

AMENDMENTS TO LB686

(Amendments to Standing Committee amendments, AM1737)

Introduced by Lathrop, 12.

1 1. Strike the original sections and all amendments thereto and
2 insert the following new 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;

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

25 (e) Any person acting with the permission of the Director of
26 Correctional Services or in accordance with rules, regulations, or
27 policies of the Department of Correctional Services.

28 (3) For purposes of this section:

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

30 (b) Electronic communication device means any device which, in its
31 ordinary and intended use, transmits by electronic means writings,

1 sounds, visual images, or data of any nature to another electronic
2 communication device. Electronic communication device does not include
3 any device provided to an inmate by the Department of Correctional
4 Services.

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

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

11 Sec. 4. Section 28-1206, Revised Statutes Cumulative Supplement,
12 2018, is amended to read:

13 28-1206 (1) A person commits the offense of possession of a deadly
14 weapon by a prohibited person if he or she:

15 (a) Possesses a firearm, a knife, or brass or iron knuckles and he
16 or she:

17 (i) Has previously been convicted of a felony;

18 (ii) Is a fugitive from justice; ~~or~~

19 (iii) Is the subject of a current and validly issued domestic
20 violence protection order, harassment protection order, or sexual assault
21 protection order and is knowingly violating such order; or

22 (iv) Is on probation pursuant to a deferred judgment for a felony
23 under section 9 of this act; or

24 (b) Possesses a firearm or brass or iron knuckles and he or she has
25 been convicted within the past seven years of a misdemeanor crime of
26 domestic violence.

27 (2) The felony conviction may have been had in any court in the
28 United States, the several states, territories, or possessions, or the
29 District of Columbia.

30 (3)(a) Possession of a deadly weapon which is not a firearm by a
31 prohibited person is a Class III felony.

1 (b) Possession of a deadly weapon which is a firearm by a prohibited
2 person is a Class ID felony for a first offense and a Class IB felony for
3 a second or subsequent offense.

4 (4) Subdivision (1)(a)(i) of this section shall not prohibit:

5 (a) Possession of archery equipment for lawful purposes; or

6 (b) If in possession of a recreational license, possession of a
7 knife for purposes of butchering, dressing, or otherwise processing or
8 harvesting game, fish, or furs.

9 (5)(a) For purposes of this section, misdemeanor crime of domestic
10 violence means a crime that:

11 (i) Is classified as a misdemeanor under the laws of the United
12 States or the District of Columbia or the laws of any state, territory,
13 possession, or tribe;

14 (ii) Has, as an element, the use or attempted use of physical force
15 or the threatened use of a deadly weapon; and

16 (iii) Is committed by another against his or her spouse, his or her
17 former spouse, a person with whom he or she has a child in common whether
18 or not they have been married or lived together at any time, or a person
19 with whom he or she is or was involved in a dating relationship as
20 defined in section 28-323.

21 (b) For purposes of this section, misdemeanor crime of domestic
22 violence also includes the following offenses, if committed by a person
23 against his or her spouse, his or her former spouse, a person with whom
24 he or she is or was involved in a dating relationship as defined in
25 section 28-323, or a person with whom he or she has a child in common
26 whether or not they have been married or lived together at any time:

27 (i) Assault in the third degree under section 28-310;

28 (ii) Stalking under subsection (1) of section 28-311.04;

29 (iii) False imprisonment in the second degree under section 28-315;

30 (iv) First offense domestic assault in the third degree under
31 subsection (1) of section 28-323; or

1 (v) Any attempt or conspiracy to commit any of such offenses.

2 (c) A person shall not be considered to have been convicted of a
3 misdemeanor crime of domestic violence unless:

4 (i) The person was represented by counsel in the case or knowingly
5 and intelligently waived the right to counsel in the case; and

6 (ii) In the case of a prosecution for a misdemeanor crime of
7 domestic violence for which a person was entitled to a jury trial in the
8 jurisdiction in which the case was tried, either:

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

10 (B) The person knowingly and intelligently waived the right to have
11 the case tried to a jury.

