

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 76

Introduced by Geist, 25.

Read first time January 05, 2023

Committee: Judiciary

1 A BILL FOR AN ACT relating to the administration of justice; to amend
2 sections 29-2252, 29-2262, 43-2,108, and 83-1,125.01, Revised
3 Statutes Cumulative Supplement, 2022; to provide access to certain
4 information relating to probationers, juveniles, and parolees to law
5 enforcement agencies; to provide duties for the probation
6 administrator, courts, the Board of Parole, and the Nebraska
7 Commission on Law Enforcement and Criminal Justice; and to repeal
8 the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2252, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 29-2252 The administrator shall:

4 (1) Supervise and administer the office;

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

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

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

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

21 (6) Cooperate with all agencies, public or private, which are
22 concerned with treatment or welfare of persons on probation. All
23 information provided to the Nebraska Commission on Law Enforcement and
24 Criminal Justice for the purpose of providing access to such information
25 to law enforcement agencies through the state's criminal justice
26 information system shall be provided in a manner that allows such
27 information to be readily accessible through the main interface of the
28 system;

29 (7) Organize and conduct training programs for probation officers.
30 Training shall include the proper use of a risk and needs assessment,
31 risk-based supervision strategies, relationship skills, cognitive

1 behavioral interventions, community-based resources, criminal risk
2 factors, and targeting criminal risk factors to reduce recidivism and the
3 proper use of a matrix of administrative sanctions, custodial sanctions,
4 and rewards developed pursuant to subdivision (18) of this section. All
5 probation officers employed on or after August 30, 2015, shall complete
6 the training requirements set forth in this subdivision;

7 (8) Collect, develop, and maintain statistical information
8 concerning probationers, probation practices, and the operation of the
9 system and provide the Community Corrections Division of the Nebraska
10 Commission on Law Enforcement and Criminal Justice with the information
11 needed to compile the report required in section 47-624;

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

14 (10) Conduct research for the purpose of evaluating and improving
15 the effectiveness of the system. Subject to the availability of funding,
16 the administrator shall contract with an independent contractor or
17 academic institution for evaluation of existing community corrections
18 facilities and programs operated by the office;

19 (11) Adopt and promulgate such rules and regulations as may be
20 necessary or proper for the operation of the office or system. The
21 administrator shall adopt and promulgate rules and regulations for
22 transitioning individuals on probation across levels of supervision and
23 discharging them from supervision consistent with evidence-based
24 practices. The rules and regulations shall ensure supervision resources
25 are prioritized for individuals who are high risk to reoffend, require
26 transitioning individuals down levels of supervision intensity based on
27 assessed risk and months of supervision without a reported major
28 violation, and establish incentives for earning discharge from
29 supervision based on compliance;

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

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

6 (13) Administer the payment by the state of all salaries, travel,
7 and expenses authorized under section 29-2259 incident to the conduct and
8 maintenance of the office;

9 (14) Use the funds provided under section 29-2262.07 to augment
10 operational or personnel costs associated with the development,
11 implementation, and evaluation of enhanced probation-based programs and
12 non-probation-based programs and services in which probation personnel or
13 probation resources are utilized pursuant to an interlocal agreement
14 authorized by subdivision (16) of this section and to purchase services
15 to provide such programs aimed at enhancing adult probationer or non-
16 probation-based program participant supervision in the community and
17 treatment needs of probationers and non-probation-based program
18 participants. Enhanced probation-based programs include, but are not
19 limited to, specialized units of supervision, related equipment purchases
20 and training, and programs that address a probationer's vocational,
21 educational, mental health, behavioral, or substance abuse treatment
22 needs;

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

25 (16) Have the authority to enter into interlocal agreements in which
26 probation resources or probation personnel may be utilized in conjunction
27 with or as part of non-probation-based programs and services. Any such
28 interlocal agreement shall comply with section 29-2255;

29 (17) Collaborate with the Community Corrections Division of the
30 Nebraska Commission on Law Enforcement and Criminal Justice and the
31 Division of Parole Supervision to develop rules governing the

1 participation of parolees in community corrections programs operated by
2 the Office of Probation Administration;

3 (18) Develop a matrix of rewards for compliance and positive
4 behaviors and graduated administrative sanctions and custodial sanctions
5 for use in responding to and deterring substance abuse violations and
6 technical violations. As applicable under sections 29-2266.02 and
7 29-2266.03, custodial sanctions of up to thirty days in jail shall be
8 designated as the most severe response to a violation in lieu of
9 revocation and custodial sanctions of up to three days in jail shall be
10 designated as the second most severe response;

