

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 989**

Introduced by Council, 11.

Read first time January 20, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to correctional services; to amend section  
2 83-4,114.01, Reissue Revised Statutes of Nebraska; to  
3 define terms; to provide for administrative segregation  
4 of committed offenders; to provide duties for chief  
5 executive officers of facilities; to provide rights and  
6 privileges as prescribed; to change provisions relating  
7 to discipline; and to repeal the original section.

8 Be it enacted by the people of the State of Nebraska,

1           Section 1. For purposes of sections 1 to 6 of this act,  
2 the definitions found in section 83-4,110 apply and:

3           (1) Administrative segregation means the placement of a  
4 committed offender in a situation of solitary confinement in a  
5 facility or managing the committed offender so that he or she  
6 is isolated from the company of other committed offenders not  
7 in administrative confinement for all or substantially all of  
8 any twenty-four-hour period. Administrative segregation does not  
9 include (a) the segregation of a committed offender for purposes of  
10 protective custody when the placement of the committed offender in  
11 protective custody is requested and consented to by the committed  
12 offender, (b) the involuntary segregation of a committed offender  
13 for no more than fourteen days when that segregation is reasonably  
14 needed for the purpose of allowing investigating authorities  
15 to complete an investigation of allegations that the committed  
16 offender committed acts of misconduct in violation of rules  
17 pertaining to committed offender behavior, or (c) the disciplinary  
18 segregation of a committed offender when that segregation is  
19 imposed as the result of disciplinary procedures carried out  
20 pursuant to sections 83-4,109 to 83-4,123;

21           (2) Chief executive officer means the chief  
22 administrative official of each facility or a designee of  
23 the chief executive officer when the chief executive officer is  
24 absent from the facility;

25           (3) Committed offender has the definition found in

1 section 83-170;

2 (4) Facility has the definition found in section 83-170;

3 (5) General population of the facility means those

4 committed offenders within a facility who are not in protective

5 custody, disciplinary segregation, or administrative segregation;

6 and

7 (6) Provisional release from administrative segregation

8 means a temporary release of a committed offender from

9 administrative segregation for the purpose of determining whether

10 the committed offender might be successfully reintegrated into the

11 general population of the facility.

12 Sec. 2. Except as otherwise provided in sections 1 to 6

13 of this act, the chief executive officer of each facility may place

14 and maintain a committed offender who is residing in that facility

15 in administrative segregation when there are grounds to believe

16 beyond a reasonable doubt that:

17 (1) The committed offender has engaged in, has attempted

18 to engage in, or plans to engage in an act which represents a

19 serious, immediate, and continuing threat to: (a) The physical

20 security of the facility; (b) the personal safety of other

21 persons; or (c) the personal safety and well-being of the committed

22 offender; and

23 (2) The continued presence of the committed offender

24 in the general population of the facility would jeopardize the

25 committed offender's own safety.

1           Sec. 3. No committed offender shall be placed or  
2 maintained in administrative segregation pursuant to section  
3 2 of this act unless the chief executive officer determines  
4 that there is no other reasonable alternative to the committed  
5 offender's placement in administrative segregation. Other  
6 reasonable alternatives to a committed offender's placement in  
7 administrative segregation to be considered by the chief executive  
8 officer shall include, but not be limited to: (1) Transfer of  
9 the committed offender to another facility; (2) transfer of other  
10 committed offenders residing in the facility to other facilities;  
11 (3) alteration of the committed offender's job assignment or  
12 schedule of activities to reduce exposure of the committed  
13 offender to situations in which the committed offender or other  
14 persons might be harmed; (4) timely mediation of disputes that  
15 the committed offender may have with other committed offenders;  
16 (5) administration of medication to the committed offender if  
17 he or she is mentally ill; and (6) transfer of the committed  
18 offender to another state pursuant to sections 29-3401 and  
19 29-3402. Before placing a committed offender in administrative  
20 segregation, the chief executive officer shall, for the purposes of  
21 determining whether there is another reasonable alternative to that  
22 placement, consult with caseworkers, mental health specialists,  
23 and other staff of the department who have knowledge of the  
24 committed offender or of the circumstances that are the basis for  
25 the proposal to place the committed offender in administrative

1 segregation.

2           Sec. 4. No committed offender shall be placed or  
3 maintained in administrative segregation for purposes of  
4 punishment. The placement of a committed offender in administrative  
5 segregation pursuant to section 2 of this act shall be considered  
6 as a mitigating circumstance in determining the length of a  
7 committed offender's placement in disciplinary segregation as  
8 punishment imposed pursuant to section 83-4,114.01.

9           Sec. 5. If a committed offender is held in administrative  
10 segregation pursuant to section 2 of this act for more than  
11 seventy-two hours, the chief executive officer shall immediately  
12 develop a plan for the projected reintegration of the committed  
13 offender into the general population of the facility. The  
14 reintegration plan shall be in writing and shall be personalized  
15 to the specific needs and circumstances of the committed offender  
16 involved. The reintegration plan shall include: (1) A statement of  
17 the conditions which need to be met for the committed offender to  
18 be removed from administrative segregation and reintegrated into  
19 the general population of the facility; (2) a statement of the  
20 facility's overall strategy for meeting the stated conditions for  
21 reintegrating the committed offender into the general population  
22 of the facility; (3) a statement of the circumstances under which  
23 the committed offender might be granted a provisional release  
24 from administrative segregation; (4) a statement of the facility's  
25 overall strategy for limiting the ill effects that administrative

1 segregation might have on the committed offender's mental health  
2 and social functioning; and (5) a projected timetable for the  
3 reintegration of the committed offender into the general population  
4 of the facility.

5           Sec. 6. All committed offenders placed in administrative  
6 segregation shall be afforded the same rights and privileges as are  
7 afforded to committed offenders in the general population of the  
8 facility with respect to: (1) Receiving visits from persons outside  
9 of the facility; (2) corresponding by mail with persons outside  
10 of the facility; (3) receiving telephone calls from and making  
11 telephone calls to persons outside of the facility; (4) possession  
12 of personal effects; (5) provision and possession of clothing,  
13 bedding, linen, and sanitation materials; (6) access to personal  
14 hygiene, including showers; (7) access to canteen services; (8)  
15 access to the facility library and related services; and (9) access  
16 to legal materials and legal services. A committed offender in  
17 administrative segregation may be deprived of clothing, personal  
18 effects, bedding, or linen when such limitations are reasonably  
19 necessary to address considerations that the possession of such  
20 items may present a danger of imminent harm to the committed  
21 offender or to other persons.

22           Sec. 7. Section 83-4,114.01, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           83-4,114.01 (1) The chief executive officer of each  
25 facility of the department shall be responsible for the discipline

1 of inmates who reside in such facility. No inmate shall be punished  
2 except upon the order of the chief executive officer of the  
3 facility, and no punishment shall be imposed otherwise than in  
4 accordance with this section.

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

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

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

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- 1                   Sec. 8. Original section 83-4,114.01, Reissue Revised
- 2 Statutes of Nebraska, is repealed.