

AMENDMENTS TO LB686

Introduced by Judiciary.

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

3 Section 1. Section 28-101, Revised Statutes Cumulative Supplement,
4 2018, is amended to read:

5 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and section
6 3 of this act shall be known and may be cited as the Nebraska Criminal
7 Code.

8 Sec. 2. Section 28-105, Revised Statutes Cumulative Supplement,
9 2018, is amended to read:

10 28-105 (1) For purposes of the Nebraska Criminal Code and any
11 statute passed by the Legislature after the date of passage of the code,
12 felonies are divided into ten classes which are distinguished from one
13 another by the following penalties which are authorized upon conviction:

14	Class I felony	Death
15	Class IA felony	Life imprisonment
16	Class IB felony	Maximum-life imprisonment
17		Minimum-twenty years imprisonment
18	Class IC felony	Maximum-fifty years imprisonment
19		Mandatory minimum-five years imprisonment
20	Class ID felony	Maximum-fifty years imprisonment
21		Mandatory minimum-three years imprisonment
22	Class II felony	Maximum-fifty years imprisonment
23		Minimum-one year imprisonment
24	Class IIA felony	Maximum-twenty years imprisonment
25		Minimum-none
26	Class III felony	Maximum-four years imprisonment and two years

1 post-release supervision or
2 twenty-five thousand dollars fine, or both
3 Minimum—none for imprisonment and nine months
4 post-release supervision if imprisonment is imposed
5 Class IIIA felony Maximum—three years imprisonment
6 and eighteen months post-release supervision or
7 ten thousand dollars fine, or both
8 Minimum—none for imprisonment and nine months
9 post-release supervision if imprisonment is imposed
10 Class IV felony Maximum—two years imprisonment and twelve
11 months post-release supervision or
12 ten thousand dollars fine, or both
13 Minimum—none for imprisonment and none for
14 ~~nine months~~ post-release supervision
15 ~~if imprisonment is imposed~~

16 (2) All sentences for maximum terms of imprisonment for one year or
17 more for felonies shall be served in institutions under the jurisdiction
18 of the Department of Correctional Services. All sentences for maximum
19 terms of imprisonment of less than one year shall be served in the county
20 jail.

21 (3) Nothing in this section shall limit the authority granted in
22 sections 29-2221 and 29-2222 to increase sentences for habitual
23 criminals.

24 (4) A person convicted of a felony for which a mandatory minimum
25 sentence is prescribed shall not be eligible for probation.

26 (5) All sentences of post-release supervision shall be served under
27 the jurisdiction of the Office of Probation Administration and shall be
28 subject to conditions imposed pursuant to section 29-2262 and subject to
29 sanctions authorized pursuant to section 29-2266.02.

30 (6) Any person who is sentenced to imprisonment for a Class I, IA,

1 IB, IC, ID, II, or IIA felony and sentenced concurrently or consecutively
2 to imprisonment for a Class III, IIIA, or IV felony shall not be subject
3 to post-release supervision pursuant to subsection (1) of this section.

4 (7) Any person who is sentenced to imprisonment for a Class III,
5 IIIA, or IV felony committed prior to August 30, 2015, and sentenced
6 concurrently or consecutively to imprisonment for a Class III, IIIA, or
7 IV felony committed on or after August 30, 2015, shall not be subject to
8 post-release supervision pursuant to subsection (1) of this section.

9 (8) The changes made to the penalties for Class III, IIIA, and IV
10 felonies by Laws 2015, LB605, do not apply to any offense committed prior
11 to August 30, 2015, as provided in section 28-116.

12 Sec. 3. (1) A person commits an offense if he or she intentionally
13 introduces within a facility, or intentionally provides an inmate of a
14 facility with, any electronic communication device. An inmate commits an
15 offense if he or she intentionally procures, makes, or otherwise provides
16 himself or herself with, or has in his or her possession, any electronic
17 communication device.

18 (2) This section does not apply to:

19 (a) An attorney or an attorney's agent visiting an inmate who is a
20 client of such attorney;

21 (b) The Public Counsel or any employee of his or her office;

22 (c) A peace officer acting under his or her authority; or

23 (d) An emergency responder or a firefighter responding to emergency
24 incidents within a facility.