11 (19) Adopt and promulgate rules and regulations for the creation of
12 individualized post-release supervision plans, collaboratively with the
13 Department of Correctional Services and county jails, for probationers
14 sentenced to post-release supervision; and

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

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

20 Sec. 2. Section 29-2262, Revised Statutes Cumulative Supplement,
21 2022, is amended to read:

22 29-2262 (1) When a court sentences an offender to probation, it
23 shall attach such reasonable conditions as it deems necessary or likely
24 to insure that the offender will lead a law-abiding life. No offender
25 shall be sentenced to probation if he or she is deemed to be a habitual
26 criminal pursuant to section 29-2221.

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

29 (a) To refrain from unlawful conduct;

30 (b) To be confined periodically in the county jail or to return to
31 custody after specified hours but not to exceed the lesser of ninety days

1 or the maximum jail term provided by law for the offense;

2 (c) To meet his or her family responsibilities;

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

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

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

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

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

13 (i) To possess no firearm or other dangerous weapon if convicted of
14 a felony, or if convicted of any other offense, to possess no firearm or
15 other dangerous weapon unless granted written permission by the court;

16 (j) To remain within the jurisdiction of the court and to notify the
17 court or the probation officer of any change in his or her address or his
18 or her employment and to agree to waive extradition if found in another
19 jurisdiction;

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

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

23 (m) To pay for tests to determine the presence of drugs or alcohol,
24 psychological evaluations, offender assessment screens, and
25 rehabilitative services required in the identification, evaluation, and
26 treatment of offenders if such offender has the financial ability to pay
27 for such services;

28 (n) To perform community service as outlined in sections 29-2277 to
29 29-2279 under the direction of his or her probation officer;

30 (o) To be monitored by an electronic surveillance device or system
31 and to pay the cost of such device or system if the offender has the

1 financial ability;

2 (p) To participate in a community correctional facility or program
3 as provided in the Community Corrections Act;

4 (q) To satisfy any other conditions reasonably related to the
5 rehabilitation of the offender;

6 (r) To make restitution as described in sections 29-2280 and
7 29-2281; or

8 (s) To pay for all costs imposed by the court, including court costs
9 and the fees imposed pursuant to section 29-2262.06.

10 (3) When jail time is imposed as a condition of probation under
11 subdivision (2)(b) of this section, the court shall advise the offender
12 on the record the time the offender will serve in jail assuming no good
13 time for which the offender will be eligible under section 47-502 is lost
14 and assuming none of the jail time imposed as a condition of probation is
15 waived by the court.

16 (4) Jail time may only be imposed as a condition of probation under
17 subdivision (2)(b) of this section if:

18 (a) The court would otherwise sentence the defendant to a term of
19 imprisonment instead of probation; and

20 (b) The court makes a finding on the record that, while probation is
21 appropriate, periodic confinement in the county jail as a condition of
22 probation is necessary because a sentence of probation without a period
23 of confinement would depreciate the seriousness of the offender's crime
24 or promote disrespect for law.

25 (5) In all cases in which the offender is guilty of violating
26 section 28-416, a condition of probation shall be mandatory treatment and
27 counseling as provided by such section.

28 (6) In all cases in which the offender is guilty of a crime covered
29 by the DNA Identification Information Act, a condition of probation shall
30 be the collecting of a DNA sample pursuant to the act and the paying of
31 all costs associated with the collection of the DNA sample prior to

1 release from probation.

2 (7) For any offender sentenced to probation, the court shall enter
3 an order to provide the offender's (a) name, (b) probation officer, and
4 (c) conditions of probation to the Nebraska Commission on Law Enforcement
5 and Criminal Justice which shall provide access to such information to
6 law enforcement agencies through the state's criminal justice information
7 service.

8 Sec. 3. Section 43-2,108, Revised Statutes Cumulative Supplement,
9 2022, is amended to read:

10 43-2,108 (1) The juvenile court judge shall keep a record of all
11 proceedings of the court in each case, including appearances, findings,
12 orders, decrees, and judgments, and any evidence which he or she feels it
13 is necessary and proper to record. The case file shall contain the
14 complaint or petition and subsequent pleadings. The case file may be
15 maintained as an electronic document through the court's electronic case
16 management system, on microfilm, or in a paper volume and disposed of
17 when determined by the State Records Administrator pursuant to the
18 Records Management Act.

