

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 624**

Introduced by McCollister, 20.

Read first time January 20, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to treatment and corrections; to amend  
2 sections 29-2204.02, 29-3803, 29-3804, 29-4014, 81-1850, 83-1,110,  
3 83-4,111, 83-4,122, and 83-4,123, Reissue Revised Statutes of  
4 Nebraska, and sections 29-2204, 83-170, 83-1,109, 83-1,135, and  
5 83-4,114.01, Revised Statutes Cumulative Supplement, 2020; to  
6 provide for earned time credit reductions in the minimum terms of  
7 prisoners at the Department of Correctional Services; to define a  
8 term; to harmonize provisions; and to repeal the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2204, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 29-2204 (1) Except when a term of life imprisonment is required by  
4 law, in imposing a sentence upon an offender for any class of felony  
5 other than a Class III, IIIA, or IV felony, the court shall fix the  
6 minimum and the maximum terms of the sentence to be served within the  
7 limits provided by law. The maximum term shall not be greater than the  
8 maximum limit provided by law, and:

9 (a) The minimum term fixed by the court shall be any term of years  
10 less than the maximum term imposed by the court; or

11 (b) The minimum term shall be the minimum limit provided by law.

12 (2) When a maximum term of life is imposed by the court for a Class  
13 IB felony, the minimum term fixed by the court shall be:

14 (a) Any term of years not less than the minimum limit provided by  
15 law; or

16 (b) A term of life imprisonment.

17 (3) When a maximum term of life is imposed by the court for a Class  
18 IA felony, the minimum term fixed by the court shall be:

19 (a) A term of life imprisonment; or

20 (b) Any term of years not less than the minimum limit provided by  
21 law after consideration of the mitigating factors in section 28-105.02,  
22 if the defendant was under eighteen years of age at the time he or she  
23 committed the crime for which he or she was convicted.

24 (4) When the court is of the opinion that imprisonment may be  
25 appropriate but desires more detailed information as a basis for  
26 determining the sentence to be imposed than has been provided by the  
27 presentence report required by section 29-2261, the court may commit an  
28 offender to the Department of Correctional Services. During that time,  
29 the department shall conduct a complete study of the offender as provided  
30 in section 29-2204.03.

31 (5) Except when a term of life is required by law, whenever the

1 defendant was under eighteen years of age at the time he or she committed  
2 the crime for which he or she was convicted, the court may, in its  
3 discretion, instead of imposing the penalty provided for the crime, make  
4 such disposition of the defendant as the court deems proper under the  
5 Nebraska Juvenile Code.

6 (6)(a) When imposing an indeterminate sentence upon an offender  
7 under this section, the court shall:

8 (i) Advise the offender on the record the time the offender will  
9 serve on his or her minimum term before attaining parole eligibility  
10 assuming that no good time or earned time for which the offender will be  
11 eligible is lost; and

12 (ii) Advise the offender on the record the time the offender will  
13 serve on his or her maximum term before attaining mandatory release  
14 assuming that no good time or earned time for which the offender will be  
15 eligible is lost.

16 (b) If any discrepancy exists between the statement of the minimum  
17 limit of the sentence and the statement of parole eligibility or between  
18 the statement of the maximum limit of the sentence and the statement of  
19 mandatory release, the statements of the minimum limit and the maximum  
20 limit shall control the calculation of the offender's term.

21 (c) If the court imposes more than one sentence upon an offender or  
22 imposes a sentence upon an offender who is at that time serving another  
23 sentence, the court shall state whether the sentences are to be  
24 concurrent or consecutive.

25 Sec. 2. Section 29-2204.02, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 29-2204.02 (1) Except when a term of probation is required by law as  
28 provided in subsection (2) of this section or except as otherwise  
29 provided in subsection (4) of this section, in imposing a sentence upon  
30 an offender for a Class III, IIIA, or IV felony, the court shall:

31 (a) Impose a determinate sentence of imprisonment within the

1 applicable range in section 28-105; and

2 (b) Impose a sentence of post-release supervision, under the  
3 jurisdiction of the Office of Probation Administration, within the  
4 applicable range in section 28-105.