25 (3) For purposes of this section:

26 (a) Facility has the same meaning as in section 83-170; and

27 (b) Electronic communication device means any device which, in its
28 ordinary and intended use, transmits by electronic means writings,
29 sounds, visual images, or data of any nature to another electronic
30 communication device. Electronic communication device does not include
31 any device provided to an inmate by the Department of Correctional

1 Services.

2 (4) A violation of this section is a Class I misdemeanor.

3 (5) An electronic communication device involved in a violation of
4 this section shall be subject to seizure by the Department of
5 Correctional Services or a peace officer, and disposition may be made in
6 accordance with the method of disposition directed for contraband in
7 sections 29-818 and 29-820.

8 Sec. 4. Section 29-1823, Revised Statutes Cumulative Supplement,
9 2018, is amended to read:

10 29-1823 (1) If at any time prior to trial it appears that the
11 defendant accused has become mentally incompetent to stand trial, such
12 disability may be called to the attention of the district or county court
13 by the county attorney or city attorney, by the defendant accused, or by
14 any person for the defendant accused. The judge of the district or county
15 court of the county where the defendant accused is to be tried shall have
16 the authority to determine whether or not the defendant accused is
17 competent to stand trial. The judge may also cause such medical,
18 psychiatric, or psychological examination of the defendant accused to be
19 made as he or she deems warranted and hold such hearing as he or she
20 deems necessary. The cost of the examination, when ordered by the court,
21 shall be the expense of the county in which the crime is charged. The
22 judge may allow any physician, psychiatrist, or psychologist a reasonable
23 fee for his or her services, which amount, when determined by the judge,
24 shall be certified to the county board which shall cause payment to be
25 made. Should the judge determine after a hearing that the defendant
26 accused is mentally incompetent to stand trial and that there is a
27 substantial probability that the defendant accused will become competent
28 within the foreseeable future, the judge shall order the defendant
29 accused to be committed to the Department of Health and Human Services to
30 provide appropriate treatment to restore competency. This may include
31 commitment to a state hospital for the mentally ill, another ~~or some~~

1 ~~other~~ appropriate state-owned or state-operated facility, or a contract
2 facility or provider pursuant to an alternative treatment plan proposed
3 by the department and approved by the court under subsection (2) of this
4 section for appropriate treatment until such time as the disability may
5 be removed.

6 (2)(a) If the department determines that treatment by a contract
7 facility or provider is appropriate, the department shall file a report
8 outlining its determination and such alternative treatment plan with the
9 court. Within twenty-one days after the filing of such report, the court
10 shall hold a hearing to determine whether such treatment is appropriate.
11 The court may approve or deny such alternative treatment plan.

12 (b) A defendant shall not be eligible for treatment by a contract
13 facility or provider under this subsection if the judge determines that
14 the public's safety would be at risk.

15 (3) ~~(2)~~ Within six months after the commencement of the treatment
16 ordered by the district or county court, and every six months thereafter
17 until either the disability is removed or other disposition of the
18 defendant accused has been made, the court shall hold a hearing to
19 determine (a) whether the defendant accused is competent to stand trial
20 or (b) whether or not there is a substantial probability that the
21 defendant accused will become competent within the foreseeable future.

22 (4) ~~(3)~~ If it is determined that there is not a substantial
23 probability that the defendant accused will become competent within the
24 foreseeable future, then the state shall either (a) commence the
25 applicable civil commitment proceeding that would be required to commit
26 any other person for an indefinite period of time or (b) release the
27 defendant accused. If during the period of time between the six-month
28 review hearings set forth in subsection ~~(3)~~ ~~(2)~~ of this section it is the
29 opinion of the department ~~Department of Health and Human Services~~ that
30 the defendant accused is competent to stand trial, the department shall
31 file a report outlining its opinion with the court, and within twenty-one

1 days after such report being filed, the court shall hold a hearing to
2 determine whether or not the defendant accused is competent to stand
3 trial. The state shall pay the cost of maintenance and care of the
4 defendant accused during the period of time ordered by the court for
5 treatment to remove the disability.

6 (5) The department may establish a network of contract facilities
7 and providers to provide competency restoration treatment pursuant to
8 alternative treatment plans under this section. The department may create
9 criteria for participation in such network and establish training in
10 competency restoration treatment for participating contract facilities
11 and providers.

