

LEGISLATIVE BILL 1094

Approved by the Governor April 19, 2016

Introduced by Judiciary Committee: Seiler, 33, Chairperson; Chambers, 11; Coash, 27; Ebke, 32; Krist, 10; Morfeld, 46; Pansing Brooks, 28; Williams, 36; Campbell, 25; Hadley, 37; Mello, 5.

A BILL FOR AN ACT relating to criminal law; to amend sections 27-1101, 28-605, 28-626, 29-2256, 29-2267, 47-401, 47-502, 83-187, and 83-1,101, Reissue Revised Statutes of Nebraska, sections 28-115, 28-1354, 29-2258, and 29-2269, Revised Statutes Cumulative Supplement, 2014, sections 28-106, 28-204, 28-394, 28-514, 29-2204.02, 29-2252, 29-2252.01, 29-2260, 29-2262, 29-2263, 29-2266, 29-2268, 47-901, 47-903, 47-908, 60-6,197.03, 71-2482, 83-1,100.02, 83-1,119, 83-1,122, 83-1,122.01, 83-1,135, 83-1,135.02, and 83-4,114, Revised Statutes Supplement, 2015, and section 28-105, Revised Statutes Cumulative Supplement, 2014, as amended by Laws 2015, LB605, section 6; to exempt certain proceedings from the Nebraska Evidence Rules; to change sentencing provisions; to provide and change penalties for certain offenses; to provide for applicability of certain changes; to change provisions relating to certain offenses; to change provisions relating to post-release supervision, probation, and parole; to change reporting requirements regarding probation and restrictive housing; to require cooperation by and access to information from the Office of Parole Administration; to provide a minimum sentence of imprisonment for certain offenses; to change provisions relating to the Office of Inspector General of the Nebraska Correctional System Act; to change training requirements for certain parole officers; to change appointment and qualification provisions for the Parole Administrator; to change membership of a restrictive housing work group; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 27-1101, Reissue Revised Statutes of Nebraska, is amended to read:

27-1101 (1) The Nebraska Evidence Rules apply to the following courts in the State of Nebraska: Supreme Court, Court of Appeals, district courts, county courts, and juvenile courts. The word judge when used in the rules shall mean any judge of any court to which the rules apply or other officer who is authorized by statute to hold any hearing to which the rules apply.

(2) The rules apply generally to all civil and criminal proceedings, including contempt proceedings except those in which the judge may act summarily.

(3) The rules with respect to privileges apply at all stages of all actions, cases, and proceedings.

(4) The rules, other than those with respect to privileges, do not apply in the following situations:

(a) Proceedings before grand juries;

(b) Proceedings for extradition or rendition; preliminary examinations or hearings in criminal cases; sentencing, ~~or~~ granting or revoking probation, or imposing custodial sanctions; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise;

(c) Contested cases before an administrative agency under the Administrative Procedure Act unless a party to the case requests that the agency be bound by the rules of evidence applicable in the district court; or

(d) Proceedings before the Nebraska Workers' Compensation Court or the Small Claims Court.

Sec. 2. Section 28-105, Revised Statutes Cumulative Supplement, 2014, as amended by Laws 2015, LB605, section 6, is amended to read:

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

Class I felony	Death
Class IA felony	Life imprisonment
Class IB felony	Maximum – life imprisonment
	Minimum – twenty years imprisonment
Class IC felony	Maximum – fifty years imprisonment
	Mandatory minimum – five years imprisonment
Class ID felony	Maximum – fifty years imprisonment

Mandatory minimum – three years imprisonment

Class II felony Maximum – fifty years imprisonment
Minimum – one year imprisonment

Class IIA felony Maximum – twenty years imprisonment
Minimum – none

Class III felony Maximum – four years imprisonment and two years
post-release supervision or
twenty-five thousand dollars fine, or both
Minimum – none for imprisonment and nine months
post-release supervision if imprisonment is imposed

Class IIIA felony Maximum – three years imprisonment
and eighteen months post-release supervision or
ten thousand dollars fine, or both
Minimum – none for imprisonment and nine months
post-release supervision if imprisonment is imposed

Class IV felony Maximum – two years imprisonment and twelve
months post-release supervision or
ten thousand dollars fine, or both
Minimum – none for imprisonment and nine months
post-release supervision if imprisonment is imposed

(2) All sentences for maximum terms of imprisonment for one year or more for felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. All sentences for maximum terms of imprisonment of less than one year shall be served in the county jail.

(3) Nothing in this section shall limit the authority granted in sections 29-2221 and 29-2222 to increase sentences for habitual criminals.

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

(5) All sentences of post-release supervision shall be served under the jurisdiction of the Office of Probation Administration and shall be subject to conditions imposed pursuant to section 29-2262 and subject to sanctions authorized pursuant to section 21 of this act ~~29-2266~~.

(6) Any person who is sentenced to imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony and sentenced concurrently or consecutively to imprisonment for a Class III, IIIA, or IV felony shall not be subject to post-release supervision pursuant to subsection (1) of this section.

(7) Any person who is sentenced to imprisonment for a Class III, IIIA, or IV felony committed prior to August 30, 2015, and sentenced concurrently or consecutively to imprisonment for a Class III, IIIA, or IV felony committed on or after August 30, 2015, shall not be subject to post-release supervision pursuant to subsection (1) of this section.

(8 ~~7~~) The changes made to the penalties for Class III, IIIA, and IV felonies by Laws 2015, LB605, do not apply to any offense committed prior to August 30, 2015, as provided in section 28-116.

Sec. 3. Section 28-106, Revised Statutes Supplement, 2015, is amended to read:

28-106 (1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I misdemeanor..... Maximum – not more than one year
imprisonment, or one thousand dollars
fine, or both
Minimum – none

Class II misdemeanor..... Maximum – six months imprisonment, or

one thousand dollars fine, or both
Minimum – none

Class III misdemeanor..... Maximum – three months imprisonment,
or five hundred dollars fine, or both
Minimum – none

Class IIIA misdemeanor..... Maximum – seven days imprisonment, five
hundred dollars fine, or both
Minimum – none

Class IV misdemeanor..... Maximum – no imprisonment, five
hundred dollars fine
Minimum – none

Class V misdemeanor..... Maximum – no imprisonment, one
hundred dollars fine
Minimum – none

Class W misdemeanor..... Driving under the influence or implied
consent
First conviction
Maximum – sixty days imprisonment and
five hundred dollars fine
Mandatory minimum – seven days
imprisonment and five hundred dollars
fine
Second conviction
Maximum – six months imprisonment and
five hundred dollars fine
Mandatory minimum – thirty days
imprisonment and five hundred dollars
fine
Third conviction
Maximum – one year imprisonment and
one thousand dollars fine
Mandatory minimum – ninety days
imprisonment
and one thousand dollars fine

(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that such sentences may be served in institutions under the jurisdiction of the Department of Correctional Services if the sentence is to be served concurrently or consecutively with a term for conviction of a felony and the combined sentences total a term of one year or more. A determinate sentence shall be imposed for a misdemeanor if the sentence is to be served concurrently or consecutively with a determinate sentence for a Class III, IIIA, or IV felony.

Sec. 4. Section 28-115, Revised Statutes Cumulative Supplement, 2014, is amended to read:

28-115 (1) Except as provided in subsection (2) of this section, any Any person who commits any of the following criminal offenses against a pregnant

woman shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense, ~~unless such criminal offense is already punishable as a Class IB felony or higher classification:~~

- (a) Assault in the first degree, section 28-308;
- (b) ~~Assault~~ assault in the second degree, section 28-309;
- (c) ~~Assault~~ assault in the third degree, section 28-310;
- (d) ~~Sexual~~ sexual assault in the first degree, section 28-319;
- (e) ~~Sexual~~ sexual assault in the second or third degree, section 28-320;
- (f) ~~Sexual~~ assault of a child in the first degree, section 28-319.01;
- (g) ~~Sexual~~ sexual assault of a child in the second or third degree, section 28-320.01;
- (h) ~~Sexual~~ sexual abuse of an inmate or parolee in the first degree, section 28-322.02;
- (i) ~~Sexual~~ sexual abuse of an inmate or parolee in the second degree, section 28-322.03;
- (j) ~~Sexual~~ sexual abuse of a protected individual in the first or second degree, section 28-322.04;
- (k) ~~Domestic~~ domestic assault in the first, second, or third degree, section 28-323;
- (l) ~~Assault~~ assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree, section 28-929;
- (m) ~~Assault~~ assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree, section 28-930;
- (n) ~~Assault~~ assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree, section 28-931;
- (o) ~~Assault~~ assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle, section 28-931.01;
- (p) ~~Assault~~ assault by a confined person, section 28-932;
- (q) ~~Confined~~ confined person committing offenses against another person, section 28-933; and
- (r) ~~Proximately~~ proximately causing serious bodily injury while operating a motor vehicle, section 60-6,198. ~~;~~ and
sexual assault of a child in the first degree, section 28-319.01.

