

AMENDMENTS TO LB220

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 29-2261, Revised Statutes Cumulative Supplement,
4 2022, is amended to read:

5 29-2261 (1) Unless it is impractical to do so, when an offender has
6 been convicted of a felony other than murder in the first degree, the
7 court shall not impose sentence without first ordering a presentence
8 investigation of the offender and according due consideration to a
9 written report of such investigation. When an offender has been convicted
10 of murder in the first degree and (a) a jury renders a verdict finding
11 the existence of one or more aggravating circumstances as provided in
12 section 29-2520 or (b)(i) the information contains a notice of
13 aggravation as provided in section 29-1603 and (ii) the offender waives
14 his or her right to a jury determination of the alleged aggravating
15 circumstances, the court shall not commence the sentencing determination
16 proceeding as provided in section 29-2521 without first ordering a
17 presentence investigation of the offender and according due consideration
18 to a written report of such investigation.

19 (2) A court may order a presentence investigation in any case,
20 except in cases in which an offender has been convicted of a Class IIIA
21 misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic
22 infraction, or any corresponding city or village ordinance.

23 (3) The presentence investigation and report shall include, when
24 available, an analysis of the circumstances attending the commission of
25 the crime, the offender's history of delinquency or criminality, physical
26 and mental condition, family situation and background, economic status,
27 education, occupation, and personal habits, and any other matters that

1 the probation officer deems relevant or the court directs to be included.
2 All local and state police agencies and Department of Correctional
3 Services adult correctional facilities shall furnish to the probation
4 officer copies of such criminal records, in any such case referred to the
5 probation officer by the court of proper jurisdiction, as the probation
6 officer shall require without cost to the court or the probation officer.

7 Such investigation shall also include:

8 (a) Any written statements submitted to the county attorney by a
9 victim; and

10 (b) Any written statements submitted to the probation officer by a
11 victim.

12 (4) If there are no written statements submitted to the probation
13 officer, he or she shall certify to the court that:

14 (a) He or she has attempted to contact the victim; and

15 (b) If he or she has contacted the victim, such officer offered to
16 accept the written statements of the victim or to reduce such victim's
17 oral statements to writing.

18 For purposes of subsections (3) and (4) of this section, the term
19 victim shall be as defined in section 29-119.

20 (5) Before imposing sentence, the court may order the offender to
21 submit to psychiatric observation and examination for a period of not
22 exceeding sixty days or such longer period as the court determines to be
23 necessary for that purpose. The offender may be remanded for this purpose
24 to any available clinic or mental hospital, or the court may appoint a
25 qualified psychiatrist to make the examination. The report of the
26 examination shall be submitted to the court.

27 (6)(a) Any presentence report, substance abuse evaluation, or
28 psychiatric examination shall be privileged and shall not be disclosed
29 directly or indirectly to anyone other than a judge; probation officers
30 to whom an offender's file is duly transferred; the probation
31 administrator or his or her designee; alcohol and drug counselors, mental

1 health practitioners, psychiatrists, and psychologists licensed or
2 certified under the Uniform Credentialing Act to conduct substance abuse
3 evaluations and treatment; or others entitled by law to receive such
4 information, including personnel and mental health professionals for the
5 Nebraska State Patrol specifically assigned to sex offender registration
6 and community notification for the sole purpose of using such report,
7 evaluation, or examination for assessing risk and for community
8 notification of registered sex offenders.

9 (b) For purposes of this subsection, mental health professional
10 means (i) a practicing physician licensed to practice medicine in this
11 state under the Medicine and Surgery Practice Act, (ii) a practicing
12 psychologist licensed to engage in the practice of psychology in this
13 state as provided in section 38-3111 or as provided under similar
14 provisions of the Psychology Interjurisdictional Compact, (iii) a
15 practicing mental health professional licensed or certified in this state
16 as provided in the Mental Health Practice Act, or (iv) a practicing
17 professional counselor holding a privilege to practice in Nebraska under
18 the Licensed Professional Counselors Interstate Compact.

19 (7) The court shall permit inspection of the presentence report,
20 substance abuse evaluation, or psychiatric examination or parts of the
21 report, evaluation, or examination, as determined by the court, by the
22 prosecuting attorney and defense counsel. ~~Such Beginning July 1, 2016,~~
23 ~~such~~ inspection shall be by electronic access only unless the court
24 determines such access is not available to the prosecuting attorney or
25 defense counsel. The State Court Administrator shall determine and
26 develop the means of electronic access to such presentence reports,
27 evaluations, and examinations. Upon application by the prosecuting
28 attorney or defense counsel, the court may order that addresses,
29 telephone numbers, and other contact information for victims or witnesses
30 named in the report, evaluation, or examination be redacted upon a
31 showing by a preponderance of the evidence that such redaction is

1 warranted in the interests of public safety. The court may permit
2 inspection of the presentence report, substance abuse evaluation, or
3 psychiatric examination or examination of parts of the report,
4 evaluation, or examination by any other person having a proper interest
5 therein whenever the court finds it is in the best interest of a
6 particular offender. The court may allow fair opportunity for an offender
7 to provide additional information for the court's consideration.