12 (6) In addition, for purposes of this section:

13 (a) Archery equipment means:

14 (i) A longbow, recurve bow, compound bow, or nonelectric crossbow
15 that is drawn or cocked with human power and released by human power; and

16 (ii) Target or hunting arrows, including arrows with broad, fixed,
17 or removable heads or that contain multiple sharp cutting edges;

18 (b) Domestic violence protection order means a protection order
19 issued pursuant to section 42-924;

20 (c) Harassment protection order means a protection order issued
21 pursuant to section 28-311.09 or that meets or exceeds the criteria set
22 forth in section 28-311.10 regarding protection orders issued by a court
23 in any other state or a territory, possession, or tribe;

24 (d) Recreational license means a state-issued license, certificate,
25 registration, permit, tag, sticker, or other similar document or
26 identifier evidencing permission to hunt, fish, or trap for furs in the
27 State of Nebraska; and

28 (e) Sexual assault protection order means a protection order issued
29 pursuant to section 28-311.11 or that meets or exceeds the criteria set
30 forth in section 28-311.12 regarding protection orders issued by a court
31 in any other state or a territory, possession, or tribe.

1 Sec. 5. Section 29-1823, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 29-1823 (1) If at any time prior to trial it appears that the
4 defendant accused has become mentally incompetent to stand trial, such
5 disability may be called to the attention of the district or county court
6 by the county attorney or city attorney, by the defendant accused, or by
7 any person for the defendant accused. The judge of the district or county
8 court of the county where the defendant accused is to be tried shall have
9 the authority to determine whether or not the defendant accused is
10 competent to stand trial. The judge may also cause such medical,
11 psychiatric, or psychological examination of the defendant accused to be
12 made as he or she deems warranted and hold such hearing as he or she
13 deems necessary. The cost of the examination, when ordered by the court,
14 shall be the expense of the county in which the crime is charged. The
15 judge may allow any physician, psychiatrist, or psychologist a reasonable
16 fee for his or her services, which amount, when determined by the judge,
17 shall be certified to the county board which shall cause payment to be
18 made. Should the judge determine after a hearing that the defendant
19 accused is mentally incompetent to stand trial and that there is a
20 substantial probability that the defendant accused will become competent
21 within the foreseeable future, the judge shall order the defendant
22 accused to be committed to the Department of Health and Human Services to
23 provide appropriate treatment to restore competency. This may include
24 commitment to a state hospital for the mentally ill, another or some
25 other appropriate state-owned or state-operated facility, or a contract
26 facility or provider pursuant to an alternative treatment plan proposed
27 by the department and approved by the court under subsection (2) of this
28 section for appropriate treatment until such time as the disability may
29 be removed.

30 (2)(a) If the department determines that treatment by a contract
31 facility or provider is appropriate, the department shall file a report

1 outlining its determination and such alternative treatment plan with the
2 court. Within twenty-one days after the filing of such report, the court
3 shall hold a hearing to determine whether such treatment is appropriate.
4 The court may approve or deny such alternative treatment plan.

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

8 (3) (2) Within six months after the commencement of the treatment
9 ordered by the district or county court, and every six months thereafter
10 until either the disability is removed or other disposition of the
11 defendant accused has been made, the court shall hold a hearing to
12 determine (a) whether the defendant accused is competent to stand trial
13 or (b) whether or not there is a substantial probability that the
14 defendant accused will become competent within the foreseeable future.

