

LEGISLATIVE BILL 46

Approved by the Governor May 23, 2003

Introduced by Brashear, 4; Bourne, 8; Dw. Pedersen, 39

AN ACT relating to criminal justice; to amend sections 29-2250, 29-2252, 29-2254, 29-2263, 29-2266, 29-2269, 81-1423, 83-1,102, 83-1,107, 83-1,110, 83-1,111, 83-1,123, 83-1,125, 83-1,135, 83-4,146, and 83-933, Reissue Revised Statutes of Nebraska, sections 28-416, 29-2259.01, 29-2262, 29-2709, 81-1425, and 83-1,118, Revised Statutes Supplement, 2002, and section 29-2261, Revised Statutes Supplement, 2002, as amended by section 9, Legislative Bill 1, Ninety-seventh Legislature, Third Special Session, 2002; to adopt the Interstate Compact for Adult Offender Supervision; to adopt the Community Corrections Act and the Correctional System Overcrowding Emergency Act; to create the Community Corrections Council; to change provisions relating to drug abuse treatment and counseling, presentence investigations, probation, parole, good time, and work camp costs; to provide for fees; to create funds; to provide duties for the Nebraska Commission on Law Enforcement and Criminal Justice; to harmonize provisions; to eliminate the Community Correctional Facilities and Programs Act and the Uniform Act for Out-of-State Parolee Supervision; to provide operative dates; to provide severability; to repeal the original sections; to outright repeal sections 29-2637, 29-2638, 47-601, 47-602, and 47-604 to 47-618, Reissue Revised Statutes of Nebraska, and section 47-603, Revised Statutes Supplement, 2002; and to declare an emergency.

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

Section 1. Section 28-416, Revised Statutes Supplement, 2002, 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), (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 IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly or pursuant to a medical order issued by a practitioner authorized to prescribe 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), (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), (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) 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) At least 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) 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) 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:

(a) Sixteen ounces or more shall be guilty of a Class IC felony;

(b) Seven ounces or more but less than sixteen ounces shall be guilty of a Class ID felony; or

(c) Three and one-half ounces or more but less than seven ounces shall be guilty of a Class II felony.

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

(13) 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) 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) 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), (8), (9), or (10) of this section shall not be eligible for parole prior to serving the mandatory minimum sentence~~ this section, if sentenced to the Department of Correctional Services, shall attend appropriate treatment and counseling on drug abuse.

(16) 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. 2. Sections 2 and 3 of this act shall be known and may be cited as the Interstate Compact for Adult Offender Supervision.

Sec. 3. The Governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

The compacting states solemnly agree:

ARTICLE I

PURPOSE

The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states: To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits, and obligations of the compact among the compacting states. In addition, this compact will: Create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, or corrections or other criminal justice agencies which will promulgate rules to achieve the purposes of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches of government, and state criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate

interventions to address and correct noncompliance; and coordinate training and education regarding regulation of interstate movement of offenders for officials involved in such activity. The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefor public business.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

Adult means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law;

Bylaws means those bylaws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct;

Compact administrator means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission, and the policies adopted by the state council under this compact;

Compacting state means any state which has enacted the enabling legislation for this compact;

Commissioner means the voting representative of each compacting state appointed pursuant to Article III of this compact;

Interstate commission means the Interstate Commission for Adult Offender Supervision established by this compact;

Member means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner;

Noncompacting state means any state which has not enacted the enabling legislation for this compact;

Offender means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies;

Person means any individual, corporation, business enterprise, or other legal entity, either public or private;

Rules means acts of the interstate commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states;

State means a state of the United States, the District of Columbia, and any other territorial possessions of the United States; and

State Council means the resident members of the State Council for Interstate Adult Offender Supervision created by each state under Article IV of this compact.

ARTICLE III
THE COMPACT COMMISSION

The compacting states hereby create the Interstate Commission for Adult Offender Supervision. The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

The interstate commission shall consist of commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members shall include a member of national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the interstate commission shall be ex officio, nonvoting members. The interstate commission may provide in its bylaws for such additional ex officio, nonvoting members as it deems necessary.

Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall

constitute a quorum for the transaction of business unless a larger quorum is required by the bylaws of the interstate commission. The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

The interstate commission shall establish an executive committee which shall include commission officers, commission members, and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff, administers enforcement and compliance with the provisions of the compact and bylaws, as directed by the interstate commission, and performs other duties as directed by the interstate commission or as set forth in the bylaws.

ARTICLE IV THE STATE COUNCIL

Each member state shall create a State Council for Interstate Adult Offender Supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators. Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the Governor in consultation with the Legislature and the judiciary. In addition to appointment of its commissioner to the interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

To adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission;

To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

To establish and maintain offices;

To purchase and maintain insurance and bonds;

To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs;

To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions, including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

To elect or appoint such officers, attorneys, employees, agents, or consultants and to fix their compensation, define their duties, and determine their qualifications and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

To accept any and all donations and grants of money, equipment, supplies, materials, and services and to receive, utilize, and dispose of same;

To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;

To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

To establish a budget, make expenditures, and levy assessments as

provided in Article X of this compact;

To sue and be sued;

To provide for dispute resolution among compacting states;

To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;

To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity; and

To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Section A. Bylaws

The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

Establishing the fiscal year of the interstate commission;

Establishing an executive committee and such other committees as may be necessary;

Providing reasonable standards and procedures:

(i) For the establishment of committees; and

(ii) Governing any general or specific delegation of any authority or function of the interstate commission;

Providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each such meeting;

Establishing the titles and responsibilities of the officers of the interstate commission;

Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission;

Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations;

Providing transition rules for startup administration of the compact; and

Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice-chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; PROVIDED, that subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission and hire and supervise such other staff as may be authorized by the interstate commission but shall not be a member.

