

One Hundred Fifth Legislature - First Session - 2017

Introducer's Statement of Intent

LB560

Chairperson: Senator Laura Ebke

Committee: Judiciary

Date of Hearing: March 22, 2017

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB560 pertains to the use of restrictive housing in the State's prison system. Restrictive housing is a phrase commonly used interchangeably with segregation and solitary confinement and serves as a prison within a prison. The use of restrictive housing was addressed extensively by the LR424 (2014) and LR34 (2015) Special Investigative Committees for the Department of Correctional Services; by LB598, a bill passed by the Legislature in 2015 implementing recommendations made by the LR424 Committee; and by the Vera Institute, which conducted a comprehensive assessment of the use restrictive housing pursuant to a contract with the Department of Correctional Services that the director entered into shortly after he was hired in 2015.

LB560 proposes to:

- 1) Implement a recommendation made by the LR34 Special Committee in its 2016 final report calling for the Legislature to create a statutory right to an administrative hearing to review continued assignment in "Longer-term Restrictive Housing"; and to eliminate statutory references to "Disciplinary Segregation", a recommendation that is backed by the Vera Institute;
- 2) Implement a recommendation from the Vera Institute that calls for a prohibition against placing vulnerable populations including teens, pregnant women, developmentally disabled, and mentally ill inmates in restrictive housing; and
- 3) Rewrites the statutory definition of "solitary confinement" to mean "confinement in an isolated cell for an average of 22 or more hours per day, with limited human interaction or constructive activity and in an environment that ensures maximum control" because the Vera Institute noted in its report to the Department that Nebraska statutory definition is not in keeping with common usage or case law.

Statutory right to an administrative hearing and thus judicial review of Longer-term Segregation

LB598 (2015) required the Department of Corrections to adopt meaningful rules and regulations pertaining to the use of restrictive housing to replace informal policies that were found to be problematic and was offered as an alternative to micromanagement of the Department by statute. LB598 provided that "[b]eginning 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.

The Department's new rules and regulations became effective in July of 2016, and instituted the use of mission specific housing classifications to manage the risk inmate behavior poses to the safety of the institution as an alternative to "disciplinary segregation" that had previously been used to sanction bad behavior and which was eliminated by the Department after the new rules were adopted. Importantly, "disciplinary segregation" was accomplished through a disciplinary hearing, from which an inmate could appeal through the Administrative Procedures Act, thereby preserving due process. Under the new rules inmates deemed to pose a safety risk are removed from the general population and placed in "immediate segregation" pending an assessment of the risk

posed, if any, and the development of a behavior modification plan, if necessary; and further, inmates who cannot be safely housed in the general population may be moved from immediate segregation into longer-term restrictive housing through risk assessment and housing classification which is not a final determination and not appealable. The LR34 Committee found that moving inmates into longer term restrictive housing in this manner effectively can place an inmate in indefinite segregation as a result of bad behavior without providing necessary due process and recommended judicial review be provided when moving inmates into longer-term restrictive housing.

Prohibition against placing vulnerable populations in restrictive housing

The Vera Institute report is framed within the context of the unusually poor restrictive housing conditions that exist due to severe overcrowding, staffing shortages, minimal mental health services, and lack of adequate programming, issues and conditions of concern to the LR34 Committee during hearings the Committee held in the fall of 2015.

The Vera report states:

"An extensive body of over 150 years of research in psychiatry, neuroscience, epidemiology, and anthropology has documented the detrimental impacts of solitary confinement on health. This body of evidence confirms what we know intuitively—that depriving human beings of social interaction and meaningful sensory stimulation results in undue suffering. The combination of social isolation, sensory deprivation, and enforced idleness is a toxic exposure that results in distinctive psychiatric symptoms, including anxiety, depression, anger, difficulties with impulse control, paranoia, visual and auditory hallucinations, cognitive disturbances, obsessive thoughts, hypersensitivity to stimuli, posttraumatic stress disorder, self-harm, suicide, and/or psychosis."

Further, the report states:

"Vera recommends that NDCS enact firmer, more explicit policies that exclude youth, pregnant women, and people with serious psychiatric illnesses, developmental and intellectual disabilities, and neurodegenerative diseases from placement in restrictive housing settings, particularly Longer-term Restrictive Housing. The department's intention to create mission-specific housing for these groups that provides additional programming, increased out-of-cell time, and opportunities for recreation is a critical first step. It is more likely to succeed if implemented in conjunction with commensurate increases in resources and staffing to deliver the quantity and quality of services necessary."

Rewrite definition of solitary confinement

A note in the Vera Report points out that the statutory definition of solitary confinement is not consistent with common usage or case law. The report states:

"Though Nebraska law and regulations assert that NDCS does not utilize "solitary confinement," its definition of the term—the confinement of someone "in an individual cell with solid, soundproof doors and which deprives the inmate of all visual and auditory contact with other persons" (Neb. Rev. Stat. 83-170(14))—is not consistent with common usage, case law, or academic scholarship on solitary confinement. Generally, the term is used to mean confinement in an isolated cell (alone or with a cellmate) for an average of 22 or more hours per day, with limited human interaction or constructive activity and in an environment that ensures maximum control."

Principal Introducer: _____

Senator Paul Schumacher