(2) The enhancement in subsection (1) of this section does not apply to any criminal offense listed in subsection (1) of this section that is already punishable as a Class I, IA, or IB felony. If any criminal offense listed in subsection (1) of this section is punishable as a Class I misdemeanor, the penalty under this section is a Class IIIA felony.

(3) (2) The prosecution shall allege and prove beyond a reasonable doubt that the victim was pregnant at the time of the offense.

Sec. 5. Section 28-204, Revised Statutes Supplement, 2015, is amended to read:

28-204 (1) A person is guilty of being an accessory to felony if with intent to interfere with, hinder, delay, or prevent the discovery, apprehension, prosecution, conviction, or punishment of another for an offense, he or she:

- (a) Harbors or conceals the other;
- (b) Provides or aids in providing a weapon, transportation, disguise, or other means of effecting escape or avoiding discovery or apprehension;
- (c) Conceals or destroys evidence of the crime or tampers with a witness, informant, document, or other source of information, regardless of its admissibility in evidence;
- (d) Warns the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law;
- (e) Volunteers false information to a peace officer; or
- (f) By force, intimidation, or deception, obstructs anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person.

(2)(a) Accessory to felony is a Class ~~IIA~~ ~~III~~ felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class I, IA, IB, IC, or ID felony.

(b) Accessory to felony is a Class IIIA felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class II or IIA felony.

(c) Accessory to felony is a Class IV felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class III or Class IIIA felony.

(d) Accessory to felony is a Class I misdemeanor if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class IV felony.

(e) Accessory to felony is a Class IV felony if the actor violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a felony of any class other than a Class IV felony.

(f) Accessory to felony is a Class I misdemeanor if the actor violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class IV felony.

Sec. 6. Section 28-394, Revised Statutes Supplement, 2015, is amended to read:

28-394 (1) A person who causes the death of an unborn child unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide of an unborn child.

(2) Except as provided in subsection (3) of this section, motor vehicle homicide of an unborn child is a Class I misdemeanor.

(3)(a) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,213 or 60-6,214, motor vehicle homicide of an unborn child is a Class ~~IIIA~~ IV felony.

(b) Except as provided in subdivision (3)(c) of this section, if the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06, motor vehicle homicide of an unborn child is a Class IIIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

(c) If the proximate cause of the death of an unborn child is the operation of a motor vehicle in violation of section 60-6,196 or 60-6,197.06 and the defendant has a prior conviction for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with section 60-6,196, motor vehicle homicide of an unborn child is a Class IIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years after the date ordered by the court and shall order that the operator's license of such person be revoked for the same period. The revocation shall not run concurrently with any jail term imposed.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Sec. 7. Section 28-514, Revised Statutes Supplement, 2015, is amended to read:

28-514 (1) A person who comes into control of property of another that he or she knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient commits theft if, with intent to deprive the owner thereof, he or she fails to take reasonable measures to restore the property to a person entitled to have it.

(2) Any person convicted of violating subsection (1) ~~the provisions of this section shall, upon conviction thereof,~~ be punished by the penalty prescribed in the next lower classification below the value of the item lost, mislaid, or delivered under a mistake pursuant to section 28-518.

(3) Any person convicted of violating subsection (1) ~~pursuant to this section~~ when the value of the property is five hundred dollars or less shall be guilty of a Class III misdemeanor for the first conviction, a Class II misdemeanor for the second conviction, and a Class I misdemeanor for the third or subsequent conviction.

Sec. 8. Section 28-605, Reissue Revised Statutes of Nebraska, is amended to read:

28-605 (1) A person commits criminal possession of written instrument forgery devices when:

(a) He or she makes or possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting, unlawfully simulating, or otherwise forging written instruments; or

(b) He or she makes or possesses any device, apparatus, equipment, or article capable of or adaptable to a use specified in subdivision (1)(a) of this section, with intent to use it himself or herself, or to aid or permit another to use it, for purposes of forgery; or

(c) Illegally possesses a genuine plate, die, or other device used in the production of written instruments, with intent to deceive or harm.

(2) Criminal possession of written instrument forgery devices is a Class IV felony.

Sec. 9. Section 28-626, Reissue Revised Statutes of Nebraska, is amended to read:

28-626 (1) A person commits the offense of criminal possession of a financial transaction forgery device if (a) such person possesses any tool, photographic equipment, printing equipment, or any other device or group or combination of devices adapted, designed, or commonly used for committing or facilitating the commission of an offense involving the unauthorized manufacturing, printing, embossing, or magnetic encoding of a financial transaction device or the altering or addition of any service marks or holographic images to a financial transaction device and (b) intends to use the device or devices possessed or knows that some person intends to use the device or devices possessed in the commission of such an offense.

(2) Any person committing the offense of criminal possession of a financial transaction forgery device shall be guilty of a Class IV felony.

Sec. 10. Section 28-1354, Revised Statutes Cumulative Supplement, 2014, is amended to read:

28-1354 For purposes of the Public Protection Act:

(1) Enterprise means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities;

(2) Pattern of racketeering activity means a cumulative loss for one or more victims or gains for the enterprise of not less than one thousand five hundred dollars resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity;

(3) Until January 1, 2017, person ~~Person~~ means any individual or entity, as defined in section ~~21-2014~~ ~~21-214~~, holding or capable of holding a legal, equitable, or beneficial interest in property. Beginning January 1, 2017, person means any individual or entity, as defined in section 21-214, holding or capable of holding a legal, equitable, or beneficial interest in property;

(4) Prosecutor includes the Attorney General of the State of Nebraska, the deputy attorney general, assistant attorneys general, a county attorney, a deputy county attorney, or any person so designated by the Attorney General, a county attorney, or a court of the state to carry out the powers conferred by the act;

(5) Racketeering activity includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:

(a) Offenses against the person which include: Murder in the first degree under section 28-303; murder in the second degree under section 28-304; manslaughter under section 28-305; assault in the first degree under section 28-308; assault in the second degree under section 28-309; assault in the third degree under section 28-310; terroristic threats under section 28-311.01; kidnapping under section 28-313; false imprisonment in the first degree under section 28-314; false imprisonment in the second degree under section 28-315; sexual assault in the first degree under section 28-319; and robbery under section 28-324;

(b) Offenses relating to controlled substances which include: To unlawfully manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance under subsection (1) of section 28-416; possession of marijuana weighing more than one pound under subsection (12) of section 28-416; possession of money used or intended to be used to facilitate a violation of subsection (1) of section 28-416 prohibited under subsection (17) of section 28-416; any violation of section 28-418; to unlawfully manufacture, distribute, deliver, or possess with intent to distribute or deliver an imitation controlled substance under section 28-445; possession of anhydrous ammonia with the intent to manufacture methamphetamine under section 28-451; and possession of ephedrine, pseudoephedrine, or phenylpropanolamine with the intent to manufacture methamphetamine under section 28-452;

(c) Offenses against property which include: Arson in the first degree under section 28-502; arson in the second degree under section 28-503; arson in the third degree under section 28-504; burglary under section 28-507; theft by unlawful taking or disposition under section 28-511; theft by shoplifting under section 28-511.01; theft by deception under section 28-512; theft by extortion under section 28-513; theft of services under section 28-515; theft by receiving stolen property under section 28-517; criminal mischief under section 28-519; and unlawfully depriving or obtaining property or services using a computer under section 28-1344;

