

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 99

Introduced by Spivey, 13; Guereca, 7; McKinney, 11.

Read first time January 10, 2025

Committee:

- 1 A BILL FOR AN ACT relating to treatment and corrections; to amend
- 2 sections 83-170, 83-173.03, and 83-4,114, Reissue Revised Statutes
- 3 of Nebraska; to provide, change, and eliminate definitions; to
- 4 change provisions relating to restrictive housing and solitary
- 5 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, Reissue Revised Statutes of Nebraska, is
2 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, Reissue Revised Statutes of Nebraska, is
8 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)(a) No inmate shall be held in restrictive housing for more than
15 fifteen consecutive days.

16 (b) No more than one inmate shall be placed in restrictive housing
17 in a cell designed for one individual, unless all such inmates
18 voluntarily agree to such placement in writing.

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

29 (4) No (3) On and after March 1, 2020, no inmate who is a member of
30 a vulnerable population shall be placed in restrictive housing. In line
31 with the least restrictive framework, an inmate who is a member of a

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

13 (5) ~~(4)~~ For purposes of this section: ~~r~~

14 (a) Developmental disability has the same meaning as in section
15 71-1107;

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

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

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

1 **Sec. 3.** Section 83-4,114, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 83-4,114 (1) There shall be no corporal punishment or disciplinary
4 restrictions on diet.

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

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

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

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

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

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

18 (iv) The confinement includes significant restrictions on
19 visitation; or

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

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

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

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

1 (c) The number of inmates held in restrictive housing who have been
2 diagnosed with a mental illness or behavioral disorder and the type of
3 mental illness or behavioral disorder by inmate;

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

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

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

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

15 (h) A description of all inmate housing areas that hold inmates in a
16 setting that is neither general population nor restrictive housing,
17 including the purpose of each setting, data on how many inmates were held
18 in such settings, the average length of stay in such settings,
19 information on programs provided in each setting, data on program
20 completions in each setting, staffing levels and types of staff in each
21 setting, and any other information or data relevant to the operation of
22 such settings. For the purposes of this subdivision, general population
23 means an inmate housing area that allows out-of-cell movement without the
24 use of restraints, a minimum of ten ~~six~~ hours per day of out-of-cell
25 time, regular access to programming areas outside the living unit, and
26 access to services available to the broader population.

27 **Sec. 4.** Original sections 83-170, 83-173.03, and 83-4,114, Reissue
28 Revised Statutes of Nebraska, are repealed.