

AMENDMENTS TO LB1010

Introduced by Judiciary.

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

3 Section 1. Section 29-2252, Revised Statutes Cumulative Supplement,
4 2020, is amended to read:

5 29-2252 The administrator shall:

6 (1) Supervise and administer the office;

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

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

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

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

23 (6) Cooperate with all agencies, public or private, which are
24 concerned with treatment or welfare of persons on probation. All
25 information provided to the Nebraska Commission on Law Enforcement and
26 Criminal Justice to provide access to such information to law enforcement
27 agencies through the state's criminal justice information system shall be

1 provided in a manner that allows such information to be readily
2 accessible through the main interface of the system;

3 (7) Organize and conduct training programs for probation officers.
4 Training shall include the proper use of a risk and needs assessment,
5 risk-based supervision strategies, relationship skills, cognitive
6 behavioral interventions, community-based resources, criminal risk
7 factors, and targeting criminal risk factors to reduce recidivism and the
8 proper use of a matrix of administrative sanctions, custodial sanctions,
9 and rewards developed pursuant to subdivision (18) of this section. All
10 probation officers employed on or after August 30, 2015, shall complete
11 the training requirements set forth in this subdivision;

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

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

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

24 (11) Adopt and promulgate such rules and regulations as may be
25 necessary or proper for the operation of the office or system. The
26 administrator shall adopt and promulgate rules and regulations for
27 transitioning individuals on probation across levels of supervision and
28 discharging them from supervision consistent with evidence-based
29 practices. The rules and regulations shall ensure supervision resources
30 are prioritized for individuals who are high risk to reoffend, require
31 transitioning individuals down levels of supervision intensity based on

1 assessed risk and months of supervision without a reported major
2 violation, and establish incentives for earning discharge from
3 supervision based on compliance;

4 (12) Transmit a report during each even-numbered year to the Supreme
5 Court on the operation of the office for the preceding two calendar years
6 which shall include a historical analysis of probation officer workload,
7 including participation in non-probation-based programs and services. The
8 report shall be transmitted by the Supreme Court to the Governor and the
9 Clerk of the Legislature. The report submitted to the Clerk of the
10 Legislature shall be submitted electronically;

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

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

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

30 (16) Have the authority to enter into interlocal agreements in which
31 probation resources or probation personnel may be utilized in conjunction

1 with or as part of non-probation-based programs and services. Any such
2 interlocal agreement shall comply with section 29-2255;

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

8 (18) Develop a matrix of rewards for compliance and positive
9 behaviors and graduated administrative sanctions and custodial sanctions
10 for use in responding to and deterring substance abuse violations and
11 technical violations. As applicable under sections 29-2266.02 and
12 29-2266.03, custodial sanctions of up to thirty days in jail shall be
13 designated as the most severe response to a violation in lieu of
14 revocation and custodial sanctions of up to three days in jail shall be
15 designated as the second most severe response;

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

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

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

25 Sec. 2. Section 29-2262, Revised Statutes Cumulative Supplement,
26 2020, is amended to read:

27 29-2262 (1) When a court sentences an offender to probation, it
28 shall attach such reasonable conditions as it deems necessary or likely
29 to insure that the offender will lead a law-abiding life. No offender
30 shall be sentenced to probation if he or she is deemed to be a habitual
31 criminal pursuant to section 29-2221.

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

3 (a) To refrain from unlawful conduct;

4 (b) To be confined periodically in the county jail or to return to
5 custody after specified hours but not to exceed the lesser of ninety days
6 or the maximum jail term provided by law for the offense;

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

8 (d) To devote himself or herself to a specific employment or
9 occupation;

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

12 (f) To pursue a prescribed secular course of study or vocational
13 training;

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

16 (h) To refrain from frequenting unlawful or disreputable places or
17 consorting with disreputable persons;

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

21 (j) To remain within the jurisdiction of the court and to notify the
22 court or the probation officer of any change in his or her address or his
23 or her employment and to agree to waive extradition if found in another
24 jurisdiction;

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

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

28 (m) To pay for tests to determine the presence of drugs or alcohol,
29 psychological evaluations, offender assessment screens, and
30 rehabilitative services required in the identification, evaluation, and
31 treatment of offenders if such offender has the financial ability to pay

1 for such services;

2 (n) To perform community service as outlined in sections 29-2277 to
3 29-2279 under the direction of his or her probation officer;

4 (o) To be monitored by an electronic surveillance device or system
5 and to pay the cost of such device or system if the offender has the
6 financial ability;

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

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

11 (r) To make restitution as described in sections 29-2280 and
12 29-2281; or

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

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

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

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

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

30 (5) In all cases in which the offender is guilty of violating
31 section 28-416, a condition of probation shall be mandatory treatment and

1 counseling as provided by such section.

