

HOUSE FLOOR SUBSTITUTE FOR  
HOUSE BILL 364

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO CORRECTIONS; ENACTING THE RESTRICTED HOUSING ACT;  
PROVIDING RESTRICTIONS ON THE USE OF RESTRICTED HOUSING;  
REQUIRING REPORTING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Restricted Housing Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Restricted Housing Act:

A. "correctional facility" means a jail, prison or  
other detention facility that is used for the confinement of  
adult or juvenile persons, whether operated by the state or a  
political subdivision of the state or a private contractor on  
behalf of the state or a political subdivision of the state;

B. "inmate" means an adult or juvenile person who

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1 is under sentence to or confined in a correctional facility;

2 C. "restricted housing", whether instituted  
3 pursuant to disciplinary, administrative, inmate classification  
4 or other action, means confinement of an inmate locked in a  
5 cell or similar living quarters in a correctional facility for  
6 twenty-two or more hours each day without daily, meaningful and  
7 sustained human interaction; and

8 D. "serious mental disability" means:

9 (1) a serious mental illness, including  
10 schizophrenia, psychosis, major depression and bipolar  
11 disorder; or

12 (2) having a significant functional impairment  
13 along with a brain injury, organic brain syndrome or  
14 intellectual disability.

15 SECTION 3. [NEW MATERIAL] RESTRICTIONS ON THE USE OF  
16 RESTRICTED HOUSING.--

17 A. An inmate who is younger than eighteen years of  
18 age shall not be placed in restricted housing.

19 B. An inmate who is known to be pregnant shall not  
20 be placed in restricted housing.

21 SECTION 4. [NEW MATERIAL] RESTRICTIONS ON THE USE OF  
22 RESTRICTED HOUSING--INMATE WITH SERIOUS MENTAL DISABILITY.--

23 A. An inmate with a serious mental disability shall  
24 not be placed in restricted housing; provided that:

25 (1) the inmate is:

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1 (a) known by the correctional facility  
2 to have been diagnosed by a qualified health care professional  
3 as having a serious mental disability; or

4 (b) clearly exhibiting self-injurious  
5 behavior, grossly abnormal and irrational behaviors, delusions  
6 or suicidal behavior unless a qualified health care  
7 professional has determined that the behavior is unrelated to a  
8 serious mental disability;

9 (2) the restriction on placement in restricted  
10 housing shall not apply during the first five consecutive days  
11 of the inmate's confinement in the correctional facility;

12 (3) if a warden, jail administrator or person  
13 in charge of a correctional facility finds that an inmate with  
14 a serious mental disability needs to be placed in restricted  
15 housing to prevent an imminent threat of physical harm to the  
16 inmate or another person, the inmate may be placed in  
17 restricted housing for no longer than forty-eight hours, and  
18 the warden, jail administrator or other person in charge of a  
19 correctional facility shall:

20 (a) make a written record of the facts  
21 and circumstances that necessitated the inmate's placement in  
22 restricted housing;

23 (b) prepare a written action plan  
24 describing how the facility will transition the inmate out of  
25 restricted housing at the earliest opportunity; and

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1 (c) notify the facility's health  
2 services administrator in writing that the inmate was placed in  
3 restricted housing in accordance with this subsection; and

4 (4) if, after fulfilling the requirements of  
5 Paragraph (3) of this subsection, a warden, jail administrator  
6 or person in charge of a correctional facility finds that an  
7 inmate with a serious mental disability poses an ongoing and  
8 realistic threat of physical harm to another person, the inmate  
9 may be placed in restricted housing for longer than forty-eight  
10 consecutive hours only if:

11 (a) other methods for ensuring the  
12 safety of the threatened person have been considered and  
13 determined insufficient, impractical or inappropriate;

14 (b) the inmate is placed in restricted  
15 housing for the shortest time period and under the least  
16 restrictive conditions practicable;

17 (c) the correctional facility provides  
18 regular access to medical and mental health care for the  
19 inmate; and

20 (d) the warden, administrator or person  
21 in charge of the correctional facility: 1) makes a written  
22 record of the facts and circumstances that necessitated the  
23 inmate's continued placement in restricted housing; 2) makes a  
24 written action plan describing how the correctional facility  
25 will transition the inmate out of restricted housing at the

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1 earliest opportunity, including a projected time line; and 3)  
2 notifies the correctional facility's health services  
3 administrator in writing that the inmate continues to be placed  
4 in restricted housing in accordance with this section.

5 B. For purposes of this section, "qualified health  
6 care professional" means a physician, licensed psychologist,  
7 prescribing psychologist, certified nurse practitioner,  
8 clinical nurse specialist with a specialty in mental health or  
9 a physician assistant with a specialty in mental health.

10 SECTION 5. [NEW MATERIAL] CORRECTIONAL FACILITIES--  
11 TRANSPARENCY AND REPORTING.--

12 A. Every three months, every correctional facility  
13 shall:

14 (1) produce a report that includes:

15 (a) the age, gender and ethnicity of  
16 every inmate who was placed in restricted housing during the  
17 previous three months, including every inmate who is in  
18 restricted housing at the time the report is produced;

19 (b) the reason restricted housing was  
20 instituted for each inmate listed in the report; and

21 (c) the dates on which each inmate was  
22 placed in and released from restricted housing during the  
23 previous three months; and

24 (2) submit a report prepared in accordance  
25 with this subsection to the:

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1 (a) legislature, if the correctional  
2 facility is a prison; and

3 (b) board of county commissioners of the  
4 county in which the correctional facility is located, if the  
5 facility is a jail.

6 B. The corrections department shall post to its  
7 public website every report produced pursuant to Subsection A  
8 of this section.

9 SECTION 6. [NEW MATERIAL] PRIVATE CORRECTIONAL  
10 FACILITIES--ANTICORRUPTION AND REPORTING.--Every three months,  
11 every private correctional facility shall submit to the board  
12 of county commissioners of the county in which the private  
13 correctional facility is located and to the legislature a  
14 report of all monetary settlements that were paid to inmates,  
15 former inmates or inmates' estates as a result of lawsuits  
16 filed by the inmates, former inmates or inmates' estates  
17 against the private correctional facility or its employees  
18 related to the use of restricted confinement or any other  
19 reason.

20 SECTION 7. [NEW MATERIAL] REPORTS FILED WITH LEGISLATIVE  
21 LIBRARY.--On the date that a report is submitted to a board of  
22 county commissioners pursuant to Section 5 or 6 of the  
23 Restricted Housing Act, a copy of the report shall be submitted  
24 electronically to the legislative council service library.

25 SECTION 8. EFFECTIVE DATE.--

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A. The effective date of the provisions of Sections  
1 through 3 and 5 through 7 of this act is July 1, 2019.

B. The effective date of the provisions of Section  
4 of this act is July 1, 2020.

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