12 Sec. 5. Section 29-2202, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 29-2202 Except as provided in sections 7 to 12 of this act, if If
15 the defendant has nothing to say, or if he or she shows no good and
16 sufficient cause why judgment should not be pronounced, the court shall
17 proceed to pronounce judgment as provided by law. The court, in its
18 discretion, may for any cause deemed by it good and sufficient, suspend
19 execution of sentence for a period not to exceed ninety days from the
20 date judgment is pronounced. If the defendant is not at liberty under
21 bail, he or she may be admitted to bail during the period of suspension
22 of sentence as provided in section 29-901.

23 Sec. 6. Section 29-2268, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 29-2268 (1) If the court finds that the probationer, other than a
26 probationer serving a term of post-release supervision, did violate a
27 condition of his or her probation, it may revoke the probation and impose
28 on the offender such new sentence as might have been imposed originally
29 for the crime of which he or she was convicted.

30 (2) If the court finds that a probationer serving a term of post-
31 release supervision did violate a condition of his or her post-release

1 supervision, it may revoke the post-release supervision and impose on the
2 offender a term of imprisonment up to the original remaining period of
3 post-release supervision. The term shall be served in an institution
4 under the jurisdiction of the Department of Correctional Services or in
5 county jail subject to subsection (2) of section 28-105.

6 (3) If the court finds that the probationer did violate a condition
7 of his or her probation, but is of the opinion that revocation is not
8 appropriate, the court may order that:

9 (a) The probationer receive a reprimand and warning;

10 (b) Probation supervision and reporting be intensified;

11 (c) The probationer be required to conform to one or more additional
12 conditions of probation which may be imposed in accordance with the
13 Nebraska Probation Administration Act;

14 (d) A custodial sanction be imposed on a probationer convicted of a
15 felony, subject to the provisions of section 29-2266.03; and

16 (e) The probationer's term of probation be extended, subject to the
17 provisions of section 29-2263.

18 Sec. 7. (1)(a) A court may, upon a finding of guilt for which a
19 judgment of conviction may be rendered, after giving the prosecutor and
20 the defendant the opportunity to be heard and with the consent of the
21 defendant, defer the entry of a judgment of conviction and the imposition
22 of a sentence and place the defendant on probation, upon conditions as
23 the court may require under section 29-2262. The court shall retain the
24 power to pronounce judgment and impose a sentence subject to the
25 defendant's compliance with conditions of probation set by the court as a
26 condition of the deferred judgment. The defendant shall be responsible
27 for the payment of all administrative and programming fees as provided in
28 section 11 of this act upon the entry of a deferred judgment. The
29 administration, supervision, and revocation of such probation shall be
30 governed by the Nebraska Probation Administration Act and sections
31 29-2270 to 29-2273.

1 (b) Upon a finding that a defendant has violated a condition of his
2 or her probation, the court may enter any order authorized by section
3 29-2268 or pronounce judgment and impose such new sentence as might have
4 been originally imposed for the crime for which the defendant was
5 convicted.

6 (c) Upon satisfactory completion of the conditions of probation and
7 the payment or waiver of all administrative and programming fees assessed
8 under section 11 of this act, the defendant shall have his or her charge
9 dismissed without entry of judgment.

10 (2) A defendant shall not be eligible for a deferred judgment if:

11 (a) The defendant has previously been convicted of a felony anywhere
12 in the United States;

13 (b) Prior to the commission of the offense, the defendant had been
14 granted a deferred judgment or substantially similar relief two or more
15 times anywhere in the United States, except for participation in a
16 pretrial diversion program established pursuant to sections 29-3601 to
17 29-3609 or a substantially similar pretrial diversion program in another
18 jurisdiction;

19 (c) Prior to the commission of the offense the defendant had been
20 granted a deferred judgment or substantially similar relief for a felony
21 anywhere in the United States within the preceding five years, measured
22 from the date of granting of the prior deferred judgment to the date of
23 commission of the offense, except for participation in a pretrial
24 diversion program established pursuant to sections 29-3601 to 29-3609 or
25 a substantially similar pretrial diversion program in another
26 jurisdiction;

27 (d) The defendant is not eligible for probation; or

28 (e) The defendant is an entity and not an individual.

