

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 831

Introduced by Cavanaugh, M., 6.

Read first time January 06, 2022

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal procedure; to amend sections
2 29-2258, 29-3601, 29-3602, 29-3603, and 29-3606, Reissue Revised
3 Statutes of Nebraska, and sections 23-1201 and 83-1,135, Revised
4 Statutes Cumulative Supplement, 2020; to name an act; to provide for
5 caregiver diversion programs; to provide for conditional release of
6 pregnant and postpartum inmates; to harmonize provisions; to repeal
7 the original sections; and to outright repeal sections 29-3604,
8 29-3605, 29-3607, 29-3608, and 29-3609, Reissue Revised Statutes of
9 Nebraska.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 23-1201, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 23-1201 (1) Except as provided in subdivision (2) of section 84-205
4 or if a person is participating in a pretrial diversion program
5 established pursuant to the Criminal Justice System Diversion Act
6 ~~sections 29-3601 to 29-3604~~ or a juvenile pretrial diversion program
7 established pursuant to sections 43-260.02 to 43-260.07, it shall be the
8 duty of the county attorney, when in possession of sufficient evidence to
9 warrant the belief that a person is guilty and can be convicted of a
10 felony or misdemeanor, to prepare, sign, verify, and file the proper
11 complaint against such person and to appear in the several courts of the
12 county and prosecute the appropriate criminal proceeding on behalf of the
13 state and county. Prior to reaching a plea agreement with defense
14 counsel, the county attorney shall consult with or make a good faith
15 effort to consult with the victim regarding the content of and reasons
16 for such plea agreement. The county attorney shall record such
17 consultation or effort in his or her office file.

18 (2) It shall be the duty of the county attorney to prosecute or
19 defend, on behalf of the state and county, all suits, applications, or
20 motions, civil or criminal, arising under the laws of the state in which
21 the state or the county is a party or interested. The county attorney may
22 be directed by the Attorney General to represent the state in any action
23 or matter in which the state is interested or a party. When such services
24 require the performance of duties which are in addition to the ordinary
25 duties of the county attorney, he or she shall receive such fee for his
26 or her services, in addition to the salary as county attorney, as (a) the
27 court shall order in any action involving court appearance or (b) the
28 Attorney General shall authorize in other matters, with the amount of
29 such additional fee to be paid by the state. It shall also be the duty of
30 the county attorney to appear and prosecute or defend on behalf of the
31 state and county all such suits, applications, or motions which may have

1 been transferred by change of venue from his or her county to any other
2 county in the state. Any counsel who may have been assisting the county
3 attorney in any such suits, applications, or motions in his or her county
4 may be allowed to assist in any other county to which such cause has been
5 removed. The county attorney shall file the annual inventory statement
6 with the county board of county personal property in his or her
7 possession as provided in sections 23-346 to 23-350. It shall be the
8 further duty of the county attorney of each county, within three days
9 from the calling to his or her attention of any violation of the
10 requirements of the law concerning annual inventory statements from
11 county officers, to institute proceedings against such offending officer
12 and in addition thereto to prosecute the appropriate action to remove
13 such county officer from office. When it is the county attorney who is
14 charged with failure to comply with this section, the Attorney General
15 may bring the action. It shall be the duty of the county attorney to make
16 a report on the tenth day of each quarter to the county board which shall
17 show final disposition of all criminal cases the previous quarter,
18 criminal cases pending on the last day of the previous quarter, and
19 criminal cases appealed during the past quarter. The county board may
20 waive the duty to make such report.

21 Sec. 2. Section 29-2258, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 29-2258 A district probation officer shall:

24 (1) Conduct juvenile intake interviews and investigations in
25 accordance with sections 43-253 and 43-260.01 and, beginning October 1,
26 2013, supervise delivery of preadjudication juvenile services under
27 subdivision (6) of section 43-254;

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

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

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

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

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

12 (7) Whenever necessary, exercise the power of arrest as provided in
13 sections 29-2266.01 and 29-2266.02 or exercise the power of temporary
14 custody as provided in section 43-286.01;

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

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

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

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

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

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

29 (14) In counties with a population of less than twenty-five thousand
30 people, participate in pretrial diversion programs established pursuant
31 to the Criminal Justice System Diversion Act sections 29-3601 to 29-3604

1 and juvenile pretrial diversion programs established pursuant to sections
2 43-260.02 to 43-260.07 as requested by judges of the probation district
3 in which he or she serves or as requested by a county attorney and
4 approved by the judges of the probation district in which he or she
5 serves, except that participation in such programs shall not require
6 appointment of additional personnel and shall be consistent with the
7 probation officer's current caseload;

