

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1208

Introduced by Vargas, 7.

Read first time January 23, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to treatment and corrections; to amend
2 sections 83-4,109, 83-4,110, 83-4,111, 83-4,112, 83-4,113, 83-4,115,
3 83-4,120, 83-4,122, and 83-4,123, Reissue Revised Statutes of
4 Nebraska, sections 25-3401, 83-170, 83-173, and 83-4,114.01, Revised
5 Statutes Cumulative Supplement, 2018, and section 83-173.03, Revised
6 Statutes Supplement, 2019; to name an act; to provide, change, and
7 eliminate definitions; to change and eliminate provisions relating
8 to discipline, confinement status, solitary confinement, restrictive
9 housing, immediate segregation, disciplinary segregation, and rules
10 and regulations; to provide duties for the Department of
11 Correctional Services; to prohibit double bunking; to provide
12 requirements and procedures for the use of statements or testimony
13 by informants; to eliminate obsolete provisions; to harmonize
14 provisions; to repeal the original sections; to outright repeal
15 section 83-173.02, Revised Statutes Cumulative Supplement, 2018; and
16 to declare an emergency.
17 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-3401, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 25-3401 (1) For purposes of this section:

4 (a) Civil action means a legal action seeking monetary damages,
5 injunctive relief, declaratory relief, or any appeal filed in any court
6 in this state that relates to or involves a prisoner's conditions of
7 confinement. Civil action does not include a motion for postconviction
8 relief or petition for habeas corpus relief;

9 (b) Conditions of confinement means any circumstance, situation, or
10 event that involves a prisoner's custody, transportation, incarceration,
11 or supervision;

12 (c) Correctional institution means any state or local facility that
13 incarcerates or detains any adult accused of, charged with, convicted of,
14 or sentenced for any crime;

15 (d) Frivolous means the law and evidence supporting a litigant's
16 position is wholly without merit or rational argument; and

17 (e) Prisoner means any person who is incarcerated, imprisoned, or
18 otherwise detained in a correctional institution.

19 (2)(a) A prisoner who has filed three or more civil actions,
20 commenced after July 19, 2012, that have been found to be frivolous by a
21 court of this state or a federal court for a case originating in this
22 state shall not be permitted to proceed in forma pauperis for any further
23 civil actions without leave of court. A court shall permit the prisoner
24 to proceed in forma pauperis if the court determines that the person is
25 in danger of serious bodily injury.

26 (b) A court may include in its final order or judgment in any civil
27 action a finding that the action was frivolous.

28 (c) A finding under subdivision (2)(b) of this section shall be
29 reflected in the record of the case.

30 (d) This subsection does not apply to judicial review of
31 disciplinary procedures in facilities ~~adult institutions~~ administered by

1 the Department of Correctional Services governed by the Nebraska
2 Department of Correctional Services Disciplinary Procedures Act sections
3 ~~83-4,109 to 83-4,123~~.

4 Sec. 2. Section 83-170, Revised Statutes Cumulative Supplement,
5 2018, is amended to read:

6 83-170 As used in the Nebraska Treatment and Corrections Act, unless
7 the context otherwise requires:

8 (1) Board means the Board of Parole;

9 (2) Committed offender means any person who, under any provision of
10 law, is sentenced or committed to a facility operated by the department
11 or is sentenced or committed to the department other than a person
12 adjudged to be as described in subdivision (1), (2), (3)(b), or (4) of
13 section 43-247 by a juvenile court;

14 (3) Department means the Department of Correctional Services;

15 (4) Director means the Director of Correctional Services;

16 (5) Director of Supervision and Services means the Director of
17 Supervision and Services appointed pursuant to section 83-1,101;

18 (6) Facility means any prison, reformatory, training school,
19 reception center, community guidance center, group home, or other
20 institution operated by the department;

21 (7) Good time means any reduction of sentence granted pursuant to
22 sections 83-1,107 and 83-1,108;

23 (8) Maximum term means the maximum sentence provided by law or the
24 maximum sentence imposed by a court, whichever is shorter;

25 (9) Minimum term means the minimum sentence provided by law or the
26 minimum sentence imposed by a court, whichever is longer;

27 (10) Pardon authority means the power to remit fines and forfeitures
28 and to grant respites, reprieves, pardons, or commutations;

29 (11) Parole term means the time from release on parole to the
30 completion of the maximum term, reduced by good time; and

