

## LEGISLATIVE BILL 364

Approved by the Governor June 17, 1997

Introduced by Brashear, 4; Chambers, 11

AN ACT relating to crimes and punishment; to amend sections 28-105, 28-201, 28-306, 28-309, 28-314, 28-386, 28-416, 28-904, 28-931, 28-931.01, 28-932, 29-2204, 29-2279, and 60-6,198, Reissue Revised Statutes of Nebraska, and sections 28-320.01, 28-707, 47-616, 83-182.01, 83-1,107, 83-1,135, and 83-4,114.01, Revised Statutes Supplement, 1996; to create the classification Class IIIA felony; to change the classification Class IV felony; to reclassify offenses; to change sentencing and good time provisions; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 28-105, Reissue Revised Statutes of Nebraska, 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 eight 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 III felony.....Maximum-twenty years imprisonment, or

twenty-five thousand dollars fine, or both  
Minimum-one year imprisonment

~~Class IIIA felony.....Maximum-five years imprisonment, or~~

~~ten thousand dollars fine, or both~~

~~Minimum-six months imprisonment~~

Class IV felony.....Maximum-five years imprisonment, or ten

thousand dollars fine, or both

Minimum-nine

Minimum-six months imprisonment

(2) All sentences of imprisonment for Class IA, IB, IC, ID, II, and III felonies and sentences of one year or more for Class ~~IIIA~~ and IV felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. Sentences of less than one year shall be served in the county jail except as provided in this subsection. If the department certifies that it has programs and facilities available for persons sentenced to terms of less than one year, the court may order that any sentence of six months or more be served in any institution under the jurisdiction of the department. Any such certification shall be given by the department to the State Court Administrator, who shall forward copies thereof to each judge having jurisdiction to sentence in felony cases.

(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.

Sec. 2. Section 28-201, Reissue Revised Statutes of Nebraska, is amended to read:

28-201. (1) A person shall be guilty of an attempt to commit a crime if he or she:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or

(b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.

(2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he or she

intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

(4) Criminal attempt is:

(a) A Class II felony when the crime attempted is a Class I, Class IA, or Class IB felony;

(b) A Class III felony when the crime attempted is a Class II felony;

(c) A Class IIIA felony when the crime attempted is manslaughter under section 28-305, motor vehicle homicide under subdivision (3)(c) of section 28-306, assault in the first degree under section 28-308, sexual assault in the second degree under section 28-320, possession or distribution of controlled substances under subdivision (2)(b) of section 28-416, incest under section 28-703, child abuse under subsection (5) of section 28-707, assault on an officer in the second degree under section 28-930, or assault by a confined person with a deadly or dangerous weapon under section 28-932;

(d) A Class IV felony when the crime attempted is a Class III felony not listed in subdivision (4)(c) of this section;

(e) ~~(d)~~ A Class I misdemeanor when the crime attempted is a Class IIIA or Class IV felony;

(f) ~~(e)~~ A Class II misdemeanor when the crime attempted is a Class I misdemeanor; and

(g) ~~(f)~~ A Class III misdemeanor when the crime attempted is a Class II misdemeanor.

Sec. 3. Section 28-306, Reissue Revised Statutes of Nebraska, is amended to read:

28-306. (1) A person who causes the death of another 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.

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

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

(b) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 60-6,196, motor vehicle homicide is a Class ~~IV~~ 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 from 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 another is the operation of a motor vehicle in violation of section 60-6,196, motor vehicle homicide is a Class III felony if the defendant has a prior conviction under section 60-6,196 or a city or village ordinance enacted pursuant to such section 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 from 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.

Sec. 4. Section 28-309, Reissue Revised Statutes of Nebraska, is amended to read:

28-309. (1) A person commits the offense of assault in the second degree if he or she:

(a) Intentionally or knowingly causes bodily injury to another person with a dangerous instrument;

(b) Recklessly causes serious bodily injury to another person with a dangerous instrument; or

(c) While during confinement or in legal custody of the Department of Correctional Services or in any county jail, unlawfully strikes or wounds another.