Section C. Corporate Records of the Interstate Commission

The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

Section D. Qualified Immunity, Defense, and Indemnification

The members, officers, executive director, and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property, personal injury, or other civil liability caused or arising out

of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities; PROVIDED, that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

The interstate commission shall defend the commissioner of a compacting state, his or her representatives or employees, or the interstate commission's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; PROVIDED, that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees harmless in the amount of any settlement or judgement obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; PROVIDED, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII

ACTIVITIES OF THE INTERSTATE COMMISSION

The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the Freedom of Information Reform Act of 1986, 5 U.S.C. section 552b, as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

Relate solely to the interstate commission's internal personnel practices and procedures;

Disclose matters specifically exempted from disclosure by statute;
Disclose trade secrets or commercial or financial information which is privileged or confidential;

Involve accusing any person of a crime or formally censuring any

person;

Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

Disclose investigatory records compiled for law enforcement purposes;

Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; or

Specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or proceeding.

For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote, reflected in the vote of each member on the question. All documents considered in connection with any action shall be identified in such minutes.

The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

ARTICLE VIII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact, including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C. section 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 1 et seq., as may be amended (hereinafter APA). All rules and amendments shall become binding as of the date specified in each rule or amendment.

If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

When promulgating a rule, the interstate commission shall:

Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

Provide an opportunity for an informal hearing; and

Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record.

Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, as defined in the APA, in the rulemaking record, the court shall hold the rule unlawful and set it aside.

Subjects to be addressed within twelve months after the first meeting must at a minimum include:

Notice to victims and opportunity to be heard;

Offender registration and compliance;

Violations/returns;

Transfer procedures and forms;

Eligibility for transfer;

Collection of restitution and fees from offenders;

Data collection and reporting;

The level of supervision to be provided by the receiving state;

Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective

date of the compact and the date on which the last eligible state adopts the compact; and

Mediation, arbitration, and dispute resolution.

The existing rules governing the operation of the previous compact superseded by this act shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption; PROVIDED, that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE IX

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Section A. Oversight

The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

The compacting states shall report to the interstate commission on issues or activities of concern to them and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

Section C. Enforcement

The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Article XII, Section B, of this compact.

ARTICLE X

FINANCE

The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs such assessment.

The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same, nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XI

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

Any state, as defined in Article II of this compact, is eligible to become a compacting state. The compact shall become effective and binding

upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII

WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

Section A. Withdrawal

Once effective, the compact shall continue in force and remain binding upon each and every compacting state; PROVIDED, that a compacting state may withdraw from the compact (withdrawing state) by enacting a statute specifically repealing the statute which enacted the compact into law.

The effective date of withdrawal is the effective date of the repeal.

The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Default

If the interstate commission determines that any compacting state has at any time defaulted (defaulting state) in the performance of any of its obligations or responsibilities under this compact, the bylaws, or any duly promulgated rules the interstate commission may impose any or all of the following penalties:

Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

Remedial training and technical assistance as directed by the interstate commission;

Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the Governor, the Chief Justice or Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.

The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations, the performance of which extends beyond the effective date of termination.

The interstate commission shall not bear any costs relating to the

defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

Section C. Judicial Enforcement

The interstate commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal court district where the interstate commission has its offices, to enforce compliance with the provisions of the compact or its duly promulgated rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

Section D. Dissolution of Compact

The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII

SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Sec. 4. Section 29-2250, Reissue Revised Statutes of Nebraska, is amended to read:

29-2250. The office shall:

- (1) Supervise and administer the system;
- (2) Establish probation policies and standards for the system, with the concurrence of the Supreme Court; and
- (3) Supervise offenders placed on probation in another state who are within the state pursuant to ~~section 29-2637~~ the Interstate Compact for Adult Offender Supervision.

Sec. 5. Section 29-2252, Reissue Revised Statutes of Nebraska, is amended to read:

29-2252. The administrator shall:

- (1) Supervise and administer the office;
- (2) Establish and maintain policies, standards, and procedures for the system, with the concurrence of the Supreme Court;
- (3) Prescribe and furnish such forms for records and reports for the system as shall be deemed necessary for uniformity, efficiency, and statistical accuracy;
- (4) Establish minimum qualifications for employment as a probation

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

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

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

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

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

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

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

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

(12) Transmit a report during each even-numbered year to the Supreme Court on the operation of the office for the preceding two calendar years, which report shall be transmitted by the Supreme Court to the Governor and the Clerk of the Legislature;

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

(14) In consultation with the Community Corrections Council, use the funds provided under section 13 of this act to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced probation-based programs and to purchase services to provide such programs aimed at enhancing adult probationer supervision in the community and treatment needs of probationers. Such enhanced probation-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs developed by or through the council that address a probationer's vocational, educational, mental health, behavioral, or substance abuse treatment needs; and

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

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

Sec. 6. Section 29-2254, Reissue Revised Statutes of Nebraska, is amended to read:

29-2254. ~~The officer~~ compact administrator appointed ~~by the Governor~~ pursuant to ~~section 29-2637~~ the Interstate Compact for Adult Offender Supervision shall delegate to the probation administrator authority and responsibility for:

(1) Implementation and administration of ~~section 29-2637~~ the compact as it affects probationers; and

(2) Supervision of probationers either sentenced to probation within the state and supervised in another state or placed on probation in another state and supervised within this state pursuant to ~~section 29-2637~~ the compact.