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

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

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

16 Sec. 3. Sections 3 to 9 of this act shall be known and may be cited
17 as the Criminal Justice System Diversion Act.

18 Sec. 4. Section 29-3601, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 ~~29-3601~~ The Legislature finds that:

21 (1) Diversion programs are a successful and cost-effective means of
22 enforcing the law and protecting the public while avoiding costly and
23 unnecessary terms of imprisonment that are a drain on society and hinder
24 rehabilitation;

25 (2) Criminal convictions affect not only the person convicted but
26 also such person's children, family, and community; and

27 (3) Given the demonstrated success of diversion programs, counties
28 should be allowed to expand their diversion programs to include caregiver
29 diversion programs, which allow offenders to rehabilitate themselves
30 while still supporting their children and families.

31 ~~pretrial diversion offers persons charged with criminal offenses and~~

1 ~~minor traffic violations an alternative to traditional criminal justice~~
2 ~~proceedings in that: (1) It permits participation by the accused only on~~
3 ~~a voluntary basis; (2) the accused has access to counsel for criminal~~
4 ~~offenses prior to a decision to participate; (3) it occurs prior to an~~
5 ~~adjudication but after arrest and a decision has been made by the~~
6 ~~prosecutor that the offense will support criminal charges; and (4) it~~
7 ~~results in dismissal of charges, or its equivalent, if the individual~~
8 ~~successfully completes the diversion process.~~

9 Sec. 5. For purposes of the Criminal Justice System Diversion Act,
10 diversion or diversion program means a program (1) in which the county
11 attorney or city attorney agrees to forego charging or prosecuting the
12 defendant with an offense in exchange for the defendant's promise to
13 participate in a program designed to rehabilitate the defendant and deter
14 future criminal activity and (2) which if completed by the defendant,
15 results in the charges not being brought or being dismissed.

16 Sec. 6. Section 29-3603, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 ~~29-3603~~ The following requirements shall apply to any A pretrial
19 diversion program plan for criminal offenses shall include, but not be
20 limited to:

21 (1) A diversion program shall have formal ~~Formal~~ eligibility
22 guidelines established following consultation with criminal justice
23 officials and program representatives. The guidelines shall be written
24 and made available and routinely disseminated to all interested parties;

25 (2) A diversion program shall permit participation by the defendant
26 only on a voluntary basis;

27 (3) There shall be a ~~(2)~~ A maximum time limit for any defendant's
28 participation in a diversion program, beyond which no defendant shall be
29 required or permitted to participate. Such maximum term shall be long
30 enough to effect sufficient change in participants to deter them from
31 criminal activity, but not so long as to prejudice the prosecution or

1 defense of the case should the participant be returned to the ordinary
2 course of prosecution;

3 (4) Eligible defendants shall have the opportunity ~~(3) The~~
4 ~~opportunity for eligible defendants~~ to review, with their counsel
5 present, a copy of general diversion program requirements including
6 average program duration and possible outcome, prior to making the
7 decision to enter a diversion program;

8 (5) Upon ~~(4) Dismissal of the diverted case upon~~ completion of the
9 diversion program, the county attorney or city attorney shall either not
10 file charges against the defendant or shall dismiss the charges;

11 (6) The diversion program shall include a ~~(5) A~~ provision that
12 participants shall be able to withdraw at any time before the program is
13 completed and be remanded to the court process without prejudice to them
14 during the ordinary course of prosecution;

15 (7) ~~(6)~~ Enrollment in a diversion program shall not be conditioned
16 on a plea of guilty; and

17 (8) ~~(7)~~ Defendants who are denied enrollment in a diversion program
18 shall be afforded an administrative review of the decision and written
19 reasons for denial.

20 Sec. 7. Section 29-3602, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 ~~29-3602~~ (1) The county attorney of any county may establish a
23 pretrial diversion program, other than a caregiver diversion program
24 under section 8 of this act, with the concurrence of the county board.

25 (2) Any city attorney may establish a pretrial diversion program,
26 other than a caregiver diversion program under section 8 of this act,
27 with the concurrence of the governing body of the city. ~~Such programs~~
28 ~~shall be established pursuant to sections 29-3603 and 29-3605 to 29-3609.~~

29 Sec. 8. (1)(a) The county attorney of any county may establish a
30 caregiver diversion program with the concurrence of the county board and
31 in consultation with the judges of the county and district courts for

1 such county.

2 (b) Any city attorney may establish a pretrial diversion program
3 with the concurrence of the governing body of the city and in
4 consultation with the judges of the county and district courts involved.

5 (2) A caregiver diversion program shall be limited to defendants who
6 are primary caregivers and who are charged with one or more eligible
7 offenses.

