

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 230

FINAL READING

Introduced by Pansing Brooks, 28; Hunt, 8.

Read first time January 14, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to juvenile facilities; to amend sections
2 83-4,125, 83-4,126, 83-4,132, and 83-4,134.01, Revised Statutes
3 Cumulative Supplement, 2018; to change provisions and provide
4 requirements for room confinement for juveniles as prescribed; to
5 harmonize provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 83-4,125, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 83-4,125 For purposes of sections 83-4,124 to 83-4,134.01 and
4 section 5 of this act:

5 (1) Criminal detention facility means any institution operated by a
6 political subdivision or a combination of political subdivisions for the
7 careful keeping or rehabilitative needs of adult or juvenile criminal
8 offenders or those persons being detained while awaiting disposition of
9 charges against them. Criminal detention facility does not include any
10 institution operated by the Department of Correctional Services. Criminal
11 detention facilities shall be classified as follows:

12 (a) Type I Facilities means criminal detention facilities used for
13 the detention of persons for not more than twenty-four hours, excluding
14 nonjudicial days;

15 (b) Type II Facilities means criminal detention facilities used for
16 the detention of persons for not more than ninety-six hours, excluding
17 nonjudicial days; and

18 (c) Type III Facilities means criminal detention facilities used for
19 the detention of persons beyond ninety-six hours;

20 (2) Juvenile detention facility means an institution operated by a
21 political subdivision or political subdivisions for the secure detention
22 and treatment of persons younger than eighteen years of age, including
23 persons under the jurisdiction of a juvenile court, who are serving a
24 sentence pursuant to a conviction in a county or district court or who
25 are detained while waiting disposition of charges against them. Juvenile
26 detention facility does not include any institution operated by the
27 department;

28 (3) Juvenile facility means a residential child-caring agency as
29 defined in section 71-1926, a juvenile detention facility or staff secure
30 juvenile facility as defined in this section, a facility operated by the
31 Department of Correctional Services that houses youth under the age of

1 majority, or a youth rehabilitation and treatment center;

2 (4) Room confinement means the involuntary restriction of a juvenile
3 placed alone in a cell, alone in a room, or alone in another area,
4 including a juvenile's own room, except during normal sleeping hours,
5 whether or not such cell, room, or other area is subject to video or
6 other electronic monitoring; and

7 (5) Staff secure juvenile facility means a juvenile residential
8 facility operated by a political subdivision (a) which does not include
9 construction designed to physically restrict the movements and activities
10 of juveniles who are in custody in the facility, (b) in which physical
11 restriction of movement or activity of juveniles is provided solely
12 through staff, (c) which may establish reasonable rules restricting
13 ingress to and egress from the facility, and (d) in which the movements
14 and activities of individual juvenile residents may, for treatment
15 purposes, be restricted or subject to control through the use of
16 intensive staff supervision. Staff secure juvenile facility does not
17 include any institution operated by the department.

18 Sec. 2. Section 83-4,126, Revised Statutes Cumulative Supplement,
19 2018, is amended to read:

20 83-4,126 (1) Except as provided in subsection (2) of this section,
21 the Jail Standards Board shall have the authority and responsibility:

22 (a) To develop minimum standards for the construction, maintenance,
23 and operation of criminal detention facilities;

24 (b) To perform other duties as may be necessary to carry out the
25 policy of the state regarding criminal detention facilities, juvenile
26 detention facilities, and staff secure juvenile facilities as stated in
27 sections 83-4,124 to 83-4,134.01 and section 5 of this act; and

28 (c) Consistent with the purposes and objectives of the Juvenile
29 Services Act, to develop standards for juvenile detention facilities and
30 staff secure juvenile facilities, including, but not limited to,
31 standards for physical facilities, care, programs, and disciplinary

1 procedures, and to develop guidelines pertaining to the operation of such
2 facilities.

3 (2) The Jail Standards Board shall not have authority over or
4 responsibility for correctional facilities that are accredited by a
5 nationally recognized correctional association. A correctional facility
6 that is accredited by a nationally recognized correctional association
7 shall show proof of accreditation annually to the Jail Standards Board.
8 For purposes of this subsection, nationally recognized correctional
9 association includes, but is not limited to, the American Correctional
10 Association or its successor.

11 Sec. 3. Section 83-4,132, Revised Statutes Cumulative Supplement,
12 2018, is amended to read:

13 83-4,132 If an inspection under sections 83-4,124 to 83-4,134.01 and
14 section 5 of this act discloses that the criminal detention facility,
15 juvenile detention facility, or staff secure juvenile facility does not
16 meet the minimum standards established by the Jail Standards Board, the
17 board shall send notice, together with the inspection report, to the
18 governing body responsible for the facility. The appropriate governing
19 body shall promptly meet to consider the inspection report, and the
20 inspection personnel shall appear before the governing body to advise and
21 consult concerning appropriate corrective action. The governing body
22 shall then initiate appropriate corrective action within six months after
23 the receipt of such inspection report or may voluntarily close the
24 facility or the objectionable portion thereof.

25 Sec. 4. Section 83-4,134.01, Revised Statutes Cumulative Supplement,
26 2018, is amended to read:

27 83-4,134.01 (1) It is the intent of the Legislature to establish a
28 system of investigation and performance review in order to provide
29 increased accountability and oversight regarding the use of room
30 confinement for juveniles in a juvenile facility.