5 (2) If the criminal offense is a Class IV felony, the court shall  
6 impose a sentence of probation unless:

7 (a) The defendant is concurrently or consecutively sentenced to  
8 imprisonment for any felony other than another Class IV felony;

9 (b) The defendant has been deemed a habitual criminal pursuant to  
10 section 29-2221; or

11 (c) There are substantial and compelling reasons why the defendant  
12 cannot effectively and safely be supervised in the community, including,  
13 but not limited to, the criteria in subsections (2) and (3) of section  
14 29-2260. Unless other reasons are found to be present, that the offender  
15 has not previously succeeded on probation is not, standing alone, a  
16 substantial and compelling reason.

17 (3) If a sentence of probation is not imposed, the court shall state  
18 its reasoning on the record, advise the defendant of his or her right to  
19 appeal the sentence, and impose a sentence as provided in subsection (1)  
20 of this section.

21 (4) For any sentence of imprisonment for a Class III, IIIA, or IV  
22 felony for an offense committed on or after August 30, 2015, imposed  
23 consecutively or concurrently with (a) a sentence for a Class III, IIIA,  
24 or IV felony for an offense committed prior to August 30, 2015, or (b) a  
25 sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA  
26 felony, the court shall impose an indeterminate sentence within the  
27 applicable range in section 28-105 that does not include a period of  
28 post-release supervision, in accordance with the process set forth in  
29 section 29-2204.

30 (5) For any sentence of imprisonment for a misdemeanor imposed  
31 consecutively or concurrently with a sentence of imprisonment for a Class

1 III, IIIA, or IV felony for an offense committed on or after August 30,  
2 2015, the court shall impose a determinate sentence within the applicable  
3 range in section 28-106 unless the person is also committed to the  
4 Department of Correctional Services in accordance with section 29-2204  
5 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony  
6 committed prior to August 30, 2015, or (b) a sentence of imprisonment for  
7 a Class I, IA, IB, IC, ID, II, or IIA felony.

8 (6) If the defendant was under eighteen years of age at the time he  
9 or she committed the crime for which he or she was convicted, the court  
10 may, in its discretion, instead of imposing the penalty provided for the  
11 crime, make such disposition of the defendant as the court deems proper  
12 under the Nebraska Juvenile Code.

13 (7)(a) When imposing a determinate sentence upon an offender under  
14 this section, the court shall:

15 (i) Advise the offender on the record the time the offender will  
16 serve on his or her term of imprisonment before his or her term of post-  
17 release supervision assuming that no good time or earned time for which  
18 the offender will be eligible is lost;

19 (ii) Advise the offender on the record the time the offender will  
20 serve on his or her term of post-release supervision; and

21 (iii) When imposing a sentence following revocation of post-release  
22 supervision, advise the offender on the record the time the offender will  
23 serve on his or her term of imprisonment, including credit for time  
24 served, assuming that no good time or earned time for which the offender  
25 will be eligible is lost.

26 (b) If a period of post-release supervision is required but not  
27 imposed by the sentencing court, the term of post-release supervision  
28 shall be the minimum provided by law.

29 (c) If the court imposes more than one sentence upon an offender or  
30 imposes a sentence upon an offender who is at that time serving another  
31 sentence, the court shall state whether the sentences are to be

1 concurrent or consecutive.

2 (d) If the offender has been sentenced to two or more determinate  
3 sentences and one or more terms of post-release supervision, the offender  
4 shall serve all determinate sentences before being released on post-  
5 release supervision.