(2) Assault in the second degree shall be a Class ~~IV~~ IIIA felony.

Sec. 5. Section 28-314, Reissue Revised Statutes of Nebraska, is amended to read:

28-314. (1) A person commits false imprisonment in the first degree if he or she knowingly restrains or abducts another person (a) under terrorizing circumstances or under circumstances which expose the person to the risk of serious bodily injury; or (b) with intent to hold him or her in a



condition of involuntary servitude.

(2) False imprisonment in the first degree is a Class ~~IV~~ IIIA felony.

Sec. 6. Section 28-320.01, Revised Statutes Supplement, 1996, is amended to read:

28-320.01. (1) A person commits sexual assault of a child if he or she subjects another person fourteen years of age or younger to sexual contact and the actor is at least nineteen years of age or older.

(2) Sexual assault of a child is a Class ~~IV~~ IIIA felony for the first offense.

(3) Any person who is found guilty of sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, or (c) in any other state or federal court under laws with essentially the same elements as this section or section 28-319 shall be guilty of a Class IC felony.

Sec. 7. Section 28-386, Reissue Revised Statutes of Nebraska, is amended to read:

28-386. (1) A person commits knowing and intentional abuse of a vulnerable adult if he or she through a knowing and intentional act causes or permits a vulnerable adult to be:

- (a) Physically injured;
- (b) Unreasonably confined;
- (c) Sexually abused;
- (d) Exploited;
- (e) Cruelly punished; or
- (f) Denied essential services.

(2) Knowing and intentional abuse of a vulnerable adult is a Class ~~IV~~ IIIA felony.

Sec. 8. Section 28-416, Reissue Revised Statutes of Nebraska, is amended to read:

28-416. (1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class III felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class ~~IV~~ IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and

teeterboards;

(ii) Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center shall mean any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) Five hundred grams or more shall be guilty of a Class IB felony;

(b) One hundred grams or more but less than five hundred grams shall be guilty of a Class IC felony; or

(c) Twenty-eight grams or more but less than one hundred grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of at least seven ounces or more shall be guilty of a Class II felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class IIIA misdemeanor.

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

(13) Any person knowingly or intentionally possessing marijuana



weighing one ounce or less shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined one hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined two hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined three hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse conducted by one of the community mental health facilities as provided by Chapter 71, article 50, or other licensed drug treatment facility.

(15) Any person convicted of violating subsection (1), (2), or (3) of this section shall only become eligible for parole upon the satisfactory attendance and completion of appropriate treatment and counseling on drug abuse, except that any person convicted of violating subsection (4), (5), (7), (8), (9), or (10) of this section shall not be eligible for parole prior to serving the mandatory minimum sentence.

(16) A person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section or while in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

Sec. 9. Section 28-707, Revised Statutes Supplement, 1996, is amended to read:

28-707. (1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or

(e) Placed in a situation to be sexually abused as defined in section 28-319 or 28-320.01.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently.

(4) Child abuse is a Class ~~IV~~ IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109.

(5) Child abuse is a Class III felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(6) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

Sec. 10. Section 28-904, Reissue Revised Statutes of Nebraska, is amended to read:

28-904. (1) A person commits the offense of resisting arrest if, while intentionally preventing or attempting to prevent a peace officer, acting under color of his or her official authority, from effecting an arrest of the actor or another, he or she:

(a) Uses or threatens to use physical force or violence against the peace officer or another; or

(b) Uses any other means which creates a substantial risk of causing physical injury to the peace officer or another; or

(c) Employs means requiring substantial force to overcome resistance to effecting the arrest.

(2) It is an affirmative defense to prosecution under this section if the peace officer involved was out of uniform and did not identify himself or herself as a peace officer by showing his or her credentials to the person whose arrest is attempted.

(3) Resisting arrest is (a) a Class I misdemeanor for the first such offense and (b) a Class ~~IV~~ IIIA felony for any second or subsequent such

offense.

(4) Resisting arrest through the use of a deadly or dangerous weapon is a Class ~~IV~~ IIIA felony.

