

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 845

Introduced by Pansing Brooks, 28; McCollister, 20; Schumacher, 22;
Williams, 36.

Read first time January 08, 2016

Committee:

- 1 A BILL FOR AN ACT relating to juvenile confinement; to amend sections
- 2 83-4,125, 83-4,126, 83-4,132, and 83-4,134, Reissue Revised Statues
- 3 of Nebraska; and section 43-251.01, Revised Statutes Supplement,
- 4 2015; to define terms; to provide requirements relating to room
- 5 confinement of juveniles; to provide for reports; to provide a duty
- 6 for the Inspector General of Nebraska Child Welfare; to harmonize
- 7 provisions; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-251.01, Revised Statutes Supplement, 2015, is
2 amended to read:

3 43-251.01 All placements and commitments of juveniles for
4 evaluations or as temporary or final dispositions are subject to the
5 following:

6 (1) No juvenile shall be confined in an adult correctional facility
7 as a disposition of the court;

8 (2) A juvenile who is found to be a juvenile as described in
9 subdivision (3) of section 43-247 shall not be placed in an adult
10 correctional facility, the secure youth confinement facility operated by
11 the Department of Correctional Services, or a youth rehabilitation and
12 treatment center or committed to the Office of Juvenile Services;

13 (3) A juvenile who is found to be a juvenile as described in
14 subdivision (1), (2), or (4) of section 43-247 shall not be assigned or
15 transferred to an adult correctional facility or the secure youth
16 confinement facility operated by the Department of Correctional Services;

17 (4) A juvenile under the age of fourteen years shall not be placed
18 with or committed to a youth rehabilitation and treatment center;

19 (5) A juvenile shall not be detained in secure detention or placed
20 at a youth rehabilitation and treatment center unless detention or
21 placement of such juvenile is a matter of immediate and urgent necessity
22 for the protection of such juvenile or the person or property of another
23 or if it appears that such juvenile is likely to flee the jurisdiction of
24 the court;

25 (6) A juvenile alleged to be a juvenile as described in subdivision
26 (3)(b) of section 43-247 shall not be placed in a juvenile detention
27 facility, including a wing labeled as staff secure at such facility,
28 unless the designated staff secure portion of the facility fully complies
29 with subdivision (5 3) of section 83-4,125 and the ingress and egress to
30 the facility are restricted solely through staff supervision; and

31 (7) A juvenile alleged to be a juvenile as described in subdivision

1 (3)(b) of section 43-247 shall not be placed out of his or her home as a
2 dispositional order of the court unless:

3 (a) All available community-based resources have been exhausted to
4 assist the juvenile and his or her family; and

5 (b) Maintaining the juvenile in the home presents a significant risk
6 of harm to the juvenile or community.

7 Sec. 2. Section 83-4,125, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 83-4,125 For purposes of sections 83-4,124 to 83-4,134 and section 6
10 of this act:

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

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

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

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

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

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

3 (3) Juvenile facility means any residential facility housing youth
4 under the age of majority, whether such facility is a public or private
5 facility;

6 (4) Room confinement means the involuntary restriction of a juvenile
7 to a cell, room, or other area, alone, including a juvenile's own room,
8 except during normal sleeping hours; and

9 (5 3) Staff secure juvenile facility means a juvenile residential
10 facility operated by a political subdivision (a) which does not include
11 construction designed to physically restrict the movements and activities
12 of juveniles who are in custody in the facility, (b) in which physical
13 restriction of movement or activity of juveniles is provided solely
14 through staff, (c) which may establish reasonable rules restricting
15 ingress to and egress from the facility, and (d) in which the movements
16 and activities of individual juvenile residents may, for treatment
17 purposes, be restricted or subject to control through the use of
18 intensive staff supervision. Staff secure juvenile facility does not
19 include any institution operated by the department.

20 Sec. 3. Section 83-4,126, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 83-4,126 (1) Except as provided in subsection (2) of this section,
23 the Jail Standards Board shall have the authority and responsibility:

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

26 (b) To perform other duties as may be necessary to carry out the
27 policy of the state regarding criminal detention facilities, juvenile
28 detention facilities, and staff secure juvenile facilities as stated in
29 sections 83-4,124 to 83-4,134 and section 6 of this act; and

30 (c) Consistent with the purposes and objectives of the Juvenile
31 Services Act, to develop standards for juvenile detention facilities and

1 staff secure juvenile facilities, including, but not limited to,
2 standards for physical facilities, care, programs, and disciplinary
3 procedures, and to develop guidelines pertaining to the operation of such
4 facilities.