8 (8) If an offender is sentenced to imprisonment, a copy of the
9 report of any presentence investigation, substance abuse evaluation, or
10 psychiatric examination shall be transmitted immediately to the
11 Department of Correctional Services. Upon request, the department shall
12 provide a copy of the report to the Board of Parole, or the Division of
13 Parole Supervision, and the Board of Pardons may receive a copy of the
14 report from the department.

15 (9) Notwithstanding subsections (6) and (7) of this section, the
16 Supreme Court or an agent of the Supreme Court acting under the direction
17 and supervision of the Chief Justice shall have access to psychiatric
18 examinations, substance abuse evaluations, and presentence investigations
19 and reports for research purposes. The Supreme Court and its agent shall
20 treat such information as confidential, and nothing identifying any
21 individual shall be released.

22 Sec. 2. Section 81-1850, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 81-1850 (1) For purposes of this section:

25 (a) Covered offense means:

26 (i) Murder in the first degree pursuant to section 28-303;

27 (ii) Murder in the second degree pursuant to section 28-304;

28 (iii) Kidnapping pursuant to section 28-313;

29 (iv) Assault in the first degree pursuant to section 28-308;

30 (v) Assault in the second degree pursuant to section 28-309;

31 (vi) Sexual assault in the first degree pursuant to section 28-319;

1 (vii) Sexual assault in the second degree pursuant to section
2 28-320;

3 (viii) Sexual assault of a child in the first degree pursuant to
4 section 28-319.01;

5 (ix) Sexual assault of a child in the second or third degree
6 pursuant to section 28-320.01;

7 (x) Stalking pursuant to section 28-311.03; or

8 (xi) An attempt, solicitation, or conspiracy to commit an offense
9 listed in this subdivision (a); and

10 (b) Victim has the same meaning as in section 29-119.

11 (2)(a) Except as provided in subdivision (2)(b) of this section,
12 when a person is convicted of a felony, the county attorney (1) Upon
13 request of the victim and at the time of conviction of the offender, the
14 county attorney of the jurisdiction in which a person is convicted of a
15 felony shall forward the name and address of any victim of such convicted
16 person to the Board of Parole, the Department of Correctional Services,
17 the county corrections agency, or the Department of Health and Human
18 Services, and the Board of Pardons, as applicable the name and address of
19 any victim, as defined in section 29-119, of the convicted person.

20 (b) A victim may waive the right to notification under this section
21 by notifying the county attorney, in which case the county attorney is
22 not required to comply with subdivision (2)(a) of this section.

23 (c) The Board of Parole board, the Department of Correctional
24 Services, the county corrections agency, or the Department of Health and
25 Human Services, and the Board of Pardons shall include the victim's name
26 in the file of the convicted person, but the name shall not be part of
27 the public record of any parole or pardons hearings of the convicted
28 person.

29 (d) Any victim, including a victim who has waived his or her right
30 to notification at the time of conviction, may request the notification
31 prescribed in this section, as applicable, by sending a written request

1 to the Board of Parole board, the Department of Correctional Services,
2 the county corrections agency,~~or~~ the Department of Health and Human
3 Services, or the Board of Pardons any time after the convicted person is
4 incarcerated and until the convicted person is no longer under the
5 jurisdiction of the Board of Parole board, the county corrections agency,
6 ~~or~~ the Department of Correctional Services, or the Board of Pardons or,
7 if the convicted person is under the jurisdiction of the Department of
8 Health and Human Services, within the three-year period after the
9 convicted person is no longer under the jurisdiction of the Board of
10 Parole board, the county corrections agency,~~or~~ the Department of
11 Correctional Services, or the Board of Pardons.

12 (3) ~~(2)~~ A victim whose name appears in the file of the convicted
13 person shall be notified by the Board of Parole:

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

17 (b) Of any parole hearings or proceedings;

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

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

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

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

26 (4) ~~(3)~~ A victim whose name appears in the file of the convicted
27 person shall be notified by the Department of Correctional Services or a
28 county corrections agency:

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

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

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

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

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

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

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

21 (5) ~~(4)~~ A victim whose name appears in the file of a convicted
22 person shall be notified by the Department of Health and Human Services:

23 (a) When a person described ~~convicted of an offense listed in~~
24 subsection (6) ~~(5)~~ of this section becomes the subject of a petition
25 pursuant to the Nebraska Mental Health Commitment Act or the Sex Offender
26 Commitment Act prior to his or her discharge from custody upon the
27 completion of his or her sentence or within thirty days after such
28 discharge. The county attorney who filed the petition shall notify the
29 Department of Correctional Services of such petition. The Department of
30 Correctional Services shall forward the names and addresses of victims
31 appearing in the file of the convicted person to the Department of Health

1 and Human Services; and

2 (b) When a person under a mental health board commitment pursuant to
3 subdivision (a) of this subsection:

4 (i) Escapes ~~escapes~~ from an inpatient facility providing board-
5 ordered treatment and again when the person is returned to an inpatient
6 facility;