6 Sec. 3. Section 29-3803, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 29-3803 Any person who is imprisoned in a facility operated by the  
9 Department of Correctional Services may request in writing to the  
10 director final disposition of any untried indictment, information, or  
11 complaint pending against him or her in this state. Upon receiving any  
12 request from a prisoner for final disposition of any untried indictment,  
13 information, or complaint, the director shall:

14 (1) Furnish the prosecutor with a certificate stating the term of  
15 commitment under which the prisoner is being held, the time already  
16 served on the sentence, the time remaining to be served, the good time  
17 and earned time credited to the prisoner earned, the time of the  
18 prisoner's parole eligibility, and any decision of the Board of Parole  
19 relating to the prisoner;

20 (2) Send by registered or certified mail, return receipt requested,  
21 one copy of the request and the certificate to the court in which the  
22 untried indictment, information, or complaint is pending and one copy to  
23 the prosecutor charged with the duty of prosecuting it; and

24 (3) Offer to deliver temporary custody of the prisoner to the  
25 appropriate authority in the city or county where the untried indictment,  
26 information, or complaint is pending.

27 Sec. 4. Section 29-3804, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 29-3804 The prosecutor in a city or county in which an untried  
30 indictment, information, or complaint is pending shall be entitled to  
31 have a prisoner, against whom he or she has lodged a detainer and who is

1 serving a term of imprisonment in any facility operated by the Department  
2 of Correctional Services, made available upon presentation of a written  
3 request for temporary custody or availability to the director. The court  
4 having jurisdiction of such indictment, information, or complaint shall  
5 duly approve, record, and transmit the prosecutor's request. Upon receipt  
6 of the prosecutor's written request the director shall:

7 (1) Furnish the prosecutor with a certificate stating the term of  
8 commitment under which the prisoner is being held, the time already  
9 served, the time remaining to be served on the sentence, the good time  
10 and earned time credited to the prisoner earned, the time of the  
11 prisoner's parole eligibility, and any decision of the Board of Parole  
12 relating to the prisoner; and

13 (2) Offer to deliver temporary custody of the prisoner to the  
14 appropriate authority in the city or county where the untried indictment,  
15 information, or complaint is pending in order that speedy and efficient  
16 prosecution may be had.

17 Sec. 5. Section 29-4014, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 29-4014 Any person convicted of a crime requiring registration as a  
20 sex offender pursuant to section 29-4003 and committed to the Department  
21 of Correctional Services shall attend appropriate sex offender treatment  
22 and counseling programming offered by the department. Refusal to  
23 participate in such programming shall not result in disciplinary action  
24 or a loss of good time or earned time credit on the part of the offender  
25 but shall require a civil commitment evaluation pursuant to section  
26 83-174.02 prior to the completion of his or her criminal sentence.

27 Sec. 6. Section 81-1850, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 81-1850 (1) Upon request of the victim and at the time of conviction  
30 of the offender, the county attorney of the jurisdiction in which a  
31 person is convicted of a felony shall forward to the Board of Parole, the

1 Department of Correctional Services, the county corrections agency, or  
2 the Department of Health and Human Services the name and address of any  
3 victim, as defined in section 29-119, of the convicted person. The board,  
4 the Department of Correctional Services, the county corrections agency,  
5 or the Department of Health and Human Services shall include the name in  
6 the file of the convicted person, but the name shall not be part of the  
7 public record of any parole hearings of the convicted person. Any victim,  
8 including a victim who has waived his or her right to notification at the  
9 time of conviction, may request the notification prescribed in this  
10 section, as applicable, by sending a written request to the board, the  
11 Department of Correctional Services, the county corrections agency, or  
12 the Department of Health and Human Services any time after the convicted  
13 person is incarcerated and until the convicted person is no longer under  
14 the jurisdiction of the board, the county corrections agency, or the  
15 Department of Correctional Services or, if the person is under the  
16 jurisdiction of the Department of Health and Human Services, within the  
17 three-year period after the convicted person is no longer under the  
18 jurisdiction of the board, the county corrections agency, or the  
19 Department of Correctional Services.