Sec. 7. Section 29-2259.01, Revised Statutes Supplement, 2002, is amended to read:

29-2259.01. There is hereby created the Probation Cash Fund. All funds collected pursuant to subdivisions ~~(2)(n) and (2)(p)~~ (2)(m) and (2)(o) of section 29-2262 shall be remitted to the State Treasurer for credit to the fund. Expenditures from the fund shall include, but not be limited to, supplementing any state funds necessary to support the costs of the services for which the funds were collected. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 8. Section 29-2261, Revised Statutes Supplement, 2002, as amended by section 9, Legislative Bill 1, Ninety-seventh Legislature, Third Special Session, 2002, is amended to read:

29-2261. (1) Unless it is impractical to do so, when an offender has been convicted of a felony other than murder in the first degree, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written

report of such investigation. When an offender has been convicted of murder in the first degree and (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b) (i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the offender waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall not commence the sentencing determination proceeding as provided in section 29-2521 without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

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

(3) The presentence investigation and report shall include, when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies and Department of Correctional Services adult correctional facilities shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer.

Such investigation shall also include:

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

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

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

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

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

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

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

(6) Any presentence report or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge, probation officers to whom an offender's file is duly transferred, the probation administrator or his or her designee, or others entitled by law to receive such information, including personnel and mental health professionals for the Nebraska State Patrol specifically assigned to sex offender registration and community notification for the sole purpose of using such report or examination for assessing risk and for community notification of registered sex offenders. For purposes of this subsection, mental health professional means (a) a practicing physician licensed to practice medicine in this state under the provisions of section 71-102, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 71-1,206.14, or (c) a practicing mental health professional licensed or certified in this state as provided in section 71-1,333. The court may permit inspection of the report or examination of parts thereof by the offender or his or her attorney, or other person having a proper interest therein, whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration.

(7) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation or psychiatric examination shall be transmitted ~~forthwith~~ immediately to the Department of Correctional Services. ~~or, when the defendant is committed to the custody of a specific institution, to such institution~~ Upon request, the Board of Parole or the Office of Parole Administration may receive a copy of the report from the department.

(8) Notwithstanding subsection (6) of this section, the Nebraska Commission on Law Enforcement and Criminal Justice under the direction and supervision of the Chief Justice of the Supreme Court shall have access to

presentence investigations and reports for the sole purpose of carrying out the study required under subdivision (7) of section 81-1425. The commission shall treat such information as confidential, and nothing identifying any individual shall be released by the commission.

Sec. 9. Section 29-2262, Revised Statutes Supplement, 2002, 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 a habitual criminal pursuant to section 29-2221.

(2) The court may, as a condition of a sentence of probation, 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 possess no firearm or other dangerous weapon unless granted written permission if convicted of a felony, or if convicted of any other offense, to possess no firearm or other dangerous weapon unless granted written permission by the court;
- (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 and to agree to waive extradition if found in another jurisdiction;
- (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, offender assessment screens, 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) (n) To perform community service as defined in section 29-2277 outlined in sections 29-2277 to 29-2279 under the direction of his or her probation officer;~~
- ~~(p) (o) 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) (p) To participate in a community correctional facility or program as provided in section 47-610 the Community Corrections Act;~~
- ~~(r) (q) To successfully complete an incarceration work camp program as determined by the Department of Correctional Services; or~~
- ~~(s) (r) To satisfy any other conditions reasonably related to the rehabilitation of the offender;~~
- (s) To make restitution as described in sections 29-2280 and 29-2281; or
- (t) To pay for all costs imposed by the court, including court costs and the fees imposed pursuant to section 12 of this act.

(3) 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 such section.

Sec. 10. Section 29-2263, Reissue Revised Statutes of Nebraska, is amended to read:

29-2263. (1) When a court has sentenced an offender to probation, the court shall specify the term of such probation which shall be not more

than five years upon conviction of a felony or second offense misdemeanor and two years upon conviction of a first offense misdemeanor. The court, on application of a probation officer or of the offender or on its own motion, may discharge an offender at any time.

(2) During the term of probation, the court on application of a probation officer or of the offender, or its own motion, may modify or eliminate any of the conditions imposed on the offender or add further conditions authorized by section 29-2262. This subsection does not preclude a probation officer from imposing administrative sanctions with the offender's full knowledge and consent as authorized by subsection (2) of section 29-2266.

(3) Upon completion of the term of probation, or the earlier discharge of the offender, the offender shall be relieved of any obligations imposed by the order of the court and shall have satisfied ~~his~~ the sentence for his or her crime.

(4) Whenever a probationer disappears or leaves the jurisdiction of the court without permission, the time during which he or she keeps his or her whereabouts hidden or remains away from the jurisdiction of the court shall be added to the original term of probation.

Sec. 11. Section 29-2266, Reissue Revised Statutes of Nebraska, is amended to read:

29-2266. (1) For purposes of this section:

(a) Administrative sanction means additional probation requirements imposed upon a probationer by his or her probation officer, with the full knowledge and consent of the probationer, designed to hold the probationer accountable for substance abuse or noncriminal violations of conditions of probation, including:

- (i) Counseling or reprimand by his or her probation officer;
- (ii) Increased supervision contact requirements;
- (iii) Increased substance abuse testing;
- (iv) Referral for substance abuse or mental health evaluation or other specialized assessment, counseling, or treatment;
- (v) Imposition of a designated curfew for a period not to exceed thirty days;
- (vi) Community service for a specified number of hours pursuant to sections 29-2277 to 29-2279;
- (vii) Travel restrictions to stay within his or her county of residence or employment unless otherwise permitted by the supervising probation officer; and
- (viii) Restructuring court-imposed financial obligations to mitigate their effect on the probationer;

(b) Noncriminal violation means a probationer's activities or behaviors which create the opportunity for re-offending or diminish the effectiveness of probation supervision resulting in a violation of an original condition of probation, including:

- (i) Moving traffic violations;
- (ii) Failure to report to his or her probation officer;
- (iii) Leaving the jurisdiction of the court or leaving the state without the permission of the court or his or her probation officer;
- (iv) Failure to work regularly or attend training or school;
- (v) Failure to notify his or her probation officer of change of address or employment;
- (vi) Frequenting places where controlled substances are illegally sold, used, distributed, or administered;
- (vii) Failure to perform community service as directed; and
- (viii) Failure to pay fines, court costs, restitution, or any fees imposed pursuant to section 12 of this act as directed; and

(c) Substance abuse violation means a probationer's activities or behaviors associated with the use of chemical substances or related treatment services resulting in a violation of an original condition of probation, including:

- (i) Positive breath test for the consumption of alcohol if the offender is required to refrain from alcohol consumption;
- (ii) Positive urinalysis for the illegal use of drugs;
- (iii) Failure to report for alcohol testing or drug testing; and
- (iv) Failure to appear for or complete substance abuse or mental health treatment evaluations or inpatient or outpatient treatment.

