

AMENDMENTS TO LB230

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

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

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

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

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

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

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

22 (2) Juvenile detention facility means an institution operated by a
23 political subdivision or political subdivisions for the secure detention
24 and treatment of persons younger than eighteen years of age, including
25 persons under the jurisdiction of a juvenile court, who are serving a
26 sentence pursuant to a conviction in a county or district court or who
27 are detained while waiting disposition of charges against them. Juvenile

1 detention facility does not include any institution operated by the
2 department;

3 (3) Juvenile facility means a residential child-caring agency as
4 defined in section 71-1926, a juvenile detention facility or staff secure
5 juvenile facility as defined in this section, a facility operated by the
6 Department of Correctional Services that houses youth under the age of
7 majority, or a youth rehabilitation and treatment center;

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

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

24 Sec. 2. Section 83-4,126, Revised Statutes Cumulative Supplement,
25 2018, is amended to read:

26 83-4,126 (1) Except as provided in subsection (2) of this section,
27 the Jail Standards Board shall have the authority and responsibility:

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

30 (b) To perform other duties as may be necessary to carry out the
31 policy of the state regarding criminal detention facilities, juvenile

1 detention facilities, and staff secure juvenile facilities as stated in
2 sections 83-4,124 to 83-4,134.01 and section 5 of this act; and

3 (c) Consistent with the purposes and objectives of the Juvenile
4 Services Act, to develop standards for juvenile detention facilities and
5 staff secure juvenile facilities, including, but not limited to,
6 standards for physical facilities, care, programs, and disciplinary
7 procedures, and to develop guidelines pertaining to the operation of such
8 facilities.

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

17 Sec. 3. Section 83-4,132, Revised Statutes Cumulative Supplement,
18 2018, is amended to read:

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

31 Sec. 4. Section 83-4,134.01, Revised Statutes Cumulative Supplement,

1 2018, is amended to read:

2 83-4,134.01 (1) It is the intent of the Legislature to establish a
3 system of investigation and performance review in order to provide
4 increased accountability and oversight regarding the use of room
5 confinement for juveniles in a juvenile facility.

6 (2) The following shall apply regarding placement in room
7 confinement of a juvenile in a juvenile facility:

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

18 (b) If any physical or mental health clinical evaluation was
19 performed during the time the juvenile was in room confinement for longer
20 than one hour, the results of such evaluation shall be considered in any
21 decision to place a juvenile in room confinement or to continue room
22 confinement;

23 (c) The juvenile facility shall submit a report quarterly to the
24 Legislature on the juveniles placed in room confinement; the length of
25 time each juvenile was in room confinement; the race, ethnicity, age, and
26 gender of each juvenile placed in room confinement; facility staffing
27 levels at the time of confinement; and the reason each juvenile was
28 placed in room confinement. The report shall specifically address each
29 instance of room confinement of a juvenile for more than four hours,
30 including all reasons why attempts to return the juvenile to the general
31 population of the juvenile facility were unsuccessful. The report shall

1 also detail all corrective measures taken in response to noncompliance
2 with this section. The report shall redact all personal identifying
3 information but shall provide individual, not aggregate, data. The report
4 shall be delivered electronically to the Legislature. The initial
5 quarterly report shall be submitted within two weeks after the quarter
6 ending on September 30, 2016. Subsequent reports shall be submitted for
7 the ensuing quarters within two weeks after the end of each quarter; and

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

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

19 (4) (e) Any juvenile facility which is not a residential child-
20 caring agency which fails to comply with the requirements of this section
21 is subject to disciplinary action as provided in section 83-4,134. Any
22 juvenile facility which is a residential child-caring agency which fails
23 to comply with the requirements of this section is subject to
24 disciplinary action as provided in section 71-1940.

25 Sec. 5. (1) This section applies to placement of a juvenile in room
26 confinement in the following facilities: A juvenile detention facility,
27 staff secure juvenile facility, facility operated by the Department of
28 Correctional Services or by any county that houses youth under the age of
29 majority, or youth rehabilitation and treatment center operated by the
30 Department of Health and Human Services.

31 (2) A juvenile shall not be placed in room confinement for any of

1 the following reasons:

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

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

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

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

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

10 (a) A juvenile shall not be held in room confinement longer than the
11 minimum time required to eliminate the substantial and immediate risk of
12 harm to self or others and shall be released from room confinement as
13 soon as the substantial and immediate risk of harm to self or others is
14 resolved; and

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

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

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

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

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

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

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

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

14 (12) Nothing in this section shall be construed to authorize or
15 require the construction or erection of fencing or similar structures at
16 any facility, nor the imposition of non-rehabilitative approaches to
17 behavior management within any facility.

18 Sec. 6. Original sections 83-4,125, 83-4,126, 83-4,132, and
19 83-4,134.01, Revised Statutes Cumulative Supplement, 2018, are repealed.