15 (4) (3) If it is determined that there is not a substantial
16 probability that the defendant accused will become competent within the
17 foreseeable future, then the state shall either (a) commence the
18 applicable civil commitment proceeding that would be required to commit
19 any other person for an indefinite period of time or (b) release the
20 defendant accused. If during the period of time between the six-month
21 review hearings set forth in subsection (3) (2) of this section it is the
22 opinion of the department ~~Department of Health and Human Services~~ that
23 the defendant accused is competent to stand trial, the department shall
24 file a report outlining its opinion with the court, and within twenty-one
25 days after such report being filed, the court shall hold a hearing to
26 determine whether or not the defendant accused is competent to stand
27 trial. The state shall pay the cost of maintenance and care of the
28 defendant accused during the period of time ordered by the court for
29 treatment to remove the disability.

30 (5) The department may establish a network of contract facilities
31 and providers to provide competency restoration treatment pursuant to

1 alternative treatment plans under this section. The department may create
2 criteria for participation in such network and establish training in
3 competency restoration treatment for participating contract facilities
4 and providers.

5 Sec. 6. Section 29-2202, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 29-2202 Except as provided in sections 9 to 11 of this act, if If
8 the defendant has nothing to say, or if he or she shows no good and
9 sufficient cause why judgment should not be pronounced, the court shall
10 proceed to pronounce judgment as provided by law. The court, in its
11 discretion, may for any cause deemed by it good and sufficient, suspend
12 execution of sentence for a period not to exceed ninety days from the
13 date judgment is pronounced. If the defendant is not at liberty under
14 bail, he or she may be admitted to bail during the period of suspension
15 of sentence as provided in section 29-901.

16 Sec. 7. Section 29-2246, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 29-2246 For purposes of the Nebraska Probation Administration Act
19 and sections 43-2,123.01 and 83-1,102 to 83-1,104, unless the context
20 otherwise requires:

21 (1) Association means the Nebraska District Court Judges
22 Association;

23 (2) Court means a district court, county court, or juvenile court as
24 defined in section 43-245;

25 (3) Office means the Office of Probation Administration;

26 (4) Probation means a sentence under which a person found guilty of
27 a crime upon verdict or plea or adjudicated delinquent or in need of
28 special supervision is released by a court subject to conditions imposed
29 by the court and subject to supervision. Probation includes post-release
30 supervision and supervision ordered by a court pursuant to a deferred
31 judgment under section 9 of this act;

1 (5) Probationer means a person sentenced to probation or post-
2 release supervision;

3 (6) Probation officer means an employee of the system who supervises
4 probationers and conducts presentence, predisposition, or other
5 investigations as may be required by law or directed by a court in which
6 he or she is serving or performs such other duties as authorized pursuant
7 to section 29-2258, except unpaid volunteers from the community;

8 (7) Juvenile probation officer means any probation officer who
9 supervises probationers of a separate juvenile court;

10 (8) Juvenile intake probation officer means an employee of the
11 system who is called upon by a law enforcement officer in accordance with
12 section 43-250 to make a decision regarding the furtherance of a
13 juvenile's detention;

14 (9) Chief probation officer means the probation officer in charge of
15 a probation district;

16 (10) System means the Nebraska Probation System;

17 (11) Administrator means the probation administrator;

18 (12) Non-probation-based program or service means a program or
19 service established within the district, county, or juvenile courts and
20 provided to individuals not sentenced to probation who have been charged
21 with or convicted of a crime for the purpose of diverting the individual
22 from incarceration or to provide treatment for issues related to the
23 individual's criminogenic needs. Non-probation-based programs or services
24 include, but are not limited to, problem solving courts established
25 pursuant to section 24-1302 and the treatment of problems relating to
26 substance abuse, mental health, sex offenses, or domestic violence;

27 (13) Post-release supervision means the portion of a split sentence
28 following a period of incarceration under which a person found guilty of
29 a crime upon verdict or plea is released by a court subject to conditions
30 imposed by the court and subject to supervision by the office; and

31 (14) Rules and regulations means policies and procedures written by

1 the office and approved by the Supreme Court.