31 (12) Person committed to the department means any person sentenced

1 or committed to a facility within the department. ÷

2 ~~(13) Restrictive housing means conditions of confinement that~~
3 ~~provide limited contact with other offenders, strictly controlled~~
4 ~~movement while out of cell, and out-of-cell time of less than twenty-four~~
5 ~~hours per week; and~~

6 ~~(14) Solitary confinement means the status of confinement of an~~
7 ~~inmate in an individual cell having solid, soundproof doors and which~~
8 ~~deprives the inmate of all visual and auditory contact with other~~
9 ~~persons.~~

10 Sec. 3. Section 83-173, Revised Statutes Cumulative Supplement,
11 2018, is amended to read:

12 83-173 The Director of Correctional Services shall:

13 (1) Supervise and be responsible for the administration of the
14 Department of Correctional Services;

15 (2) Establish, consolidate, or abolish any administrative
16 subdivision within the department and appoint and remove for cause the
17 heads thereof and delegate appropriate powers and duties to them;

18 (3) Establish and administer policies and programs for the operation
19 of the facilities in the department and for the custody, control, safety,
20 correction, and rehabilitation of persons committed to the department;

21 (4) Appoint and remove the chief executive officer of each facility
22 and delegate appropriate powers and duties to him or her;

23 (5) Appoint and remove employees of the department and delegate
24 appropriate powers and duties to them;

25 (6) Adopt and promulgate rules and regulations for the management,
26 correctional treatment, and rehabilitation of persons committed to the
27 department, the administration of facilities, and the conduct of officers
28 and employees under his or her jurisdiction;

29 (7) Designate the place of confinement of persons committed to the
30 department subject to section 83-176;

31 (8) Establish and administer policies that ensure that complete and

1 up-to-date electronic records are maintained for each person committed to
2 the department and which also ensure privacy protections. The director
3 shall ensure that up-to-date electronic records are shared with the
4 Public Counsel and the office of Inspector General of the Nebraska
5 Correctional System, including all intelligence information or reported
6 generated by department employees, but not including information or
7 reports shared with the department by law enforcement. Electronic records
8 shall include programming recommendations, program completions, time
9 spent in housing other than general population as defined in section
10 83-4,110, and medical records, including mental and behavioral health
11 records;

12 (9) Collect, develop, and maintain statistical information
13 concerning persons committed to the department, sentencing practices, and
14 correctional treatment as may be useful in penological research or in the
15 development of treatment programs;

16 (10) Provide training programs designed to equip employees for duty
17 in the facilities and related services of the department and to raise and
18 maintain the educational standards and the level of performance of such
19 employees;

20 (11) Notify law enforcement agencies of upcoming furloughs as
21 required by section 83-173.01;

22 (12) Issue or authorize the issuance of a warrant for the arrest of
23 any person committed to the department who has escaped from the custody
24 of the department; and

25 (13) Exercise all powers and perform all duties necessary and proper
26 in carrying out his or her responsibilities.

27 Sec. 4. Sections 83-4,109 to 83-4,123 and sections 4, 7, 8, 9, 10,
28 11, 12, 13, 14, and 16 of this act shall be known and may be cited as the
29 Nebraska Department of Correctional Services Disciplinary Procedures Act.

30 Sec. 5. Section 83-4,109, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 83-4,109 The Nebraska Department of Correctional Services
2 Disciplinary Procedures Act shall govern disciplinary ~~Disciplinary~~
3 procedures in all facilities ~~adult institutions~~ administered by the
4 Department of Correctional Services ~~shall be governed by the provisions~~
5 ~~of sections 83-4,109 to 83-4,123.~~

6 Sec. 6. Section 83-4,110, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 83-4,110 For purposes of the Nebraska Department of Correctional
9 Services Disciplinary Procedures Act ~~sections 83-4,109 to 83-4,123,~~
10 unless the context otherwise requires:

11 (1) Department means the Department of Correctional Services;

12 (2) Developmental disability has the same meaning as in section
13 71-1107;

14 (3) (1) Director means shall mean the Director of Correctional
15 Services; and

16 (4) Facility means any prison or other institution operated by the
17 department;

18 (5) General population means conditions of confinement that allow an
19 inmate to have out-of-cell time of at least one hundred three hours per
20 week;

21 (6) Immediate segregation means placement of an inmate in
22 restrictive housing for fifteen consecutive days or less;