(2) Whenever a probation officer has reasonable cause to believe that a probationer has ~~violated~~ committed or is about to violate a condition of ~~his~~ commit a substance abuse violation or noncriminal violation while on probation, but that the probationer will not attempt to leave the jurisdiction, and will not place lives or property in danger, the probation officer shall ~~submit~~ either:

(a) Impose one or more administrative sanctions with the approval of his or her chief probation officer or such chief's designee. The decision to impose administrative sanctions in lieu of formal revocation proceedings rests with the probation officer and his or her chief probation officer or such chief's designee and shall be based upon the probationer's risk level, the severity of the violation, and the probationer's response to the violation. If administrative sanctions are to be imposed, the probationer shall acknowledge in writing the nature of the violation and agree upon the administrative sanction. The probationer has the right to decline to acknowledge the violation; and if he or she declines to acknowledge the violation, the probation officer shall take action pursuant to subdivision (2)(b) of this section. A copy of the report shall be submitted to the county attorney of the county where probation was imposed; or

(b) Submit a written report to the sentencing court, with a copy to the county attorney of the county where probation was imposed, outlining the nature of the probation violation and request that formal revocation proceedings be instituted against the probationer.

(3) Whenever a probation officer has reasonable cause to believe that a probationer has violated or is about to violate a condition of probation other than a substance abuse violation or noncriminal violation and that the probationer will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall submit a written report to the sentencing court, with a copy to the county attorney of the county where probation was imposed, outlining the nature of the probation violation. The court may, on the basis of such report and such further investigation as it may deem appropriate:

(a) Suspend any further proceedings;

(b) Instruct the probation officer to handle the matter informally without instituting formal revocation procedures; or

(c) Refer the matter to the county attorney.

(2) (4) Whenever a probation officer has a reasonable cause to believe that a probationer has violated or is about to violate a condition of his or her probation and that the probationer will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer shall arrest the probationer without a warrant and may call on any peace officer to assist him for assistance. Whenever a probationer is arrested, with or without a warrant, he or she shall be detained in a jail or other detention facility.

(3) (5) Immediately after such arrest and detention pursuant to subsection (4) of this section, the probation officer shall notify the county attorney of the county where probation was imposed and submit a written report of the reason for such arrest and of any violation of probation. After prompt consideration of such written report, the county attorney shall:

(a) Order the probationer's release from confinement; or

(b) File with the sentencing court a motion or information to revoke the probation.

(4) (6) Whenever a county attorney receives a report from a probation officer that a probationer has violated a condition of his probation, he the county attorney may file a motion or information to revoke probation.

(7) The administrator shall adopt and promulgate rules and regulations to carry out this section.

Sec. 12. (1) Except as otherwise provided in this section, whenever a district court or county court sentences an adult offender to probation, the court shall require the probationer to pay a one-time administrative enrollment fee and thereafter a monthly probation programming fee.

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

(a) Adult probationers placed on either probation or intensive supervision probation shall pay a one-time administrative enrollment fee of thirty dollars. The fee shall be paid in a lump sum upon the beginning of probation supervision;

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

(c) Adult probationers placed on intensive supervision probation shall pay a monthly probation programming fee of thirty-five dollars, not later than the tenth day of each month, for the duration of probation.

(3) The court shall waive payment of the monthly probation programming fees in whole or in part if after a hearing a determination is made that such payment would constitute an undue hardship on the offender due to limited income, employment or school status, or physical or mental

handicap. Such waiver shall be in effect only during the period of time that the probationer is unable to pay his or her monthly probation programming fee.

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

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

(6) No probationer shall be required to pay more than one monthly probation programming fee per month.

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

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

(9) The probationer shall pay the fees described in this section to the clerk of the court. The clerk of the court shall remit all fees so collected to the State Treasurer for credit to the Probation Program Cash Fund.

Sec. 13. The Probation Program Cash Fund is created. All funds collected pursuant to section 12 of this act shall be remitted to the State Treasurer for credit to the fund. The fund shall be utilized by the administrator, in consultation with the Community Corrections Council, for the purposes stated in subdivision (14) of section 29-2252. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 14. Section 29-2269, Reissue Revised Statutes of Nebraska, is amended to read:

29-2269. Sections 29-2246 to ~~29-2268~~ 29-2269 and sections 12 and 13 of this act shall be known and may be cited as the Nebraska Probation Administration Act.

Sec. 15. Section 29-2709, Revised Statutes Supplement, 2002, is amended to read:

29-2709. When any costs in misdemeanor, traffic, felony preliminary, or juvenile cases in county court, except for those costs provided for in subsection (3) of section 24-703, two dollars of the fee provided in section 33-107.01, and the court automation fee provided in section 33-107.03, and the uniform data analysis fee provided in section 45 of this act, are found by a county judge to be uncollectible for any reason, including the dismissal of the case, such costs shall be deemed waived unless the judge, in his or her discretion, enters an order assessing such portion of the costs as by law would be paid over by the court to the State Treasurer as follows:

(1) In all cases brought by or with the consent of the county attorney, all such uncollectible costs shall be certified by the clerk of the court to the county clerk who shall present the bills therefor to the county board. The county board shall pay from the county general fund all such bills found by the board to be lawful; and

(2) In all cases brought under city or village ordinance, all such uncollectible costs shall be certified to the appropriate city or village officer authorized to receive claims who shall present the bills therefor to the governing body of the city or village in the same manner as other claims. Such governing body shall pay from the general fund of the city or village all such bills as are found to be lawful.

