

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 620**

Introduced by Vargas, 7.

Read first time January 20, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to treatment and corrections; to amend
- 2 sections 83-170, 83-173.03, and 83-4,114, Revised Statutes
- 3 Cumulative Supplement, 2020; to redefine terms; to limit the use of
- 4 restrictive housing and solitary confinement; and to repeal the
- 5 original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 83-170, Revised Statutes Cumulative Supplement,  
2 2020, is 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;

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 twenty-four  
2 hours per week or less than two hours per day; and

3 (14) Solitary confinement means the status of confinement of an  
4 inmate for at least twenty-two hours per day in an individual cell having  
5 solid, soundproof doors and which deprives the inmate of all visual and  
6 auditory contact with other persons; has reduced or no natural light;  
7 involves a restriction or deprivation of reading material, television,  
8 radios, or other property; includes significant restrictions on  
9 visitation; or restricts the ability to participate in group activities,  
10 including eating with others.

11 Sec. 2. Section 83-173.03, Revised Statutes Cumulative Supplement,  
12 2020, is amended to read:

13 83-173.03 (1) No inmate shall be held in restrictive housing unless  
14 done in the least restrictive manner consistent with maintaining order in  
15 the facility and pursuant to rules and regulations adopted and  
16 promulgated by the department pursuant to the Administrative Procedure  
17 Act. No inmate shall be held in restrictive housing for more than fifteen  
18 consecutive days.

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

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

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

12 (4) For purposes of this section, member of a vulnerable population  
13 means an inmate who is eighteen years of age or younger, pregnant, or  
14 diagnosed with a serious mental illness as defined in section 44-792, a  
15 developmental disability as defined in section 71-1107, or a traumatic  
16 brain injury as defined in section 79-1118.01.

17 Sec. 3. Section 83-4,114, Revised Statutes Cumulative Supplement,  
18 2020, is amended to read:

19 83-4,114 (1) There shall be no corporal punishment or disciplinary  
20 restrictions on diet.

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

26 (3) No person shall be placed in solitary confinement as defined in  
27 section 83-170 for more than fifteen consecutive days.

28 (4) The director shall issue an annual report on or before September  
29 15 to the Governor and the Clerk of the Legislature. The report to the  
30 Clerk of the Legislature shall be issued electronically. For all inmates  
31 who were held in restrictive housing during the prior year, the report

1 shall contain the race, gender, age, and length of time each inmate has  
2 continuously been held in restrictive housing. Prior to releasing the  
3 report, the director shall meet with the long-term restrictive housing  
4 work group to share the contents of the report. The report shall also  
5 contain:

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

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

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

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

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

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

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

23 (5)(a) There is hereby established within the department a long-term  
24 restrictive housing work group. The work group shall consist of one  
25 member of the Judiciary Committee of the Legislature appointed by the  
26 Executive Board of the Legislative Council who shall be a nonvoting, ex  
27 officio member and the following voting members:

28 (i) The director and all deputy directors who have oversight over  
29 inmate health services or correctional facilities. The director or his or  
30 her designee shall serve as the chairperson of the work group;

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

1 (iii) Two employees of the department who currently work with  
2 inmates held in restrictive housing as designated by the director;

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

4 (v) Six members appointed by the Governor who have demonstrated an  
5 interest in correctional issues. Of these members at least one shall be  
6 an individual who was previously incarcerated in Nebraska's correctional  
7 system. The remaining members shall consist of individuals who are mental  
8 health professionals, have been employed in a restrictive housing unit in  
9 a correctional facility, have advocated for the rights of incarcerated  
10 individuals, or have otherwise been engaged in activities related to  
11 Nebraska's correctional system.

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

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

19 (d) The director shall provide the work group with quarterly updates  
20 on the department's policies related to the work group's subject matter  
21 and with any other information related to long-term restrictive housing  
22 that is requested by members of the work group.

23 (e) The work group shall terminate on December 31, 2021.

24 Sec. 4. Original sections 83-170, 83-173.03, and 83-4,114, Revised  
25 Statutes Cumulative Supplement, 2020, are repealed.