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

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

13 Sec. 3. Section 43-2,108, Revised Statutes Cumulative Supplement,
14 2020, is amended to read:

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

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

1 shall not be made available to parties or their counsel; and such
2 district court records shall be made available to a county court or
3 separate juvenile court upon request of the county judge or separate
4 juvenile judge for the confidential use of such judge and his or her
5 probation officer as to matters pending before such court, but shall not
6 be made available by such judge to the parties or their counsel.

7 (3) As used in this section, confidential record information means
8 all docket records, other than the pleadings, orders, decrees, and
9 judgments; case files and records; reports and records of probation
10 officers; and information supplied to the court of jurisdiction in such
11 cases by any individual or any public or private institution, agency,
12 facility, or clinic, which is compiled by, produced by, and in the
13 possession of any court. In all cases under subdivision (3)(a) of section
14 43-247, access to all confidential record information in such cases shall
15 be granted only as follows: (a) The court of jurisdiction may, subject to
16 applicable federal and state regulations, disseminate such confidential
17 record information to any individual, or public or private agency,
18 institution, facility, or clinic which is providing services directly to
19 the juvenile and such juvenile's parents or guardian and his or her
20 immediate family who are the subject of such record information; (b) the
21 court of jurisdiction may disseminate such confidential record
22 information, with the consent of persons who are subjects of such
23 information, or by order of such court after showing of good cause, to
24 any law enforcement agency upon such agency's specific request for such
25 agency's exclusive use in the investigation of any protective service
26 case or investigation of allegations under subdivision (3)(a) of section
27 43-247, regarding the juvenile or such juvenile's immediate family, who
28 are the subject of such investigation; and (c) the court of jurisdiction
29 may disseminate such confidential record information to any court, which
30 has jurisdiction of the juvenile who is the subject of such information
31 upon such court's request.

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

5 (5) In all cases under sections 43-246.01 and 43-247, the office of
6 Inspector General of Nebraska Child Welfare may submit a written request
7 to the probation administrator for access to the records of juvenile
8 probation officers in a specific case. Upon a juvenile court order, the
9 records shall be provided to the Inspector General within five days for
10 the exclusive use in an investigation pursuant to the Office of Inspector
11 General of Nebraska Child Welfare Act. Nothing in this subsection shall
12 prevent the notification of death or serious injury of a juvenile to the
13 Inspector General of Nebraska Child Welfare pursuant to section 43-4318
14 as soon as reasonably possible after the Office of Probation
15 Administration learns of such death or serious injury.

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

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

27 (8)(a) Any records concerning a juvenile court petition filed
28 pursuant to subdivision (3)(c) of section 43-247 shall remain
29 confidential except as may be provided otherwise by law. Such records
30 shall be accessible to (i) the juvenile except as provided in subdivision
31 (b) of this subsection, (ii) the juvenile's counsel, (iii) the juvenile's

1 parent or guardian, and (iv) persons authorized by an order of a judge or
2 court.

3 (b) Upon application by the county attorney or by the director of
4 the facility where the juvenile is placed and upon a showing of good
5 cause therefor, a judge of the juvenile court having jurisdiction over
6 the juvenile or of the county where the facility is located may order
7 that the records shall not be made available to the juvenile if, in the
8 judgment of the court, the availability of such records to the juvenile
9 will adversely affect the juvenile's mental state and the treatment
10 thereof.

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

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

30 Sec. 4. Section 83-1,125.01, Revised Statutes Cumulative Supplement,
31 2020, is amended to read:

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

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

24 (2) Any decision concerning release on or revocation of parole or
25 imposition of sanctions shall be made only after the individual file has
26 been reviewed. The contents of the individual file shall be confidential
27 unless disclosed in connection with a public hearing and shall not be
28 subject to public inspection except by court order for good cause shown.
29 The contents of the file shall not be accessible to any person under the
30 jurisdiction of the Board of Parole. A person under the jurisdiction of
31 the board may obtain access to his or her medical records by request to

1 the provider pursuant to sections 71-8401 to 71-8407 notwithstanding the
2 fact that such medical records may be a part of his or her parole file.
3 The board and the Division of Parole Supervision have the authority to
4 withhold decision guideline scores, risk and needs assessment scores, and
5 mental health and psychological records of a person under the
6 jurisdiction of the board when appropriate.

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

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

23 Sec. 5. Original sections 29-2252, 29-2262, 43-2,108, and
24 83-1,125.01, Revised Statutes Cumulative Supplement, 2020, are repealed.