

LEGISLATIVE BILL 673

Approved by the Governor April 6, 1988

Introduced by Chambers, 11

AN ACT relating to penal and correctional institutions; to amend sections 83-4,122 and 83-4,123, Reissue Revised Statutes of Nebraska, 1943; to provide for tape recording certain hearings; to provide for judicial review as prescribed; and to repeal the original sections.

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

Section 1. That section 83-4,122, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-4,122. In disciplinary cases which may involve the imposition of disciplinary isolation, the loss of good-time credit, or a change in work, education, or other program assignment, the director shall establish disciplinary procedures consistent with the following principles:

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

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

(3) Any person charged with a violation of rules ~~is shall be~~ entitled to a hearing on that charge at which time he ~~shall~~ or she will have an opportunity to appear before and address the person or persons deciding the charge. The individual bringing the charge shall also appear at such hearing;

(4) The person or persons determining the disposition of the charge may also summon to testify any witnesses or other persons with relevant knowledge of the incident. The person charged shall be permitted to

question any person so summoned and shall be allowed to call witnesses and present documentary evidence in his or her defense when permitting him or her to do so will not be unduly hazardous to institutional safety or correctional goals. The person or persons determining the disposition of charges shall state his, her, or their reasons in writing for refusing to call a witness;

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

(6) A change in work, education, or other program assignment shall not be used for disciplinary purposes without prior review and approval of the warden; ~~and~~

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

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

Sec. 2. That section 83-4,123, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-4,123. Nothing in sections 83-4,109 to 83-4,123 shall be construed as to restrict or impair an inmate's free access to the courts and necessary legal assistance in any cause of action arising under sections 83-4,109 to 83-4,123 or to judicial review for disciplinary cases which involve the imposition of disciplinary isolation, the loss of good-time credit, or a change in work, education, or other program assignment in accordance with the Administrative Procedure Act. Such judicial review may only be invoked after completion of any review of the hearing prescribed by section 83-4,122 by the department.

Sec. 3. That original sections 83-4,122 and 83-4,123, Reissue Revised Statutes of Nebraska, 1943, are repealed.