

AMENDMENTS TO LB 677

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

3 "Section 1. For purposes of sections 1 to 6 of this act,
4 the definitions found in section 83-4,110 apply and:

5 (1) Administrative segregation means the placement of a
6 committed offender in a situation of solitary confinement in a
7 facility or managing the committed offender so that he or she is
8 isolated from the company of other committed offenders not in
9 administrative confinement for all or substantially all of any
10 twenty-four-hour period. Administrative segregation does not
11 include (a) the segregation of a committed offender for purposes of
12 protective custody when the placement of the committed offender in
13 protective custody is requested and consented to by the committed
14 offender, (b) the involuntary segregation of a committed offender
15 for no more than fourteen days when that segregation is reasonably
16 needed for the purpose of allowing investigating authorities to
17 complete an investigation of allegations that the committed
18 offender committed acts of misconduct in violation of rules
19 pertaining to committed offender behavior, (c) the disciplinary
20 segregation of a committed offender when that segregation is
21 imposed as the result of disciplinary procedures carried out
22 pursuant to sections 83-4,109 to 83-4,123, (d) the segregation of a
23 committed offender who is sentenced to death while the inmate is
24 awaiting execution, or (e) medical segregation imposed pursuant to

1 section 83-180 or 83-4,161;

2 (2) Chief executive officer means the chief
3 administrative official of each facility or a designee of the chief
4 executive officer when the chief executive officer is absent from
5 the facility;

6 (3) Committed offender has the definition found in
7 section 83-170;

8 (4) Facility has the definition found in section 83-170;

9 (5) General population of the facility means those
10 committed offenders within a facility who are not in protective
11 custody, disciplinary segregation, or administrative segregation;
12 and

13 (6) Provisional release from administrative segregation
14 means a temporary release of a committed offender from
15 administrative segregation for the purpose of determining whether
16 the committed offender might be successfully reintegrated into the
17 general population of the facility.

18 Sec. 2. Except as otherwise provided in sections 1 to 6
19 of this act, the chief executive officer of each facility may place
20 and maintain a committed offender who is residing in that facility
21 in administrative segregation when there is clear and convincing
22 evidence to believe that:

23 (1) The committed offender has engaged in, has attempted
24 to engage in, or plans to engage in an act which represents a
25 serious, immediate, and continuing threat to: (a) The physical
26 security of the facility; (b) the personal safety of other persons;
27 or (c) the personal safety and well-being of the committed

1 offender; and

2 (2) The continued presence of the committed offender in
3 the general population of the facility would jeopardize the
4 committed offender's own safety or the safety of other persons.

5 Sec. 3. No committed offender shall be placed or
6 maintained in administrative segregation pursuant to section 2 of
7 this act unless the chief executive officer determines that there
8 is no other reasonable alternative to the committed offender's
9 placement in administrative segregation. Other reasonable
10 alternatives to a committed offender's placement in administrative
11 segregation to be considered by the chief executive officer shall
12 include, but not be limited to: (1) Transfer of the committed
13 offender to another facility; (2) transfer of other committed
14 offenders residing in the facility to other facilities; (3)
15 alteration of the committed offender's job assignment or schedule
16 of activities to reduce exposure of the committed offender to
17 situations in which the committed offender or other persons might
18 be harmed; (4) timely mediation of disputes that the committed
19 offender may have with other committed offenders; (5)
20 administration of medication to the committed offender if he or she
21 is mentally ill; and (6) transfer of the committed offender to
22 another state pursuant to sections 29-3401 and 29-3402. Before
23 placing a committed offender in administrative segregation, the
24 chief executive officer shall, for the purposes of determining
25 whether there is another reasonable alternative to that placement,
26 consult with caseworkers, mental health specialists, and other
27 staff of the department who have knowledge of the committed

1 offender or of the circumstances that are the basis for the
2 proposal to place the committed offender in administrative
3 segregation.

4 Sec. 4. No committed offender shall be placed or
5 maintained in administrative segregation for purposes of
6 punishment. The placement of a committed offender in
7 administrative segregation pursuant to section 2 of this act shall
8 be considered as a mitigating circumstance in determining the
9 length of a committed offender's placement in disciplinary
10 segregation as punishment imposed pursuant to section 83-4,114.01.