Sec. 16. Section 81-1423, Reissue Revised Statutes of Nebraska, is amended to read:

81-1423. The commission shall have authority to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) Do all things necessary to carry out sections 81-1843 to 81-1848.

Sec. 17. Section 81-1425, Revised Statutes Supplement, 2002, is amended to read:

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

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

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

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

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

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

(6) Collect, develop, and maintain, and analyze statistical information, records, and reports as the commission may determine relevant to its functions, including, but not limited to, the statistical information set forth in section 39 of this act;

(7) Prior to August 1, 2001, review and analyze all cases involving criminal homicide committed on or after April 20, 1973. The review and analysis shall examine (a) the facts, including mitigating and aggravating circumstances, (b) to the extent such can be ascertained, the race, gender,

religious preference, and economic status of the defendant and of the victim, (c) the charges filed, (d) the result of the judicial proceeding in each case, and (e) the sentence imposed. Upon the completion of such review, the report of such shall be transmitted to the Governor, the Clerk of the Legislature, and the Chief Justice of the Supreme Court. The review and analysis shall be updated as new cases of criminal homicide occur. The commission shall update such report annually to the parties named in this subdivision;

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

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

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

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

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

Sec. 18. The Legislature affirms the importance of parole as a program for the supervised release of inmates making the transition from confinement to responsible citizenship. Therefor the Legislature intends that committed offenders who are eligible for parole have the opportunity to complete the final stages of their sentences on parole.

Sec. 19. Section 83-1,102, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,102. The Parole Administrator shall:

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

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

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

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

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

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

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

(8) In consultation with the Community Corrections Council, use the funds provided under section 22 of this act to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced parole-based programs and purchase services to provide such programs aimed at enhancing adult parolee supervision in the community and treatment needs of parolees. Such enhanced parole-based programs include, but are not limited to, specialized units of supervision, related equipment purchases and training, and programs developed by or through the council that address a parolee's vocational, educational, mental health, behavioral, or substance abuse treatment needs; and

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

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

83-1,107. (1) (a) Within sixty days after initial classification and assignment of any offender committed 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~~ The department shall provide programs to allow compliance by the committed offender with the department-approved personalized program plan.

Programming may include, but is not limited to:

- (i) Academic and vocational education, including teaching such classes by qualified offenders;
- (ii) Substance abuse treatment;
- (iii) Mental health and psychiatric treatment, including criminal personality programming;
- (iv) Constructive, meaningful work programs; and
- (v) Any other program deemed necessary and appropriate by the department.

(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. ~~Intentional failure to comply with the department-approved personalized program plan by any committed offender as scheduled for any year, or pro rata part thereof, shall cause disciplinary action to be taken by the department resulting in the forfeiture of up to a maximum of three months' good time for the scheduled year.~~ The department may not impose disciplinary action upon any committed offender solely because of the committed offender's failure to comply with the department-approved personalized program plan, but such failure may be considered by the board in its deliberations on whether or not to grant parole to a committed offender.

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

The total 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 from the maximum term, to determine the date when discharge from the custody of the state becomes mandatory.

(3) While the offender is in the custody of the department, reductions of terms granted pursuant to subsection (2) 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~~ notified regarding the charges of misconduct.

(4) The department shall make treatment programming available to committed offenders as provided in section 83-1,110.01 and shall include continuing participation in such programming as part of each offender's parolee personalized program plan.

(5) (a) Within thirty days after any committed offender has been paroled, all available information regarding such parolee shall be reviewed and a parolee personalized program plan document shall be drawn up and approved by the Office of Parole Administration. The document shall specifically describe the approved personalized program plan and the specific goals the office expects the parolee to achieve. The document shall also contain a realistic schedule for completion of the approved personalized program plan. The approved personalized program plan shall be fully explained to the parolee. During the term of parole, the parolee shall comply with the approved personalized program plan and the office shall provide programs to allow compliance by the parolee with the approved personalized program plan.

Programming may include, but is not limited to:

- (i) Academic and vocational education;
- (ii) Substance abuse treatment;
- (iii) Mental health and psychiatric treatment, including criminal personality programming;
- (iv) Constructive, meaningful work programs;
- (v) Community service programs; and
- (vi) Any other program deemed necessary and appropriate by the office.

(b) A modification in the approved personalized program plan may be made to account for the increased or decreased abilities of the parolee or the availability of any program. Any modification shall be made only after notice is given to the parolee. Intentional failure to comply with the approved personalized program plan by any parolee as scheduled for any year, or pro rata part thereof, shall cause disciplinary action to be taken by the office resulting in the forfeiture of up to a maximum of three months' good time for the scheduled year.

(6) While the offender is in the custody of the board, reductions of terms granted pursuant to subsection (2) of this section may be forfeited, withheld, and restored by the administrator with the approval of the director after the offender has been ~~consulted~~ notified 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.

~~(5)~~ (7) Good time or other reductions of sentence granted under the provisions of any law prior to July 1, 1996, may be forfeited, withheld, or restored in accordance with the terms of the Nebraska Treatment and Corrections Act.

Sec. 21. (1) Unless otherwise provided by this section, whenever an adult offender is paroled, the board shall require a parolee to pay a monthly parole programming fee.

(2) Parolees under the supervision of the Office of Parole Administration shall pay a monthly parole programming fee of twenty-five dollars, not later than the tenth day of each month, beginning the second month of parole supervision and continuing for the duration of the parole.

(3) The board shall waive payment of the monthly parole programming fee in whole or in part if after a hearing a determination is made that such payment would constitute an undue hardship on the parolee due to limited income, employment or school status, or physical or mental handicap. Such waiver shall be in effect only during the period of time that the parolee is unable to pay his or her monthly parole programming fee.