19 (2) Except as provided in subsections (3) and (4) of this section,
20 the medical, psychological, psychiatric, and social welfare reports and
21 the records of juvenile probation officers, as they relate to individual
22 proceedings in the juvenile court, shall not be open to inspection,
23 without order of the court. Such records shall be made available to a
24 district court of this state or the District Court of the United States
25 on the order of a judge thereof for the confidential use of such judge or
26 his or her probation officer as to matters pending before such court but
27 shall not be made available to parties or their counsel; and such
28 district court records shall be made available to a county court or
29 separate juvenile court upon request of the county judge or separate
30 juvenile judge for the confidential use of such judge and his or her
31 probation officer as to matters pending before such court, but shall not

1 be made available by such judge to the parties or their counsel.

2 (3) As used in this section, confidential record information means
3 all docket records, other than the pleadings, orders, decrees, and
4 judgments; case files and records; reports and records of probation
5 officers; and information supplied to the court of jurisdiction in such
6 cases by any individual or any public or private institution, agency,
7 facility, or clinic, which is compiled by, produced by, and in the
8 possession of any court. In all cases under subdivision (3)(a) of section
9 43-247, access to all confidential record information in such cases shall
10 be granted only as follows: (a) The court of jurisdiction may, subject to
11 applicable federal and state regulations, disseminate such confidential
12 record information to any individual, or public or private agency,
13 institution, facility, or clinic which is providing services directly to
14 the juvenile and such juvenile's parents or guardian and his or her
15 immediate family who are the subject of such record information; (b) the
16 court of jurisdiction may disseminate such confidential record
17 information, with the consent of persons who are subjects of such
18 information, or by order of such court after showing of good cause, to
19 any law enforcement agency upon such agency's specific request for such
20 agency's exclusive use in the investigation of any protective service
21 case or investigation of allegations under subdivision (3)(a) of section
22 43-247, regarding the juvenile or such juvenile's immediate family, who
23 are the subject of such investigation; and (c) the court of jurisdiction
24 may disseminate such confidential record information to any court, which
25 has jurisdiction of the juvenile who is the subject of such information
26 upon such court's request.

27 (4) The court shall provide copies of predispositional reports and
28 evaluations of the juvenile to the juvenile's attorney and the county
29 attorney or city attorney prior to any hearing in which the report or
30 evaluation will be relied upon.

31 (5) In all cases under sections 43-246.01 and 43-247, the office of

1 Inspector General of Nebraska Child Welfare may submit a written request
2 to the probation administrator for access to the records of juvenile
3 probation officers in a specific case. Upon a juvenile court order, the
4 records shall be provided to the Inspector General within five days for
5 the exclusive use in an investigation pursuant to the Office of Inspector
6 General of Nebraska Child Welfare Act. Nothing in this subsection shall
7 prevent the notification of death or serious injury of a juvenile to the
8 Inspector General of Nebraska Child Welfare pursuant to section 43-4318
9 as soon as reasonably possible after the Office of Probation
10 Administration learns of such death or serious injury.

11 (6) In all cases under sections 43-246.01 and 43-247, the juvenile
12 court shall disseminate confidential record information to the Foster
13 Care Review Office pursuant to the Foster Care Review Act.

14 (7) Nothing in subsections (3), (5), and (6) of this section shall
15 be construed to restrict the dissemination of confidential record
16 information between any individual or public or private agency,
17 institute, facility, or clinic, except any such confidential record
18 information disseminated by the court of jurisdiction pursuant to this
19 section shall be for the exclusive and private use of those to whom it
20 was released and shall not be disseminated further without order of such
21 court.

22 (8)(a) Any records concerning a juvenile court petition filed
23 pursuant to subdivision (3)(c) of section 43-247 shall remain
24 confidential except as may be provided otherwise by law. Such records
25 shall be accessible to (i) the juvenile except as provided in subdivision
26 (b) of this subsection, (ii) the juvenile's counsel, (iii) the juvenile's
27 parent or guardian, and (iv) persons authorized by an order of a judge or
28 court.

29 (b) Upon application by the county attorney or by the director of
30 the facility where the juvenile is placed and upon a showing of good
31 cause therefor, a judge of the juvenile court having jurisdiction over

1 the juvenile or of the county where the facility is located may order
2 that the records shall not be made available to the juvenile if, in the
3 judgment of the court, the availability of such records to the juvenile
4 will adversely affect the juvenile's mental state and the treatment
5 thereof.