31 (2) The following shall apply regarding placement in room

1 confinement of a juvenile in a juvenile facility:

2 (a) Room confinement of a juvenile for longer than one hour during a
3 twenty-four-hour period shall be documented and approved in writing by a
4 supervisor in the juvenile facility. Documentation of the room
5 confinement shall include the date of the occurrence; the race,
6 ethnicity, age, and gender of the juvenile; the reason for placement of
7 the juvenile in room confinement; an explanation of why less restrictive
8 means were unsuccessful; the ultimate duration of the placement in room
9 confinement; facility staffing levels at the time of confinement; and any
10 incidents of self-harm or suicide committed by the juvenile while he or
11 she was isolated;

12 (b) If any physical or mental health clinical evaluation was
13 performed during the time the juvenile was in room confinement for longer
14 than one hour, the results of such evaluation shall be considered in any
15 decision to place a juvenile in room confinement or to continue room
16 confinement;

17 (c) The juvenile facility shall submit a report quarterly to the
18 Legislature on the juveniles placed in room confinement; the length of
19 time each juvenile was in room confinement; the race, ethnicity, age, and
20 gender of each juvenile placed in room confinement; facility staffing
21 levels at the time of confinement; and the reason each juvenile was
22 placed in room confinement. The report shall specifically address each
23 instance of room confinement of a juvenile for more than four hours,
24 including all reasons why attempts to return the juvenile to the general
25 population of the juvenile facility were unsuccessful. The report shall
26 also detail all corrective measures taken in response to noncompliance
27 with this section. The report shall redact all personal identifying
28 information but shall provide individual, not aggregate, data. The report
29 shall be delivered electronically to the Legislature. The initial
30 quarterly report shall be submitted within two weeks after the quarter
31 ending on September 30, 2016. Subsequent reports shall be submitted for

1 the ensuing quarters within two weeks after the end of each quarter; and

2 (d) The Inspector General of Nebraska Child Welfare shall review all
3 data collected pursuant to this section in order to assess the use of
4 room confinement for juveniles in each juvenile facility and prepare an
5 annual report of his or her findings, including, but not limited to,
6 identifying changes in policy and practice which may lead to decreased
7 use of such confinement as well as model evidence-based criteria to be
8 used to determine when a juvenile should be placed in room confinement.
9 The report shall be delivered electronically to the Legislature on an
10 annual basis. ~~;~~ ~~and~~

11 (3) The use of consecutive periods of room confinement to avoid the
12 intent or purpose of this section is prohibited.

13 (4) (e) Any juvenile facility which is not a residential child-
14 caring agency which fails to comply with the requirements of this section
15 is subject to disciplinary action as provided in section 83-4,134. Any
16 juvenile facility which is a residential child-caring agency which fails
17 to comply with the requirements of this section is subject to
18 disciplinary action as provided in section 71-1940.

19 Sec. 5. (1) This section applies to placement of a juvenile in room
20 confinement in the following facilities: A juvenile detention facility,
21 staff secure juvenile facility, facility operated by the Department of
22 Correctional Services, or youth rehabilitation and treatment center
23 operated by the Department of Health and Human Services.

24 (2) A juvenile shall not be placed in room confinement for any of
25 the following reasons:

26 (a) As a punishment or a disciplinary sanction;

27 (b) As a response to a staffing shortage; or

28 (c) As retaliation against the juvenile by staff.

29 (3) A juvenile shall not be placed in room confinement unless all
30 other less-restrictive alternatives have been exhausted and the juvenile
31 poses an immediate and substantial risk of harm to self or others.

1 (4) A juvenile may only be held in room confinement according to the
2 following conditions:

3 (a) A juvenile shall not be held in room confinement longer than the
4 minimum time required to eliminate the substantial and immediate risk of
5 harm to self or others and shall be released from room confinement as
6 soon as the substantial and immediate risk of harm to self or others is
7 resolved; and

8 (b) A juvenile shall only be held in room confinement for a period
9 that does not compromise or harm the mental or physical health of the
10 juvenile.

11 (5) Any juvenile placed in room confinement shall be released
12 immediately upon regaining sufficient control so as to no longer engage
13 in behavior that threatens substantial and immediate risk of harm to self
14 or others.

15 (6) Not later than one business day after the date on which a
16 facility places a juvenile in room confinement, the facility shall
17 provide notice of the placement in room confinement to the juvenile's
18 parent or guardian and the attorney of record for the juvenile.

19 (7) All rooms used for room confinement shall have adequate and
20 operating lighting, heating and cooling, and ventilation for the comfort
21 of the juvenile. Rooms shall be clean and resistant to suicide and self-
22 harm. Juveniles in room confinement shall have access to drinking water,
23 toilet facilities, hygiene supplies, and reading materials approved by a
24 licensed mental health professional.

25 (8) Juveniles in room confinement shall have the same access as
26 provided to juveniles in the general population of the facility to meals,
27 contact with parents or legal guardians, legal assistance, and access to
28 educational programming.

29 (9) Juveniles in room confinement shall have access to appropriate
30 medical and mental health services. Mental health staff shall promptly
31 provide mental health services as needed.

1 (10) Juveniles in room confinement shall be continuously monitored
2 by staff of the facility. Continuous monitoring may be accomplished
3 through regular in-person visits to the confined juvenile which may also
4 be supplemented by electronic video monitoring.

5 (11) The use of consecutive periods of room confinement to avoid the
6 intent and purpose of this section is prohibited.

7 (12) Nothing in this section shall be construed to authorize or
8 require the construction or erection of fencing or similar structures at
9 any facility, nor the imposition of nonrehabilitative approaches to
10 behavior management within any facility.

11 Sec. 6. Original sections 83-4,125, 83-4,126, 83-4,132, and
12 83-4,134.01, Revised Statutes Cumulative Supplement, 2018, are repealed.