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

13 Sec. 4. Section 83-4,132, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 83-4,132 If an inspection under sections 83-4,124 to 83-4,134 and
16 section 6 of this act discloses that the criminal detention facility,
17 juvenile detention facility, or staff secure juvenile facility does not
18 meet the minimum standards established by the Jail Standards Board, the
19 board shall send notice, together with the inspection report, to the
20 governing body responsible for the facility. The appropriate governing
21 body shall promptly meet to consider the inspection report, and the
22 inspection personnel shall appear before the governing body to advise and
23 consult concerning appropriate corrective action. The governing body
24 shall then initiate appropriate corrective action within six months after
25 the receipt of such inspection report or may voluntarily close the
26 facility or the objectionable portion thereof.

27 Sec. 5. Section 83-4,134, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 83-4,134 Sections 83-4,124 to 83-4,134 and section 6 of this act
30 shall be implemented upon completion of the development of minimum
31 standards by the Jail Standards Board. Thereafter, inspections shall

1 begin, but no criminal detention facility, juvenile detention facility,
2 or staff secure juvenile facility shall be closed within one year of the
3 date of first filing of the minimum standards in the office of the
4 Secretary of State. After one year from the date of first filing of the
5 minimum standards, a facility may be closed for any violation of the
6 minimum standards. Those standards relating to the construction of the
7 facility itself and its plumbing, heating, and wiring systems shall not
8 be enforced so as to require the closing of any facility for a period of
9 two years from the date of the first filing of the minimum standards
10 unless such violations are of immediate danger to the safety of the
11 persons confined in the facility or facility personnel, in which case
12 such period shall be one year.

13 Sec. 6. (1) It is the intent of the Legislature to establish a
14 system of investigation and performance review in order to provide
15 increased accountability and oversight regarding the use of room
16 confinement for juveniles in a juvenile facility.

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

19 (a) Room confinement of a juvenile for longer than two hours shall
20 be approved and documented in writing by a supervisor in the juvenile
21 facility. Room confinement of a juvenile for longer than three hours
22 shall be approved and documented in writing by the head of the juvenile
23 facility. Documentation of the room confinement shall include the date of
24 the occurrence; the race, ethnicity, age, and gender of the juvenile; the
25 reason for placement of the juvenile in room confinement; an explanation
26 of why less restrictive means were unsuccessful; the ultimate duration of
27 the placement in room confinement; and any incidents of self-harm or
28 suicide committed by the juvenile while he or she was isolated;

29 (b) If any physical or mental health clinical evaluation was
30 performed during the time the juvenile was in room confinement for longer
31 than one hour, the results of such evaluation shall be considered in any

1 decision to place a juvenile in room confinement or to continue room
2 confinement;

3 (c) The juvenile facility shall report quarterly to the Legislature
4 on the number of juveniles placed in room confinement, the length of time
5 each juvenile was in room confinement, the race, ethnicity, age, and
6 gender of each juvenile placed in room confinement, and the reason each
7 juvenile was placed in room confinement. The report shall be delivered
8 electronically to the Legislature. The initial quarterly report shall be
9 submitted within two weeks after the quarter ending on September 30,
10 2016. Subsequent reports shall be submitted for the ensuing quarters,
11 within two weeks after the end of each quarter;

12 (d) Room confinement of a juvenile for over four hours shall be
13 documented and addressed in a quarterly report submitted electronically
14 to the Legislature, and the report shall include all reasons why attempts
15 to return the juvenile to the general population of the juvenile facility
16 were unsuccessful and detail all corrective measures taken if the
17 provisions of this section were not complied with. The initial quarterly
18 report shall be submitted within two weeks after the quarter ending on
19 September 30, 2016. Subsequent reports shall be submitted for the ensuing
20 quarters, within two weeks after the end of each quarter; and

21 (e) The Inspector General of Nebraska Child Welfare shall review all
22 data collected pursuant to this section in order to assess the use of
23 room confinement for juveniles in each juvenile facility and prepare an
24 annual report of its findings, including, but not limited to, identifying
25 changes in policy and practice which may lead to decreased use of such
26 confinement as well as model evidence-based criteria to be used to
27 determine when a juvenile should be placed in room confinement. The
28 report shall be delivered electronically to the Legislature on an annual
29 basis.

30 Sec. 7. Original sections 83-4,125, 83-4,126, 83-4,132, and
31 83-4,134, Reissue Revised Statutes of Nebraska, and section 43-251.01,

1 Revised Statutes Supplement, 2015, are repealed.