2 Sec. 8. Section 29-2268, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 29-2268 (1) If the court finds that the probationer, other than a
5 probationer serving a term of post-release supervision, did violate a
6 condition of his or her probation, it may revoke the probation and impose
7 on the offender such new sentence as might have been imposed originally
8 for the crime of which he or she was convicted.

9 (2) If the court finds that a probationer serving a term of post-
10 release supervision did violate a condition of his or her post-release
11 supervision, it may revoke the post-release supervision and impose on the
12 offender a term of imprisonment up to the original remaining period of
13 post-release supervision. If a sentence of incarceration is imposed upon
14 revocation of post-release supervision, the court shall grant jail credit
15 for any days spent in custody as a result of the post-release
16 supervision, including custodial sanctions. The term shall be served in
17 an institution under the jurisdiction of the Department of Correctional
18 Services or in county jail subject to subsection (2) of section 28-105.

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

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

23 (b) Probation supervision and reporting be intensified;

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

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

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

31 Sec. 9. (1) Upon a finding of guilt for which a judgment of

1 conviction may be rendered, a defendant may request the court defer the
2 entry of judgment of conviction. Upon such request and after giving the
3 prosecutor and defendant the opportunity to be heard, the court may defer
4 the entry of a judgment of conviction and the imposition of a sentence
5 and place the defendant on probation, upon conditions as the court may
6 require under section 29-2262.

7 (2) The court shall not defer judgment under this section if:

8 (a) The offense is a violation of section 42-924;

9 (b) The victim of the offense is an intimate partner as defined in
10 section 28-323;

11 (c) The offense is a violation of section 60-6,196 or 60-6,197 or a
12 city or village ordinance enacted in conformance with section 60-6,196 or
13 60-6,197; or

14 (d) The defendant is not eligible for probation.

15 (3) Whenever a court considers a request to defer judgment, the
16 court shall consider the factors set forth in section 29-2260 and any
17 other information the court deems relevant.

18 (4) Except as otherwise provided in this section and sections 10 and
19 11 of this act, the supervision of a defendant on probation pursuant to a
20 deferred judgment shall be governed by the Nebraska Probation
21 Administration Act and sections 29-2270 to 29-2273.

22 (5) After a hearing providing the prosecutor and defendant an
23 opportunity to be heard and upon a finding that a defendant has violated
24 a condition of his or her probation, the court may enter any order
25 authorized by section 29-2268 or pronounce judgment and impose such new
26 sentence as might have been originally imposed for the offense for which
27 the defendant was convicted.

28 (6) Upon satisfactory completion of the conditions of probation and
29 the payment or waiver of all administrative and programming fees assessed
30 under section 10 of this act, the defendant or prosecutor may file a
31 motion to withdraw any plea entered by the defendant and to dismiss the

1 action without entry of judgment.

2 (7) The provisions of this section apply to offenses committed on or
3 after July 1, 2020. For purposes of this section, an offense shall be
4 deemed to have been committed prior to July 1, 2020, if any element of
5 the offense occurred prior to such date.

6 Sec. 10. Upon entry of a deferred judgment pursuant to section 9 of
7 this act, the court shall order the defendant to pay all administrative
8 and programming fees authorized under section 29-2262.06, unless waived
9 under such section. The defendant shall pay any such fees to the clerk of
10 the court. The clerk of the court shall remit all fees so collected to
11 the State Treasurer for credit to the Probation Program Cash Fund.

12 Sec. 11. An entry of deferred judgment pursuant to section 9 of
13 this act is a final order as defined in section 25-1902.