8 (3) A caregiver diversion program may include, but is not limited
9 to, the following components:

10 (a) Parenting classes;

11 (b) Family and individual counseling;

12 (c) Mental health screening, education, and treatment;

13 (d) Family case management services;

14 (e) Drug and alcohol treatment;

15 (f) Domestic violence education and prevention;

16 (g) Physical and sexual abuse counseling;

17 (h) Anger management;

18 (i) Vocational and educational services;

19 (j) Job training and placement;

20 (k) Affordable and safe housing assistance; and

21 (l) Financial literacy courses.

22 (4) For purposes of this section:

23 (a)(i) Eligible offense means any felony or misdemeanor or any
24 violation of a city or village ordinance punishable by imprisonment, but
25 does not include an infraction or an offense described in subdivision (4)
26 (a)(ii) or (iii) of this section.

27 (ii) Eligible offense does not include any offense:

28 (A) Classified as a Class I, IA, IB, IC, ID, or II felony;

29 (B) The victim of which is a person for whom the defendant is the
30 primary caregiver;

31 (C) For which registration is required under the Sex Offender

1 Registration Act;

2 (D) Involving, as an element of the offense, sexual contact or
3 sexual penetration;

4 (E) Involving, as an element of the offense, the threat to inflict
5 serious bodily injury or death on another person, the infliction of
6 serious bodily injury on another person, or causing the death of another
7 person; or

8 (F) Of attempt, conspiracy, solicitation, being an accessory to,
9 aiding and abetting, aiding the consummation of, or compounding a felony
10 with any of the offenses in subdivision (4)(a)(ii) of this section as the
11 underlying offense.

12 (iii) Eligible offense also does not include:

13 (A) Any injury accident;

14 (B) Leaving the scene of an accident, sections 60-696 to 60-698;

15 (C) Reckless driving or willful reckless driving, sections 60-6,213
16 and 60-6,214; or

17 (D) Operating a motor vehicle to avoid arrest, section 28-905;

18 (b) Primary caregiver means a person:

19 (i) Who is a custodial parent or legal guardian of a child under
20 eighteen years of age;

21 (ii) Who resides in the same household as such child;

22 (iii) Who provides care or financial support for such child either
23 alone or with the assistance of other family or household members; and

24 (iv) Whose absence in such child's life would be detrimental to the
25 child;

26 (c) Serious bodily injury has the same meaning as in section 28-109;
27 and

28 (d) Sexual contact and sexual penetration have the same meaning as
29 in section 28-318.

30 Sec. 9. Section 29-3606, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 ~~29-3606~~ (1) For purposes of this section, minor traffic violation
2 does not include operating a motor vehicle to avoid arrest, section
3 28-905, leaving the scene of an accident, sections 60-696 to 60-698,
4 driving under the influence of alcoholic liquor or drugs, sections
5 60-4,164, 60-6,196, 60-6,197, and 60-6,211.01, reckless driving or
6 willful reckless driving, sections 60-6,213 and 60-6,214, participating
7 in a speed competition, section 60-6,195, refusing a breath or blood
8 test, sections 60-4,164, 60-6,197, 60-6,197.04, and 60-6,211.02, driving
9 on a suspended or revoked operator's license, sections 60-4,107 to
10 60-4,110 and 60-6,197.06, speeding twenty or more miles per hour over the
11 speed limit, operating a motor vehicle without insurance or other
12 financial responsibility in violation of the Motor Vehicle Safety
13 Responsibility Act, any injury accident, or any violation which is
14 classified as a misdemeanor or a felony.

15 (2) ~~(1)~~ A pretrial diversion plan for minor traffic violations shall
16 consist of a driver's safety training program.

17 (3) Any driver holding a commercial driver's license or CLP-
18 commercial learner's permit issued pursuant to the Motor Vehicle
19 Operator's License Act shall not be eligible to participate in a program
20 under the Criminal Justice System Diversion Act if such participation
21 would not be in compliance with federal law or regulations and subject
22 the state to possible loss of federal funds.

23 (4) ~~(2)~~ A driver's safety training program shall:

24 (a) Provide a curriculum of driver's safety training, as approved by
25 the Department of Motor Vehicles ~~department~~, which is designed to educate
26 persons committing minor traffic violations and to deter future
27 violations; and

28 (b) Require payment of a fee approved by the department which is
29 reasonable and appropriate to defray the cost of the presentation of the
30 program. A jurisdiction shall charge a uniform fee for participation in a
31 driver's safety training program regardless of the minor traffic

1 violation for which the applicant was cited. Fees received by a
2 jurisdiction offering a driver's safety training program may be utilized
3 by such jurisdiction to pay for the costs of administering and operating
4 such program, to promote driver safety, and to pay for the costs of
5 administering and operating other safety and educational programs within
6 such jurisdiction.