Sec. 11. Section 28-931, Reissue Revised Statutes of Nebraska, is amended to read:

28-931. (1) A person commits the offense of assault on an officer in the third degree if he or she intentionally, knowingly, or recklessly causes bodily injury to a peace officer or employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the third degree shall be a Class ~~IV~~ IIIA felony.

Sec. 12. Section 28-931.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-931.01. (1) A person commits the offense of assault on an officer using a motor vehicle if he or she intentionally and knowingly causes bodily injury to a peace officer or employee of the Department of Correctional Services (a) by using a motor vehicle to run over or to strike such officer or employee or (b) by using a motor vehicle to collide with such officer's or employee's motor vehicle, while such officer or employee is engaged in the performance of his or her duties.

(2) Assault on an officer using a motor vehicle shall be a Class ~~IV~~ IIIA felony.

Sec. 13. Section 28-932, Reissue Revised Statutes of Nebraska, is amended to read:

28-932. (1) Any person who is legally confined in a jail or correctional or penal institution and intentionally, knowingly, or recklessly causes bodily injury to another person shall be guilty of a Class ~~IV~~ IIIA felony, except that if a deadly or dangerous weapon is used to commit such assault he or she shall be guilty of a Class III felony.

(2) Sentences imposed under subsection (1) of this section shall be consecutive to any sentence or sentences imposed for violations committed prior to the violation of subsection (1) of this section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is solely related to the offense for which the sentence is being imposed under this section.

Sec. 14. Section 29-2204, Reissue Revised Statutes of Nebraska, is amended to read:

29-2204. (1) Except when a term of life is required by law, in imposing an indeterminate sentence upon an offender the court shall:

(a)(i) Fix the minimum and maximum limits of the sentence to be served within the limits provided by law for any class of felony other than a Class IV felony, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum. If the criminal offense is a Class IV felony, the court shall 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

(ii) 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;

(b) Advise the offender on the record the time the offender will serve on his or her minimum term before attaining parole eligibility assuming that no good time for which the offender will be eligible is lost; and

(c) Advise the offender on the record the time the offender will serve on his or her maximum term before attaining mandatory release assuming that no good time for which the offender will be eligible is lost.

If any discrepancy exists between the statement of the minimum limit of the sentence and the statement of parole eligibility or between the statement of the maximum limit of the sentence and the statement of mandatory release, the statements of the minimum limit and the maximum limit shall control the calculation of the offender's term. 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.

(2)(a) When 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 required by section 29-2261, the court shall commit an offender to the Department of Correctional Services for a period not exceeding ninety days. The department shall conduct a complete study of the offender during that

time, inquiring into such matters as his or her previous delinquency or criminal experience, social background, capabilities, and mental, emotional, and physical health and the rehabilitative resources or programs which may be available to suit his or her 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 department 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 subsection (1) of this section. The term of the sentence shall run from the date of original commitment under this subsection.

(b) 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 subsection 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 or her to the appropriate court for sentencing or such other disposition as the court may then deem appropriate.

(3) Except when a term of life is required by law, whenever 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.

Sec. 15. Section 29-2279, Reissue Revised Statutes of Nebraska, is amended to read:

29-2279. The length of a community service sentence shall be as follows:

(1) For a Class IV or Class V misdemeanor, not less than four nor more than eighty hours;

(2) For a Class III or Class IIIA misdemeanor, not less than eight nor more than one hundred fifty hours;

(3) For a Class I or Class II misdemeanor, not less than twenty nor more than four hundred hours;

(4) For a Class IIIA or Class IV felony, not less than two hundred nor more than three thousand hours; and

(5) For a Class III felony, not less than four hundred nor more than six thousand hours.

Sec. 16. Section 47-616, Revised Statutes Supplement, 1996, is amended to read:

47-616. If an offender fails to remain within the limits of his or her confinement or to return within the time prescribed to a community correctional facility to which he or she was assigned or transferred or if any offender who participates in a community correctional program leaves his or her place of employment or, having been recommended by the director or the probation administrator to be returned to a correctional institution, neglects or fails to do so, the offender shall be deemed to have escaped from custody and all reductions in sentence authorized by subsections (2) and (3) of section sections 83-1,107 and section 83-1,108 shall be forfeited.