23 (7) Long-term restrictive housing means placement of an inmate in
24 restrictive housing for more than ninety consecutive days in a calendar
25 year;

26 (8) Member of a vulnerable population means an inmate who is:

27 (a) Eighteen years of age or younger;

28 (b) Pregnant; or

29 (c) Diagnosed with a serious mental illness, a developmental
30 disability, or a traumatic brain injury;

31 (9) Restrictive housing means conditions of confinement that provide

1 limited contact with other inmates, strictly controlled movement while
2 out of cell, and out-of-cell time of less than seventy hours per week;

3 ~~(2) Department shall mean the Department of Correctional Services.~~

4 (10) Security threat means a threat to the security of the facility,
5 staff, the inmate himself or herself, other inmates, or the public;

6 (11) Serious mental illness means any mental health condition that
7 medical science affirms is caused by a biological disorder of the brain
8 and that substantially limits the life activities of the person with the
9 serious mental illness. Serious mental illness includes, but is not
10 limited to, (a) schizophrenia, (b) schizoaffective disorder, (c)
11 delusional disorder, (d) bipolar affective disorder, (e) major
12 depression, and (f) obsessive compulsive disorder;

13 (12) Solitary confinement means placement of an inmate in a cell for
14 an average of twenty-two hours or more per day for fifteen or more
15 consecutive days;

16 (13) Structured out-of-cell hours means hours that an inmate
17 confined to restrictive housing is allowed to spend outside of the
18 inmate's cell participating in required programming, treatment, and
19 educational activities;

20 (14) Traumatic brain injury means an acquired injury to the brain
21 caused by an external physical force, resulting in total or partial
22 functional disability or psychosocial impairment, or both, that adversely
23 affects a person's educational performance. Traumatic brain injury
24 applies to open or closed head injuries resulting in impairments in one
25 or more areas, including cognition; language; memory; attention;
26 reasoning; abstract thinking; judgment; problem solving; sensory,
27 perceptual, and motor abilities; psychosocial behavior; physical
28 functions; information processing; and speech. Traumatic brain injury
29 does not include brain injuries that are congenital or degenerative or
30 brain injuries induced by birth trauma; and

31 (15) Unstructured out-of-cell hours means hours that an inmate

1 confined to restrictive housing is allowed to spend outside of the
2 inmate's cell that are not structured out-of-cell hours.

3 Sec. 7. Section 83-173.03, Revised Statutes Supplement, 2019, is
4 amended to read:

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

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

21 (3) ~~No On and after March 1, 2020, no~~ inmate who is a member of a
22 vulnerable population shall be placed in restrictive housing. In line
23 with the least restrictive framework and subject to section 8 of this
24 act, an inmate who is a member of a vulnerable population may be assigned
25 to immediate segregation to protect himself or herself, staff, other
26 inmates, or inmates who are members of vulnerable populations pending
27 classification. The department shall adopt and promulgate rules and
28 regulations pursuant to the Administrative Procedure Act regarding
29 restrictive housing to address risks for inmates who are members of
30 vulnerable populations. Nothing in this subsection prohibits the
31 department from developing secure mental health housing to serve the

1 needs of inmates with serious mental illnesses ~~as defined in section~~
2 ~~44-792~~, developmental disabilities ~~as defined in section 71-1107~~, or
3 traumatic brain injuries ~~as defined in section 79-1118.01~~ in such a way
4 that provides for meaningful access to social interaction, exercise,
5 environmental stimulation, and therapeutic programming.

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

11 Sec. 8. The department shall not confine an inmate to immediate
12 segregation status for more than fifteen consecutive days. At the end of
13 fifteen consecutive days on immediate segregation status:

14 (1) If the inmate is a member of a vulnerable population, the inmate
15 shall be classified to general population status; and

16 (2) If the inmate is not a member of a vulnerable population, the
17 inmate shall be:

18 (a) Classified to restrictive housing status; or

19 (b) Classified to general population status.

20 Sec. 9. (1) The department shall not place or retain an inmate in
21 restrictive housing for more than ninety days in any calendar year,
22 whether consecutive or not, due to a security threat posed by the inmate
23 unless there is an individualized determination made by a specialized
24 inmate classification committee in accordance with this section.

25 (2) The director shall convene a specialized inmate classification
26 committee to make determinations under this section. The committee shall
27 consist of such employees of the department as the director determines to
28 be appropriate but shall include at least one qualified mental health
29 professional.