(d) Offenses involving fraud which include: Burning to defraud an insurer under section 28-505; forgery in the first degree under section 28-602; forgery in the second degree under section 28-603; criminal possession of a forged instrument under section 28-604; criminal possession of written instrument forgery devices under section 28-605; criminal impersonation under section 28-638; identity theft under section 28-639; identity fraud under section 28-640; false statement or book entry under section 28-612; tampering with a publicly exhibited contest under section 28-614; issuing a false financial statement for purposes of obtaining a financial transaction device under section 28-619; unauthorized use of a financial transaction device under section 28-620; criminal possession of a financial transaction device under section 28-621; unlawful circulation of a financial transaction device in the first degree under section 28-622; unlawful circulation of a financial transaction device in the second degree under section 28-623; criminal possession of a blank financial transaction device under section 28-624; criminal sale of a blank financial transaction device under section 28-625; criminal possession of a financial transaction forgery device under section 28-626; unlawful manufacture of a financial transaction device under section 28-627; laundering of sales forms under section 28-628; unlawful acquisition of sales form processing services under section 28-629; unlawful factoring of a financial transaction device under section 28-630; and fraudulent insurance acts under section 28-631;

(e) Offenses involving governmental operations which include: Abuse of public records under section 28-911; perjury or subornation of perjury under

section 28-915; bribery under section 28-917; bribery of a witness under section 28-918; tampering with a witness or informant or jury tampering under section 28-919; bribery of a juror under section 28-920; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree under section 28-929; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree under section 28-930; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree under section 28-931; and assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle under section 28-931.01;

(f) Offenses involving gambling which include: Promoting gambling in the first degree under section 28-1102; possession of gambling records under section 28-1105; gambling debt collection under section 28-1105.01; and possession of a gambling device under section 28-1107;

(g) Offenses relating to firearms, weapons, and explosives which include: Carrying a concealed weapon under section 28-1202; transportation or possession of machine guns, short rifles, or short shotguns under section 28-1203; unlawful possession of a handgun under section 28-1204; unlawful transfer of a firearm to a juvenile under section 28-1204.01; using a deadly weapon to commit a felony or possession of a deadly weapon during the commission of a felony under section 28-1205; possession of a deadly weapon by a prohibited person under section 28-1206; possession of a defaced firearm under section 28-1207; defacing a firearm under section 28-1208; unlawful discharge of a firearm under section 28-1212.02; possession, receipt, retention, or disposition of a stolen firearm under section 28-1212.03; unlawful possession of explosive materials in the first degree under section 28-1215; unlawful possession of explosive materials in the second degree under section 28-1216; unlawful sale of explosives under section 28-1217; use of explosives without a permit under section 28-1218; obtaining an explosives permit through false representations under section 28-1219; possession of a destructive device under section 28-1220; threatening the use of explosives or placing a false bomb under section 28-1221; using explosives to commit a felony under section 28-1222; using explosives to damage or destroy property under section 28-1223; and using explosives to kill or injure any person under section 28-1224;

(h) Any violation of the Securities Act of Nebraska pursuant to section 8-1117;

(i) Any violation of the Nebraska Revenue Act of 1967 pursuant to section 77-2713;

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; labor trafficking, sex trafficking, labor trafficking of a minor, or sex trafficking of a minor under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act; and

(k) A violation of the Computer Crimes Act;

(6) State means the State of Nebraska or any political subdivision or any department, agency, or instrumentality thereof; and

(7) Unlawful debt means a debt of at least one thousand five hundred dollars:

(a) Incurred or contracted in gambling activity which was in violation of federal law or the law of the state or which is unenforceable under state or federal law in whole or in part as to principal or interest because of the laws relating to usury; or

(b) Which was incurred in connection with the business of gambling in violation of federal law or the law of the state or the business of lending money or a thing of value at a rate usurious under state law if the usurious rate is at least twice the enforceable rate.

Sec. 11. Section 29-2204.02, Revised Statutes Supplement, 2015, is amended to read:

29-2204.02 (1) Except when a term of probation is required by law as provided in subsection (2) of this section or except as otherwise provided in subsection (4) of this section, in imposing a sentence upon an offender for a Class III, IIIA, or IV felony, the court shall:

(a) Impose a determinate sentence of imprisonment within the applicable range in section 28-105; and

(b) Impose a sentence of post-release supervision, under the jurisdiction of the Office of Probation Administration, within the applicable range in section 28-105.

(2) If the criminal offense is a Class IV felony, the court shall impose a sentence of probation unless:

(a) The defendant is concurrently or consecutively sentenced to imprisonment for any felony other than another Class IV felony;

(b) The defendant has been deemed a habitual criminal pursuant to section 29-2221; or

(c) There are substantial and compelling reasons why the defendant cannot effectively and safely be supervised in the community, including, but not limited to, the criteria in subsections (2) and (3) of section 29-2260. Unless other reasons are found to be present, that the offender has not previously

succeeded on probation is not, standing alone, a substantial and compelling reason.

(3) If a sentence of probation is not imposed, the court shall state its reasoning on the record, advise the defendant of his or her right to appeal the sentence, and impose a sentence as provided in subsection (1) of this section.

(4) For any sentence of imprisonment for a Class III, IIIA, or IV felony for an offense committed on or after August 30, 2015, imposed consecutively or concurrently with (a) a sentence for a Class III, IIIA, or IV felony for an offense committed prior to August 30, 2015, or (b) a sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony, the court shall impose an indeterminate sentence within the applicable range in section 28-105 that does not include a period of post-release supervision, in accordance with the process set forth in section 29-2204.

(5) For any sentence of imprisonment for a misdemeanor imposed consecutively or concurrently with a sentence of imprisonment for a Class III, IIIA, or IV felony for an offense committed on or after August 30, 2015, the court shall impose a determinate sentence within the applicable range in section 28-106 unless the person is also committed to the Department of Correctional Services in accordance with section 29-2204 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony committed prior to August 30, 2015, or (b) a sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony.

~~(6)~~ (4) If the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted, the court may, in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code.

~~(7)(a)~~ ~~(5)(a)~~ When imposing a determinate sentence upon an offender under this section, the court shall:

(i) Advise the offender on the record the time the offender will serve on his or her term of imprisonment before his or her term of post-release supervision assuming that no good time for which the offender will be eligible is lost; ~~and~~

(ii) Advise the offender on the record the time the offender will serve on his or her term of post-release supervision; ~~and before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.~~

(iii) When imposing a sentence following revocation of post-release supervision, advise the offender on the record the time the offender will serve on his or her term of imprisonment, including credit for time served, assuming that no good time for which the offender will be eligible is lost.

(b) If a period of post-release supervision is required but not imposed by the sentencing court, the term of post-release supervision shall be the minimum provided by law.

(c) If the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.

(d) If the offender has been sentenced to two or more determinate sentences and one or more terms of post-release supervision, the offender shall serve all determinate sentences before being released on post-release supervision.

Sec. 12. Section 29-2252, Revised Statutes Supplement, 2015, 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. Training shall include the proper use of a risk and needs assessment, risk-based supervision strategies, relationship skills, cognitive behavioral interventions, community-based resources, criminal risk factors, and targeting criminal risk factors to reduce recidivism and the proper use of a matrix of administrative sanctions, custodial sanctions, and rewards developed pursuant to subdivision (18) of this section. All probation officers employed on or after August 30, 2015, shall complete the training requirements set forth in this subdivision;

(8) Collect, develop, and maintain statistical information concerning

probationers, probation practices, and the operation of the system and provide the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice with the information needed to compile the report required in section 47-624;

(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. Subject to the availability of funding, the administrator shall contract with an independent contractor or academic institution for evaluation of existing community corrections facilities and programs operated by the office;

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

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

(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;

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

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

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

(17) Collaborate with the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice and the Office of Parole Administration to develop rules governing the participation of parolees in community corrections programs operated by the Office of Probation Administration;

(18) Develop a matrix of rewards for compliance and positive behaviors and graduated administrative sanctions and custodial sanctions for use in responding to and deterring substance abuse violations and technical violations. As applicable under sections 21 and 22 of this act ~~section 29-2266~~, custodial sanctions of up to thirty days in jail shall be designated as the most severe response to a violation in lieu of revocation and custodial sanctions of up to three days in jail shall be designated as the second most severe response;

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

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

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

Sec. 13. Section 29-2252.01, Revised Statutes Supplement, 2015, is amended to read:

29-2252.01 On January 15 and July 15 ~~December 31 and June 30~~ of each fiscal year, the administrator shall provide a report to the budget division of the Department of Administrative Services, the Legislative Fiscal Analyst, and the Supreme Court which shall include, but not be limited to:

(1) The total number of felony cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(2) The total number of misdemeanor cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(3) The felony caseload per officer for both regular and intensive

supervision probation on the last day of the reporting period;

(4) The misdemeanor caseload per officer for both regular and intensive supervision probation on the last day of the reporting period;

(5) The total number of juvenile cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(6) The total number of predisposition investigations completed by the office in the previous six months;

(7) The total number of presentence investigations completed by the office in the previous six months;

(8) The total number of juvenile intake screening interviews conducted and detentions authorized by the office in the previous six months, using the detention screening instrument described in section 43-260.01; and

(9) The total number of probationers with restitution judgments, the number of restitution payments made to clerks of the court, the average amount of payments, and the total amount of restitution collected.