20 (2) A victim whose name appears in the file of the convicted person  
21 shall be notified by the Board of Parole:

22 (a) Within ninety days after conviction of an offender, of the  
23 tentative date of release and the earliest parole eligibility date of  
24 such offender;

25 (b) Of any parole hearings or proceedings;

26 (c) Of any decision of the Board of Parole;

27 (d) When a convicted person who is on parole is returned to custody  
28 because of parole violations; and

29 (e) If the convicted person has been adjudged a mentally disordered  
30 sex offender or is a convicted sex offender, when such person is released  
31 from custody or treatment.



1           Such notification shall be given in person, by telecommunication, or  
2 by mail.

3           (3) A victim whose name appears in the file of the convicted person  
4 shall be notified by the Department of Correctional Services or a county  
5 corrections agency:

6           (a) When a convicted person is granted a furlough or release from  
7 incarceration for twenty-four hours or longer or any transfer of the  
8 convicted person to community status;

9           (b) When a convicted person is released into community-based  
10 programs, including educational release and work release programs. Such  
11 notification shall occur at the beginning and termination of any such  
12 program;

13           (c) When a convicted person escapes or does not return from a  
14 granted furlough or release and again when the convicted person is  
15 returned into custody;

16           (d) When a convicted person is discharged from custody upon  
17 completion of his or her sentence. Such notice shall be given at least  
18 thirty days before discharge, when practicable;

19           (e) Of the (i) department's calculation of the earliest parole  
20 eligibility date of the prisoner with all potential good time, earned  
21 time, or disciplinary credits considered if the sentence exceeds ninety  
22 days or (ii) county corrections agency's calculation of the earliest  
23 release date of the prisoner. The victim may request one notice of the  
24 calculation described in this subdivision. Such information shall be  
25 mailed not later than thirty days after receipt of the request;

26           (f) Of any reduction in the prisoner's minimum sentence; and

27           (g) Of the victim's right to submit a statement as provided in  
28 section 81-1848.

29           (4) A victim whose name appears in the file of a convicted person  
30 shall be notified by the Department of Health and Human Services:

31           (a) When a person convicted of an offense listed in subsection (5)

1 of this section becomes the subject of a petition pursuant to the  
2 Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act  
3 prior to his or her discharge from custody upon the completion of his or  
4 her sentence or within thirty days after such discharge. The county  
5 attorney who filed the petition shall notify the Department of  
6 Correctional Services of such petition. The Department of Correctional  
7 Services shall forward the names and addresses of victims appearing in  
8 the file of the convicted person to the Department of Health and Human  
9 Services;

10 (b) When a person under a mental health board commitment pursuant to  
11 subdivision (a) of this subsection escapes from an inpatient facility  
12 providing board-ordered treatment and again when the person is returned  
13 to an inpatient facility;

14 (c) When a person under a mental health board commitment pursuant to  
15 subdivision (a) of this subsection is discharged or has a change in  
16 disposition from inpatient board-ordered treatment;

17 (d) When a person under a mental health board commitment pursuant to  
18 subdivision (a) of this subsection is granted a furlough or release for  
19 twenty-four hours or longer; and

20 (e) When a person under a mental health board commitment pursuant to  
21 subdivision (a) of this subsection is released into educational release  
22 programs or work release programs. Such notification shall occur at the  
23 beginning and termination of any such program.