30 (3) Before the department may place or retain an inmate in
31 restrictive housing beyond the duration specified in subsection (1) of

1 this section, the specialized inmate classification committee must find
2 by a preponderance of the evidence that less restrictive alternatives are
3 unsuitable in light of a continuing and serious security threat as a
4 result of the inmate's:

5 (a) History of serious violent behavior in correctional facilities;

6 (b) Acts such as escapes or attempted escapes from secure
7 correctional settings;

8 (c) Acts or threats of violence likely to destabilize the facility
9 environment to such a degree that the order and security of the facility
10 are threatened;

11 (d) Membership in a security threat group accompanied by a finding
12 based on specific and reliable information that the inmate either has
13 engaged in dangerous or threatening behavior directed by the group or
14 directs the dangerous or threatening behavior of others; or

15 (e) Incitement or threats to incite group disturbances in a
16 correctional facility.

17 (4) After making a determination under subsection (3) of this
18 section, the inmate shall be provided a written statement of the facts
19 upon which such determination is based. Such written statement shall be
20 provided to the Public Counsel and the office of Inspector General of the
21 Nebraska Correctional System. This subsection does not require disclosure
22 of information to the inmate if such disclosure would present a security
23 threat.

24 (5) The placement and retention of an inmate in long-term
25 restrictive housing shall be periodically reviewed by the department
26 pursuant to departmental rules and regulations. The decision to retain an
27 inmate confined to restrictive housing for more than one hundred eighty
28 consecutive days must be personally reviewed by the director every thirty
29 days thereafter until the inmate is released from restrictive housing.

30 Sec. 10. Inmates confined to restrictive housing shall be provided
31 daily out-of-cell time as follows:

1 (1) Inmates confined to restrictive housing for more than fifteen
2 consecutive days, but less than one hundred eighty days, shall be
3 provided at least four out-of-cell hours per day, at least two of which
4 shall be unstructured out-of-cell hours; and

5 (2) Inmates confined to restrictive housing for more than one
6 hundred eighty consecutive days shall be provided at least six out-of-
7 cell hours per day, at least three of which shall be unstructured out-of-
8 cell hours.

9 Sec. 11. The department shall provide all inmates confined to long-
10 term restrictive housing with continuous access to:

11 (1) Mental health treatment as prescribed by treatment
12 professionals; and

13 (2) All necessary clinical programming as recommended by the Board
14 of Parole.

15 Sec. 12. (1) The department shall not place inmates in double
16 bunking.

17 (2) For purposes of this section, double bunking means putting two
18 inmates in a single restrictive housing unit cell for any period of time.

19 Sec. 13. No inmate shall be retained on restrictive housing for
20 more than three hundred and sixty-five consecutive days, unless the
21 inmate has committed a Class I or Class II rules violation while on long-
22 term restrictive housing status.

23 Sec. 14. No inmate shall be discharged from custody into the
24 community directly from long-term restrictive housing. The department
25 shall provide inmates in long-term restrictive housing with at least one
26 hundred twenty days to transition from restrictive housing to the
27 community.

28 Sec. 15. Section 83-4,111, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 83-4,111 (1) The department shall adopt and promulgate rules and
31 regulations pursuant to the Administrative Procedure Act to establish

1 criteria for justifiably and reasonably determining which rights and
2 privileges an inmate forfeits upon commitment and which rights and
3 privileges an inmate retains.

4 (2) Such rules and regulations shall include, but not be limited to,
5 criteria concerning (a) disciplinary procedures and a code of offenses
6 for which discipline may be imposed, (b) restrictive housing and
7 immediate segregation ~~disciplinary segregation~~, (c) grievance procedures,
8 (d) good-time credit, (e) mail and visiting privileges, and (f)
9 rehabilitation opportunities.

10 (3) The rules and regulations adopted pursuant to the Nebraska
11 Department of Correctional Services Disciplinary Procedures Act ~~sections~~
12 ~~83-4,109 to 83-4,123~~ shall in no manner deprive an inmate of any rights
13 and privileges to which he or she is entitled under other provisions of
14 law or under policies adopted in a correctional facility.