29 (3) A defendant may be disqualified under subsection (2) of this
30 section for a previous conviction for a felony or previous grant of
31 deferred judgment or substantially similar relief arising from the laws

1 of this state, the United States, the District of Columbia, or any state,
2 territory, possession, or tribe, only if:

3 (a) In the case of a previous felony, such felony was classified as
4 a felony by the law under which the defendant was convicted at the time
5 of such prior conviction; and

6 (b) Such previous felony conviction, deferred judgment, or
7 substantially similar relief was the result of a case:

8 (i) In which the defendant was represented by counsel or knowingly
9 and intelligently waived the right to counsel; and

10 (ii) Which, if it involved prosecution for a crime for which the
11 defendant was entitled to a jury trial in the jurisdiction in which the
12 case was tried, either:

13 (A) The case was tried to a jury; or

14 (B) The defendant knowingly and intelligently waived the right to
15 have the case tried to a jury.

16 Sec. 8. A deferred judgment under section 7 of this act shall be
17 entered promptly by the clerk of the court into a statewide data base,
18 which shall serve as the deferred judgment docket. The deferred judgment
19 docket shall be created and maintained by the State Court Administrator.
20 The docket shall contain a permanent record of the deferred judgment,
21 including the name and date of birth of the defendant, the docket number
22 of the case, the nature of the offense, and the date of the deferred
23 judgment. Before granting deferred judgment in any case, the court shall
24 search the deferred judgment docket and consider any prior record of
25 deferred judgment against the defendant. The permanent record provided
26 for in this section shall be confidential and not a public record. The
27 permanent record shall only be made available to the defendant and his or
28 her attorney, the clerk of the court, any judge or prosecutor in this
29 state, the Nebraska Probation System, and any committee or commission
30 tasked by the Legislature with tracking the implementation of and
31 measuring the efficacy of the deferred judgment program.

1 Sec. 9. (1) Prior to sentencing a defendant who is eligible for
2 probation, the court shall consider whether to defer judgment and place
3 the defendant on probation under section 7 of this act.

4 (2) In considering whether to defer judgment, the court first shall
5 determine if entering a deferred judgment will (a) provide the maximum
6 opportunity for the rehabilitation of the defendant and (b) protect the
7 community from further offenses by the defendant. In making this
8 determination, the court shall consider the age of the defendant, the
9 defendant's prior record of convictions and deferred judgments, the
10 defendant's employment and family circumstances, the defendant's mental
11 health and substance abuse history and treatment options available in the
12 community and the correctional system, the nature and circumstances of
13 the offense, and such other factors as are appropriate. The court may
14 order a presentence investigation pursuant to section 29-2261 for the
15 purpose of determining whether the defendant is a suitable candidate for
16 deferred judgment. When granting or denying a deferred judgment, the
17 court shall make a specific written statement of its reasons for the
18 decision and the facts supporting the decision.

19 (3) If the court decides that the defendant is not eligible for
20 deferred judgment, the court shall proceed to pronounce judgment as
21 provided by law.

22 Sec. 10. (1) The term of probation for a person on probation as a
23 result of a deferred judgment shall be as follows:

24 (a) For a felony, not less than two years nor more than five years;
25 and

26 (b) For a misdemeanor, not less than one year nor more than two
27 years.

28 (2) In determining the term of probation, the court shall consider
29 what period of time is most likely to provide the maximum opportunity for
30 the rehabilitation of the defendant, what period of time will suffice to
31 determine whether rehabilitation has been successful, and what period of

1 time will suffice to protect the community from further offenses by the
2 defendant.

3 (3) The term of probation may be extended for up to one year subject
4 to the provisions of section 29-2263.

5 (4) The court may reduce the term of probation or discharge the
6 defendant from probation at any time if the court determines that the
7 purpose of probation has been fulfilled and the administrative and
8 programming fees imposed under section 11 of this act have been paid or
9 waived.

10 (5) The court may, as a condition of probation, impose on the
11 defendant any requirements permitted by section 29-2262. The court may
12 modify, eliminate, or add further conditions at any time pursuant to
13 section 29-2263.

14 Sec. 11. Upon entry of a deferred judgment pursuant to section 7 of
15 this act, the court shall order the defendant to pay all administrative
16 and programming fees authorized under section 29-2262.06, unless waived
17 under such section. The defendant shall pay any such fees to the clerk of
18 the court. The clerk of the court shall remit all fees so collected to
19 the State Treasurer for credit to the Probation Program Cash Fund.