(4) When monthly parole programming fees are waived, in whole or in part, the parole officer, pursuant to rules and regulations adopted by the board, may contract with the parolee to perform approved community service at the rate of five dollars per hour in lieu of payment of monthly parole programming fees. A parolee may be required to pay a participation fee in order to take advantage of community service programs. A parolee may not accumulate more than three months' advance credit for community service. The use of community service alternatives does not preclude the imposition of other intermediate measures.

(5) The Office of Parole Administration with the approval of the Board of Parole shall implement sanctions if a parolee defaults in the payment of monthly parole programming fees or any installment thereof as established by subsection (2) of this section, except that parole shall not be revoked nor shall the parolee be imprisoned for such nonpayment if the parolee is financially unable to make the payment.

(6) If the board determines that the default in payment described in subsection (5) of this section was not attributable to a deliberate refusal to obey the order of the board or to failure on the parolee's part to make a good faith effort to obtain the funds required for payment, the board may allow the parolee additional time for payment, reduce the amount of each installment, or revoke the fees or the unpaid portion in whole or in part.

(7) No parolee shall be required to pay more than one monthly parole programming fee per month.

(8) The imposition of monthly parole programming fees in this section shall be considered separate and apart from specific service delivery fees.

(9) Any adult offender received for supervision pursuant to section 29-2637 or the Interstate Compact for Adult Offender Supervision shall be assessed a monthly parole programming fee during the period of time the offender is actively supervised by Nebraska parole authorities.

(10) A parolee shall pay the fees described in this section to the Office of Parole Administration. The office shall remit all fees to the State Treasurer for credit to the Parole Program Cash Fund.

(11) The board and the office shall adopt and promulgate rules and regulations to carry out this section.

Sec. 22. The Parole Program Cash Fund is created. All funds collected pursuant to section 21 of this act shall be remitted to the State Treasurer for credit to the fund. The fund shall be utilized by the Office of Parole Administration, in consultation with the Community Corrections Council, for the purposes stated in subdivision (8) of section 83-1,102. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 23. Section 83-1,110, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,110. (1) ~~Except as provided in subsections (3) and (4) of this section, every~~ Every committed offender shall be eligible for parole when the offender has served one-half the minimum term of his or her sentence as provided in sections 83-1,107 and 83-1,108. The board shall conduct a parole

review not later than sixty days prior to the date a committed offender becomes eligible for parole as provided in this subsection, except that if a committed offender is eligible for parole upon his or her commitment to the department, a parole review shall occur as early as is practical. No such reduction of sentence shall be applied to any sentence imposing a mandatory minimum term.

(2) ~~Except as provided in subsections (3) and (4) of this section, every~~ 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~~ term as provided in sections 83-1,107 and 83-1,108. 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. 24. Section 83-1,111, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,111. (1) Every committed offender shall be interviewed and have his or her record reviewed by two or more members of the Board of Parole or a person designated by the board within sixty days before the expiration of his or her minimum term less any reductions as provided in section 83-1,110. If, in the opinion of the reviewers, the review indicates the offender is reasonably likely to be granted parole, the Board of Parole shall schedule a public hearing before a majority of its members. At such hearing the offender may present evidence, call witnesses, and be represented by counsel. If, in the opinion of the reviewers, the review indicates the offender should be denied parole, the offender may request an additional review by a majority of the members of the board. A review by the majority of the members of the board may be conducted not more than once annually. Any hearing and review shall be conducted in an informal manner, but a complete record of the proceedings shall be made and preserved.

(2) The board shall render its decision regarding the committed offender's release on parole within a reasonable time after the hearing or review. The decision shall be by majority vote of the board. The decision shall be based on the entire record before the board, which shall include the opinion of the person who conducted the review. If the board shall deny parole, written notification listing the reasons for such denial and the recommendations for correcting deficiencies which cause the denial shall be given to the committed offender within thirty days following the hearing.

(3) If the board fixes the release date, such date shall be not more than six months from the date of the committed offender's parole hearing, or from the date of last reconsideration of his or her case, unless there are special reasons for fixing a later release date.

(4) If the board defers the case for later reconsideration, the committed offender shall be afforded a parole ~~hearing~~ review at least once a year until a release date is fixed. The board may order a reconsideration or a rehearing of the case at any time.

(5) The release of a committed offender on parole shall not be upon the application of the offender, but by the initiative of the Board of Parole. No application for release on parole made by a committed offender or on his or her behalf shall be entertained by the board. Nothing herein shall prohibit the Director of Correctional Services from recommending to the board that it consider an individual offender for release on parole.

Sec. 25. Section 83-1,118, Revised Statutes Supplement, 2002, is amended to read:

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

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

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

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

maximum term less good time.

(5) Upon completion of the lawful requirements of the sentence, the department shall provide the parolee or committed offender with a written notice regarding his or her civil rights. The notice shall inform the parolee or committed offender that voting rights are not restored upon completion of the sentence. The notice shall also include information on restoring such civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(6) The Board of Parole may discharge a parolee from parole when such parolee is under the supervision of another state's correctional institution and such offender has reached the expiration date of his or her Nebraska parole term.

Sec. 26. 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 reparaole at any time in the same manner as any other committed offender eligible for parole. ~~7 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. 27. Section 83-1,125, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,125. (1) If a warrant or detainer is placed against a committed offender by a court, parole agency, or other authority of this or any other jurisdiction, the administrator shall inquire before such offender becomes eligible for parole whether the authority concerned intends to execute or withdraw the warrant or detainer when the offender is released.

(2) If the authority notifies the administrator that it intends to execute the warrant or detainer when the offender is released, the administrator shall advise the authority concerned of the sentence under which the offender is held, the time of parole eligibility, any decision of the board relating to the offender, and the nature of the offender's adjustment during imprisonment and shall give reasonable notice to such authority of the offender's release date.

