment shall be used on any inmate.

(3) The chief executive officer shall maintain a record of breaches of discipline, of the disposition of each case, and of the punishment, if any, for each such breach. Each breach of discipline shall be entered in the inmate's file, together with the disposition or punishment for the breach.

(4) The chief executive officer may recommend to the director that an inmate who is considered to be incorrigible by reason of frequent intentional breaches of discipline or who is detrimental to the discipline or the morale of the facility be transferred to another facility for stricter safekeeping and closer confinement, subject to the provisions of section 83-176.

Sec. 27. Section 83-925.07, Reissue Revised Statutes of Nebraska, is amended to read:

83-925.07. In developing its programs, the Office of Juvenile Services shall:

(1) Design the table of organization for the office by designing the functional specifications for the operation of the office and managing the process of change as programs, functions, and services are transferred to the office;

(2) Develop risk and need assessment instruments for use in determining the need for detention or other placement at the time a juvenile enters the system. This shall include validating and pilot testing the instruments in selected jurisdictions;

(3) Develop a case classification process to include the establishment of classification program levels and case management standards for each program level. This shall include pilot testing the classification process with juveniles committed for placement;

(4) Plan for the construction of a secure confinement facility to

serve juvenile offenders identified as in need of secure confinement in a county containing a city of the metropolitan class. A secure confinement facility shall mean a physically secure coeducational facility designed to provide secure confinement, education, and treatment for serious and chronic juvenile offenders who have been committed to the Office of Juvenile Services or the Department of Correctional Services for secure care;

(5) Develop a purchase-of-care system which will facilitate the development of a statewide community-based continuum of care with the involvement of the private sector and the local public sector. Care services may be purchased from private providers to provide a wider diversity of services. This system shall include accessing existing Title IV-E funds of the federal Social Security Act, as amended, new medicaid funds, and other funding sources to support eligible community-based services. Such services developed and purchased shall include, but not be limited to, evaluation services which shall be available on a geographically accessible basis across the state. The evaluation services available at the Youth Diagnostic and Rehabilitation Center pursuant to sections 83-4,100 to 83-4,104 shall be replaced with purchased community-based evaluation services. The replacement shall be completed by December 31, 1996. All costs incurred during the period in which the juvenile is being evaluated shall be the responsibility of the state;

(6) Develop a community-based assessment and evaluation process. A prototype community-based evaluation process shall be developed and pilot-tested in several jurisdictions. A residential evaluation program shall be established in a county containing a city of the metropolitan class;

(7) Develop functional specifications for juvenile service centers and identify several demonstration sites. The risk assessment and community-based assessment and evaluation procedures may be pilot-tested at the juvenile service center demonstration sites; and

(8) Identify and recommend the functional requirements for a management information system. The system shall be a unified, interdepartmental client information system which supports assessment.

Sec. 28. In any criminal prosecution for theft pursuant to subsection (4) of section 28-511, the accused shall be tried in the county where the motor vehicle was rented or leased or where the motor vehicle was recovered except as otherwise provided in section 25-412.03.

Sec. 29. (1) Structured programming shall be planned for all adult persons committed to the department. The structured programming shall include any of the following: Work programs, vocational training, behavior management and modification, money management, and substance abuse awareness, counseling, or treatment. Programs and treatment services shall address:

- (a) Behavioral impairments, severe emotional disturbances, and other mental health or psychiatric disorders;
- (b) Drug and alcohol use and addiction;
- (c) Health and medical needs;
- (d) Education and related services;
- (e) Counseling services for persons committed to the department who have been physically or sexually abused;
- (f) Work ethic and structured work programs; and
- (g) The development and enhancement of job acquisition skills and job performance skills.

(2) The goal of such structured programming is to provide the skills necessary for the person committed to the department to successfully return to his or her home or community or to a suitable alternative community upon his or her release from the adult correctional facility.

(3) If a person committed to the department refuses to participate in the structured programming described in subsection (1) of this section, he or she shall be subject to disciplinary action, including a loss of privileges, good time, or both, by the department.

(4) In no event shall a person committed to the department be ineligible for good time due to the unavailability of services referred to in this section.

(5) Any person committed to the department who is qualified by reason of education, training, or experience to teach academic or vocational classes may be given the opportunity to teach such classes to committed offenders as part of the structured programming described in this section.

Sec. 30. Any individual, partnership, firm, limited liability company, corporation, company, society, or association, the state or any department, agency, or subdivision thereof, or any other public or private entity aggrieved by the actions of an individual convicted of a violation of section 28-311.01 shall have a cause of action for any loss or damage, including reasonable costs and attorney's fees, resulting from the underlying

conduct which was the basis for the conviction.

Sec. 31. (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 or 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 IV felony.

Sec. 32. Sections 3 to 5 and 34 of this act become operative on January 1, 1996. Sections 19 to 21, 25, 26, 29, and 35 of this act become operative on July 1, 1996. The other sections of this act become operative on their effective date.

Sec. 33. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 34. Original sections 28-318 and 28-320, Reissue Revised Statutes of Nebraska, and section 28-319, Revised Statutes Supplement, 1994, are repealed.

Sec. 35. Original sections 47-616, 83-1,107, 83-1,110, 83-1,135, and 83-4,114.01, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 36. Original sections 28-105, 28-1205, 28-1206, 29-2257, 29-2525, 43-2,104, 43-2,105, 83-1,116, 83-1,122, 83-1,123, and 83-925.07, Reissue Revised Statutes of Nebraska, and sections 28-101, 28-416, 28-516, 28-1212.01, 28-1212.02, 29-2204, 29-2221, and 29-2262, Revised Statutes Supplement, 1994, are repealed.