

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 786

Introduced by Lathrop, 12.

Read first time January 08, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Treatment and Corrections Act;
2 to amend section 83-179, Reissue Revised Statutes of Nebraska,
3 sections 83-170 and 83-1,135, Revised Statutes Cumulative
4 Supplement, 2018, and section 83-173.03, Revised Statutes
5 Supplement, 2019; to define terms; to change provisions relating to
6 the use of restrictive housing; to require screening for serious
7 mental illnesses, developmental disabilities, and traumatic brain
8 injuries as prescribed; to require a report; to harmonize
9 provisions; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 83-170, Revised Statutes Cumulative Supplement,
2 2018, 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) Developmental disability has the same meaning as in section
13 71-1107;

14 (5) (4) Director means the Director of Correctional Services;

15 (6) (5) Director of Supervision and Services means the Director of
16 Supervision and Services appointed pursuant to section 83-1,101;

17 (7) (6) Facility means any prison, reformatory, training school,
18 reception center, community guidance center, group home, or other
19 institution operated by the department;

20 (8) (7) Good time means any reduction of sentence granted pursuant
21 to sections 83-1,107 and 83-1,108;

22 (9) (8) Maximum term means the maximum sentence provided by law or
23 the maximum sentence imposed by a court, whichever is shorter;

24 (10) (9) Minimum term means the minimum sentence provided by law or
25 the minimum sentence imposed by a court, whichever is longer;

26 (11) (10) Pardon authority means the power to remit fines and
27 forfeitures and to grant respites, reprieves, pardons, or commutations;

28 (12) (11) Parole term means the time from release on parole to the
29 completion of the maximum term, reduced by good time;

30 (13) (12) Person committed to the department means any person
31 sentenced or committed to a facility within the department;

1 ~~(14)~~ (13) Restrictive housing means conditions of confinement that
2 provide limited contact with other offenders, strictly controlled
3 movement while out of cell, and out-of-cell time of less than twenty-four
4 hours per week;~~and~~

5 (15) Serious mental illness means any mental health condition that
6 current medical science affirms is caused by a biological disorder of the
7 brain and that substantially limits the life activities of the person
8 with the serious mental illness. Serious mental illness includes, but is
9 not limited to, (a) schizophrenia, (b) schizoaffective disorder, (c)
10 delusional disorder, (d) bipolar affective disorder, (e) major
11 depression, and (f) obsessive compulsive disorder;

12 ~~(16)~~ (14) Solitary confinement means the status of confinement of an
13 inmate in an individual cell having solid, soundproof doors and which
14 deprives the inmate of all visual and auditory contact with other
15 persons; and -

16 (17) Traumatic brain injury means an acquired injury to the brain
17 caused by an external physical force, resulting in total or partial
18 functional disability or psychosocial impairment, or both, that adversely
19 affects a person's educational performance. Traumatic brain injury
20 applies to open or closed head injuries resulting in impairments in one
21 or more areas, including cognition; language; memory; attention;
22 reasoning; abstract thinking; judgment; problem solving; sensory,
23 perceptual, and motor abilities; psychosocial behavior; physical
24 functions; information processing; and speech. Traumatic brain injury
25 does not include brain injuries that are congenital or degenerative or
26 brain injuries induced by birth trauma.

27 Sec. 2. Section 83-173.03, Revised Statutes Supplement, 2019, is
28 amended to read:

29 83-173.03 (1) No inmate shall be held in restrictive housing unless
30 done in the least restrictive manner consistent with maintaining order in
31 the facility and pursuant to rules and regulations adopted and

1 promulgated by the department pursuant to the Administrative Procedure
2 Act.