(3) The board may parole an offender who is eligible for release to a warrant or detainer. If an offender is paroled to such a warrant or detainer, the board may provide, as a condition of release, that if the charge or charges on which the warrant or detainer is based are dismissed, or are satisfied after conviction and sentence, prior to the expiration of the offender's parole term, the authority to whose warrant or detainer the offender is released shall return the offender to serve the remainder of the parole term or such part as the board may determine.

(4) If a person paroled to a warrant or detainer is thereafter sentenced and placed on probation, or released on parole in another jurisdiction, prior to the expiration of the parole term less good time in this state, the board may permit the person to serve the remainder of the parole term or such part as the board may determine concurrently with the person's new probation or parole term. Such concurrent terms may be served in either of the two jurisdictions, and supervision shall be administered in accordance with ~~section 29-2637~~ the Interstate Compact for Adult Offender Supervision.

Sec. 28. Section 83-1,135, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,135. Sections 83-170 to 83-1,135 and sections 18, 21, and 22 of this act shall be known and may be cited as the Nebraska Treatment and Corrections Act.

Sec. 29. Section 83-4,146, Reissue Revised Statutes of Nebraska, is amended to read:

83-4,146. All costs incurred during the period the offender is

committed to an incarceration work camp shall be the responsibility of the state, and the counties shall be liable ~~only~~ for the cost of transporting the offender to the incarceration work camp and for returning the offender to the appropriate court for reimposition of sentence or such other disposition as the court may then deem appropriate only if the offender is unsatisfactorily discharged from the incarceration work camp.

Sec. 30. Section 83-933, Reissue Revised Statutes of Nebraska, is amended to read:

83-933. The Office of Parole Administration shall be within the Division of Community-Centered Services. Subject to the supervision of the assistant director of the division, the Parole Administrator shall be charged with the administration of parole services in the community pursuant to the provisions of section 83-1,102, implementation and administration of the Uniform Act for Out-of-State Parolee Supervision Interstate Compact for Adult Offender Supervision as it affects parolees, and supervision of parolees either paroled in Nebraska and supervised in another state or paroled in another state and supervised in Nebraska, pursuant to the compact.

Sec. 31. Sections 31 to 45 of this act shall be known and may be cited as the Community Corrections Act.

Sec. 32. It is the intent of the Legislature that the Community Corrections Act:

(1) Provide for the development and establishment of community-based facilities and programs in Nebraska for adult felons and encourage the use of such facilities and programs by sentencing courts and the Board of Parole as alternatives to incarceration or reincarceration, in order to reduce prison overcrowding and enhance offender supervision in the community; and

(2) Serve the interests of society by promoting the rehabilitation of offenders and deterring offenders from engaging in further criminal activity, by making community-based facilities and programs available to probationers and parolees while emphasizing offender culpability, offender accountability, and public safety and reducing reliance upon incarceration as a means of managing nonviolent offenders.

Sec. 33. For purposes of the Community Corrections Act:

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

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

(3) Council means the Community Corrections Council;

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

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

Sec. 34. The Legislature declares that the policy of the State of Nebraska is that there shall be a coordinated effort to (1) establish community correctional programs across the state in order to divert adult felony offenders from the prison system and (2) provide necessary supervision and services to adult felony offenders with the goal of reducing the probability of criminal behavior while maintaining public safety. To further such policy, the Community Corrections Council is created. For administrative and budgetary purposes, the council shall be within the Nebraska Commission on Law Enforcement and Criminal Justice.

Sec. 35. (1) The council shall include the following voting members:

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

(b) The Director of Correctional Services;

(c) The chairperson of the Board of Parole;

(d) The Parole Administrator; and

(e) Seven members appointed by the Governor with the approval of a

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

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

(a) The State Court Administrator;

(b) The probation administrator;

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

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

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

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

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

Sec. 36. The council shall:

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

(a) Qualifications of staff;

(b) Suitability of programs;

(c) Offender needs;

(d) Probation population;

(e) Parole population; and

(f) Other applicable criminal justice data;

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

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

(4) Develop, recommend, and review sentencing guidelines for adoption by the Supreme Court as set forth in section 42 of this act;

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

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

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

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

(9) In order to ensure adequate funding for substance abuse treatment programs for probationers, consult with the probation administrator as provided in section 13 of this act and develop or assist with the development of programs as provided in subdivision (14) of section 29-2252;

(10) In order to ensure adequate funding for substance abuse treatment programs for parolees, consult with the Office of Parole Administration as provided in section 22 of this act and develop or assist with the development of programs as provided in subdivision (8) of section 83-1,102;

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

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

Sec. 37. (1) The Governor shall appoint the chief of the council.

(2) The chief shall:

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

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

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

Sec. 38. On or before January 1, 2004, the council shall:

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

(2) Develop and implement a plan for statewide use of community correctional facilities and programs.

Sec. 39. The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice shall develop and maintain a uniform crime data analysis system in Nebraska which shall include, but need not be limited to, the number of offenses, arrests, charges, probation admissions, probation violations, probation discharges, admissions to and discharges from the Department of Correctional Services, parole reviews, parole hearings, releases on parole, parole violations, and parole discharges. The data shall be categorized by statutory crime. The data shall be collected from the Board of Parole, the State Court Administrator, the Department of Correctional Services, the Office of Parole Administration, the Office of Probation Administration, the Nebraska State Patrol, counties, local law enforcement, and any other entity associated with criminal justice. The council, the chief, and the Supreme Court shall have access to such data to develop guidelines pursuant to section 42 of this act.

Sec. 40. (1) A sentencing judge may sentence an offender to probation conditioned upon community correctional programming pursuant to section 42 of this act and the guidelines developed by the Supreme Court.