Sec. 17. Section 60-6,198, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,198. (1) Any person who, while operating a motor vehicle in violation of section 60-6,196 or 60-6,197, proximately causes serious bodily injury to another person shall be guilty of a Class IV 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 from 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.

(2) For purposes of this section, serious bodily injury shall mean bodily injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body.

Sec. 18. Section 83-182.01, Revised Statutes Supplement, 1996, is amended to read:

83-182.01. (1) Structured programming shall be planned for all adult persons committed to the department. The structured programming shall include any of the following: Work programs, vocational training, behavior management and modification, money management, and substance abuse awareness, counseling, or treatment. Programs and treatment services shall address:

(a) Behavioral impairments, severe emotional disturbances, and other



mental health or psychiatric disorders;

(b) Drug and alcohol use and addiction;

(c) Health and medical needs;

(d) Education and related services;

(e) Counseling services for persons committed to the department who have been physically or sexually abused;

(f) Work ethic and structured work programs; and

(g) The development and enhancement of job acquisition skills and job performance skills.

(2) The goal of such structured programming is to provide the skills necessary for the person committed to the department to successfully return to his or her home or community or to a suitable alternative community upon his or her release from the adult correctional facility.

(3) If a person committed to the department refuses to participate in the structured programming described in subsection (1) of this section, he or she shall be subject to disciplinary action, including a loss of privileges, good time, or both, by the department.

(4) In no event shall a person committed to the department be ineligible for good time due to the unavailability of services referred to in this section.

(5) Any person committed to the department who is qualified by reason of education, training, or experience to teach academic or vocational classes may be given the opportunity to teach such classes to committed offenders as part of the structured programming described in this section.

Sec. 19. Section 83-1,107, Revised Statutes Supplement, 1996, is amended to read:

83-1,107. (1)(a) Within sixty days after commitment initial classification and assignment of any offender committed to the department, all available information regarding such committed offender shall be reviewed and a committed offender department-approved personalized program plan document shall be drawn up. The document shall specifically describe the department-approved personalized program plan and the specific goals the department expects the committed offender to achieve. The document shall also contain a realistic schedule for completion of the department-approved personalized program plan. The department-approved personalized program plan shall be fully explained to the committed offender. During incarceration, the committed offender shall comply with the department-approved personalized program plan and the department shall provide programs to allow compliance by the committed offender with the department-approved personalized program plan.

Programming may include, but is not limited to:

(i) Academic and vocational education, including teaching such classes by qualified offenders;

(ii) Substance abuse treatment;

(iii) Mental health and psychiatric treatment, including criminal personality programming;

(iv) Constructive, meaningful work programs; and

(v) Any other program deemed necessary and appropriate by the department.

(b) A modification in the department-approved personalized program plan may be made to account for the increased or decreased abilities of the committed offender or the availability of any program. Any modification shall be made only after notice is given to the committed offender. Completion of intentional failure to comply with the department-approved personalized program plan by any committed offender as scheduled for any year, or pro rata part thereof, shall entitle the committed offender to the earned good time of three months described in this section cause disciplinary action to be taken by the department resulting in the forfeiture of up to a maximum of three months good time for the scheduled year.

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

(3) The chief executive officer shall reduce the term of a committed offender up to an additional three months for each year of the offender's term and pro rata for any part thereof which is less than a year upon:

~~(a) (i)~~ The committed offender's successful participation in or completion of a department-approved educational program or the awarding of a high school diploma while incarcerated;

(ii) The committed offender's having received a high school, general educational development, or college diploma or the offender's successful completion of any other continuing educational program as offered by the department; or

(iii) The committed offender's successful participation in teaching



an academic or vocational class offered by the department;

(b) The committed offender's successful completion of a department-approved substance abuse or addiction treatment program while he or she is incarcerated;

(c) The committed offender's successful completion of a department-approved criminal personality treatment program while he or she is incarcerated;

(d) The committed offender's demonstrated work ethic as shown by obtaining and maintaining regular employment in the correctional system;

(e) The committed offender's successful completion of a department-approved psychiatric counseling or treatment program while he or she is incarcerated; or

(f) The committed offender's successful completion of any other program deemed necessary and appropriate by the department.

