

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 609

Introduced by Pirsch, 4.

Read first time January 19, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to correctional facilities; to amend section
2 83-183.01, Reissue Revised Statutes of Nebraska, and
3 section 83-184, Revised Statutes Cumulative Supplement,
4 2010; to adopt the Correctional Facility Reimbursement
5 Act; to harmonize provisions; to provide an operative
6 date; and to repeal the original sections.

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

1 Section 1. Sections 1 to 11 of this act shall be known
2 and may be cited as the Correctional Facility Reimbursement Act.

3 Sec. 2. For purposes of the Correctional Facility
4 Reimbursement Act:

5 (1)(a) Assets means property, tangible or intangible,
6 real or personal, belonging to or due a prisoner or former prisoner,
7 including income or payments to such prisoner from social security,
8 worker's compensation, veteran's compensation, pension benefits,
9 previously earned salary or wages, except certain wages as provided
10 in subdivision (b) of this subdivision, bonuses, annuities,
11 retirement benefits, or from any other source whatsoever, but does
12 not include any of the following:

13 (i) Money otherwise owing to a prisoner described in
14 section 81-1836; and

15 (ii) The homestead of the prisoner as provided in section
16 40-101.

17 (b) The disposition of wages earned by a person committed
18 to the department shall be governed by sections 83-183.01 and 83-184;

19 (2) Correctional facility means a facility or institution
20 which houses a prisoner population under the jurisdiction of the
21 department or under the jurisdiction of a political subdivision.
22 Correctional facility includes an incarceration work camp as
23 described in section 83-4,142, a community correctional facility or
24 program as defined in section 47-621, an adult correctional facility,
25 a criminal detention facility as defined in section 83-4,125, a

1 juvenile detention facility as defined in section 83-4,125, and a
2 jail as defined in section 47-117;

3 (3) Cost of care means the cost to the department or a
4 political subdivision for providing transportation, room, board,
5 clothing, security, medical, and other normal living expenses of
6 prisoners and the cost to the department or political subdivision for
7 providing college-level classes or programs to prisoners, as
8 determined by the department or political subdivision;

9 (4) Department means the Department of Correctional
10 Services;

11 (5) Director means the Director of Correctional Services;

12 (6) Prisoner means any person who is under the
13 jurisdiction of the department or a political subdivision and is
14 either confined in any correctional facility or is under the
15 continuing jurisdiction of the department or a political subdivision;
16 and

17 (7) Prosecuting attorney means the Attorney General or an
18 assistant attorney general, a county attorney or a deputy county
19 attorney, or a city attorney or an assistant city attorney, as the
20 case may be.

21 Sec. 3. (1) Not later than thirty days after the
22 operative date of this act, the department shall develop a form which
23 shall be used to obtain information from all prisoners regarding
24 assets of the prisoners.

25 (2) The form shall be submitted to each person who is

1 sentenced to imprisonment in this state on and after the operative
2 date of this act. The form may be resubmitted to a prisoner for
3 purposes of obtaining current information regarding assets of the
4 prisoner.

5 (3) Every prisoner shall complete the form or provide for
6 completion of the form, and the prisoner shall swear or affirm under
7 oath that to the best of his or her knowledge the information
8 provided is complete and accurate.

9 Sec. 4. The director, or the administrator of the
10 correctional facility of a political subdivision, as the case may be,
11 shall forward to the prosecuting attorney a report on each prisoner
12 containing a completed form under section 3 of this act together with
13 all other information available on the assets of the prisoner and an
14 estimate of the total cost of care for that prisoner.

15 Sec. 5. (1) The prosecuting attorney shall investigate or
16 cause to be investigated, as necessary, all reports received under
17 section 4 of this act.

18 (2) If the prosecuting attorney, upon completing the
19 investigation under subsection (1) of this section, has good cause to
20 believe that a prisoner has sufficient assets to recover not less
21 than ten percent of the estimated cost of care of the prisoner or ten
22 percent of the estimated cost of care of the prisoner for two years,
23 whichever is less, the prosecuting attorney shall seek to secure
24 reimbursement for the cost of care to the department or political
25 subdivision, as the case may be, for that prisoner.

1 (3) Not more than ninety percent of the value of the
2 assets of the prisoner may be used for purposes of securing costs and
3 reimbursement under the Correctional Facility Reimbursement Act.

4 Sec. 6. (1) A prisoner shall fully cooperate with the
5 department or political subdivision by providing complete financial
6 information for purposes of the Correctional Facility Reimbursement
7 Act.

