A BILL FOR AN ACT relating to correctional services; to amend section 83-4,111, Reissue Revised Statutes of Nebraska, and sections 83-170, 83-173.03, 83-4,114, and 83-4,114.01, Revised Statutes Cumulative Supplement, 2016; to redefine terms; to change provisions relating to restrictive housing, departmental rules and regulations, reports, and inmate discipline; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 83-170, Revised Statutes Cumulative Supplement, 2016, is amended to read:

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

(1) Administrator means the Parole Administrator;
(2) Board means the Board of Parole;
(3) Committed offender means any person who, under any provision of law, is sentenced or committed to a facility operated by the department or is sentenced or committed to the department other than a person adjudged to be as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 by a juvenile court;
(4) Department means the Department of Correctional Services;
(5) Director means the Director of Correctional Services;
(6) Facility means any prison, reformatory, training school, reception center, community guidance center, group home, or other institution operated by the department;
(7) Good time means any reduction of sentence granted pursuant to sections 83-1,107 and 83-1,108;
(8) Maximum term means the maximum sentence provided by law or the maximum sentence imposed by a court, whichever is shorter;
(9) Minimum term means the minimum sentence provided by law or the minimum sentence imposed by a court, whichever is longer;
(10) Pardon authority means the power to remit fines and forfeitures and to grant respites, reprieves, pardons, or commutations;
(11) Parole term means the time from release on parole to the completion of the maximum term, reduced by good time;
(12) Person committed to the department means any person sentenced or committed to a facility within the department;
(13) Restrictive housing means conditions of confinement, in the least restrictive manner consistent with maintaining order in the facility, that provide limited contact with other offenders, strictly
controlled movement while out of cell, and out-of-cell time of less than twenty-four hours per week; and

(14) Solitary confinement means confinement in an isolated cell, alone or with a cell mate, for an average of twenty-two or more hours per day, with limited human interaction or constructive activity and in an environment that ensures maximum control the status of confinement of an inmate in an individual cell having solid, soundproof doors and which deprives the inmate of all visual and auditory contact with other persons.

Sec. 2. Section 83-173.03, Revised Statutes Cumulative Supplement, 2016, is amended to read:

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

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

(2) Any inmate confined in restrictive housing may, after the ninetieth day in a calendar year of his or her confinement which occurs after the effective date of this act, seek a review of the decision to place him or her in restrictive housing. The review shall be conducted by the district court of the county in which the correctional facility in
which the inmate is confined is located. A district judge may appoint a
special master to conduct the review. The district judge may hold further
proceedings with respect to the review or enter an order based upon
recommendations of the special master.

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

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

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

(3) (4) The department shall adopt and promulgate rules and
regulations to establish criteria for justifiably and reasonably
determining which rights and privileges an inmate forfeits upon
commitment and which rights and privileges an inmate retains.
Such rules and regulations shall include, but not be limited to, criteria concerning (a) disciplinary procedures and a code of offenses for which discipline may be imposed, (b) restrictive housing disciplinary segregation, (c) grievance procedures, (d) good-time credit, (e) mail and visiting privileges, and (f) rehabilitation opportunities.

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

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

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

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

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

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

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

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

(c) The number of inmates held in restrictive housing who have been diagnosed with a mental illness or behavioral disorder and the type of
(d) The number of inmates who were released from restrictive housing directly to parole or into the general public and the reason for such release;

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

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

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

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

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

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

(ii) The behavioral health administrator within the department;

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

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

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

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

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

(b) The work group shall advise the department on policies and procedures related to the proper treatment and care of offenders in long-term restrictive housing.
(c) The director shall convene the work group's first meeting no later than September 15, 2015, and the work group shall meet at least semiannually thereafter. The chairperson shall schedule and convene the work group's meetings.

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

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

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

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

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

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

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

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

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