20 Sec. 12. An entry of deferred judgment pursuant to section 7 of
21 this act is a final order as defined in section 25-1902.

22 Sec. 13. Section 29-3523, Revised Statutes Cumulative Supplement,
23 2018, is amended to read:

24 29-3523 (1) After the expiration of the periods described in
25 subsection (3) of this section or after the granting of a motion under
26 subsection (4), (5), or (6) of this section, a criminal justice agency
27 shall respond to a public inquiry in the same manner as if there were no
28 criminal history record information and criminal history record
29 information shall not be disseminated to any person other than a criminal
30 justice agency, except as provided in subsection (2) of this section or
31 when the subject of the record:

1 (a) Is currently the subject of prosecution or correctional control
2 as the result of a separate arrest;

3 (b) Is currently an announced candidate for or holder of public
4 office;

5 (c) Has made a notarized request for the release of such record to a
6 specific person; or

7 (d) Is kept unidentified, and the record is used for purposes of
8 surveying or summarizing individual or collective law enforcement agency
9 activity or practices, or the dissemination is requested consisting only
10 of release of criminal history record information showing (i) dates of
11 arrests, (ii) reasons for arrests, and (iii) the nature of the
12 dispositions including, but not limited to, reasons for not prosecuting
13 the case or cases.

14 (2) That part of criminal history record information described in
15 subsection (7) of this section may be disseminated to individuals and
16 agencies for the express purpose of research, evaluative, or statistical
17 activities pursuant to an agreement with a criminal justice agency that
18 specifically authorizes access to the information, limits the use of the
19 information to research, evaluative, or statistical activities, and
20 ensures the confidentiality and security of the information.

21 (3) Except as provided in subsections (1) and (2) of this section,
22 in the case of an arrest, citation in lieu of arrest, or referral for
23 prosecution without citation, all criminal history record information
24 relating to the case shall be removed from the public record as follows:

25 (a) When no charges are filed as a result of the determination of
26 the prosecuting attorney, the criminal history record information shall
27 not be part of the public record after one year from the date of arrest,
28 citation in lieu of arrest, or referral for prosecution without citation;

29 (b) When charges are not filed as a result of a completed diversion,
30 the criminal history record information shall not be part of the public
31 record after two years from the date of arrest, citation in lieu of

1 arrest, or referral for prosecution without citation; and

2 (c) When charges are filed, but the case is dismissed by the court
3 (i) on motion of the prosecuting attorney, (ii) as a result of a hearing
4 not the subject of a pending appeal, (iii) after acquittal, ~~or~~ (iv) after
5 a deferred judgment, or (v) after completion of a program prescribed by a
6 drug court or any other problem solving court approved by the Supreme
7 Court, the criminal history record information shall not be part of the
8 public record immediately upon notification of a criminal justice agency
9 after acquittal pursuant to subdivision (3)(c)(iii) of this section or
10 after the entry of an order dismissing the case.

11 (4) Upon the granting of a motion to set aside a conviction or an
12 adjudication pursuant to section 29-3005, a person who is a victim of sex
13 trafficking, as defined in section 29-3005, may file a motion with the
14 sentencing court for an order to seal the criminal history record
15 information related to such conviction or adjudication. Upon a finding
16 that a court issued an order setting aside such conviction or
17 adjudication pursuant to section 29-3005, the sentencing court shall
18 grant the motion and:

19 (a) For a conviction, issue an order as provided in subsection (7)
20 of this section; or

21 (b) For an adjudication, issue an order as provided in section
22 43-2,108.05.

23 (5) Any person who has received a pardon may file a motion with the
24 sentencing court for an order to seal the criminal history record
25 information and any cases related to such charges or conviction. Upon a
26 finding that the person received a pardon, the court shall grant the
27 motion and issue an order as provided in subsection (7) of this section.

28 (6) Any person who is subject to a record which resulted in a case
29 being dismissed prior to January 1, 2017, as described in subdivision (3)
30 (c) of this section, may file a motion with the court in which the case
31 was filed to enter an order pursuant to subsection (7) of this section.

1 Upon a finding that the case was dismissed for any reason described in
2 subdivision (3)(c) of this section, the court shall grant the motion and
3 enter an order as provided in subsection (7) of this section.