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

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

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

17 (6) ~~(5)~~ Subsection (5) ~~(4)~~ of this section applies to a person
18 ~~persons~~ convicted of a covered offense ~~at least one of the following~~
19 ~~offenses~~ which is also alleged to be the recent act or threat underlying
20 the commitment of such person ~~persons~~ as mentally ill and dangerous or as
21 a dangerous sex offender ~~offenders~~ as defined in section 83-174.01. ÷

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

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

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

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

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

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

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

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

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

1 ~~to section 28-320.01;~~

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

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

5 ~~(7) (6)~~ A victim whose name appears in the file of a convicted
6 person convicted of a covered offense shall be notified, via certified
7 mail, by the Board of Pardons:

8 (a) Of any pardon or commutation proceedings at least thirty
9 calendar days prior to the proceedings; and

10 (b) If a pardon or commutation has been granted, within ten days
11 after such granting.

12 ~~(8) (7)~~ The Board of Parole, the Department of Correctional
13 Services, the Department of Health and Human Services, and the Board of
14 Pardons shall adopt and promulgate rules and regulations as needed to
15 carry out this section.

16 ~~(9) (8)~~ The victim's address and telephone number maintained by the
17 Department of Correctional Services, the Department of Health and Human
18 Services, the county corrections agency, ~~or~~ the Board of Parole, and the
19 Board of Pardons pursuant to subsection ~~(2) (1)~~ of this section shall be
20 exempt from disclosure under public records laws and federal freedom of
21 information laws, as such laws existed on January 1, 2004.

22 Sec. 3. Section 83-109, Revised Statutes Cumulative Supplement,
23 2022, is amended to read:

24 83-109 (1) The Department of Health and Human Services shall have
25 general control over the admission of patients and residents to all
26 institutions over which it has jurisdiction. Each individual shall be
27 assigned to the institution best adapted to care for him or her.

28 (2) A record of every patient or resident of every institution shall
29 be kept complete from the date of his or her entrance to the date of his
30 or her discharge or death. Such records shall be accessible only (a) to
31 the department, a legislative committee, the Governor, any federal agency

1 requiring medical records to adjudicate claims for federal benefits, and
2 any public or private agency under contract to provide facilities,
3 programs, and patient services, (b) upon order of a judge, court, or
4 mental health board, (c) in accordance with sections 20-161 to 20-166,
5 (d) to the Nebraska State Patrol pursuant to section 69-2409.01, (e) to
6 those portions of the record required to be released to a victim as
7 defined in section 29-119 in order to comply with the victim notification
8 requirements pursuant to subsections ~~(4)~~ and (5) and (6) of section
9 81-1850, (f) to law enforcement and county attorneys when a crime occurs
10 on the premises of an institution, (g) upon request when a patient or
11 resident has been deceased for fifty years or more, (h) to current
12 treatment providers, or (i) to treatment providers for coordination of
13 care related to transfer or discharge. In addition, a patient or resident
14 or his or her legally authorized representative may authorize the
15 specific release of his or her records, or portions thereof, by filing
16 with the department a signed written consent.

17 (3) Transfers of patients or residents from one institution to
18 another shall be within the exclusive jurisdiction of the department and
19 shall be recorded in the office of the department, with the reasons for
20 such transfers.

21 (4) When the department is unable to assign a patient to a regional
22 center or commit him or her to any other institution at the time of
23 application, a record thereof shall be kept and the patient accepted at
24 the earliest practicable date.

25 (5) The superintendents of the regional centers and Beatrice State
26 Developmental Center shall notify the department immediately whenever
27 there is any question regarding the propriety of the commitment,
28 detention, transfer, or placement of any person admitted to a state
29 institution. The department shall then investigate the matter and take
30 such action as shall be proper. Any interested party who is not satisfied
31 with such action may appeal such action, and the appeal shall be in

1 accordance with the Administrative Procedure Act.

2 (6) The department shall have full authority on its own suggestion
3 or upon the application of any interested person to investigate the
4 physical and mental status of any patient or resident of any regional
5 center or the Beatrice State Developmental Center. If upon such
6 investigation the department considers such patient or resident fit to be
7 released from the regional center or Beatrice State Developmental Center,
8 it shall cause such patient or resident to be discharged or released on
9 convalescent leave.

10 Sec. 4. Section 83-1,127, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 83-1,127 The Board of Pardons shall:

13 (1) Exercise the pardon authority as defined in section 83-170 for
14 all criminal offenses except treason and cases of impeachment;

15 (2) Adopt and promulgate ~~Make~~ rules and regulations for its own
16 administration and operation;

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

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

21 (5) Consult with the Department of Motor Vehicles concerning
22 applications received from the department pursuant to section 60-6,209
23 for the exercise of pardon authority; and

24 (6) Exercise all powers and perform all duties necessary and proper
25 in carrying out its responsibilities under the provisions of the Nebraska
26 Treatment and Corrections Act.

27 Sec. 5. Original sections 81-1850 and 83-1,127, Reissue Revised
28 Statutes of Nebraska, and sections 29-2261 and 83-109, Revised Statutes
29 Cumulative Supplement, 2022, are repealed.