14 Sec. 12. Section 29-3523, Revised Statutes Cumulative Supplement,
15 2018, is amended to read:

16 29-3523 (1) After the expiration of the periods described in
17 subsection (3) of this section or after the granting of a motion under
18 subsection (4), (5), or (6) of this section, a criminal justice agency
19 shall respond to a public inquiry in the same manner as if there were no
20 criminal history record information and criminal history record
21 information shall not be disseminated to any person other than a criminal
22 justice agency, except as provided in subsection (2) of this section or
23 when the subject of the record:

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

26 (b) Is currently an announced candidate for or holder of public
27 office;

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

30 (d) Is kept unidentified, and the record is used for purposes of
31 surveying or summarizing individual or collective law enforcement agency

1 activity or practices, or the dissemination is requested consisting only
2 of release of criminal history record information showing (i) dates of
3 arrests, (ii) reasons for arrests, and (iii) the nature of the
4 dispositions including, but not limited to, reasons for not prosecuting
5 the case or cases.

6 (2) That part of criminal history record information described in
7 subsection (7) of this section may be disseminated to individuals and
8 agencies for the express purpose of research, evaluative, or statistical
9 activities pursuant to an agreement with a criminal justice agency that
10 specifically authorizes access to the information, limits the use of the
11 information to research, evaluative, or statistical activities, and
12 ensures the confidentiality and security of the information.

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

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

21 (b) When charges are not filed as a result of a completed diversion,
22 the criminal history record information shall not be part of the public
23 record after two years from the date of arrest, citation in lieu of
24 arrest, or referral for prosecution without citation; and

25 (c) When charges are filed, but the case is dismissed by the court
26 (i) on motion of the prosecuting attorney, (ii) as a result of a hearing
27 not the subject of a pending appeal, (iii) after acquittal, ~~or~~ (iv) after
28 a deferred judgment, or (v) after completion of a program prescribed by a
29 drug court or any other problem solving court approved by the Supreme
30 Court, the criminal history record information shall not be part of the
31 public record immediately upon notification of a criminal justice agency

1 after acquittal pursuant to subdivision (3)(c)(iii) of this section or
2 after the entry of an order dismissing the case.

3 (4) Upon the granting of a motion to set aside a conviction or an
4 adjudication pursuant to section 29-3005, a person who is a victim of sex
5 trafficking, as defined in section 29-3005, may file a motion with the
6 sentencing court for an order to seal the criminal history record
7 information related to such conviction or adjudication. Upon a finding
8 that a court issued an order setting aside such conviction or
9 adjudication pursuant to section 29-3005, the sentencing court shall
10 grant the motion and:

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

13 (b) For an adjudication, issue an order as provided in section
14 43-2,108.05.

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

20 (6) Any person who is subject to a record which resulted in a case
21 being dismissed prior to January 1, 2017, as described in subdivision (3)
22 (c) of this section, may file a motion with the court in which the case
23 was filed to enter an order pursuant to subsection (7) of this section.
24 Upon a finding that the case was dismissed for any reason described in
25 subdivision (3)(c) of this section, the court shall grant the motion and
26 enter an order as provided in subsection (7) of this section.

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

30 (a) Order that all records, including any information or other data
31 concerning any proceedings relating to the case, including the arrest,

1 taking into custody, petition, complaint, indictment, information, trial,
2 hearing, adjudication, correctional supervision, dismissal, or other
3 disposition or sentence, are not part of the public record and shall not
4 be disseminated to persons other than criminal justice agencies, except
5 as provided in subsection (1) or (2) of this section;

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

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

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

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

19 (9) Any person arrested due to the error of a law enforcement agency
20 may file a petition with the district court for an order to expunge the
21 criminal history record information related to such error. The petition
22 shall be filed in the district court of the county in which the
23 petitioner was arrested. The county attorney shall be named as the
24 respondent and shall be served with a copy of the petition. The court may
25 grant the petition and issue an order to expunge such information if the
26 petitioner shows by clear and convincing evidence that the arrest was due
27 to error by the arresting law enforcement agency.

28 (10) The changes made by Laws 2018, LB1132, to the relief set forth
29 in this section shall apply to all persons otherwise eligible in
30 accordance with the provisions of this section, whether arrested, cited
31 in lieu of arrest, referred for prosecution without citation, charged,

1 convicted, or adjudicated prior to, on, or subsequent to July 19, 2018.