The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

Sec. 14. Section 29-2256, Reissue Revised Statutes of Nebraska, is amended to read:

29-2256 Nothing in the Nebraska Probation Administration Act sections 29-2246 to 29-2268 shall be construed to prohibit any court or probation office from utilizing volunteers from the community for probation supervision. The ; ~~Provided, the volunteer program shall be~~ is supervised by a full-time probation officer who meets the minimum qualifications established by the office.

Sec. 15. Section 29-2258, Revised Statutes Cumulative Supplement, 2014, is amended to read:

29-2258 A district probation officer shall:

(1) Conduct juvenile intake interviews and investigations in accordance with sections 43-253 and 43-260.01 and, beginning October 1, 2013, supervise delivery of preadjudication juvenile services under subdivision (6) of section 43-254;

(2) Make presentence and other investigations, as may be required by law or directed by a court in which he or she is serving;

(3) Supervise probationers in accordance with the rules and regulations of the office and the directions of the sentencing court;

(4) Advise the sentencing court, in accordance with the Nebraska Probation Administration Act and such rules and regulations of the office, of violations of the conditions of probation by individual probationers;

(5) Advise the sentencing court, in accordance with the rules and regulations of the office and the direction of the court, when the situation of a probationer may require a modification of the conditions of probation or when a probationer's adjustment is such as to warrant termination of probation;

(6) Provide each probationer with a statement of the period and conditions of his or her probation;

(7) Whenever necessary, exercise the power of arrest as provided in sections 20 and 21 of this act or exercise the power of temporary custody as provided in section 29-2266 or 43-286.01;

(8) Establish procedures for the direction and guidance of deputy probation officers under his or her jurisdiction and advise such officers in regard to the most effective performance of their duties;

(9) Supervise and evaluate deputy probation officers under his or her jurisdiction;

(10) Delegate such duties and responsibilities to a deputy probation officer as he or she deems appropriate;

(11) Make such reports as required by the administrator, the judges of the probation district in which he or she serves, or the Supreme Court;

(12) Keep accurate and complete accounts of all money or property collected or received from probationers and give receipts therefor;

(13) Cooperate fully with and render all reasonable assistance to other probation officers;

(14) In counties with a population of less than twenty-five thousand people, participate in pretrial diversion programs established pursuant to sections 29-3601 to 29-3604 and juvenile pretrial diversion programs established pursuant to sections 43-260.02 to 43-260.07 as requested by judges of the probation district in which he or she serves or as requested by a county attorney and approved by the judges of the probation district in which he or she serves, except that participation in such programs shall not require appointment of additional personnel and shall be consistent with the probation officer's current caseload;

(15) Participate, at the direction of the probation administrator pursuant to an interlocal agreement which meets the requirements of section 29-2255, in non-probation-based programs and services;

(16) Perform such other duties not inconsistent with the Nebraska Probation Administration Act or the rules and regulations of the office as a court may from time to time direct; and

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

Sec. 16. Section 29-2260, Revised Statutes Supplement, 2015, is amended to read:

29-2260 (1) Whenever a person is adjudicated to be as described in subdivision (1), (2), (3)(b), or (4) of section 43-247, his or her disposition shall be governed by the Nebraska Juvenile Code.

(2) Whenever a court considers sentence for an offender convicted of

either a misdemeanor or a felony for which mandatory or mandatory minimum imprisonment is not specifically required, the court may withhold sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character, and condition of the offender, the court finds that imprisonment of the offender is necessary for protection of the public because:

(a) The risk is substantial that during the period of probation the offender will engage in additional criminal conduct;

(b) The offender is in need of correctional treatment that can be provided most effectively by commitment to a correctional facility; or

(c) A lesser sentence will depreciate the seriousness of the offender's crime or promote disrespect for law.

(3) The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of withholding sentence of imprisonment:

(a) The crime neither caused nor threatened serious harm;

(b) The offender did not contemplate that his or her crime would cause or threaten serious harm;

(c) The offender acted under strong provocation;

(d) Substantial grounds were present tending to excuse or justify the crime, though failing to establish a defense;

(e) The victim of the crime induced or facilitated commission of the crime;

(f) The offender has compensated or will compensate the victim of his or her crime for the damage or injury the victim sustained;

(g) The offender has no history of prior delinquency or criminal activity and has led a law-abiding life for a substantial period of time before the commission of the crime;

(h) The crime was the result of circumstances unlikely to recur;

(i) The character and attitudes of the offender indicate that he or she is unlikely to commit another crime;

(j) The offender is likely to respond affirmatively to probationary treatment; and

(k) Imprisonment of the offender would entail excessive hardship to his or her dependents.

(4) When an offender who has been convicted of a crime is not sentenced to imprisonment, the court may sentence him or her to probation.

~~(5) For all sentences of imprisonment for Class III, IIIA, or IV felonies, other than those imposed consecutively or concurrently with a sentence to imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony, the court shall impose a determinate sentence within the applicable range in section 28-105, including a period of post-release supervision.~~

Sec. 17. Section 29-2262, Revised Statutes Supplement, 2015, 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 For misdemeanors,~~ to be confined periodically in the county jail or to return to custody after specified hours but not to exceed the lesser of ninety days or the maximum jail term provided by law for the offense;

(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 possess no firearm or other dangerous weapon 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 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;

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

(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;

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

(q) To successfully complete an incarceration work camp program as determined by the Department of Correctional Services;

(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 29-2262.06.

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

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

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

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

(5) (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.

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

Sec. 18. Section 29-2263, Revised Statutes Supplement, 2015, is amended to read:

29-2263 (1) Except as provided in subsection (2) of this section, 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 probationer or on its own motion, may discharge a probationer at any time.

(2) When a court has sentenced an offender to post-release supervision, the court shall specify the term of such post-release supervision as provided in section 28-105. The court, on application of a probation officer or of the probationer or on its own motion, may discharge a probationer at any time.

(3) During the term of probation, the court on application of a probation officer or of the probationer, or its own motion, may modify or eliminate any of the conditions imposed on the probationer or add further conditions authorized by section 29-2262. This subsection does not preclude a probation officer from imposing administrative sanctions with the probationer's full knowledge and consent as authorized by sections 20 and 21 of this act subsection (2) or (9) of section 29-2266.

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

(5) 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. 19. Section 29-2266, Revised Statutes Supplement, 2015, is amended to read:

29-2266 ~~(1)~~ For purposes of sections 20 to 22 of this act this section:

(1) Absconding supervision means a probationer has purposely avoided supervision for a period of at least two weeks and reasonable efforts by probation officers and staff to locate the probationer in person have proven unsuccessful;

(2) (a) Administrative sanction means an additional probation requirement 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 violations of conditions of probation, including, but not limited to:

(a) (i) Counseling or reprimand by his or her probation officer;

(b) (ii) Increased supervision contact requirements;

(c) (iii) Increased substance abuse testing;

(d) (iv) Referral for substance abuse or mental health evaluation or other specialized assessment, counseling, or treatment;

(e) (v) Imposition of a designated curfew for a period not to exceed thirty days;

(f) (vi) Community service for a specified number of hours pursuant to sections 29-2277 to 29-2279;

(g) (vii) Travel restrictions to stay within his or her county of residence or employment unless otherwise permitted by the supervising probation officer; and

(h) (viii) Restructuring court-imposed financial obligations to mitigate their effect on the probationer;

(3) Custodial sanction means an additional probation requirement imposed

upon a probationer designed to hold the probationer accountable for a violation of a condition of probation. A custodial sanction may include up to thirty days in jail as the most severe response and may include up to three days in jail as the second most severe response;

~~(4)(a) (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 29-2262.06 as directed; and~~

~~(b) Noncriminal violation does not include absconding supervision; and~~

~~(5) e) 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:~~

- ~~(a i) Positive breath test for the consumption of alcohol if the offender is required to refrain from alcohol consumption;~~
- ~~(b ii) Positive urinalysis for the illegal use of drugs;~~
- ~~(c iii) Failure to report for alcohol testing or drug testing; and~~
- ~~(d 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 sentenced for a misdemeanor has committed or is about to 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 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 sentenced for a misdemeanor 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.~~