4 (7) Upon acquittal or entry of an order dismissing a case described
5 in subdivision (3)(c) of this section, or after granting a motion under
6 subsection (4), (5), or (6) of this section, the court shall:

7 (a) Order that all records, including any information or other data
8 concerning any proceedings relating to the case, including the arrest,
9 taking into custody, petition, complaint, indictment, information, trial,
10 hearing, adjudication, correctional supervision, dismissal, or other
11 disposition or sentence, are not part of the public record and shall not
12 be disseminated to persons other than criminal justice agencies, except
13 as provided in subsection (1) or (2) of this section;

14 (b) Send notice of the order (i) to the Nebraska Commission on Law
15 Enforcement and Criminal Justice, (ii) to the Nebraska State Patrol, and
16 (iii) to law enforcement agencies, county attorneys, and city attorneys
17 referenced in the court record;

18 (c) Order all parties notified under subdivision (7)(b) of this
19 section to seal all records pertaining to the case; and

20 (d) If the case was transferred from one court to another, send
21 notice of the order to seal the record to the transferring court.

22 (8) In any application for employment, bonding, license, education,
23 or other right or privilege, any appearance as a witness, or any other
24 public inquiry, a person cannot be questioned with respect to any offense
25 for which the record is sealed. If an inquiry is made in violation of
26 this subsection, the person may respond as if the offense never occurred.

27 (9) Any person arrested due to the error of a law enforcement agency
28 may file a petition with the district court for an order to expunge the
29 criminal history record information related to such error. The petition
30 shall be filed in the district court of the county in which the
31 petitioner was arrested. The county attorney shall be named as the

1 respondent and shall be served with a copy of the petition. The court may
2 grant the petition and issue an order to expunge such information if the
3 petitioner shows by clear and convincing evidence that the arrest was due
4 to error by the arresting law enforcement agency.

5 (10) The changes made by Laws 2018, LB1132, to the relief set forth
6 in this section shall apply to all persons otherwise eligible in
7 accordance with the provisions of this section, whether arrested, cited
8 in lieu of arrest, referred for prosecution without citation, charged,
9 convicted, or adjudicated prior to, on, or subsequent to July 19, 2018.

10 Sec. 14. Section 83-173.03, Revised Statutes Cumulative Supplement,
11 2018, is amended to read:

12 83-173.03 (1) ~~No Beginning July 1, 2016, no~~ inmate shall be held in
13 restrictive housing unless done in the least restrictive manner
14 consistent with maintaining order in the facility and pursuant to rules
15 and regulations adopted and promulgated by the department pursuant to the
16 Administrative Procedure Act.

17 (2) The department shall adopt and promulgate rules and regulations
18 pursuant to the Administrative Procedure Act establishing levels of
19 restrictive housing as may be necessary to administer the correctional
20 system. Rules and regulations shall establish behavior, conditions, and
21 mental health status under which an inmate may be placed in each
22 confinement level as well as procedures for making such determinations.
23 Rules and regulations shall also provide for individualized transition
24 plans, developed with the active participation of the committed offender,
25 for each confinement level back to the general population or to society.

26 (3) On and after October 1, 2019, no inmate who is a member of a
27 vulnerable population shall be placed in restrictive housing. In line
28 with the least restrictive framework, an inmate who is a member of a
29 vulnerable population may be assigned to immediate segregation to protect
30 himself or herself, staff, other inmates, or inmates who are members of
31 vulnerable populations pending classification. The department shall adopt

1 and promulgate rules and regulations pursuant to the Administrative
2 Procedure Act regarding restrictive housing to address risks for inmates
3 who are members of vulnerable populations. Nothing in this subsection
4 prohibits the department from developing secure mental health housing to
5 serve the needs of inmates with serious mental illnesses as defined in
6 section 44-792, developmental disabilities as defined in section 71-1107,
7 or traumatic brain injuries as defined in section 79-1118.01 in such a
8 way that provides for meaningful access to social interaction, exercise,
9 environmental stimulation, and therapeutic programming.

10 (4) For purposes of this section, member of a vulnerable population
11 means an inmate who is eighteen years of age or younger, pregnant, or
12 diagnosed with a serious mental illness as defined in section 44-792, a
13 developmental disability as defined in section 71-1107, or a traumatic
14 brain injury as defined in section 79-1118.01.