8 (2) The failure of a prisoner to fully cooperate as
9 provided in subsection (1) of this section may be considered for
10 purposes of a parole determination.

11 Sec. 7. (1) The prosecuting attorney may file a complaint
12 in the court in which a prisoner was sentenced, stating that the
13 prisoner is or has been a prisoner in a correctional facility, that
14 there is good cause to believe that the prisoner has assets, and
15 praying that the assets be used to reimburse the department or such
16 political subdivision for the expenses incurred or to be incurred, or
17 both, by the department or such political subdivision for the cost of
18 care of the prisoner.

19 (2) Upon the filing of the complaint under subsection (1)
20 of this section, the court shall issue an order to show cause why the
21 prayer of the complainant should not be granted. The complaint and
22 order shall be served upon the prisoner personally or, if the
23 prisoner is confined in a correctional facility, by registered mail
24 addressed to the prisoner in care of the director or of the
25 administrator of the correctional facility of such political

1 subdivision where the prisoner is housed, as the case may be, at
2 least thirty days before the date of hearing on the complaint and
3 order.

4 (3) At the time of the hearing on the complaint and
5 order, if it appears that the prisoner has any assets which could be
6 subject to the claim of the department or political subdivision under
7 the Correctional Facility Reimbursement Act, the court shall issue an
8 order requiring any person, corporation, or other legal entity
9 possessed or having custody of those assets to appropriate and apply
10 the assets or a portion thereof toward reimbursing the department or
11 political subdivision as provided for under the act.

12 (4) The amount of reimbursement under the act shall not
13 be in excess of the per capita cost of care for maintaining prisoners
14 in the correctional facility in which the prisoner is housed, and in
15 no case shall such reimbursement exceed thirty-five dollars per day
16 of incarceration.

17 (5) At the hearing on the complaint and order and before
18 entering any order on behalf of the department or political
19 subdivision against the prisoner, the court shall take into
20 consideration any legal obligation of the prisoner to support a
21 spouse, minor children, or other dependents and any moral obligation
22 to support dependents to whom the prisoner is providing or has in
23 fact provided support and any outstanding civil judgments against the
24 prisoner.

25 (6) If a person, corporation, or other legal entity

1 neglects or refuses to comply with an order under subsection (3) of
2 this section, the court shall order the person, corporation, or other
3 legal entity to appear before the court at such time as the court may
4 direct and to show cause why the person, corporation, or other legal
5 entity should not be held in contempt of court.

6 (7) If, in the opinion of the court, the assets of the
7 prisoner are sufficient to pay the cost of the proceedings under the
8 act, the assets shall be liable for those costs upon order of the
9 court.

10 (8) The department or political subdivision may recover
11 the cost of care incurred or to be incurred, or both, by the
12 department or political subdivision for the prisoner during the
13 entire period or periods the prisoner is in a correctional facility.
14 The department or political subdivision may commence proceedings
15 under the act until the prisoner has been finally discharged on the
16 sentence and is no longer under the jurisdiction of the department or
17 political subdivision.

18 Sec. 8. (1) In seeking to secure reimbursement under the
19 Correctional Facility Reimbursement Act, the prosecuting attorney may
20 use any remedy, interim order, or enforcement procedure allowed by
21 law or court rule, including an ex parte restraining order to
22 restrain the prisoner or any other person or legal entity in
23 possession or having custody of the estate of the prisoner from
24 disposing of certain property pending a hearing on an order to show
25 cause why the particular property should not be applied to reimburse

1 the department or political subdivision as provided for under the
2 act.

3 (2) To protect and maintain assets pending resolution of
4 an action under the act, the court, upon request, may appoint a
5 receiver.

6 Sec. 9. A prosecuting attorney shall enforce the
7 Correctional Facility Reimbursement Act, except that if the Attorney
8 General is enforcing the act, he or she may request the prosecuting
9 attorney of the political subdivision in which the prisoner was
10 sentenced or the prosecuting attorney of the political subdivision in
11 which any asset of a prisoner is located to make an investigation or
12 assist in legal proceedings under the act.

13 Sec. 10. The sentencing judge, a county sheriff, the
14 director, and the State Treasurer shall furnish to the prosecuting
15 attorney all information and assistance possible to enable the
16 prosecuting attorney to secure reimbursement for the department or a
17 political subdivision under the Correctional Facility Reimbursement
18 Act.

