

LEGISLATIVE BILL 1499

Approved by the Governor April 8, 1972

Introduced by Judiciary Committee, Roland A. Luedtke, 28th District, Chairman; Harold D. Simpson, 46th District; P. J. Morgan, 4th District; Fred W. Carstens, 30th District; Terry Carpenter, 48th District; Walter H. Epke, 24th District

AN ACT to amend sections 83-185, 83-188, 83-1,101, 83-1,106 to 83-1,108, 83-1,110, 83-1,111, 83-1,120, and 83-1,123, Revised Statutes Supplement, 1969, section 83-187, Revised Statutes Supplement, 1971, and section 83-1,105, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 1173, Eighty-second Legislature, Second Session, 1972, relating to state institutions; to provide for treatment of prisoners as prescribed; to provide for pardons and paroles as prescribed; to transfer functions as prescribed; to provide alternatives for fixing of sentences as prescribed; to provide for treatment of parolees; to provide for revocation of paroles as prescribed; and to repeal the original sections.

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

Section 1. That section 83-185, Revised Statutes Supplement, 1969, be amended to read as follows:

83-185. (1) The chief executive officer of each facility shall be responsible for the discipline of those persons committed to the Division of Corrections who reside therein. No person shall be punished except upon the order of the chief executive officer of the facility; nor shall any punishment be imposed otherwise than in accordance with this section.

(2) Except in flagrant or serious cases, punishment for misconduct shall consist of deprivation of privileges. In cases of ~~assault;--escape;--attempt--to escape-or-other~~ flagrant or serious misconduct, the chief executive officer may order that a person's reduction of term as provided in section 83-1,107 be forfeited or withheld and also that the person be confined in a disciplinary cell. The chief executive officer may order that such person, during all or part of the period in a disciplinary cell, be put on an adequate and healthful

diet. A person in a disciplinary cell shall be visited at least once every eight hours. No cruel, inhuman or corporal punishment shall be used on any person.

(3) The chief executive officer shall maintain a record of breaches of discipline, of the disposition of each case, and of the punishment, if any, for each such breach. Each breach of discipline shall be entered in the person's file, together with the disposition or punishment therefor.

(4) The chief executive officer may recommend to the Director of Corrections that a person who is considered to be incorrigible by reason of frequent intentional breaches of discipline, or who is detrimental to the discipline or the morale of the facility, be transferred to another facility for stricter safekeeping and closer confinement, subject to the provisions of section 83-176.

Sec. 2. That section 83-187, Revised Statutes Supplement, 1971, be amended to read as follows:

83-187. (1) When a person committed to the Division of Corrections is released from a facility, either on parole or upon final discharge, he shall be returned any personal possessions taken from him upon his confinement, and the chief executive officer of the facility shall furnish him with clothing appropriate for the season of the year, a transportation ticket to the place where he 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 his residence, and such sum of money as may be prescribed by the regulations of the Division of Corrections to enable him to meet his immediate needs. If at the time of his release he is too ill or feeble or otherwise unable to use public means of transportation, the chief executive officer may make special arrangements for his transportation to the place where he will reside.

(2) At the time of his release, he shall also be paid his 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 Division of Corrections 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. 3. That section 83-188, Revised Statutes Supplement, 1969, be amended to read as follows:

83-188. There is hereby created the Board of Parole. For administrative purposes only, the board shall be within the Division--of--Corrections Board of Pardons. Nothing in this act shall be construed to give the Director of Public Institutions, or the Director of Corrections, or the Board of Pardons any authority, power, or responsibility over the board, its employees, or the exercise of its functions under the provisions of this act.

Sec. 4. That section 83-1,101, Revised Statutes Supplement, 1969, be amended to read as follows:

83-1,101. The Director of Corrections with the consent of the Board of Parole shall appoint a Parole Administrator, who shall be a person with appropriate experience in the field of corrections, or with training in relevant disciplines at a recognized university.