11 Sec. 5. If a committed offender is held in
12 administrative segregation pursuant to section 2 of this act for
13 more than ninety-six hours, the chief executive officer shall
14 immediately develop a plan for the projected reintegration of the
15 committed offender into the general population of the facility.
16 The reintegration plan shall be in writing and shall be
17 personalized to the specific needs and circumstances of the
18 committed offender involved. The reintegration plan shall include:
19 (1) A statement of the conditions which need to be met for the
20 committed offender to be removed from administrative segregation
21 and reintegrated into the general population of the facility; (2) a
22 statement of the facility's overall strategy for meeting the stated
23 conditions for reintegrating the committed offender into the
24 general population of the facility; (3) a statement of the
25 circumstances under which the committed offender might be granted a
26 provisional release from administrative segregation; (4) a
27 statement of the facility's overall strategy for limiting the ill

1 effects that administrative segregation might have on the committed
2 offender's mental health and social functioning; and (5) a
3 projected timetable for the reintegration of the committed offender
4 into the general population of the facility.

5 Sec. 6. All committed offenders placed in administrative
6 segregation shall be afforded the same rights and privileges as are
7 afforded to committed offenders in the general population of the
8 facility with respect to: (1) Receiving visits from persons outside
9 of the facility; (2) corresponding by mail with persons outside of
10 the facility; (3) receiving telephone calls from and making
11 telephone calls to persons outside of the facility; (4) possession
12 of personal effects; (5) provision and possession of clothing,
13 bedding, linen, and sanitation materials; (6) access to personal
14 hygiene, including showers; (7) access to canteen services; (8)
15 access to the facility library and related services; and (9) access
16 to legal materials and legal services. A committed offender in
17 administrative segregation may be deprived of clothing, personal
18 effects, bedding, or linen when such limitations are reasonably
19 necessary to address considerations that the possession of such
20 items may present a danger of imminent harm to the committed
21 offender or to other persons.

22 Sec. 7. The Legislature shall commission a study of the
23 Department of Correctional Services for purposes of examining its
24 mission, structure, programming, and staffing and shall make
25 recommendations for any needed changes. The study shall:

26 (1) Assess the current structure and mission of the
27 department, including the duties found in section 83-171;

1 (2) Review the growth and viability of the
2 mission-related duties of the department as they relate to the
3 department's work capacity;

4 (3) Review the utilization, effectiveness, and cost of
5 current inmate programming and treatment services;

6 (4) Review the growth in the department's budget over the
7 past ten years, including changes in staffing, institutions,
8 programming, and contracting with private providers for services
9 within institutions;

10 (5) Examine the department's cost per offender and
11 compare it to similar costs in other states;

12 (6) Review the practice of national accreditation of
13 departmental institutions; and

14 (7) Review any promising mental health, substance abuse,
15 vocational, or educational programs implemented by other
16 jurisdictions with respect to their correctional agencies.

17 Sec. 8. The study described in section 7 of this act
18 shall be conducted by a task force consisting of the Director of
19 Correctional Services or his or her designee, the executive
20 director of the Nebraska Commission on Law Enforcement and Criminal
21 Justice or his or her designee, the chairperson of the Community
22 Corrections Council or his or her designee, the Public Counsel or
23 his or her designee, the Parole Administrator or his or her
24 designee, and the chairperson of the Board of Parole or his or her
25 designee. In addition, the Executive Board of the Legislative
26 Council shall appoint to the task force two members of the
27 Legislature, two representatives of the Nebraska Association of

1 Public Employees who are employed by the Department of Correctional
2 Services, two members who work in post-release programs for
3 Nebraska inmates in Nebraska, and two at-large members from the
4 general public. The Executive Board of the Legislative Council
5 shall appoint a chairperson of the task force from the task force
6 members. The appointments to the task force shall be made no later
7 than August 1, 2005.

8 Sec. 9. The task force created pursuant to section 8 of
9 this act shall gather information from interested parties through
10 public hearings and other appropriate means to assure ample
11 opportunities for outside input to be received for consideration.
12 The task force shall issue a preliminary report on or before
13 December 15, 2005, and complete its work and issue a final report
14 outlining its findings and recommendations to the Governor and the
15 Legislature on or before December 15, 2006. The College of Public
16 Affairs and Community Service of the University of Nebraska at
17 Omaha shall provide administrative support to the task force and
18 shall be responsible for the production and distribution of the
19 final report. Members of the task force shall be reimbursed
20 pursuant to sections 81-1174 to 81-1177 for their actual and
21 necessary expenses during service. It is the intent of the
22 Legislature that any money appropriated by the Legislature for this
23 study shall be appropriated to the College of Public Affairs and
24 Community Service of the University of Nebraska at Omaha.

