

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 560

Introduced by Schumacher, 22.

Read first time January 18, 2017

Committee:

1 A BILL FOR AN ACT relating to correctional services; to amend section
2 83-4,111, Reissue Revised Statutes of Nebraska, and sections 83-170,
3 83-173.03, 83-4,114, and 83-4,114.01, Revised Statutes Cumulative
4 Supplement, 2016; to redefine terms; to change provisions relating
5 to restrictive housing, departmental rules and regulations, reports,
6 and inmate discipline; to harmonize provisions; to repeal the
7 original sections; and to declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 83-170, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

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

5 (1) Administrator means the Parole Administrator;

6 (2) Board means the Board of Parole;

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

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

13 (5) Director means the Director of Correctional Services;

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

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

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

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

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

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

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

29 (13) Restrictive housing means conditions of confinement, in the
30 least restrictive manner consistent with maintaining order in the
31 facility, that provide limited contact with other offenders, strictly

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

3 (14) Solitary confinement means confinement in an isolated cell,
4 alone or with a cell mate, for an average of twenty-two or more hours per
5 day, with limited human interaction or constructive activity and in an
6 environment that ensures maximum control ~~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. 2. Section 83-173.03, Revised Statutes Cumulative Supplement,
11 2016, is amended to read:

12 83-173.03 ~~(1) Beginning July 1, 2016, no inmate shall be held in~~
13 ~~restrictive housing unless done in the least restrictive manner~~
14 ~~consistent with maintaining order in the facility and pursuant to rules~~
15 ~~and regulations adopted and promulgated by the department pursuant to the~~
16 ~~Administrative Procedure Act.~~

17 (1) ~~(2)~~ The department shall adopt and promulgate rules and
18 regulations pursuant to the Administrative Procedure Act establishing
19 levels of restrictive housing as may be necessary to administer the
20 correctional system. Rules and regulations shall establish behavior,
21 conditions, and mental health status under which an inmate may be placed
22 in each confinement level as well as procedures for making such
23 determinations. Rules and regulations shall also provide for
24 individualized transition plans, developed with the active participation
25 of the committed offender, for each confinement level back to the general
26 population or to society.

27 (2) Any inmate confined in restrictive housing may, after the
28 ninetieth day in a calendar year of his or her confinement which occurs
29 after the effective date of this act, seek a review of the decision to
30 place him or her in restrictive housing. The review shall be conducted by
31 the district court of the county in which the correctional facility in

1 which the inmate is confined is located. A district judge may appoint a
2 special master to conduct the review. The district judge may hold further
3 proceedings with respect to the review or enter an order based upon
4 recommendations of the special master.

5 Sec. 3. Section 83-4,111, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 83-4,111 (1) No inmate shall be held in restrictive housing unless
8 done in the least restrictive manner consistent with maintaining order in
9 the facility and pursuant to rules and regulations adopted and
10 promulgated by the department pursuant to the Administrative Procedure
11 Act.

12 (2) On or after July 1, 2017, no inmate who is a member of a
13 vulnerable population shall be placed in restrictive housing. For
14 purposes of this section, vulnerable population means any inmate who is
15 eighteen years of age or younger, pregnant, or diagnosed with a serious
16 mental illness as defined in section 44-792. In line with the least
17 restrictive framework, inmates who are members of vulnerable populations
18 may be assigned to immediate segregation to protect staff, other inmates,
19 or the inmates who are members of the vulnerable populations pending
20 classification. The department shall also adopt and promulgate rules and
21 regulations pursuant to the Administrative Procedure Act regarding
22 restrictive housing to address risks for inmates who are members of
23 vulnerable populations. Nothing in this subsection prohibits the
24 department from developing secure mental health housing to serve the
25 needs of inmates with serious mental illnesses in such a way that
26 provides for meaningful access to social interaction, exercise,
27 environmental stimulation, and therapeutic programming.

28 (3) ~~(1)~~ The department shall adopt and promulgate rules and
29 regulations to establish criteria for justifiably and reasonably
30 determining which rights and privileges an inmate forfeits upon
31 commitment and which rights and privileges an inmate retains.

1 (4) ~~(2)~~ Such rules and regulations shall include, but not be limited
2 to, criteria concerning (a) disciplinary procedures and a code of
3 offenses for which discipline may be imposed, (b) restrictive housing
4 ~~disciplinary segregation~~, (c) grievance procedures, (d) good-time credit,
5 (e) mail and visiting privileges, and (f) rehabilitation opportunities.

6 (5) ~~(3)~~ The rules and regulations adopted pursuant to sections
7 83-4,109 to 83-4,123 shall in no manner deprive an inmate of any rights
8 and privileges to which he or she is entitled under other provisions of
9 law or under policies adopted in a correctional facility.

10 Sec. 4. Section 83-4,114, Revised Statutes Cumulative Supplement,
11 2016, is amended to read:

12 83-4,114 (1) There shall be no corporal punishment or disciplinary
13 restrictions on diet.

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

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

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

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

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

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

1 mental illness or behavioral disorder by inmate;

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

5 (e) The number of inmates who were released from restrictive housing
6 based upon an order of a district judge under subsection (2) of section
7 83-173.03;

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

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

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

16 (5)(a) There is hereby established within the department a long-term
17 restrictive housing work group. The work group shall consist of:

18 (i) The director and all deputy directors. The director shall serve
19 as the chairperson of the work group;

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

21 (iii) Two employees of the department who currently work with
22 inmates held in restrictive housing;

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

24 (v) Four members as follows appointed by the Governor:

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

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

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

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

5 (d) The director shall provide the work group with quarterly updates
6 on the department's policies related to the work group's subject matter.

7 Sec. 5. Section 83-4,114.01, Revised Statutes Cumulative Supplement,
8 2016, is amended to read:

9 83-4,114.01 (1) The chief executive officer of each facility of the
10 department shall be responsible for the discipline of inmates who reside
11 in such facility. No inmate shall be punished except upon the order of
12 the chief executive officer of the facility, and no punishment shall be
13 imposed otherwise than in accordance with this section.

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

23 (3) The chief executive officer shall maintain a record of breaches
24 of discipline, of the disposition of each case, and of the punishment, if
25 any, for each such breach. Each breach of discipline shall be entered in
26 the inmate's file, together with the disposition or punishment for the
27 breach.

28 (4) The chief executive officer may recommend to the director that
29 an inmate who is considered to be incorrigible by reason of frequent
30 intentional breaches of discipline or who is detrimental to the
31 discipline or the morale of the facility be transferred to another

1 facility for stricter safekeeping and closer confinement, subject to the
2 provisions of section 83-176.

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

5 Sec. 6. Original section 83-4,111, Reissue Revised Statutes of
6 Nebraska, and sections 83-170, 83-173.03, 83-4,114, and 83-4,114.01,
7 Revised Statutes Cumulative Supplement, 2016, are repealed.

8 Sec. 7. Since an emergency exists, this act takes effect when
9 passed and approved according to law.