Sec. 5. That section 83-1,105, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 1173, Eighty-second Legislature, Second Session, 1972, be amended to read as follows:

83-1,105. Except where a term of life is required by law, ~~every person convicted of a criminal offense may, in the court's discretion, be given an indeterminate sentence.~~ in imposing an indeterminate sentence upon the offender, the court may:

(1) Fix the minimum and maximum limits of the sentence, but the minimum limit fixed by the court shall not be less than the minimum provided by law nor more than one-third of the maximum term, and the maximum limit shall not be greater than the maximum provided by law; or

(2) Impose a definite term of years, in which event the maximum term of the sentence shall be the term imposed by the court and the minimum term shall be the minimum sentence provided by law; or

~~(2)~~ (3) Where the court is of the opinion that imprisonment may be appropriate but desires more detailed information as a basis for determining the sentence to be imposed than has been provided by the presentence report, commit an offender to the Division of Corrections for a

period not exceeding ninety days. The division shall conduct a complete study of the offender during that time, inquiring into such matters as his previous delinquency or criminal experience, his social background, his capabilities and his mental, emotional and physical health and the rehabilitative resources or programs which may be available to suit his needs. By the expiration of the period of commitment, or by the expiration of such additional time as the court shall grant, not exceeding a further period of ninety days, the offender shall be returned to the court for sentencing and the court shall be provided with a written report of the results of the study, including whatever recommendations the division believes will be helpful to a proper resolution of the case. After receiving the report and the recommendations, the court shall proceed to sentence the offender in accordance with any applicable provision of law. The term shall run from the date of original commitment under this section. In order to encourage the use of this procedure in appropriate cases, all costs incurred during the period the defendant is held in a state institution under this subdivision shall be a responsibility of the state, and the county shall be liable only for the cost of delivering the defendant to the institution and the cost of returning him to the appropriate court for sentencing or such other disposition as the court may then deem appropriate.

Sec. 6. That section 83-1,106, Revised Statutes Supplement, 1969, be amended to read as follows:

83-1,106. (1) Credit against the maximum term and any minimum term may be given by ~~the Director of Corrections~~ to an offender for time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. This shall specifically include, but shall not be limited to, time spent in custody prior to trial, during trial, pending sentence, pending the resolution of an appeal, and prior to delivery of the offender to the custody of the Division of Corrections.

(2) Credit against the maximum term and any minimum term may be given to an offender for time spent in custody under a prior sentence if he is later reprosecuted and resentedenced for the same offense or for another offense based on the same conduct. In the case of such a reprosecution, this may include credit in accordance with subsection (1) of this section for time spent in custody as a result of both the original charge and any subsequent charge for the same offense or for another offense based on the same conduct.

(3) If an offender is serving consecutive or concurrent sentences, or both, and if one of the sentences is set aside as the result of a direct or collateral proceeding, credit against the maximum term and any minimum term of the remaining sentences may be given for all time served since the commission of the offenses on which the sentences set aside were based.

(4) If the offender is arrested on one charge and prosecuted on another charge growing out of conduct which occurred prior to his arrest, credit against the maximum term and any minimum term of any sentence resulting from such prosecution may be given for all time spent in custody under the former charge which has not been credited against another sentence.

(5) Credit for time served may only be given in accordance with the procedure specified in this subsection;

(a) Credit to an offender who may be eligible therefor under subsections (1), (2), and (4) of this section shall be set forth as a part of the sentence; or

(b) Credit to an offender who may be eligible therefor under subsection (3) of this section may only be given by the court in which such sentence was set aside by entering such credit in the final order setting aside such sentence.

Sec. 7. That section 83-1,107, Revised Statutes Supplement, 1969, be amended to read as follows:

83-1,107. (1) The chief executive officer of a facility shall reduce, for parole purposes, for good behavior and faithful performance of duties while confined in a facility the term of a committed offender sentenced as follows: Two months on the first year, two months on the second year, three months on the third year, four months for each succeeding year of his term and pro rata for any part thereof which is less than a year. In addition, for especially meritorious behavior or exceptional performance of his duties, an offender may receive a further reduction, for parole purposes, not to exceed five days, for any month of imprisonment. The total of all such reductions shall be deducted:

(a) From his minimum term, to determine the date of his eligibility for release on parole; and

(b) From his maximum term, to determine the date when his release under--supervision on parole becomes mandatory under the provisions of section 83-1,111.

(2) Reductions of such terms may be forfeited, withheld and restored by the chief executive officer of the facility after the offender has been consulted regarding the charges of misconduct. No reduction of an offender's term for especially meritorious behavior or exceptional performance of his duties shall be forfeited or withheld after an offender is released on parole.

(3) Good time or other reductions of sentence granted under the provisions of any law prior to the effective date of this act may be forfeited, withheld, or restored in accordance with the terms of this act.

