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LEGISLATIVE BILL 686

Approved by the Governor May 30, 2019

Introduced by Lathrop, 12.

A BILL FOR AN ACT relating to criminal justice; to amend sections 29-2202, 29-2246, and 29-2268, Reissue Revised Statutes of Nebraska, and sections 28-101, 28-105, 28-1206, 29-1823, 29-3523, 83-173.03, and 83-4,114, Revised Statutes Cumulative Supplement, 2018; to change Class IV felony provisions; to prohibit the introduction and possession of electronic communication devices in correctional facilities as prescribed; to provide a penalty; to change possession of a deadly weapon by a prohibited person provisions; to change provisions relating to competency to stand trial; to provide for deferred judgments by courts as prescribed; to change provisions relating to post-release supervision; to prohibit placement of members of vulnerable populations in restrictive housing as prescribed; to change provisions relating to the long-term restrictive housing work group; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

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

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

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

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

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

Class I felony	Death
Class IA felony	Life imprisonment
Class IB felony	Maximum—life imprisonment Minimum—twenty years imprisonment
Class IC felony	Maximum—fifty years imprisonment Mandatory minimum—five years imprisonment
Class ID felony	Maximum—fifty years imprisonment Mandatory minimum—three years imprisonment
Class II felony	Maximum—fifty years imprisonment Minimum—one year imprisonment
Class IIA felony	Maximum—twenty years imprisonment Minimum—none
Class III felony	Maximum—four years imprisonment and two years post-release supervision or twenty-five thousand dollars fine, or both Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed
Class IIIA felony	Maximum—three years imprisonment and eighteen months post-release supervision or ten thousand dollars fine, or both Minimum—none for imprisonment and nine months post-release supervision if imprisonment is imposed

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Class IV felony	Maximum—two years imprisonment and twelve months post-release supervision or ten thousand dollars fine, or both
	Minimum—none for imprisonment and none for ~~nine months~~ post-release supervision ~~if imprisonment is imposed~~

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

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

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

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

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

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

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

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

(2) This section does not apply to:

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

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

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

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

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

(3) For purposes of this section:

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

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

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

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

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

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

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

(i) Has previously been convicted of a felony;

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

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

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

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

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

(3)(a) Possession of a deadly weapon which is not a firearm by a

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prohibited person is a Class III felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Archery equipment means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Office means the Office of Probation Administration;

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

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

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

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

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

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

(10) System means the Nebraska Probation System;

(11) Administrator means the probation administrator;

(12) Non-probation-based program or service means a program or service established within the district, county, or juvenile courts and provided to individuals not sentenced to probation who have been charged with or convicted

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of a crime for the purpose of diverting the individual from incarceration or to provide treatment for issues related to the individual's criminogenic needs. Non-probation-based programs or services include, but are not limited to, problem solving courts established pursuant to section 24-1302 and the treatment of problems relating to substance abuse, mental health, sex offenses, or domestic violence;

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

(14) Rules and regulations means policies and procedures written by the office and approved by the Supreme Court.

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

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

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

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

(a) The probationer receive a reprimand and warning;

(b) Probation supervision and reporting be intensified;

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

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

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

Sec. 9. (1) Upon a finding of guilt for which a judgment of conviction may be rendered, a defendant may request the court defer the entry of judgment of conviction. Upon such request and after giving the prosecutor and defendant the opportunity to be heard, the court may defer the entry of a judgment of conviction and the imposition of a sentence and place the defendant on probation, upon conditions as the court may require under section 29-2262.

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

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

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

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

(d) The defendant is not eligible for probation.

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

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

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

(6) Upon satisfactory completion of the conditions of probation and the payment or waiver of all administrative and programming fees assessed under section 10 of this act, the defendant or prosecutor may file a motion to withdraw any plea entered by the defendant and to dismiss the action without entry of judgment.

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

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

Sec. 11. An entry of deferred judgment pursuant to section 9 of this act

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is a final order as defined in section 25-1902.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Send notice of the order (i) to the Nebraska Commission on Law

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Enforcement and Criminal Justice, (ii) to the Nebraska State Patrol, and (iii) to law enforcement agencies, county attorneys, and city attorneys referenced in the court record;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The number of inmates who were released from restrictive housing

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directly to parole or into the general public and the reason for such release;

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

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

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

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

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

(ii) The behavioral health administrator within the department;

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

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

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

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

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

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

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

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

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

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

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

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

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