

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 557

Introduced by Vargas, 7; DeBoer, 10; McKinney, 11.

Read first time January 17, 2023

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to treatment and corrections; to amend
- 2 sections 83-170, 83-173.03, and 83-4,114, Revised Statutes
- 3 Cumulative Supplement, 2022; to provide, change, and eliminate
- 4 definitions; to change provisions relating to restrictive housing
- 5 and solitary confinement; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 83-170, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 83-170 As used in the Nebraska Treatment and Corrections Act, unless
4 the context otherwise requires:

5 (1) Board means the Board of Parole;

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

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

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

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

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

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

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

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

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

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

28 (12) Person committed to the department means any person sentenced
29 or committed to a facility within the department; and

30 (13) Restrictive housing means conditions of confinement that
31 provide limited contact with other offenders, strictly controlled

1 movement while out of cell, and out-of-cell time of less than ten hours
2 per day. twenty-four hours per week; and

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

7 Sec. 2. Section 83-173.03, Revised Statutes Cumulative Supplement,
8 2022, is amended to read:

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

14 (2) No inmate shall be held in restrictive housing for more than
15 fifteen consecutive days.

16 ~~(3)~~ (2) The department shall adopt and promulgate rules and
17 regulations pursuant to the Administrative Procedure Act establishing
18 levels of restrictive housing as may be necessary to administer the
19 correctional system. Rules and regulations shall establish behavior,
20 conditions, and mental health status under which an inmate may be placed
21 in each confinement level as well as procedures for making such
22 determinations. Rules and regulations shall also provide for
23 individualized transition plans, developed with the active participation
24 of the committed offender, for each confinement level back to the general
25 population or to society.

26 (4) No ~~(3)~~ ~~On and after March 1, 2020, no~~ inmate who is a member of
27 a vulnerable population shall be placed in restrictive housing. In line
28 with the least restrictive framework, an inmate who is a member of a
29 vulnerable population may be assigned to immediate segregation to protect
30 himself or herself, staff, other inmates, or inmates who are members of
31 vulnerable populations pending classification. The department shall adopt

1 and promulgate rules and regulations pursuant to the Administrative
2 Procedure Act regarding restrictive housing to address risks for inmates
3 who are members of vulnerable populations. Nothing in this subsection
4 prohibits the department from developing secure mental health housing to
5 serve the needs of inmates with serious mental illnesses ~~as defined in~~
6 ~~section 44-792~~, developmental disabilities ~~as defined in section 71-1107~~,
7 or traumatic brain injuries ~~as defined in section 79-1118.01~~ in such a
8 way that provides for meaningful access to social interaction, exercise,
9 environmental stimulation, and therapeutic programming.

10 (5) ~~(4)~~ For purposes of this section:

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

13 (b) Member ~~, member~~ of a vulnerable population means an inmate who
14 is eighteen years of age or younger, pregnant, or diagnosed with a
15 serious mental illness ~~as defined in section 44-792~~, a developmental
16 disability ~~as defined in section 71-1107~~, or a traumatic brain injury;

17 (c) Serious mental illness means any mental health condition that
18 medical science affirms is caused by a biological disorder of the brain
19 and that substantially limits the life activities of the person with the
20 condition. A person shall still be considered to have a serious mental
21 illness notwithstanding the fact that, at a particular time, the mental
22 health condition does not, as a result of treatment or medication,
23 substantially limit such person's life activities. Serious mental illness
24 includes, but is not limited to: (i) schizophrenia, (ii) schizoaffective
25 disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v)
26 major depression, and (vi) obsessive compulsive disorder; and

27 (d) Traumatic brain injury has the same meaning as defined in
28 section 79-1118.01.

29 Sec. 3. Section 83-4,114, Revised Statutes Cumulative Supplement,
30 2022, is amended to read:

31 83-4,114 (1) There shall be no corporal punishment or disciplinary

1 restrictions on diet.

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

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

8 (b) Solitary confinement means confinement of an inmate for at least
9 twenty-two hours per day in an individual cell if:

10 (i) The cell deprives the inmate of all visual and auditory contact
11 with other persons;

12 (ii) The cell has reduced or no natural light;

13 (iii) The confinement involves a restriction or deprivation of
14 reading material, television, radios, or other property;

15 (iv) The confinement includes significant restrictions on
16 visitation; or

17 (v) The confinement restricts the inmate's ability to participate in
18 group activities, including eating with others.

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

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

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

31 (c) The number of inmates held in restrictive housing who have been

1 diagnosed with a mental illness or behavioral disorder and the type of
2 mental illness or behavioral disorder by inmate;

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

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

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

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

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

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

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

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

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

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

1 individuals, or have otherwise been engaged in activities related to
2 Nebraska's correctional system.

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

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

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

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

15 Sec. 4. Original sections 83-170, 83-173.03, and 83-4,114, Revised
16 Statutes Cumulative Supplement, 2022, are repealed.