24 (5) Subsection (4) of this section applies to persons convicted of  
25 at least one of the following offenses which is also alleged to be the  
26 recent act or threat underlying the commitment of such persons as  
27 mentally ill and dangerous or as dangerous sex offenders as defined in  
28 section 83-174.01:

29 (a) Murder in the first degree pursuant to section 28-303;

30 (b) Murder in the second degree pursuant to section 28-304;

31 (c) Kidnapping pursuant to section 28-313;

- 1 (d) Assault in the first degree pursuant to section 28-308;
- 2 (e) Assault in the second degree pursuant to section 28-309;
- 3 (f) Sexual assault in the first degree pursuant to section 28-319;
- 4 (g) Sexual assault in the second degree pursuant to section 28-320;
- 5 (h) Sexual assault of a child in the first degree pursuant to  
6 section 28-319.01;
- 7 (i) Sexual assault of a child in the second or third degree pursuant  
8 to section 28-320.01;
- 9 (j) Stalking pursuant to section 28-311.03; or
- 10 (k) An attempt, solicitation, or conspiracy to commit an offense  
11 listed in subdivisions (a) through (j) of this subsection.
- 12 (6) A victim whose name appears in the file of a convicted person  
13 shall be notified by the Board of Pardons:
- 14 (a) Of any pardon or commutation proceedings; and
- 15 (b) If a pardon or commutation has been granted.
- 16 (7) The Board of Parole, the Department of Correctional Services,  
17 the Department of Health and Human Services, and the Board of Pardons  
18 shall adopt and promulgate rules and regulations as needed to carry out  
19 this section.
- 20 (8) The victim's address and telephone number maintained by the  
21 Department of Correctional Services, the Department of Health and Human  
22 Services, the county corrections agency, or the Board of Parole pursuant  
23 to subsection (1) of this section shall be exempt from disclosure under  
24 public records laws and federal freedom of information laws, as such laws  
25 existed on January 1, 2004.
- 26 Sec. 7. Section 83-170, Revised Statutes Cumulative Supplement,  
27 2020, is amended to read:
- 28 83-170 As used in the Nebraska Treatment and Corrections Act, unless  
29 the context otherwise requires:
- 30 (1) Board means the Board of Parole;
- 31 (2) Committed offender means any person who, under any provision of

1 law, is sentenced or committed to a facility operated by the department  
2 or is sentenced or committed to the department other than a person  
3 adjudged to be as described in subdivision (1), (2), (3)(b), or (4) of  
4 section 43-247 by a juvenile court;

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

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

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

9 (6) Earned time means any reduction of sentence granted pursuant to  
10 section 8 of this act;

11 (7) (6) Facility means any prison, reformatory, training school,  
12 reception center, community guidance center, group home, or other  
13 institution operated by the department;

14 (8) (7) Good time means any reduction of sentence granted pursuant  
15 to sections 83-1,107 and 83-1,108;

16 (9) (8) Maximum term means the maximum sentence provided by law or  
17 the maximum sentence imposed by a court, whichever is shorter;

18 (10) (9) Minimum term means the minimum sentence provided by law or  
19 the minimum sentence imposed by a court, whichever is longer;

20 (11) (10) Pardon authority means the power to remit fines and  
21 forfeitures and to grant respites, reprieves, pardons, or commutations;

22 (12) (11) Parole term means the time from release on parole to the  
23 completion of the maximum term, reduced by good time;

24 (13) (12) Person committed to the department means any person  
25 sentenced or committed to a facility within the department;

26 (14) (13) Restrictive housing means conditions of confinement that  
27 provide limited contact with other offenders, strictly controlled  
28 movement while out of cell, and out-of-cell time of less than twenty-four  
29 hours per week; and

30 (15) (14) Solitary confinement means the status of confinement of an  
31 inmate in an individual cell having solid, soundproof doors and which

1 deprives the inmate of all visual and auditory contact with other  
2 persons.

3       Sec. 8. (1) The department shall provide earned time credit to  
4 committed offenders as provided in this section. Earned time shall be  
5 credited against the minimum term of an offender's sentence. Earned time  
6 credit shall be granted for satisfactory completion of department-  
7 approved pro-social and rehabilitative activities.