~~(4) Whenever a probation officer has a reasonable cause to believe that a probationer sentenced for a misdemeanor 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 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.~~

~~(5) Immediately after 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.~~

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

~~(7) Whenever a probation officer has reasonable cause to believe that a probationer sentenced for a felony has committed or is about to commit a~~

violation while on probation, the probation officer shall consider:

~~(a) Whether the probation officer is required to arrest the probationer pursuant to subsection (10) of this section;~~

~~(b) The probationer's risk level, the severity of the violation, and the probationer's response to the violation; and~~

~~(c) Whether to impose administrative sanctions or seek custodial sanctions or revocation pursuant to subsection (8) of this section.~~

~~(8) The following sanctions may be imposed or sought by the probation officer, with approval from his or her chief probation officer or such chief's designee, for felony probationers:~~

~~(a) One or more administrative sanctions;~~

~~(b) A custodial sanction of up to three days in jail or up to thirty days in jail, to be imposed by the court. Custodial sanctions may be combined with one or more administrative sanctions; or~~

~~(c) Formal revocation proceedings, however formal revocations may only be instituted against the probationer for a substance abuse or noncriminal violation if the probationer has served ninety days of cumulative custodial sanctions during the current probation term.~~

~~(9) If administrative sanctions are to be imposed by the probation officer pursuant to subsection (8) of this section, the probationer must acknowledge in writing the nature of the violation and agree upon the sanction. Prior to acknowledging the violation and agreeing upon the sanction, the probationer must be presented with a violation report and advised of the right to a hearing before the court on the alleged violation. The probationer has the right to decline to acknowledge the violation and request a court hearing. If the probationer declines to acknowledge the violation, 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, describing the alleged violation or violations and requesting that administrative sanctions or a custodial sanction of up to thirty days in jail be imposed.~~

~~(10) Whenever a probation officer has reasonable cause to believe that a probationer sentenced for a felony 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 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. 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 impose administrative or custodial sanctions, or both, or revoke the probation.~~

~~(11) The administrator shall adopt and promulgate rules and regulations at the direction of the Supreme Court to ensure prompt court review of requests for the imposition of custodial sanctions.~~

~~(12) The administrator shall adopt and promulgate rules and regulations to carry out this section.~~

Sec. 20. (1) Whenever a probation officer has reasonable cause to believe that a probationer sentenced for a misdemeanor has committed or is about to commit a violation of a condition of probation, the probation officer shall 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 an administrative sanction 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 an administrative sanction is 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 (1)(b) of this section. The probation officer shall submit a written report to the county attorney of the county where probation was imposed, outlining the nature of the probation violation and the sanction 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 initiated against the probationer in accordance with sections 29-2267 and 29-2268.

(2) Whenever a probation officer has reasonable cause to believe that a probationer sentenced for a misdemeanor 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 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) Immediately after arrest and detention pursuant to subsection (2) 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) Notify the probation officer and the jail or detention facility, in writing, that he or she does not intend to file a motion to revoke probation, and authorize the release of the probationer from confinement; or

(b) File with the sentencing court a motion or information to revoke probation in accordance with sections 29-2267 and 29-2268.

(4) Whenever a county attorney receives a report from a probation officer that a probationer sentenced for a misdemeanor has violated a condition of probation, the county attorney may file a motion or information to revoke probation in accordance with sections 29-2267 and 29-2268.

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

Sec. 21. (1) Whenever a probation officer has reasonable cause to believe that a probationer sentenced for a felony has committed or is about to commit a violation while on probation, the probation officer shall consider:

(a) Whether the probation officer is required to arrest the probationer pursuant to subsection (2) of this section;

(b) The probationer's risk level, the severity of the violation, and the probationer's response to the violation;

(c) Whether to impose administrative sanctions or seek custodial sanctions; or

(d) Whether to seek revocation of probation.

(2) Whenever a probation officer has reasonable cause to believe that a probationer sentenced for a felony 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 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) Whenever a probation officer has reasonable cause to believe that a probationer sentenced for a felony has committed or is about to commit a violation of a condition of probation, the probation officer shall:

(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 an administrative sanction 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 an administrative sanction is 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 (3) (b) or (c) of this section. The probation officer shall submit a written report to the county attorney of the county where probation was imposed, outlining the nature of the probation violation and the sanction imposed;

(b) Seek the imposition of a custodial sanction with the approval of his or her chief probation officer or such chief's designee. The decision to impose a custodial sanction rests with the court and shall be based upon the probationer's risk level, the severity of the violation, and the probationer's response to the violation. If a custodial sanction is to be imposed, the probationer shall acknowledge in writing the nature of the violation and agree upon the custodial 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 in accordance with section 22 of this act. If the probationer acknowledges the violation and agrees upon the custodial sanction, the probation officer shall take action in accordance with subsection (1) of section 22 of this act and shall submit a written report to the county attorney of the county where probation was imposed, outlining the nature of the probation violation and the sanction to be imposed; or

(c) 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 initiated against the probationer in accordance with sections 29-2267 and 29-2268.

(4) Immediately after arrest and detention pursuant to subsection (2) 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) Notify the probation officer and the jail or detention facility, in writing, that he or she does not intend to file a motion to revoke probation, and authorize the release of the probationer from confinement; or

(b) File with the sentencing court a motion or information to revoke probation in accordance with sections 29-2267 and 29-2268.

(5) Whenever a county attorney receives a report from a probation officer that a probationer sentenced for a felony has violated a condition of probation, the county attorney may file a motion or information to revoke probation in accordance with sections 29-2267 and 29-2268.

(6) The administrator shall adopt and promulgate rules and regulations to carry out this section, including, but not limited to, rules and regulations to ensure prompt court review of requests for the imposition of custodial

sanctions.

Sec. 22. (1) Whenever a probation officer seeks to impose a custodial sanction and the probationer acknowledges the violation, agrees to the custodial sanction, and waives the hearing, the probation officer shall submit a written report to the sentencing court outlining the nature of the violation and the sanction to be imposed. Upon receiving the probation officer's report, the court shall issue a commitment order accordingly.

(2) Whenever a probation officer seeks to impose a custodial sanction and the probationer declines to acknowledge the violation, the probation officer shall submit a written report to the sentencing court outlining the nature of the violation and the sanction to be imposed. The probationer is entitled to a prompt consideration of such charge by the sentencing court. Except as provided in subsection (1) of this section, the court shall not impose a custodial sanction on a probationer unless the violation of probation is established at a hearing by a preponderance of the evidence.

(3) Prior to the custodial sanction hearing, the probation officer shall provide the probationer written notice of the grounds on which the request to impose a custodial sanction is based. The probationer has the right to hear and controvert the evidence against him or her, to offer evidence in his or her defense, and to be represented by counsel. The right to hear and controvert the evidence does not include a right to confront witnesses. The right to offer evidence includes, but is not limited to, the right to submit affidavits and reports for consideration by the court and the right to testify and call witnesses.

(4) The county attorney of the county where probation was imposed may appear at and participate in a custodial sanction hearing to offer evidence, call witnesses, and cross examine witnesses. The court shall receive the affidavit and report of the probation officer as evidence and may receive additional affidavits and reports related to the requested sanction or sanctions.

(5) After a custodial sanction hearing, if the court determines that a custodial sanction should be imposed, the court shall issue a commitment order accordingly. The decision to impose a custodial sanction shall be based upon the probationer's risk level, the severity of the violation, and the probationer's response to the violation, and shall be made in accordance with the procedure in this section, relevant court rules, and the matrix of rewards and graduated sanctions developed by the administrator. A custodial sanction may be combined with one or more administrative sanctions.

Sec. 23. Section 29-2267, Reissue Revised Statutes of Nebraska, is amended to read:

29-2267 (1) Whenever a motion or information to revoke probation is filed, the probationer shall be entitled to a prompt consideration of such charge by the sentencing court. The court shall not revoke probation or increase the probation requirements imposed thereby on the probationer, except after a hearing upon proper notice where the violation of probation is established by clear and convincing evidence.

(2) The probationer shall have the right to receive, prior to the hearing, a copy of the information or written notice of the grounds on which the information is based. The probationer shall have the right to hear and controvert the evidence against him or her, to offer evidence in his or her defense, and to be represented by counsel.

(3) For a probationer convicted of a felony, revocation proceedings may only be instituted in response to a substance abuse or noncriminal violation if the probationer has served ninety days of cumulative custodial sanctions during the current probation term.