2 Sec. 13. Section 83-173.03, Revised Statutes Cumulative Supplement,
3 2018, is amended to read:

4 83-173.03 (1) ~~No Beginning July 1, 2016,~~ no inmate shall be held in
5 restrictive housing unless done in the least restrictive manner
6 consistent with maintaining order in the facility and pursuant to rules
7 and regulations adopted and promulgated by the department pursuant to the
8 Administrative Procedure Act.

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

18 (3) On and after March 1, 2020, no inmate who is a member of a
19 vulnerable population shall be placed in restrictive housing. In line
20 with the least restrictive framework, an inmate who is a member of a
21 vulnerable population may be assigned to immediate segregation to protect
22 himself or herself, staff, other inmates, or inmates who are members of
23 vulnerable populations pending classification. The department shall adopt
24 and promulgate rules and regulations pursuant to the Administrative
25 Procedure Act regarding restrictive housing to address risks for inmates
26 who are members of vulnerable populations. Nothing in this subsection
27 prohibits the department from developing secure mental health housing to
28 serve the needs of inmates with serious mental illnesses as defined in
29 section 44-792, developmental disabilities as defined in section 71-1107,
30 or traumatic brain injuries as defined in section 79-1118.01 in such a
31 way that provides for meaningful access to social interaction, exercise,

1 environmental stimulation, and therapeutic programming.

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

7 Sec. 14. Section 83-4,114, Revised Statutes Cumulative Supplement,
8 2018, is amended to read:

9 83-4,114 (1) There shall be no corporal punishment or disciplinary
10 restrictions on diet.

11 (2) Disciplinary restrictions on clothing, bedding, mail,
12 visitations, use of toilets, washbowls, or scheduled showers shall be
13 imposed only for abuse of such privilege or facility and only as
14 authorized by written directives, guidance documents, and operational
15 manuals.

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

17 (4) The director shall issue an annual report on or before September
18 15 to the Governor and the Clerk of the Legislature. The report to the
19 Clerk of the Legislature shall be issued electronically. For all inmates
20 who were held in restrictive housing during the prior year, the report
21 shall contain the race, gender, age, and length of time each inmate has
22 continuously been held in restrictive housing. Prior to releasing the
23 report, the director shall meet with the long-term restrictive housing
24 work group to share the contents of the report. The report shall also
25 contain:

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

27 (b) The reason or reasons each inmate was held in restrictive
28 housing;

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

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

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

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

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

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

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

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

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

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

24 (v) Six ~~Four~~ members ~~as follows~~ appointed by the Governor who have
25 demonstrated an interest in correctional issues. Of these members at
26 least one shall be an individual who was previously incarcerated in
27 Nebraska's correctional system. The remaining members shall consist of
28 individuals who are mental health professionals, have been employed in a
29 restrictive housing unit in a correctional facility, have advocated for
30 the rights of incarcerated individuals, or have otherwise been engaged in
31 activities related to Nebraska's correctional system. ÷

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

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

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

8 (c) The director shall convene the work group's first meeting no
9 later than September 15, 2015, and the work group shall meet at least
10 semiannually thereafter. The chairperson shall schedule and convene the
11 work group's meetings.

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

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

17 Sec. 15. The Revisor of Statutes shall assign sections 9 to 11 of
18 this act to Chapter 29, article 22.

19 Sec. 16. Sections 5 and 18 of this act become operative on July 1,
20 2021. The other sections of this act become operative on their effective
21 date.

22 Sec. 17. Original sections 29-2202, 29-2246, and 29-2268, Reissue
23 Revised Statutes of Nebraska, and sections 28-101, 28-105, 28-1206,
24 29-3523, 83-173.03, and 83-4,114, Revised Statutes Cumulative Supplement,
25 2018, are repealed.

26 Sec. 18. Original section 29-1823, Revised Statutes Cumulative
27 Supplement, 2018, is repealed.