8       (2) Pro-social and rehabilitative activities include, but are not  
9 limited to, activities involving employment, education, self-betterment  
10 groups, peer support, misconduct reduction, drug treatment, spiritual  
11 awareness, entrepreneurship courses, and restorative justice training.

12       (3) Earned time credit shall be granted in the following amounts:

13       (a) One month for completion of any pro-social and rehabilitative  
14 activity that requires less than ninety days to complete;

15       (b) One month for each month it takes to complete any pro-social and  
16 rehabilitative activity that requires ninety days or longer to complete;

17       (c) One year for successful completion of a general educational  
18 development test;

19       (d) Three months for each college course completed;

20       (e) Six months for completion of forty hours of restorative justice  
21 training;

22       (f) One year for each year serving as an intentional peer support  
23 volunteer;

24       (g) One month for each month participating in a peer support program  
25 other than as described in subdivision (3)(f) of this section;

26       (h) Three months for each year employed for the same employer;

27       (i) Three months for each year of involvement in a self-betterment  
28 group; and

29       (j) Six months for each year the committed offender is not found  
30 guilty of a Class I, II, or III offense under the department's  
31 disciplinary code. Reductions earned under this subdivision (3)(j) shall

1 not be subject to forfeit or withholding by the department.

2 (4) The total reductions under this section shall be credited from  
3 the date of sentence, which shall include any term of confinement prior  
4 to sentence and commitment as provided pursuant to section 83-1,106, and  
5 shall be deducted from the minimum term, to determine the date when the  
6 committed offender becomes eligible for parole.

7 (5) Except as provided in subdivision (3)(j) of this section, while  
8 a committed offender is in the custody of the department, reductions of  
9 terms granted pursuant to this section may be forfeited, withheld, and  
10 restored by the chief executive officer of the facility with the approval  
11 of the director after the offender has been notified regarding the  
12 charges of misconduct.

13 Sec. 9. Section 83-1,109, Revised Statutes Cumulative Supplement,  
14 2020, is amended to read:

15 83-1,109 The chief executive officer of a facility shall regularly  
16 report all good time and earned time and all forfeitures, withholdings,  
17 and restorations of good time and earned time to the director. On the  
18 basis of such report, the director shall inform the board and the  
19 Director of Supervision and Services of all committed offenders who are  
20 expected to become eligible for release on parole within the next three  
21 months.

22 Sec. 10. Section 83-1,110, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 83-1,110 (1) Every committed offender shall be eligible for parole  
25 when the offender has served one-half the minimum term of his or her  
26 sentence as provided in sections 83-1,107 and 83-1,108 and section 8 of  
27 this act. The board shall conduct a parole review not later than sixty  
28 days prior to the date a committed offender becomes eligible for parole  
29 as provided in this subsection, except that if a committed offender is  
30 eligible for parole upon his or her commitment to the department, a  
31 parole review shall occur as early as is practical. No such reduction of

1 sentence shall be applied to any sentence imposing a mandatory minimum  
2 term.

3 (2) Every committed offender sentenced to consecutive terms, whether  
4 received at the same time or at any time during the original sentence,  
5 shall be eligible for release on parole when the offender has served the  
6 total of one-half the minimum term as provided in sections 83-1,107 and  
7 83-1,108 and section 8 of this act. The maximum terms shall be added to  
8 compute the new maximum term which, less good time, shall determine the  
9 date when discharge from the custody of the state becomes mandatory.

10 Sec. 11. Section 83-1,135, Revised Statutes Cumulative Supplement,  
11 2020, is amended to read:

12 83-1,135 Sections 83-170 to 83-1,135.05 and section 8 of this act  
13 shall be known and may be cited as the Nebraska Treatment and Corrections  
14 Act.

15 Sec. 12. Section 83-4,111, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 83-4,111 (1) The department shall adopt and promulgate rules and  
18 regulations to establish criteria for justifiably and reasonably  
19 determining which rights and privileges an inmate forfeits upon  
20 commitment and which rights and privileges an inmate retains.