Sec. 24. Section 29-2268, Revised Statutes Supplement, 2015, is amended to read:

29-2268 (1) If the court finds that the probationer, other than a probationer serving a term of post-release supervision, did violate a condition of his or her probation, it may revoke the probation and impose on the offender such new sentence as might have been imposed originally for the crime of which he or she was convicted.

(2) If the court finds that a probationer serving a term of post-release supervision did violate a condition of his or her post-release supervision, it may revoke the post-release supervision and impose on the offender a term of imprisonment up to the remaining period of post-release supervision. The term shall be served in an institution under the jurisdiction of the Department of Correctional Services or in county jail subject to subsection (2) of section 28-105.

(3) If the court finds that the probationer did violate a condition of his or her probation, but is of the opinion that revocation is not appropriate, the court may order that:

(a) The probationer receive a reprimand and warning;

(b) Probation supervision and reporting be intensified;

(c) The probationer be required to conform to one or more additional conditions of probation which may be imposed in accordance with the Nebraska Probation Administration Act provisions of sections 29-2246 to 29-2268; and

(d) A custodial sanction be imposed on a probationer convicted of a felony, subject to the provisions of section 22 of this act; and

(e) The probationer's term of probation be extended, subject to the provisions of section 29-2263.

Sec. 25. Section 29-2269, Revised Statutes Cumulative Supplement, 2014, is amended to read:

29-2269 Sections 29-2246 to 29-2269 and sections 20 to 22 of this act shall be known and may be cited as the Nebraska Probation Administration Act.

Sec. 26. Section 47-401, Reissue Revised Statutes of Nebraska, is amended to read:

47-401 (1) Any person sentenced to or confined in a city or county jail upon conviction for a misdemeanor, a felony, contempt, or nonpayment of any fine or forfeiture or as the result of a custodial sanction imposed in response to a parole or probation violation may be granted the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

- (a) Seeking employment;
- (b) Working at his or her employment;
- (c) Conducting such person's own business or other self-employed occupation, including housekeeping and attending to the needs of such person's family;
- (d) Attending any high school, college, university, or other educational or vocational training program or institution;
- (e) Serious illness or death of a member of such person's immediate family;
- (f) Medical treatment; ~~or~~
- (g) Outpatient or inpatient treatment for alcohol or substance abuse; ~~or~~
- (h) Engaging in other rehabilitative activities, including, but not limited to, attending a program or service provided at a reporting center.

(2) Any person sentenced to or confined in a city or county jail upon conviction for a misdemeanor or nonpayment of any fine or forfeiture or as the result of a custodial sanction imposed in response to a parole or probation violation may be granted the privilege of serving the sentence or a part of the sentence at a house of correction, community residential center, work release center, halfway house, or other place of confinement properly designated as a jail facility in accordance with this section and sections 15-259, 47-117, 47-207, and 47-409.

(3) Any person sentenced to or confined in a city or county jail upon conviction for a misdemeanor, a felony, contempt, or nonpayment of any fine or forfeiture or as the result of a custodial sanction imposed in response to a parole or probation violation may be granted the privilege of serving all or part of the sentence under house arrest. For purposes of this subsection, house arrest means restricting an offender to a specific residence except for authorized periods of absence for employment or for medical, educational, or other reasons approved by the court. House arrest may be monitored by electronic surveillance devices or systems.

Sec. 27. Section 47-502, Reissue Revised Statutes of Nebraska, is amended to read:

47-502 Any person sentenced to or confined in a city or county jail, including any person serving a custodial sanction imposed in response to a parole or probation violation, shall, after the fifteenth day of his or her confinement, have his or her remaining term reduced one day for each day of his or her sentence or sanction during which he or she has not committed any breach of discipline or other violation of jail regulations.

Sec. 28. Section 47-901, Revised Statutes Supplement, 2015, is amended to read:

47-901 Sections 47-901 to 47-918 and section 31 of this act shall be known and may be cited as the Office of Inspector General of the Nebraska Correctional System Act.

Sec. 29. Section 47-903, Revised Statutes Supplement, 2015, is amended to read:

47-903 For purposes of the Office of Inspector General of the Nebraska Correctional System Act, the following definitions apply:

- (1) Administrator means a person charged with administration of a program, an office, or a division of the department or administration of a private agency;
- (2) Department means the Department of Correctional Services;
- (3) Director means the Director of Correctional Services;
- (4) Inspector General means the Inspector General of the Nebraska Correctional System appointed under section 47-904;
- (5) Malfeasance means a wrongful act that the actor has no legal right to do or any wrongful conduct that affects, interrupts, or interferes with performance of an official duty;
- (6) Management means supervision of subordinate employees;
- (7) Misfeasance means the improper performance of some act that a person may lawfully do;
- (8) Obstruction means hindering an investigation, preventing an investigation from progressing, stopping or delaying the progress of an investigation, or making the progress of an investigation difficult or slow;
- (9) Office means the office of Inspector General of the Nebraska Correctional System and includes the Inspector General and other employees of the office;
- (10) Office of Parole Administration means the office created pursuant to section 83-1,100;
- (11) ~~(10)~~ Private agency means an entity that contracts with the department or contracts to provide services to another entity that contracts with the department; and
- (12) ~~(11)~~ Record means any recording in written, audio, electronic transmission, or computer storage form, including, but not limited to, a draft, memorandum, note, report, computer printout, notation, or message, and

includes, but is not limited to, medical records, mental health records, case files, clinical records, financial records, and administrative records.

Sec. 30. Section 47-908, Revised Statutes Supplement, 2015, is amended to read:

47-908 All employees of the department, all employees of the Office of Parole Administration, and all owners, operators, managers, supervisors, and employees of private agencies shall cooperate with the office. Cooperation includes, but is not limited to, the following:

(1) Provision of full access to and production of records and information. Providing access to and producing records and information for the office is not a violation of confidentiality provisions under any statute, rule, or regulation if done in good faith for purposes of an investigation under the Office of Inspector General of the Nebraska Correctional System Act;

(2) Fair and honest disclosure of records and information reasonably requested by the office in the course of an investigation under the act;

(3) Encouraging employees to fully comply with reasonable requests of the office in the course of an investigation under the act;

(4) Prohibition of retaliation by owners, operators, or managers against employees for providing records or information or filing or otherwise making a complaint to the office;

(5) Not requiring employees to gain supervisory approval prior to filing a complaint with or providing records or information to the office;

(6) Provision of complete and truthful answers to questions posed by the office in the course of an investigation; and

(7) Not willfully interfering with or obstructing the investigation.

Sec. 31. The Office of Parole Administration shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the office in connection with administration of the Nebraska parole system, except that access for the Public Counsel and the Inspector General to a parolee's medical or mental health records shall be subject to the parolee's consent.

Sec. 32. Section 60-6,197.03, Revised Statutes Supplement, 2015, is amended to read:

60-6,197.03 Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) Except as provided in subdivision (2) of this section, if such person has not had a prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of six months from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to section 60-6,211.05 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of sixty days from the date ordered by the court. The court shall order that during the period of revocation the person apply for an ignition interlock permit pursuant to section 60-6,211.05. Such order of probation or sentence suspension shall also include, as one of its conditions, the payment of a five-hundred-dollar fine;

(2) If such person has not had a prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for two days or the imposition of not less than one hundred twenty hours of community service;

(3) Except as provided in subdivision (5) of this section, if such person has had one prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of eighteen

months from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that the person apply for an ignition interlock permit and have an ignition interlock device installed on any motor vehicle he or she owns or operates for at least one year. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of eighteen months from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that the person apply for an ignition interlock permit and installation of an ignition interlock device for not less than a one-year period pursuant to section 60-6,211.05. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than two hundred forty hours of community service;

(4) Except as provided in subdivision (6) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least two years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(5) If such person has had one prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class I misdemeanor, and the court shall, as part of the judgment of conviction, order payment of a one-thousand-dollar fine and revoke the operator's license of such person for a period of at least eighteen months but not more than fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least ninety days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least eighteen months but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days and that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device for not less than a one-year period issued pursuant to section 60-6,211.05. The court shall also issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. If the person has an ignition interlock device installed as required under this subdivision, the person shall not be eligible for reinstatement of his or her operator's license until he or she has had the ignition interlock device installed for the period ordered by the court. The order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(6) If such person has had two prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under

section 60-6,197, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least five years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine, confinement in the city or county jail for sixty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than sixty days;

(7) Except as provided in subdivision (8) of this section, if such person has had three prior convictions, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for ninety days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than ninety days;

(8) If such person has had three prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIA felony, with a minimum sentence of one year of imprisonment, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred twenty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred twenty days;

(9) Except as provided in subdivision (10) of this section, if such person has had four or more prior convictions, such person shall be guilty of a Class IIA felony with a minimum sentence of two years' imprisonment, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence

suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred eighty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred eighty days; and

(10) If such person has had four or more prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class II felony with a minimum sentence of two years' imprisonment and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred eighty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred eighty days.