The total of all the reductions shall be credited from the date of sentence, which shall include any term of confinement prior to sentence and commitment as provided pursuant to section 83-1,106, and shall be deducted from the maximum term, to determine the date when discharge from the custody of the state becomes mandatory.

(3) (4) While the offender is in the custody of the department, reductions of terms granted pursuant to subsections (2) and (3) subsection (2) of this section may be forfeited, withheld, and restored by the chief executive officer of the facility with the approval of the director after the offender has been consulted regarding the charges of misconduct.

(4) (5) While the offender is in the custody of the board, reductions of terms granted pursuant to subsections (2) and (3) subsection (2) of this section may be forfeited, withheld, and restored by the administrator with the approval of the director after the offender has been consulted regarding the charges of misconduct or breach of the conditions of parole. In addition, the board may recommend such forfeitures of good time to the director.

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

Sec. 20. Except when a term of life is required by law, in imposing an indeterminate sentence upon an offender the court shall:

(1) Fix the minimum and maximum limits of the sentence to be served within the limits provided by law for any class of felony other than a Class IV felony, except that when a maximum limit of life is imposed by the court for a Class IB felony, the minimum limit may be any term of years not less than the statutory mandatory minimum. If the criminal offense is a Class IV felony, the court shall 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;

(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

(3)(a) When 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 required by section 29-2261, the court shall commit an offender to the Department of Correctional Services for a period not exceeding ninety days. The department shall conduct a complete study of the offender during that time, inquiring into such matters as his or her previous delinquency or criminal experience, social background, capabilities, and mental, emotional, and physical health and the rehabilitative resources or programs which may be available to suit his or her 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 department 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 of the sentence shall run from the date of original commitment under this subdivision.

(b) In order to encourage the use of this procedure in appropriate cases, all costs incurred during the period the offender is held in a state institution under this subdivision shall be the responsibility of the state and the county shall be liable only for the cost of delivering the offender to

the institution and the cost of returning him or her to the appropriate court for sentencing or such other disposition as the court may then deem appropriate.

Sec. 21. Section 83-1,135, Revised Statutes Supplement, 1996, is amended to read:

83-1,135. Sections 83-170 to 83-1,135 and section 20 of this act shall be known and may be cited as the Nebraska Treatment and Corrections Act.

Sec. 22. Section 83-4,114.01, Revised Statutes Supplement, 1996, is amended to read:

83-4,114.01. (1) The chief executive officer of each facility of the department shall be responsible for the discipline of inmates who reside in such facility. No inmate shall be punished except upon the order of the chief executive officer of the facility, and no punishment shall 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 flagrant or serious misconduct, the chief executive officer may order that an inmate's reduction of term as provided in subsections ~~(2)~~ and ~~(3)~~ of section 83-1,107 be forfeited or withheld and also that the inmate be confined in disciplinary segregation. During the period of disciplinary segregation, such inmate shall be put on an adequate and healthful diet. An inmate in disciplinary segregation shall be visited at least once every eight hours. No cruel, inhuman, or corporal punishment shall be used on any inmate.

(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 inmate's file, together with the disposition or punishment for the breach.

(4) The chief executive officer may recommend to the director that an inmate 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. 23. This act becomes operative July 1, 1998.

Sec. 24. Original sections 28-105, 28-201, 28-306, 28-309, 28-314, 28-386, 28-416, 28-904, 28-931, 28-931.01, 28-932, 29-2204, 29-2279, and 60-6,198, Reissue Revised Statutes of Nebraska, and sections 28-320.01, 28-707, 47-616, 83-182.01, 83-1,107, 83-1,135, and 83-4,114.01, Revised Statutes Supplement, 1996, are repealed.