21 (2) Such rules and regulations shall include, but not be limited to,  
22 criteria concerning (a) disciplinary procedures and a code of offenses  
23 for which discipline may be imposed, (b) disciplinary segregation, (c)  
24 grievance procedures, (d) ~~good-time~~ good time credit, (e) mail and  
25 visiting privileges, ~~and~~ (f) rehabilitation opportunities, and (g) earned  
26 time credit.

27 (3) The rules and regulations adopted pursuant to sections 83-4,109  
28 to 83-4,123 shall in no manner deprive an inmate of any rights and  
29 privileges to which he or she is entitled under other provisions of law  
30 or under policies adopted in a correctional facility.

31 Sec. 13. Section 83-4,114.01, Revised Statutes Cumulative

1 Supplement, 2020, is amended to read:

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

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

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

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

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

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



1           83-4,122 In disciplinary cases which may involve the imposition of  
2 disciplinary isolation or the loss of good time or earned time ~~good-time~~  
3 credit, the director shall establish disciplinary procedures consistent  
4 with the following principles:

5           (1) Any person or persons who initiate a disciplinary charge against  
6 an inmate shall not determine the disposition of the charge. The director  
7 may establish one or more disciplinary boards to hear and determine  
8 charges. To the extent possible, a person representing the treatment or  
9 counseling staff of the institution or facility shall participate in  
10 determining the disposition of the disciplinary case;

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

16           (3) An inmate charged with a violation of rules shall be entitled to  
17 a hearing on that charge at which time he or she shall have an  
18 opportunity to appear before and address the person or persons deciding  
19 the charge. The individual bringing the charge shall also appear at such  
20 hearing;

21           (4) The person or persons determining the disposition of the charge  
22 may also summon to testify any witnesses or other persons with relevant  
23 knowledge of the incident. The inmate charged shall be permitted to  
24 question any person so summoned and shall be allowed to call witnesses  
25 and present documentary evidence in his or her defense when permitting  
26 him or her to do so will not be unduly hazardous to institutional safety  
27 or correctional goals. The person or persons determining the disposition  
28 of charges shall state his, her, or their reasons in writing for refusing  
29 to call a witness;

30           (5) If the charge is sustained, the inmate charged shall be entitled  
31 to a written statement of the decision by the persons determining the

1 disposition of the charge, which statement shall include the basis for  
2 the decision and the disciplinary action, if any, to be imposed;

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

5 (7) The inmate charged shall be entitled to an adequate opportunity  
6 to prepare a defense. Such opportunity shall include the right to  
7 assistance and advice in preparing and presenting a defense from any  
8 inmate in general population or staff member at the institution where the  
9 hearing is held. Such inmate or staff member may serve in such an  
10 advisory capacity for the inmate so charged;

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

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

16 Sec. 15. Section 83-4,123, Reissue Revised Statutes of Nebraska, is  
17 amended to read:

18 83-4,123 Nothing in sections 83-4,109 to 83-4,123 shall be construed  
19 as to restrict or impair an inmate's free access to the courts and  
20 necessary legal assistance in any cause of action arising under such  
21 sections or to judicial review for disciplinary cases which involve the  
22 imposition of disciplinary isolation or the loss of good time or earned  
23 time ~~good-time~~ credit in accordance with the Administrative Procedure  
24 Act. Such judicial review may only be invoked after completion of any  
25 review of the hearing prescribed by section 83-4,122 by the department.

26 Sec. 16. Original sections 29-2204.02, 29-3803, 29-3804, 29-4014,  
27 81-1850, 83-1,110, 83-4,111, 83-4,122, and 83-4,123, Reissue Revised  
28 Statutes of Nebraska, and sections 29-2204, 83-170, 83-1,109, 83-1,135,  
29 and 83-4,114.01, Revised Statutes Cumulative Supplement, 2020, are  
30 repealed.