6 (9) Nothing in subsection (3), (5), or (6) of this section shall be
7 construed to restrict the immediate dissemination of a current picture
8 and information about a child who is missing from a foster care or out-
9 of-home placement. Such dissemination by the Office of Probation
10 Administration shall be authorized by an order of a judge or court. Such
11 information shall be subject to state and federal confidentiality laws
12 and shall not include that the child is in the care, custody, or control
13 of the Department of Health and Human Services or under the supervision
14 of the Office of Probation Administration.

15 (10) Any juvenile court order that places a juvenile on electronic
16 monitoring shall also state whether the data from such electronic
17 monitoring device shall be made available to a law enforcement agency
18 immediately upon request by such agency. For any juvenile subject to the
19 supervision of a probation officer, the name of the juvenile, the name of
20 the juvenile's probation officer, and any terms of probation included in
21 a juvenile court order otherwise open to inspection shall be provided to
22 the Nebraska Commission on Law Enforcement and Criminal Justice which
23 shall provide access to such information to law enforcement agencies
24 through the state's criminal justice information service.

25 Sec. 4. Section 83-1,125.01, Revised Statutes Cumulative Supplement,
26 2022, is amended to read:

27 83-1,125.01 (1) The Board of Parole and the Division of Parole
28 Supervision may maintain an individual file for each person who is under
29 the jurisdiction of the Board of Parole. Such file may be maintained
30 electronically and shall include, when available and appropriate, the
31 following information on such person:

- 1 (a) Admission summary;
- 2 (b) Presentence investigation report;
- 3 (c) Classification reports and recommendations;
- 4 (d) Official records of conviction and commitment along with any
- 5 earlier criminal records;
- 6 (e) Progress reports and admission-orientation reports;
- 7 (f) Reports of any disciplinary infractions and their disposition;
- 8 (g) Risk and needs assessments;
- 9 (h) Parole plan and parole placement and investigation worksheets;
- 10 (i) Decision guideline scores;
- 11 (j) Parole case plan;
- 12 (k) Parole progress reports and contact notes;
- 13 (l) Arrest and violation reports, including disposition;
- 14 (m) Parole proceedings orders and notices;
- 15 (n) Other documents related to parole supervision;
- 16 (o) Correspondence; and
- 17 (p) Other pertinent data concerning his or her background, conduct,
- 18 associations, and family relationships.

19 (2) Any decision concerning release on or revocation of parole or
20 imposition of sanctions shall be made only after the individual file has
21 been reviewed. The contents of the individual file shall be confidential
22 unless disclosed in connection with a public hearing and shall not be
23 subject to public inspection except by court order for good cause shown.
24 The contents of the file shall not be accessible to any person under the
25 jurisdiction of the Board of Parole. A person under the jurisdiction of
26 the board may obtain access to his or her medical records by request to
27 the provider pursuant to sections 71-8401 to 71-8407 notwithstanding the
28 fact that such medical records may be a part of his or her parole file.
29 The board and the Division of Parole Supervision have the authority to
30 withhold decision guideline scores, risk and needs assessment scores, and
31 mental health and psychological records of a person under the

1 jurisdiction of the board when appropriate.

2 (3) Nothing in this section limits in any manner the authority of
3 the Public Counsel to inspect and examine the records and documents of
4 the board and the Division of Parole Supervision pursuant to sections
5 81-8,240 to 81-8,254, except that the Public Counsel's access to the
6 medical or mental health records of a person under the jurisdiction of
7 the board shall be subject to his or her consent. The office of Public
8 Counsel shall not disclose the medical or mental health records of a
9 person under the jurisdiction of the board to anyone else, including any
10 other person under the jurisdiction of the board, except as authorized by
11 law.

12 (4) For any person under the jurisdiction of the Board of Parole,
13 the board shall provide such person's (a) name, (b) parole officer, and
14 (c) conditions of parole to the Nebraska Commission on Law Enforcement
15 and Criminal Justice which shall provide access to such information to
16 law enforcement agencies through the state's criminal justice information
17 service.

18 Sec. 5. Original sections 29-2252, 29-2262, 43-2,108, and
19 83-1,125.01, Revised Statutes Cumulative Supplement, 2022, are repealed.