15 Sec. 15. Section 83-4,114, Revised Statutes Cumulative Supplement,
16 2018, is amended to read:

17 83-4,114 (1) There shall be no corporal punishment or disciplinary
18 restrictions on diet.

19 (2) Disciplinary restrictions on clothing, bedding, mail,
20 visitations, use of toilets, washbowls, or scheduled showers shall be
21 imposed only for abuse of such privilege or facility and only as
22 authorized by written directives, guidance documents, and operational
23 manuals.

24 (3) No person shall be placed in solitary confinement.

25 (4) The director shall issue an annual report on or before September
26 15 to the Governor and the Clerk of the Legislature. The report to the
27 Clerk of the Legislature shall be issued electronically. For all inmates
28 who were held in restrictive housing during the prior year, the report
29 shall contain the race, gender, age, and length of time each inmate has
30 continuously been held in restrictive housing. Prior to releasing the
31 report, the director shall meet with the long-term restrictive housing

1 work group to share the contents of the report. The report shall also
2 contain:

3 (a) The number of inmates held in restrictive housing;

4 (b) The reason or reasons each inmate was held in restrictive
5 housing;

6 (c) The number of inmates held in restrictive housing who have been
7 diagnosed with a mental illness or behavioral disorder and the type of
8 mental illness or behavioral disorder by inmate;

9 (d) The number of inmates who were released from restrictive housing
10 directly to parole or into the general public and the reason for such
11 release;

12 (e) The number of inmates who were placed in restrictive housing for
13 his or her own safety and the underlying circumstances for each
14 placement;

15 (f) To the extent reasonably ascertainable, comparable statistics
16 for the nation and each of the states that border Nebraska pertaining to
17 subdivisions (4)(a) through (e) of this section; and

18 (g) The mean and median length of time for all inmates held in
19 restrictive housing.

20 (5)(a) There is hereby established within the department a long-term
21 restrictive housing work group. The work group shall consist of one
22 member of the Judiciary Committee of the Legislature appointed by the
23 Executive Board of the Legislative Council who shall be a nonvoting, ex
24 officio member and the following voting members:

25 (i) The director and all deputy directors who have oversight over
26 inmate health services or correctional facilities. The director or his or
27 her designee shall serve as the chairperson of the work group;

28 (ii) The behavioral health administrator within the department;

29 (iii) Two employees of the department who currently work with
30 inmates held in restrictive housing as designated by the director;

31 (iv) Additional department staff as designated by the director; and

1 (v) Six Four members appointed by the Executive Board of the
2 Legislative Council who have demonstrated an interest in correctional
3 issues. Of these members at least one shall be an individual who was
4 previously incarcerated in Nebraska's correctional system. The remaining
5 members shall consist of individuals who are mental health professionals,
6 have been employed in a restrictive housing unit in a correctional
7 facility, have advocated for the rights of incarcerated individuals, or
8 have otherwise been engaged in activities related to Nebraska's
9 correctional system, as follows appointed by the Governor:

10 ~~(A) Two representatives from a nonprofit prisoners' rights advocacy~~
11 ~~group, including at least one former inmate; and~~

12 ~~(B) Two mental health professionals independent from the department~~
13 ~~with particular knowledge of prisons and conditions of confinement.~~

14 (b) The work group shall advise the department on policies and
15 procedures related to the proper treatment and care of offenders in long-
16 term restrictive housing.

17 (c) The director shall convene the work group's first meeting no
18 later than September 15, 2015, and the work group shall meet at least
19 semiannually thereafter. The chairperson shall schedule and convene the
20 work group's meetings.

21 (d) The director shall provide the work group with quarterly updates
22 on the department's policies related to the work group's subject matter
23 and with any other information related to long-term restrictive housing
24 that is requested by members of the work group.

25 (e) The work group shall terminate on December 31, 2021.

26 Sec. 16. The Revisor of Statutes shall assign sections 7 to 12 of
27 this act to Chapter 29, article 22.

28 Sec. 17. Original sections 29-2202 and 29-2268, Reissue Revised
29 Statutes of Nebraska, and sections 28-101, 28-105, 29-1823, 29-3523,
30 83-173.03, and 83-4,114, Revised Statutes Cumulative Supplement, 2018,
31 are repealed.