Sec. 8. That section 83-1,108, Revised Statutes Supplement, 1969, be amended to read as follows:

83-1,108. (1) The Board of Parole shall reduce for good conduct in conformity with the conditions of his parole, a parolee's parole term by six days for each month of such term. The total of such reductions shall be deducted from his parole term to determine the date when his discharge from parole becomes mandatory.

(2) Reductions of the parole term for good behavior may be forfeited, withheld and restored by the Board of Parole. The forfeiture and withholding of such reductions shall be made only if the board finds a violation of parole conditions, ~~and consults the parolee regarding the charges of violation:~~

Sec. 9. That section 83-1,110, Revised Statutes Supplement, 1969, be amended to read as follows:

83-1,110. (1) Every committed offender shall be eligible for release on parole upon completion of his minimum term less reductions granted in accordance with this act, ~~or, if there is no minimum, at any time.~~ A committed offender shall be eligible for parole prior to the expiration of the minimum term whenever the minimum sentence provided by law, less such reductions, has been served and the sentencing judge or his successor in office shall give his approval for the parole of such offender.

(2) Every committed offender sentenced to consecutive terms, whether received at the same time or at any time during the original sentence, shall be eligible for release on parole when he shall have served the total of the minimum terms, less reductions granted in accordance with the provisions of this act. The maximum terms shall be added to compute the new maximum term, which, less reductions granted in accordance with the provisions of this act, shall determine the date when

his release on parole becomes mandatory.

Sec. 10. That section 83-1,111, Revised Statutes Supplement, 1969, be amended to read as follows:

83-1,111. (1) Every committed offender shall have a hearing before the Board of Parole or a member or members designated by the board within sixty days before the expiration of his minimum term less any reductions, ~~or, if there is no minimum, within ninety days of his commitment.~~ The hearing shall be conducted in an informal manner, but a complete record of the proceedings shall be made and preserved.

(2) The board shall render its decision regarding the committed offender's release on parole within a reasonable time after the hearing. The decision shall be by majority vote of the board. The decision shall be based on the entire record before the board, which shall include the opinion of the member who presided at the hearing.

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

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

(5) If the board fixes no earlier release date, a committed offender's release ~~under supervision on parole~~ shall become mandatory at the expiration of his ~~maximum~~ term of imprisonment, less good time reductions allowed in accordance with the provisions of this act, or three months prior to discharge, whichever is earlier. Nothing herein shall require the mandatory release ~~---under supervision parole~~ of an offender who has violated his a discretionary parole within three twelve months of the date when his release parole would otherwise be mandatory.

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

offender for release on parole.

Sec. 11. That section 83-1,120, Revised Statutes Supplement, 1969, be amended to read as follows:

83-1,120. Whenever a parolee is charged with a violation of his parole, he shall be entitled to a prompt ~~consideration of decision on~~ such charge by the Board of Parole, which in no event shall occur more than thirty days after his ~~arrest receipt of the parole officer's written report.~~

Sec. 12. That section 83-1,123, Revised Statutes Supplement, 1969, be amended to read as follows:

83-1,123. (1) A parolee whose parole is revoked shall: ~~(a) Be~~ be recommitted for the remainder of his maximum prison term, ~~after credit thereon--for deducting~~ the period served on parole prior to the violation; ~~and (b) be treated as an escaped prisoner until apprehended and returned to the Division of Corrections.~~

~~(2) The time from the date of his declared delinquency until the date of his arrest for the custody of the Board of Parole shall not be counted as any portion of the time served.~~

~~(2) (3)~~ A parolee whose parole has been revoked shall be considered by the Board of Parole for reparole at any time in the same manner as any other committed offender eligible for parole.

~~(3) (4)~~ Except in the case of a parolee who has left the jurisdiction or his place of residence, action revoking a parolee's parole and recommitting him for violation of the conditions of parole must be taken before the expiration of his parole term less reductions for good behavior. A parolee who has left the jurisdiction or his place of residence shall be treated as a parole violator and, when he is apprehended, shall be subject to recommitment or to supervision for the balance of his parole term as of the date of his violation.

Sec. 13. That original sections 83-185, 83-188, 83-1,101, 83-1,106 to 83-1,108, 83-1,110, 83-1,111, 83-1,120, and 83-1,123, Revised Statutes Supplement, 1969, section 83-187, Revised Statutes Supplement, 1971, and section 83-1,105, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 1173, Eighty-second Legislature, Second Session, 1972, are repealed.