25 Sec. 10. The task force created pursuant to section 8 of
26 this act shall cease to exist on December 15, 2006.

27 Sec. 11. Section 29-2261, Revised Statutes Supplement,

1 2004, is amended to read:

2 29-2261. (1) Unless it is impractical to do so, when an
3 offender has been convicted of a felony other than murder in the
4 first degree, the court shall not impose sentence without first
5 ordering a presentence investigation of the offender and according
6 due consideration to a written report of such investigation. When
7 an offender has been convicted of murder in the first degree and
8 (a) a jury renders a verdict finding the existence of one or more
9 aggravating circumstances as provided in section 29-2520 or (b) (i)
10 the information contains a notice of aggravation as provided in
11 section 29-1603 and (ii) the offender waives his or her right to a
12 jury determination of the alleged aggravating circumstances, the
13 court shall not commence the sentencing determination proceeding as
14 provided in section 29-2521 without first ordering a presentence
15 investigation of the offender and according due consideration to a
16 written report of such investigation.

17 (2) A court may order a presentence investigation in any
18 case, except in cases in which an offender has been convicted of a
19 Class IIIA misdemeanor, a Class IV misdemeanor, a Class V
20 misdemeanor, a traffic infraction, or any corresponding city or
21 village ordinance.

22 (3) The presentence investigation and report shall
23 include, when available, an analysis of the circumstances attending
24 the commission of the crime, the offender's history of delinquency
25 or criminality, physical and mental condition, family situation and
26 background, economic status, education, occupation, and personal
27 habits, and any other matters that the probation officer deems

1 relevant or the court directs to be included. All local and state
2 police agencies and Department of Correctional Services adult
3 correctional facilities shall furnish to the probation officer
4 copies of such criminal records, in any such case referred to the
5 probation officer by the court of proper jurisdiction, as the
6 probation officer shall require without cost to the court or the
7 probation officer.

8 Such investigation shall also include:

9 (a) Any written statements submitted to the county
10 attorney by a victim; and

11 (b) Any written statements submitted to the probation
12 officer by a victim.

13 (4) If there are no written statements submitted to the
14 probation officer, he or she shall certify to the court that:

15 (a) He or she has attempted to contact the victim; and

16 (b) If he or she has contacted the victim, such officer
17 offered to accept the written statements of the victim or to reduce
18 such victim's oral statements to writing.

19 For purposes of subsections (3) and (4) of this section,
20 the term victim shall be as defined in section 29-119.

21 (5) Before imposing sentence, the court may order the
22 offender to submit to psychiatric observation and examination for a
23 period of not exceeding sixty days or such longer period as the
24 court determines to be necessary for that purpose. The offender
25 may be remanded for this purpose to any available clinic or mental
26 hospital, or the court may appoint a qualified psychiatrist to make
27 the examination. The report of the examination shall be submitted

1 to the court.

2 (6) Any presentence report or psychiatric examination
3 shall be privileged and shall not be disclosed directly or
4 indirectly to anyone other than a judge, probation officers to whom
5 an offender's file is duly transferred, the probation administrator
6 or his or her designee, or others entitled by law to receive such
7 information, including personnel and mental health professionals
8 for the Nebraska State Patrol specifically assigned to sex offender
9 registration and community notification for the sole purpose of
10 using such report or examination for assessing risk and for
11 community notification of registered sex offenders. For purposes
12 of this subsection, mental health professional means (a) a
13 practicing physician licensed to practice medicine in this state
14 under the provisions of section 71-102, (b) a practicing
15 psychologist licensed to engage in the practice of psychology in
16 this state as provided in section 71-1,206.14, or (c) a practicing
17 mental health professional licensed or certified in this state as
18 provided in section 71-1,333. ~~The court may~~ Prior to imposing
19 sentence, the court shall permit inspection of the report ~~or~~
20 ~~examination of parts thereof~~ by the offender or his or her
21 attorney. The court may permit inspection of the report or
22 examination of parts thereof by others ~~or other person~~ having a
23 proper interest therein, whenever the court finds it is in the best
24 interest of a particular offender. The court ~~may~~ shall allow fair
25 opportunity for an offender to provide additional information for
26 the court's consideration.