19 Sec. 11. (1) The costs of any investigations and of
20 securing any reimbursements under the Correctional Facility
21 Reimbursement Act shall be paid from the reimbursements secured under
22 the act, and the balance of the reimbursements shall be credited to
23 the General Fund.

24 (2) The State Treasurer may determine the amount due the
25 department or a political subdivision in cases under the act and

1 render statements thereof, and such sworn statements shall be
2 considered prima facie evidence of the amount due.

3 Sec. 12. Section 83-183.01, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 83-183.01 A person committed to the department, who is
6 earning at least minimum wage and is employed pursuant to sections
7 81-1827 and 83-183, shall have his or her wages set aside by the
8 chief executive officer of the facility in a separate wage fund. The
9 director shall adopt and promulgate rules and regulations which will
10 protect ~~the inmate's~~ such person's rights to due process, provide for
11 hearing as necessary before the Crime Victim's Reparations Committee,
12 and govern the disposition of ~~a confined~~ such person's gross monthly
13 wage minus required payroll deductions and payment of necessary work-
14 related incidental expenses for the following purposes:

15 (1) For the support of families and dependent relatives
16 of ~~the respective inmates;~~ such persons;

17 (2) For the discharge of any legal obligations, including
18 judgments for restitution;

19 (3) To pay all or a part of the cost of their board,
20 room, clothing, medical, dental, and other correctional services if
21 funds collected under the Correctional Facilities Reimbursement Act
22 are insufficient;

23 (4) To provide for funds payable to the person committed
24 to the department upon his or her release;

25 (5) For the actual value of state property intentionally

1 or willfully and wantonly destroyed by such person during his or her
2 commitment;

3 (6) For reasonable costs incurred in returning such
4 person to the facility to which he or she is committed in the event
5 of escape; and

6 (7) For deposit in the Victim's Compensation Fund.

7 Sec. 13. Section 83-184, Revised Statutes Cumulative
8 Supplement, 2010, is amended to read:

9 83-184 (1) When the conduct, behavior, mental attitude,
10 and conditions indicate that a person committed to the department and
11 the general society of the state will be benefited, and there is
12 reason to believe that the best interests of the people of the state
13 and the person committed to the department will be served thereby, in
14 that order, and upon the recommendation of the board in the case of
15 each committed offender, the director may authorize such person,
16 under prescribed conditions, to:

17 (a) Visit a specifically designated place or places and
18 return to the same or another facility. An extension of limits may be
19 granted to permit a visit to a dying relative, attendance at the
20 funeral of a relative, the obtaining of medical services, the
21 contacting of prospective employers, or for any other reason
22 consistent with the public interest; or

23 (b) Work at paid employment or participate in a training
24 program in the community on a voluntary basis whenever:

25 (i) Such paid employment will not result in the

1 displacement of employed workers, or be applied in skills, crafts, or
2 trades in which there is a surplus of available gainful labor in the
3 locality, or impair existing contracts for services; and

4 (ii) The rates of pay and other conditions of employment
5 will not be less than those paid or provided for work of similar
6 nature in the locality in which the work is to be performed.

7 (2) The wages earned by a person authorized to work at
8 paid employment in the community under the provisions of this section
9 shall be credited by the chief executive officer of the facility to
10 such person's wage fund. The director shall authorize the chief
11 executive officer to withhold up to five percent of such person's net
12 wages. The funds withheld pursuant to this subsection shall be
13 remitted to the State Treasurer for credit as provided in subsection
14 (2) of section 33-157.

15 (3) A person authorized to work at paid employment in the
16 community under the provisions of this section may be required to
17 pay, and the director is authorized to collect, such costs incident
18 to the person's confinement as the director deems appropriate and
19 reasonable if funds collected under the Correctional Facilities
20 Reimbursement Act are insufficient. Collections shall be deposited in
21 the state treasury as miscellaneous receipts.

22 (4) The willful failure of a person to remain within the
23 extended limits of his or her confinement or to return within the
24 time prescribed to a facility designated by the director may be
25 deemed an escape from custody punishable as provided in section

1 28-912.

2 (5) No person employed in the community under the
3 provisions of this section or otherwise released shall, while working
4 in such employment in the community or going to or from such
5 employment or during the time of such release, be deemed to be an
6 agent, employee, or servant of the state.

7 Sec. 14. This act becomes operative on July 1, 2012.

8 Sec. 15. Original section 83-183.01, Reissue Revised
9 Statutes of Nebraska, and section 83-184, Revised Statutes Cumulative
10 Supplement, 2010, are repealed.