7 (5) ~~(3)~~ The program administrator of each driver's safety training
8 program shall keep a record of attendees and shall be responsible for
9 determining eligibility. A report of attendees at all driver's safety
10 training programs in the state shall be shared only with similar programs
11 throughout the state. All procedures for sharing records of attendees
12 among such programs shall conform with the rules and regulations adopted
13 and promulgated by the department to assure that no individual takes the
14 approved course more than once within any three-year period in Nebraska.
15 Such record of attendees and any related records shall not be considered
16 a public record as defined in section 84-712.01.

17 (6) Any organization or governmental entity desiring to offer a
18 driver's safety training program pursuant to this section shall first
19 obtain a certificate from the department, to be renewed annually. The
20 certificate fee and the annual renewal fee shall each be fifty dollars.
21 The fee collected by the department from the organization or governmental
22 entity shall be remitted to the State Treasurer for credit to the
23 Department of Motor Vehicles Cash Fund.

24 (7) ~~(4)~~ The department shall approve the curriculum and fees of each
25 program and shall adopt and promulgate rules and regulations governing
26 such programs, including guidelines for fees, curriculum, and instructor
27 certification.

28 (8) This section shall not apply to a diversion plan for offenses
29 other than minor traffic violations.

30 Sec. 10. Section 83-1,135, Revised Statutes Cumulative Supplement,
31 2020, is amended to read:

1 83-1,135 Sections 83-170 to 83-1,135.05 and section 11 of this act
2 shall be known and may be cited as the Nebraska Treatment and Corrections
3 Act.

4 Sec. 11. (1) In the furtherance of public interest and community
5 safety, the department may conditionally release:

6 (a) An eligible inmate who gave birth within twelve months of the
7 date of commitment for up to one year postpartum; and

8 (b) An eligible inmate who is pregnant at the time of commitment for
9 the duration of the pregnancy and for up to one year postpartum.

10 (2) The department may conditionally release an eligible inmate
11 under subsection (1) of this section to community-based programming for
12 the purposes of participation in prenatal or postnatal care programming
13 and to promote maternal bonding. Programming requirements established by
14 the department may include the following components:

15 (a) Parenting classes;

16 (b) Family and individual counseling;

17 (c) Mental health screening, education, and treatment;

18 (d) Family case management services;

19 (e) Drug and alcohol treatment;

20 (f) Domestic violence education and prevention;

21 (g) Physical and sexual abuse counseling;

22 (h) Anger management;

23 (i) Vocational and education services;

24 (j) Job training and placement;

25 (k) Affordable and safe housing assistance; and

26 (l) Financial literacy courses.

27 (3) The department may adopt and promulgate rules and regulations to
28 implement this section in accordance with public safety requirements and
29 generally accepted correctional practices. Determination of conditional
30 release decisions shall be clearly documented and communicated to the
31 inmate.

1 (4) For purposes of this section:

2 (a) Disqualifying offense means any offense:

3 (i) Classified as a Class I, IA, IB, IC, ID, or Class II felony;

4 (ii) The victim of which was a person for whom the inmate was the
5 primary caregiver;

6 (iii) For which registration is required under the Sex Offender
7 Registration Act;

8 (iv) Involving, as an element of the offense, sexual contact or
9 sexual penetration;

10 (v) Involving, as an element of the offense, the threat to inflict
11 serious bodily injury or death on another person, the infliction of
12 serious bodily injury on another person, or causing the death of another
13 person; or

14 (vi) Of attempt, conspiracy, solicitation, being an accessory to,
15 aiding and abetting, or aiding the consummation of a felony, with any of
16 the offenses listed in subdivision (4)(a) of this section as the
17 underlying offense;

18 (b) Eligible inmate means a person committed to the department for
19 any reason other than commission of a disqualifying offense;

20 (c) Serious bodily injury has the same meaning as in section 28-109;
21 and

22 (d) Sexual contact and sexual penetration have the same meaning as
23 in section 28-318.

24 Sec. 12. Original sections 29-2258, 29-3601, 29-3602, 29-3603, and
25 29-3606, Reissue Revised Statutes of Nebraska, and sections 23-1201 and
26 83-1,135, Revised Statutes Cumulative Supplement, 2020, are repealed.

27 Sec. 13. The following sections are outright repealed: Sections
28 29-3604, 29-3605, 29-3607, 29-3608, and 29-3609, Reissue Revised Statutes
29 of Nebraska.