27 (7) If an offender is sentenced to imprisonment, a copy

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1 of the report of any presentence investigation or psychiatric
2 examination shall be transmitted immediately to the Department of
3 Correctional Services. Upon request, the Public Counsel, the Board
4 of Parole, or the Office of Parole Administration ~~may~~ shall receive
5 a copy of the report from the department.

6 (8) Notwithstanding subsection (6) of this section, the
7 Nebraska Commission on Law Enforcement and Criminal Justice under
8 the direction and supervision of the Chief Justice of the Supreme
9 Court shall have access to presentence investigations and reports
10 for the sole purpose of carrying out the study required under
11 subdivision (7) of section 81-1425. The commission shall treat
12 such information as confidential, and nothing identifying any
13 individual shall be released by the commission.

14 (9) Notwithstanding subsection (6) of this section, the
15 Supreme Court or an agent of the Supreme Court acting under the
16 direction and supervision of the Chief Justice shall have access to
17 psychiatric examinations and presentence investigations and reports
18 for research purposes. The Supreme Court and its agent shall treat
19 such information as confidential and nothing identifying any
20 individual shall be released.

21 Sec. 12. Section 83-4,114.01, Reissue Revised Statutes
22 of Nebraska, is amended to read:

23 83-4,114.01. (1) The chief executive officer of each
24 facility of the department shall be responsible for the discipline
25 of inmates who reside in such facility. No inmate shall be
26 punished except upon the order of the chief executive officer of
27 the facility, and no punishment shall be imposed otherwise than in

1 accordance with this section.

2 (2) Except in flagrant or serious cases, punishment for
3 misconduct shall consist of deprivation of privileges. In cases of
4 flagrant or serious misconduct, the chief executive officer may
5 order that an inmate's reduction of term as provided in section
6 83-1,107 be forfeited or withheld and also that the inmate be
7 confined in disciplinary segregation. During the period of
8 disciplinary segregation, such inmate shall be put on an adequate
9 and healthful diet. An inmate in disciplinary segregation shall be
10 visited at least once every eight hours. No cruel, inhuman, or
11 corporal punishment shall be used on any inmate.

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

17 (4) The chief executive officer may recommend to the
18 director that an inmate who is considered to be incorrigible by
19 reason of frequent intentional breaches of discipline or who is
20 detrimental to the discipline or the morale of the facility be
21 transferred to another facility for stricter safekeeping and closer
22 confinement, subject to the provisions of section 83-176.

23 Sec. 13. Section 84-106, Revised Statutes Supplement,
24 2004, is amended to read:

25 84-106. The Governor is authorized to call to his or her
26 assistance and to appoint ~~any number of~~ persons necessary to assist
27 the Superintendent of Law Enforcement and Public Safety to enforce

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1 ~~the provisions of~~ the criminal laws. The superintendent and his or
2 her assistants, who shall be designated ~~and named~~ deputy state
3 sheriffs, shall qualify by ~~each~~ taking and filing oath in writing.
4 Such ~~individuals~~ persons shall be bonded or insured as required by
5 section 11-201. The premiums may be paid for out of appropriations
6 made ~~available~~ to the state offices, departments, commissions, or
7 other agencies to which such deputy state sheriffs are assigned.
8 No deputy state sheriffs shall be assigned to the Department of
9 Correctional Services. The superintendent and his or her
10 assistants shall have the same powers in each of the ~~several~~
11 counties of the state as the sheriffs have in their respective
12 counties, insofar as the enforcement of the criminal laws is
13 concerned. An action against the superintendent or any of his or
14 her assistants for an act done by them or either of them ~~in~~ by
15 virtue of, or under color of their offices respectively, or for any
16 neglect of their official duties, shall be brought ~~either~~ in
17 Lancaster County, Nebraska, or in the county where the cause of
18 action or some part thereof arose.

19 Sec. 14. Original section 83-4,114.01, Reissue Revised
20 Statutes of Nebraska, and sections 29-2261 and 84-106, Revised
21 Statutes Supplement, 2004, are repealed.

22 Sec. 15. Since an emergency exists, this act takes
23 effect when passed and approved according to law."