(2) A sentence to a community correctional program or facility shall be imposed as a condition of probation pursuant to the Nebraska Probation Administration Act. The court may modify the sentence of an offender serving a sentence in a community correctional program in the same manner as if the offender had been placed on probation.

(3) The Office of Probation Administration shall utilize community correctional facilities and programs as appropriate.

Sec. 41. (1) The Board of Parole may parole an offender to a community correctional facility or program pursuant to guidelines developed by the council.

(2) The Department of Correctional Services and the Office of Parole Administration shall utilize community correctional facilities and programs as appropriate.

Sec. 42. (1) In order to facilitate the purposes of the Community Corrections Act, the Supreme Court shall by court rule adopt guidelines for sentencing of persons convicted of certain crimes. The guidelines shall provide that courts are to consider community correctional programs and facilities in sentencing designated offenders, with the goal of reducing dependence on incarceration as a sentencing option for nonviolent offenders.

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

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

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

Sec. 43. Proceedings under the Community Corrections Act shall not be subject to the Administrative Procedure Act.

Sec. 44. The Community Corrections Uniform Data Analysis Fund is created. The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice shall administer the fund which shall consist of funds collected pursuant to section 45 of this act and such other funds as the Legislature may direct. The fund shall only be used to support operations relating to the implementation and coordination of the uniform analysis of crime data pursuant to the Community Corrections Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds

Investment Act.

Sec. 45. In addition to all other court costs assessed according to law, a uniform data analysis fee of one dollar shall be taxed as costs for each case filed in each county court, separate juvenile court, and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Community Corrections Uniform Data Analysis Fund.

Sec. 46. Sections 46 to 49 of this act shall be known and may be cited as the Correctional System Overcrowding Emergency Act.

Sec. 47. For purposes of the Correctional System Overcrowding Emergency Act:

- (1) Board means the Board of Parole;
- (2) Committed offender has the definition found in section 83-170;
- (3) Department means the Department of Correctional Services;
- (4) Design capacity means the total designed bed space in facilities operated by the department, as certified by the director;
- (5) Director means the Director of Correctional Services;
- (6) Operational capacity means one hundred twenty-five percent of design capacity;
- (7) Population means the actual number of inmates assigned to facilities operated by the department and does not include inmates assigned to county-operated correctional institutions; and
- (8) Violent offense means any one or more of the following crimes: Murder in the first degree, murder in the second degree, manslaughter, assault in the first degree, kidnapping, sexual assault in the first degree, or robbery.

Sec. 48. (1) The Governor may declare a correctional system overcrowding emergency whenever the director certifies that the population is over one hundred forty percent of design capacity. The director shall so certify within thirty days after the date on which the population first exceeds one hundred forty percent of design capacity.

(2) Upon declaration of a correctional system overcrowding emergency, the board shall immediately consider or reconsider committed offenders eligible for parole who have not been released on parole.

(3) Upon such consideration or reconsideration, and for all other consideration of committed offenders eligible for parole while the correctional system overcrowding emergency is in effect, the board shall order the release of each committed offender unless it is of the opinion that such release should be deferred because:

(a) The board has determined that it is more likely than not that the committed offender will not conform to the conditions of parole;

(b) The board has determined that release of the committed offender would have a very significant and quantifiable effect on institutional discipline; or

(c) The board has determined that there is a very substantial risk that the committed offender will commit a violent act against a person.

(4) In making the determination regarding the risk that a committed offender will not conform to the conditions of parole, the board shall take into account the factors set forth in subsection (2) of section 83-1,114.

(5) The board shall continue granting parole to offenders under this section until the director certifies that the population is at operational capacity. The director shall so certify within thirty days after the date on which the population first reaches operational capacity.

Sec. 49. The department shall prepare an annual report on committed offenders who are paroled or granted controlled release pursuant to the Correctional System Overcrowding Emergency Act. The report shall summarize each such former committed offender's behavior since parole and generally evaluate his or her success or lack of success in becoming a law-abiding member of society. The annual report shall be filed with the Executive Board of the Legislative Council on or before December 31, with the first such report submitted by December 31 of the first year that committed offenders are paroled pursuant to the act. A notice of the filing of the report shall be submitted to each member of the Legislature when the annual report is filed with the Executive Board.

Sec. 50. It is the intent of the Legislature that the changes made to the Nebraska Treatment and Corrections Act by this legislative bill with respect to parole eligibility apply to all committed offenders under sentence and not on parole on the operative date of this section and to all persons sentenced on and after such date.

Sec. 51. Sections 2 to 4, 6, 27, 30, 53, and 55 of this act become

operative when thirty-five states have adopted the Interstate Compact for Adult Offender Supervision. Sections 12, 13, 21, and 22 of this act become operative on July 1, 2003. The other sections of this act become operative on their effective date.

Sec. 52. 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. 53. Original sections 29-2250, 29-2254, 83-1,125, and 83-933, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 54. Original sections 29-2252, 29-2263, 29-2266, 29-2269, 81-1423, 83-1,102, 83-1,107, 83-1,110, 83-1,111, 83-1,123, 83-1,135, and 83-4,146, Reissue Revised Statutes of Nebraska, sections 28-416, 29-2259.01, 29-2262, 29-2709, 81-1425, and 83-1,118, Revised Statutes Supplement, 2002, and section 29-2261, Revised Statutes Supplement, 2002, as amended by section 9, Legislative Bill 1, Ninety-seventh Legislature, Third Special Session, 2002, are repealed.

Sec. 55. The following sections are outright repealed: Sections 29-2637 and 29-2638, Reissue Revised Statutes of Nebraska.

Sec. 56. The following sections are outright repealed: Sections 47-601, 47-602, and 47-604 to 47-618, Reissue Revised Statutes of Nebraska, and section 47-603, Revised Statutes Supplement, 2002.

Sec. 57. Since an emergency exists, this act takes effect when passed and approved according to law.