15 Sec. 16. (1) For purposes of this section:

16 (a) Benefit means any leniency, immunity, financial payment, reward,
17 or amelioration of current or future conditions of incarceration that has
18 been requested by the informant or that has been offered or may be
19 offered in the future to the informant in connection with such
20 informant's statement or testimony in the disciplinary proceeding in
21 which the department intends to use such statement or call such informant
22 as a witness;

23 (b) Disciplinary proceeding means any proceeding whereby an inmate
24 may be placed or retained in restrictive housing;

25 (c) Informant means an inmate who:

26 (i) Offers a statement or testimony about another inmate for use in
27 a disciplinary proceeding; and

28 (ii) Who has requested or received or may in the future receive a
29 benefit in connection with such statement or testimony; and

30 (d) Office means the office of Inspector General of the Nebraska
31 Correctional System;

1 (2) The department shall maintain a searchable record of:

2 (a) Each disciplinary proceeding in which a statement or testimony
3 is offered or provided by an informant against another inmate's interest
4 and the outcome of such disciplinary proceeding; and

5 (b) Any benefit requested by or offered or provided to an informant
6 in connection with such statement or testimony.

7 (3) If the department uses the statement or testimony of an
8 informant in a disciplinary proceeding, the department shall disclose to
9 the office and the Public Counsel:

10 (a) The disciplinary record of the informant;

11 (b) Any benefit requested by or offered or provided to an informant
12 or that may be offered or provided to the informant in the future in
13 connection with such statement or testimony;

14 (c) The department's assessment of the informant's credibility and
15 the tool used to make such assessment;

16 (d) Any specific statement allegedly made by the inmate against whom
17 the informant will provide a statement or testify and the time, place,
18 and manner of the inmate's alleged statement;

19 (e) Information regarding any incident known to the department in
20 which the informant provided a statement or testified or the department
21 intended to have the informant provide a statement or testify in a
22 disciplinary proceeding involving another inmate and whether the
23 informant requested, was offered, or received any benefit in exchange for
24 or subsequent to such statement or testimony; and

25 (f) Any occasion known to the department in which the informant, in
26 relation to a disciplinary proceeding, recanted a statement or testimony
27 about another inmate and any transcript or records related to such
28 recantation.

29 (4) The department shall disclose the information described in
30 subsection (3) of this section to the office and the Public Counsel no
31 more than three business days after the disciplinary proceeding in which

1 an informant's statement or testimony was used. If the information could
2 not have been discovered or obtained by the department by such deadline
3 with the exercise of due diligence, or could not practicably be disclosed
4 sooner, the department may disclose the information as soon as
5 practicable after such deadline.

6 (5) If, at any time subsequent to the deadline in subsection (4) of
7 this section, the department discovers additional material required to be
8 disclosed under subsection (3) of this section, the department shall
9 promptly notify the office and Public Counsel and disclose such
10 information to them.

11 (6) A willful violation of this section shall constitute a violation
12 of section 81-8,254.

13 Sec. 17. Section 83-4,112, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 83-4,112 (1) Copies of all rules and regulations shall be filed
16 pursuant to the Administrative Procedure Act and shall be distributed to
17 all ~~adult correctional~~ facilities in this state.

18 (2) Inmates shall be informed of rules and policies concerning
19 behavior and discipline, inmate rights and developmental opportunities,
20 work or education programs, and complaint procedures at the facility.
21 Such rules and policies, or significant portions thereof, shall be posted
22 at conspicuous places throughout the facility.

23 Sec. 18. Section 83-4,113, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 83-4,113 All ~~adult~~ disciplinary action within the system of the
26 department shall be pursuant to the Nebraska Department of Correctional
27 Services Disciplinary Procedures Act sections 83-4,109 to 83-4,123.
28 Inmates shall be informed of rules of behavior and discipline. Such rules
29 shall be posted or otherwise made available to the inmates.

30 Sec. 19. Section 83-4,114.01, Revised Statutes Cumulative
31 Supplement, 2018, is amended to read:

1 83-4,114.01 (1) The chief executive officer of each facility of the
2 department shall be responsible for the discipline of inmates who reside
3 in such facility. No inmate shall be punished except upon the order of
4 the chief executive officer of the facility, and no punishment shall be
5 imposed otherwise than in accordance with this section.

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

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

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

26 (5) The department shall adopt and promulgate rules and regulations
27 to define the term flagrant or serious misconduct.

28 Sec. 20. Section 83-4,115, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 83-4,115 Any review of disciplinary action imposed upon any person
31 shall be pursuant to the Nebraska Department of Correctional Services

1 ~~Disciplinary Procedures Act sections 83-4,109 to 83-4,123.~~ The director
2 shall establish procedures to review the disciplinary actions of inmates.
3 The director may establish one or more administrative review boards
4 within the department to review disciplinary actions. No member of any
5 review board shall also be a member of a disciplinary hearing board, but
6 the same considerations for appointing members to the disciplinary
7 hearing board may apply to appointing members to a review board.