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

12 (3) On and after March 1, 2020, no inmate who is a member of a
13 vulnerable population shall be placed in restrictive housing. In line
14 with the least restrictive framework, an inmate who is a member of a
15 vulnerable population may be assigned to immediate segregation to protect
16 himself or herself, staff, other inmates, or inmates who are members of
17 vulnerable populations pending classification. The department shall adopt
18 and promulgate rules and regulations pursuant to the Administrative
19 Procedure Act regarding restrictive housing to address risks for inmates
20 who are members of vulnerable populations. Nothing in this subsection
21 prohibits the department from developing secure mental health housing to
22 serve the needs of inmates with serious mental illnesses ~~as defined in~~
23 ~~section 44-792~~, developmental disabilities ~~as defined in section 71-1107~~,
24 or traumatic brain injuries ~~as defined in section 79-1118.01~~ in such a
25 way that provides for meaningful access to social interaction, exercise,
26 environmental stimulation, and therapeutic programming.

27 (4) For purposes of this section, member of a vulnerable population
28 means an inmate who is eighteen years of age or younger, pregnant, or
29 diagnosed with a serious mental illness ~~as defined in section 44-792~~, a
30 developmental disability ~~as defined in section 71-1107~~, or a traumatic
31 brain injury ~~as defined in section 79-1118.01~~. An inmate shall be

1 presumed to be a member of a vulnerable population if such inmate
2 receives a presumptive positive result for serious mental illness,
3 developmental disability, or traumatic brain injury in a screening test
4 under subsection (5) of this section, section 83-179, or section 4 of
5 this act. Such presumption may be overcome by a negative diagnosis,
6 issued by a licensed psychiatrist, psychologist, or physician with the
7 appropriate training to make such diagnosis, which contradicts the result
8 of the screening test.

9 (5) Any inmate held in restrictive housing for a cumulative six
10 months during any twelve-month period shall be screened for serious
11 mental illness using an evidence-based screening tool.

12 Sec. 3. Section 83-179, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 83-179 Upon initial admission to a facility, each person committed
15 to the department shall be given a physical examination and a thorough
16 evaluation. The evaluation shall include such person's psychological,
17 social, educational, and vocational condition and history and the
18 motivation of the offense. The evaluation shall also include a screening,
19 using evidence-based screening tools, for serious mental illness,
20 developmental disability, and traumatic brain injury. A report containing
21 the findings of the examination and evaluation shall be submitted on each
22 such person to the chief executive officer of the facility. The report
23 shall include recommendations regarding the facility to which such person
24 should be assigned, the degree and kind of custodial control, and the
25 program of treatment for rehabilitation, including medical and
26 psychological treatment and educational and vocational training. A
27 medical determination shall be made as to whether such person shall be
28 kept apart from other persons committed to the department.

29 Sec. 4. On or before November 30, 2020, the department or its
30 designee shall screen, using evidence-based screening tools, every inmate
31 who is in the department's custody as of such date for serious mental

1 illness, developmental disability, and traumatic brain injury. A new
2 screening is not required for any inmate who has been so screened under
3 section 83-179.

4 Sec. 5. On or before December 30, 2020, and annually thereafter,
5 the department shall issue a report for the calendar year on the number
6 of inmates with presumptive positive test results for serious mental
7 illness, developmental disability, and traumatic brain injury, as
8 determined by the screening tests prescribed in subsection (5) of section
9 83-173.03, section 83-179, and section 4 of this act. The report shall be
10 provided electronically to the Clerk of the Legislature and the Judiciary
11 Committee of the Legislature not later than December 30 of each year.

12 Sec. 6. Section 83-1,135, Revised Statutes Cumulative Supplement,
13 2018, is amended to read:

14 83-1,135 Sections 83-170 to 83-1,135.05 and sections 4 and 5 of this
15 act shall be known and may be cited as the Nebraska Treatment and
16 Corrections Act.

17 Sec. 7. Original section 83-179, Reissue Revised Statutes of
18 Nebraska, sections 83-170 and 83-1,135, Revised Statutes Cumulative
19 Supplement, 2018, and section 83-173.03, Revised Statutes Supplement,
20 2019, are repealed.