

1 HOUSE BILL 364

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CORRECTIONS; ENACTING THE RESTRICTED HOUSING ACT;
12 PROVIDING RESTRICTIONS ON THE USE OF RESTRICTED HOUSING;
13 REQUIRING REPORTING.
14

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

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

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

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

25 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 HJC → ~~C. An inmate in a facility operated by the~~
22 ~~corrections department or its contractors shall not be housed~~
23 ~~in restricted housing for more than fifteen consecutive days~~
24 ~~and not to exceed a total of forty-five days in a twelve-month~~
25 ~~period.~~ ← HJC

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

3 HJC→A.←HJC An inmate with a serious mental disability
4 shall not be placed in restricted housing; provided that:

5 HJC→A. (1)←HJC the inmate is:

6 HJC→(1) (a)←HJC known by the correctional facility
7 to have been diagnosed by a qualified health care professional
8 as having a serious mental disability; or

9 HJC→(2) (b)←HJC clearly exhibiting self-injurious
10 behavior, grossly abnormal and irrational behaviors, delusions
11 or suicidal behavior HJC→unless a qualified health care
12 professional has determined that the behavior is unrelated
13 to a serious mental disability←HJC;

14 HJC→B. (2)←HJC the restriction on placement in
15 restricted housing shall not apply during the first five
16 consecutive days of the inmate's confinement in the
17 correctional facility; HJC→and←HJC

18 HJC→C. (3)←HJC if a warden, jail administrator or
19 person in charge of a correctional facility finds that an
20 inmate with a serious mental disability needs to be placed in
21 restricted housing to prevent an imminent threat of physical
22 harm to the inmate or another person, the inmate may be placed
23 in restricted housing for no longer than forty-eight hours, and
24 the warden, jail administrator or other person in charge of a
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1 correctional facility shall:

2 HJC→~~(1)~~ (a)←HJC make a written record of the facts
3 and circumstances that necessitated the inmate's placement in
4 restricted housing;

5 HJC→~~(2)~~ (b)←HJC prepare a written action plan
6 describing how the facility will transition the inmate out of
7 restricted housing at the earliest opportunity; and

8 HJC→~~(3)~~ (c)←HJC notify the facility's medical
9 professional in writing that the inmate was placed in
10 restricted housing in accordance with this subsection

11 HJC→. ; and←HJC

12 HJC→(4) if, after fulfilling the requirements
13 of Paragraph (3) of this subsection, a warden, jail
14 administrator or person in charge of a correctional
15 facility finds that an inmate with a serious mental
16 disability poses an ongoing and realistic threat of
17 physical harm to another person, the inmate may be placed
18 in restricted housing for longer than forty-eight
19 consecutive hours only if:

20 (a) other methods for ensuring the
21 safety of the threatened person have been considered and
22 determined insufficient, impractical or inappropriate;
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1 (b) the inmate is placed in
2 restricted housing for the shortest time period and under
3 the least restrictive conditions practicable;

4 (c) the correctional facility
5 provides regular access to medical and mental health care
6 for the inmate; and

7 (d) the warden, administrator or
8 person in charge of the correctional facility: 1) makes a
9 written record of the facts and circumstances that
10 necessitated the inmate's continued placement in
11 restricted housing; 2) makes a written action plan
12 describing how the correctional facility will transition
13 the inmate out of restricted housing at the earliest
14 opportunity, including a projected time line; and 3)
15 notifies the correctional facility's qualified health care
16 professional in writing that the inmate continues to be
17 placed in restricted housing in accordance with this
18 section.
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21 B. For purposes of this section, "qualified
22 health care professional" means a licensed physician as
23 defined in Section 61-6-6 NMSA 1978 or a psychologist as
24 defined in Section 61-9-3 NMSA 1978 and who is licensed
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1 pursuant to the Professional Psychologist Act. ←HJC

2 SECTION 5. [NEW MATERIAL] CORRECTIONAL FACILITIES--
3 TRANSPARENCY AND REPORTING.--

4 A. Every three months, every correctional facility
5 shall:

6 (1) produce a report that includes:

7 (a) the age, gender and ethnicity of
8 every inmate who was placed in restricted housing during the
9 previous three months, including every inmate who is in
10 restricted housing at the time the report is produced;

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

13 (c) the dates on which each inmate was
14 placed in and released from restricted housing during the
15 previous three months; and

16 (2) submit a report prepared in accordance
17 with this subsection to the:

18 (a) legislature, if the correctional
19 facility is a prison; and

20 (b) board of county commissioners of the
21 county in which the correctional facility is located, if the
22 facility is a jail.

23 B. The corrections department shall post to its
24 public website every report produced pursuant to Subsection A
25 of this section.

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

12 SECTION 7. ~~[NEW MATERIAL]~~ REPORTS FILED WITH LEGISLATIVE
13 LIBRARY.--On the date that a report is submitted to a board of
14 county commissioners pursuant to Section 5 or 6 of the
15 Restricted Housing Act, a copy of the report shall be submitted
16 electronically to the legislative council service library.

17 SECTION 8. EFFECTIVE DATE.--
18 A. The effective date of the provisions of Sections
19 1 through 3 and 5 through 7 of this act is July 1, 2019.
20 B. The effective date of the provisions of Section
21 4 of this act is July 1, 2020.