

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 861**

Introduced by Schumacher, 22; Bolz, 29; Chambers, 11; Coash, 27; Ebke,  
32; Krist, 10; Mello, 5; Morfeld, 46; Pansing Brooks, 28;  
Seiler, 33; Williams, 36.

Read first time January 11, 2016

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Department of Correctional Services; to
- 2 amend sections 83-173.03 and 83-4,114, Revised Statutes Supplement,
- 3 2015; to provide for review by a district court of inmate
- 4 restrictive housing placement as prescribed; to provide for the
- 5 inclusion of such information in a report; and to repeal the
- 6 original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 83-173.03, Revised Statutes Supplement, 2015, is  
2 amended to read:

3 83-173.03 (1) Beginning July 1, 2016, no inmate shall be held in  
4 restrictive housing unless done in the least restrictive manner  
5 consistent with maintaining order in the facility and pursuant to rules  
6 and regulations adopted and promulgated by the department pursuant to the  
7 Administrative Procedure Act.

8 (2) Any inmate placed in restrictive housing may, upon the ninetieth  
9 day of his or her confinement, seek a review of the decision to place him  
10 or her in restrictive housing. The review shall be conducted by the  
11 district court of the county in which the correctional facility in which  
12 the inmate is confined is located. A district judge may appoint a  
13 magistrate to conduct the review. The district judge may hold further  
14 proceedings with respect to the review or enter an order based upon  
15 recommendations of the magistrate.

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 3) Rules and regulations may authorize the director to issue  
27 written directives, guidance documents, and operational manuals not  
28 inconsistent with law and rules and regulations. Such directives,  
29 guidance documents, and operational manuals shall be made available to  
30 the public in the same manner that rules and regulations are made  
31 available unless the safety and security of a correctional facility

1 ~~institution~~ would be placed at imminent and substantial risk by such  
2 publication. If any directive, guidance document, or operational manual  
3 is not made available to the public, notice shall be given to the deputy  
4 public counsel for corrections and to the Inspector General of the  
5 Nebraska Correctional System. The notice shall identify all documents not  
6 publicly available by title, number of pages, and date adopted. All  
7 directives, guidance documents, and operational manuals shall be made  
8 available to any member of the Legislature upon request. Security manuals  
9 shall be made available to the Legislature for inspection upon request,  
10 but shall not be copied or removed from secure locations as designated by  
11 the director.

12 Sec. 2. Section 83-4,114, Revised Statutes Supplement, 2015, is  
13 amended to read:

14 83-4,114 (1) There shall be no corporal punishment or disciplinary  
15 restrictions on diet.

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

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

22 (4) The director shall issue an annual report to the Governor and  
23 the Clerk of the Legislature. The report to the Clerk of the Legislature  
24 shall be issued electronically. For all inmates who were held in  
25 restrictive housing during the prior year, the report shall contain the  
26 race, gender, age, and length of time each inmate has continuously been  
27 held in restrictive housing. The report shall also 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 as defined in section 71-907 and the type  
2 of mental illness 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 released from restrictive housing  
7 based upon an order of a district judge under subsection (2) of section  
8 83-173.03;

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

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

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

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

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

21 (ii) The director of health services within the department;

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

23 (iv) Two employees of the department who currently work with inmates  
24 held in restrictive housing;

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

26 (vi) Four members as follows appointed by the Governor:

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

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

31 (b) The work group shall advise the department on policies and

1 procedures related to the proper treatment and care of offenders in long-  
2 term restrictive housing.

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

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

9 Sec. 3. Original sections 83-173.03 and 83-4,114, Revised Statutes  
10 Supplement, 2015, are repealed.