8 Sec. 21. Section 83-4,120, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 83-4,120 A written report of any infraction shall be filed with the
11 warden within seventy-two hours of the occurrence of such infraction or
12 the discovery of it. Such report shall be placed in the files of the
13 ~~institution or~~ facility.

14 Sec. 22. Section 83-4,122, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 83-4,122 In disciplinary cases which may involve the imposition of
17 disciplinary isolation, including placement or retention in restrictive
18 housing, or the loss of good-time credit, the director shall establish
19 disciplinary procedures consistent with the following principles:

20 (1) Any person or persons who initiate a disciplinary charge against
21 an inmate shall not determine the disposition of the charge. The director
22 may establish one or more disciplinary boards to hear and determine
23 charges. To the extent possible, a person representing the treatment or
24 counseling staff of the ~~institution or~~ facility shall participate in
25 determining the disposition of the disciplinary case;

26 (2) An inmate charged with a violation of department rules of
27 behavior shall be given notice of the charge including a statement of the
28 misconduct alleged and of the rules such conduct is alleged to violate.
29 Such notice shall be given at least twenty-four hours before a hearing on
30 the matter is held;

31 (3) An inmate charged with a violation of rules shall be entitled to

1 a hearing on that charge at which time he or she shall have an
2 opportunity to appear before and address the person or persons deciding
3 the charge. The individual bringing the charge shall also appear at such
4 hearing;

5 (4) The person or persons determining the disposition of the charge
6 may also summon to testify any witnesses or other persons with relevant
7 knowledge of the incident. The inmate charged shall be permitted to
8 question any person so summoned and shall be allowed to call witnesses
9 and present documentary evidence in his or her defense when permitting
10 him or her to do so will not be unduly hazardous to institutional safety
11 or correctional goals. The person or persons determining the disposition
12 of charges shall state his, her, or their reasons in writing for refusing
13 to call a witness;

14 (5) If the charge is sustained, the inmate charged shall be entitled
15 to a written statement of the decision by the persons determining the
16 disposition of the charge, which statement shall include the basis for
17 the decision and the disciplinary action, if any, to be imposed;

18 (6) A change in work, education, or other program assignment shall
19 not be used for disciplinary purposes;

20 (7) The inmate charged shall be entitled to an adequate opportunity
21 to prepare a defense. Such opportunity shall include the right to
22 assistance and advice in preparing and presenting a defense from any
23 inmate in general population or staff member at the facility ~~institution~~
24 where the hearing is held. Such inmate or staff member may serve in such
25 an advisory capacity for the inmate so charged;

26 (8) Any hearing conducted pursuant to this section shall be tape
27 recorded, and such recording shall be preserved for a period of six
28 months; and

29 (9) The standard of proof to sustain the charge shall be substantial
30 evidence.

31 Sec. 23. Section 83-4,123, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 83-4,123 Nothing in the Nebraska Department of Correctional Services
3 Disciplinary Procedures Act sections ~~83-4,109 to 83-4,123~~ shall be
4 construed as to restrict or impair an inmate's free access to the courts
5 and necessary legal assistance in any cause of action arising under such
6 sections or to judicial review for disciplinary cases which involve the
7 imposition of disciplinary isolation, including placement or retention in
8 restrictive housing, or the loss of good-time credit in accordance with
9 the Administrative Procedure Act. Such judicial review may only be
10 invoked after completion of any review of the hearing prescribed by
11 section 83-4,122 by the department.

12 Sec. 24. Original sections 83-4,109, 83-4,110, 83-4,111, 83-4,112,
13 83-4,113, 83-4,115, 83-4,120, 83-4,122, and 83-4,123, Reissue Revised
14 Statutes of Nebraska, sections 25-3401, 83-170, 83-173, and 83-4,114.01,
15 Revised Statutes Cumulative Supplement, 2018, and section 83-173.03,
16 Revised Statutes Supplement, 2019, are repealed.

17 Sec. 25. The following section is outright repealed: Section
18 83-173.02, Revised Statutes Cumulative Supplement, 2018.

19 Sec. 26. Since an emergency exists, this act takes effect when
20 passed and approved according to law.