Sec. 33. Section 71-2482, Revised Statutes Supplement, 2015, is amended to read:

71-2482 Any person violating any of the provisions of section 71-2478, 71-2480, or 71-2481 is guilty of a Class III misdemeanor. Any person, for a second or subsequent violation of any of the provisions of section 71-2480 or 71-2481, is guilty of a Class II misdemeanor.

Sec. 34. Section 83-187, Reissue Revised Statutes of Nebraska, is amended to read:

83-187 (1) When a person committed to the department is released from a facility, ~~either on parole,~~ on post-release supervision, or upon final discharge, the person shall be returned any personal possessions taken upon confinement, and the chief executive officer of the facility shall furnish the person with a written notice as required in section 83-1,118, clothing appropriate for the season of the year, a transportation ticket to the place where he or she will reside, if within the continental limits of the United States or if not, the state may purchase transportation to the nearest United States border en route to such residence, and such sum of money as may be prescribed by the regulations of the department to enable the person to meet his or her immediate needs. If at the time of release the person is too ill or feeble or otherwise unable to use public means of transportation, the chief executive officer may make special arrangements for transportation to the place where the person will reside.

(2) At the time of release, the person shall also be paid his or her earnings and any accrued interest thereon set aside in the wage fund. Such earnings and interest shall be paid either in a lump sum or otherwise as determined by the chief executive officer to be in the best interest of the person. No less than one-third of such fund shall be paid upon release, and the entire fund shall be paid within six months of the person's release.

(3) The department shall send a copy of the release or discharge to the court which committed the person and also to the sheriff of the county in which the court is located and, when such county contains a city of the metropolitan class, to the police department of such city.

Sec. 35. Section 83-1,100.02, Revised Statutes Supplement, 2015, is amended to read:

83-1,100.02 (1) For purposes of this section:

(a) Levels of supervision means the determination of the following for each person on parole:

- (i) Supervision contact requirements, including the frequency, location, methods, and nature of contact with the parole officer;
- (ii) Substance abuse testing requirements and frequency;
- (iii) Contact restrictions;
- (iv) Curfew restrictions;
- (v) Access to available programs and treatment, with priority given to moderate-risk and high-risk parolees; and
- (vi) Severity of graduated responses to violations of supervision

conditions; and

(b) Risk and needs assessment means an actuarial tool that has been validated in Nebraska to determine the likelihood of the parolee engaging in future criminal behavior.

(2) The Office of Parole Administration shall establish an evidence-based process that utilizes a risk and needs assessment to measure criminal risk factors and specific individual needs.

(3) The risk and needs assessment shall be performed at the commencement of the parole term and every six months thereafter by office staff trained and certified in the use of the risk and needs assessment.

(4) The office shall test the validity of the risk and needs assessment at least every five years.

(5) Based on the results of the risk and needs assessment, the office shall determine levels of supervision to target parolee criminal risk and need factors by focusing sanction, program, and treatment resources on moderate-risk and high-risk parolees.

(6) The office shall provide training to its parole officers on use of a risk and needs assessment, risk-based supervision strategies, relationship skills, cognitive behavioral interventions, community-based resources, criminal risk factors, targeting criminal risk factors to reduce recidivism, and proper use of a matrix of administrative sanctions, custodial sanctions, and rewards developed pursuant to section 83-1,119. All parole officers employed on August 30, 2015, shall complete the training requirements set forth in this subsection on or before January 1, 2017 ~~July 1, 2016~~. Each parole officer hired on or after August 30, 2015, shall complete the training requirements set forth in this subsection within one year after his or her hire date.

(7) The office shall provide training for chief parole officers to become trainers so as to ensure long-term and self-sufficient training capacity in the state.

Sec. 36. Section 83-1,101, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1,101 The Director of Correctional Services with the consent of the Board of Parole shall appoint a Parole Administrator. The Parole Administrator, who shall be a person with appropriate experience and training, including, but not limited to, familiarity with the implementation of evidence-based processes for utilizing risk and needs assessments to measure criminal risk factors and specific individual needs in the field of corrections, or with training in relevant disciplines at a recognized university.~~

Sec. 37. Section 83-1,119, Revised Statutes Supplement, 2015, is amended to read:

83-1,119 (1) For purposes of this section:

(a) Absconding parole supervision means a parolee has purposely avoided supervision for a period of at least two weeks and reasonable efforts by a parole officer and staff to locate the parolee in person have proven unsuccessful;

~~(b) Administrative sanction means additional parole requirements imposed upon a parolee by his or her parole officer, with the full knowledge and consent of the parolee, designed to hold the parolee accountable for substance abuse or technical violations of conditions of parole, including, but not limited to:~~

~~(i) Counseling or reprimand by the adult parole administration of the department;~~

~~(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 to be determined by the adult parole administration; and~~

~~(vi) Travel restrictions to stay within his or her county of residence or employment unless otherwise permitted by the adult parole administration;~~

~~(c) Contract facility means a county jail that contracts with the department to house parolees or other offenders under the jurisdiction of the department;~~

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

~~(i) Positive breath test for the consumption of alcohol if the parolee 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; and~~

~~(e) Technical violation means a parolee's activities or behaviors which create the opportunity for re-offending or diminish the effectiveness of parole supervision resulting in a violation of an original condition of parole and includes, including, but not limited to:~~

~~(i) Moving traffic violations;~~

~~(ii) Failure to report to his or her parole officer;~~

~~(iii) Leaving the state without the permission of the Board of Parole;~~

~~(iv) Failure to work regularly or attend training or school;~~

~~(v) Failure to notify his or her parole officer of change of address or employment;~~

~~(vi) Frequenting places where controlled substances are illegally sold,~~

used, distributed, or administered; and

(vii) Failure to pay fines, court costs, restitution, or any fees imposed pursuant to section 83-1,107.01 as directed.

Technical violation does not include absconding parole supervision.

(2) The Office of Parole Administration shall develop a matrix of rewards for compliance and positive behaviors and graduated administrative sanctions and custodial sanctions for use in responding to and deterring substance abuse violations and technical violations. A custodial sanction of thirty days in a correctional facility or a contract facility shall be designated as the most severe response to a violation in lieu of revocation.

(3) Whenever a parole officer has reasonable cause to believe that a parolee has committed or is about to commit a substance abuse violation or technical violation while on parole, but that the parolee will not attempt to leave the jurisdiction and will not place lives or property in danger, the parole officer shall either:

(a) Impose one or more administrative sanctions based upon the parolee's risk level, the severity of the violation, and the parolee's response to the violation. If administrative sanctions are to be imposed, the parolee shall acknowledge in writing the nature of the violation and agree upon the administrative sanction. The parolee has the right to decline to acknowledge the violation. If he or she declines to acknowledge the violation, the parole officer shall take action pursuant to subdivision (3)(b) of this section. A copy of the report shall be submitted to the Board of Parole; or

(b) Submit a written report to the Board of Parole, outlining the nature of the parole violation, and request the imposition of a custodial sanction of up to thirty days in a correctional facility or a contract facility. On the basis of the report and such further investigation as the board may deem appropriate, the board shall determine whether and how the parolee violated the conditions of parole and may:

(i) Dismiss the charge of violation; or

(ii) If the board finds a violation justifying a custodial sanction, issue a warrant if necessary and impose a custodial sanction of up to thirty days in a correctional facility or a contract facility.

(4) Whenever a parole officer has reasonable cause to believe that a parolee has violated or is about to violate a condition of parole by a violation other than a substance abuse violation or a technical violation and the parole officer has reasonable cause to believe that the parolee will not attempt to leave the jurisdiction and will not place lives or property in danger, the parole officer shall submit a written report to the Board of Parole which may, on the basis of such report and such further investigation as it may deem appropriate:

(a) Dismiss the charge of violation;

(b) Determine whether the parolee violated the conditions of his or her parole;

(c) Impose a custodial sanction of up to thirty days in a correctional facility or a contract facility;

(d) Revoke his or her parole in accordance with the Nebraska Treatment and Corrections Act; or

(e) Issue a warrant for the arrest of the parolee.

(5) Whenever a parole officer has reasonable cause to believe that a parolee has violated or is about to violate a condition of parole and that the parolee will attempt to leave the jurisdiction or will place lives or property in danger, the parole officer shall arrest the parolee without a warrant and call on any peace officer to assist him or her in doing so.

(6) Whenever a parolee is arrested with or without a warrant, he or she shall be detained in a local jail or other detention facility. Immediately after such arrest and detention, the parole officer shall notify the Board of Parole and submit a written report of the reason for such arrest. A complete investigation shall be made by the parole administration and submitted to the board. After prompt consideration of such written report, the board shall order the parolee's release from detention or continued confinement to await a final decision on imposition of a custodial sanction or the revocation of parole.

(7) The Board of Parole shall adopt and promulgate rules and regulations necessary to carry out this section.

Sec. 38. Section 83-1,122, Revised Statutes Supplement, 2015, is amended to read:

83-1,122 (1) If the board finds that the parolee has engaged in criminal conduct, the board may order revocation of the parolee's parole.

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

(a) The parolee receive a reprimand and warning;

(b) Parole supervision and reporting be intensified;

(c) Good time granted pursuant to section 83-1,108 be forfeited or withheld;

(d) The parolee serve a custodial sanction of up to thirty days in a correctional facility or a contract facility as defined in section 83-1,119; or

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

(3) Cumulative custodial sanctions of ~~thirty days~~ in a correctional facility or a contract facility under this section and section 83-1,119 shall not exceed sixty days. If a parolee has previously received sixty days of

~~cumulative two thirty-day~~ custodial sanctions before the current violation, the board shall either order revocation of the parolee's parole or one or more of the other sanctions described in subsection (2) of this section.

(4) Time spent in custodial sanctions under this section and section 83-1,119 shall be credited to the parolee's sentence.

Sec. 39. A parolee serving a custodial sanction in a correctional facility or contract facility may be granted the privilege of leaving the facility during necessary and reasonable hours for any of the following purposes:

(1) Seeking employment;

(2) Working at his or her employment;

(3) Conducting such person's own business or other self-employed occupation, including housekeeping and attending to the needs of such person's family;

(4) Attending any high school, college, university, or other educational or vocational training program or institution;

(5) Serious illness or death of a member of such person's immediate family;

(6) Medical treatment;

(7) Outpatient or inpatient treatment for alcohol or substance abuse; or

(8) Engaging in other rehabilitative activities.

Sec. 40. Section 83-1,122.01, Revised Statutes Supplement, 2015, is amended to read:

83-1,122.01 (1) The board does not have jurisdiction over a person who is committed to the department in accordance with section 29-2204.02 for a Class III, IIIA, or IV felony committed on or after August 30, 2015, unless the person is also committed to the department in accordance with section 29-2204 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony committed prior to August 30, 2015, or (b) a sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony ~~The board shall not have jurisdiction over persons who are committed to the department in accordance with section 29-2204.02 unless the defendant is also sentenced for an offense in accordance with section 29-2204.~~

(2) The board does not have jurisdiction over a person committed to the department for a misdemeanor sentence imposed consecutively or concurrently with a Class III, IIIA, or IV felony sentence for an offense committed on or after August 30, 2015, unless the person is also committed to the department in accordance with section 29-2204 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony committed prior to August 30, 2015, or (b) a sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony.

Sec. 41. Section 83-1,135, Revised Statutes Supplement, 2015, is amended to read:

83-1,135 Sections 83-170 to 83-1,135.02 and section 39 of this act shall be known and may be cited as the Nebraska Treatment and Corrections Act.

Sec. 42. Section 83-1,135.02, Revised Statutes Supplement, 2015, is amended to read:

83-1,135.02 (1) It is the intent of the Legislature that the changes made to the Nebraska Treatment and Corrections Act by Laws 2003, LB 46, with respect to parole eligibility apply to all committed offenders under sentence and not on parole on May 24, 2003, and to all persons sentenced on and after such date.

(2) It is the intent of the Legislature that the changes made to sections 29-2262, 29-2266, 29-2281, 83-182.01, 83-183, 83-183.01, 83-184, 83-1,119, and 83-1,122 by Laws 2015, LB605, and sections 83-184.01, 83-1,100.02, and 83-1,100.03 apply to all committed offenders under sentence, on parole, or on probation on August 30, 2015, and to all persons sentenced on and after such date.

(3) It is the intent of the Legislature that the changes made to sections 28-105, 29-2204.02, 29-2260, 29-2262, 29-2263, 29-2266, 29-2267, 29-2268, 47-401, 47-502, 83-187, 83-1,119, 83-1,122, and 83-1,122.01 by this legislative bill and sections 20, 21, 22, and 39 of this act apply to all committed offenders under sentence, on parole, or on probation on or after the effective date of this act and to all persons sentenced on and after such date.

Sec. 43. Section 83-4,114, Revised Statutes Supplement, 2015, is amended to read:

83-4,114 (1) There shall be no corporal punishment or disciplinary restrictions on diet.

(2) Disciplinary restrictions on clothing, bedding, mail, visitations, use of toilets, washbowls, or scheduled showers shall be imposed only for abuse of such privilege or facility and only as authorized by written directives, guidance documents, and operational manuals.

(3) No person shall be placed in solitary confinement.

(4) The director shall issue an annual report on or before September 15 to the Governor and the Clerk of the Legislature. The report to the Clerk of the Legislature shall be issued electronically. For all inmates who were held in restrictive housing during the prior year, the report shall contain the race, gender, age, and length of time each inmate has continuously been held in restrictive housing. The report shall also contain:

(a) The number of inmates held in restrictive housing;

(b) The reason or reasons each inmate was held in restrictive housing;

(c) The number of inmates held in restrictive housing who have been diagnosed with a mental illness or behavioral disorder as defined in section 71-907 and the type of mental illness or behavioral disorder by inmate;

(d) The number of inmates who were released from restrictive housing

directly to parole or into the general public and the reason for such release;

(e) The number of inmates who were placed in restrictive housing for his or her own safety and the underlying circumstances for each placement;

(f) To the extent reasonably ascertainable, comparable statistics for the nation and each of the states that border Nebraska pertaining to subdivisions (4)(a) through (e) of this section; and

(g) The mean and median length of time for all inmates held in restrictive housing.

(5)(a) There is hereby established within the department a long-term restrictive housing work group. The work group shall consist of:

(i) The director and all deputy directors. The director shall serve as the chairperson of the work group;

~~(ii) The director of health services within the department;~~

~~(ii iii)~~ The behavioral health administrator within the department;

~~(iii iv)~~ Two employees of the department who currently work with inmates held in restrictive housing;

~~(iv v)~~ Additional department staff as designated by the director; and

~~(v vi)~~ Four members as follows appointed by the Governor:

(A) Two representatives from a nonprofit prisoners' rights advocacy group, including at least one former inmate; and

(B) Two mental health professionals independent from the department with particular knowledge of prisons and conditions of confinement.

(b) The work group shall advise the department on policies and procedures related to the proper treatment and care of offenders in long-term restrictive housing.

(c) The director shall convene the work group's first meeting no later than September 15, 2015, and the work group shall meet at least semiannually thereafter. The chairperson shall schedule and convene the work group's meetings.

(d) The director shall provide the work group with quarterly updates on the department's policies related to the work group's subject matter.

Sec. 44. Original sections 27-1101, 28-605, 28-626, 29-2256, 29-2267, 47-401, 47-502, 83-187, and 83-1,101, Reissue Revised Statutes of Nebraska, sections 28-115, 28-1354, 29-2258, and 29-2269, Revised Statutes Cumulative Supplement, 2014, sections 28-106, 28-204, 28-394, 28-514, 29-2204.02, 29-2252, 29-2252.01, 29-2260, 29-2262, 29-2263, 29-2266, 29-2268, 47-901, 47-903, 47-908, 60-6,197.03, 71-2482, 83-1,100.02, 83-1,119, 83-1,122, 83-1,122.01, 83-1,135, 83-1,135.02, and 83-4,114, Revised Statutes Supplement, 2015, and section 28-105, Revised Statutes Cumulative Supplement, 2014, as amended by Laws 2015, LB605, section 6, are repealed.

Sec. 45. Since an emergency exists, this act takes effect when passed and approved according to law.