

AMENDMENTS TO LB921

(Amendments to Standing Committee amendments, AM2503)

Introduced by Cavanaugh, J., 9.

1           1. Insert the following new sections:

2           Sec. 2. Section 29-3001, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4           29-3001 (1) A prisoner in custody under sentence and claiming a  
5 right to be released on the ground that there was such a denial or  
6 infringement of the rights of the prisoner as to render the judgment void  
7 or voidable under the Constitution of this state or the Constitution of  
8 the United States, may file a verified motion, in the court which imposed  
9 such sentence, stating the grounds relied upon and asking the court to  
10 vacate or set aside the sentence.

11           (2) Unless the motion and the files and records of the case show to  
12 the satisfaction of the court that the prisoner is entitled to no relief,  
13 the court shall cause notice thereof to be served on the county attorney,  
14 grant a prompt hearing thereon, and determine the issues and make  
15 findings of fact and conclusions of law with respect thereto. If the  
16 court finds that there was such a denial or infringement of the rights of  
17 the prisoner as to render the judgment void or voidable under the  
18 Constitution of this state or the Constitution of the United States, the  
19 court shall vacate and set aside the judgment and shall discharge the  
20 prisoner or resentence the prisoner or grant a new trial as may appear  
21 appropriate. Proceedings under the provisions of sections 29-3001 to  
22 29-3004 shall be civil in nature. Costs shall be taxed as in habeas  
23 corpus cases.

24           (3) A court may entertain and determine such motion without  
25 requiring the production of the prisoner, whether or not a hearing is  
26 held. Testimony of the prisoner or other witnesses may be offered by

1 deposition. The court need not entertain a second motion or successive  
2 motions for similar relief on behalf of the same prisoner.

3 (4) A one-year period of limitation shall apply to the filing of a  
4 verified motion for postconviction relief. The one-year limitation period  
5 shall run from the later of:

6 (a) The date the judgment of conviction became final by the  
7 conclusion of a direct appeal or the expiration of the time for filing a  
8 direct appeal;

9 (b) The date on which the factual predicate of the constitutional  
10 claim or claims alleged could have been discovered through the exercise  
11 of due diligence;

12 (c) The date on which an impediment created by state action, in  
13 violation of the Constitution of the United States or the Constitution of  
14 Nebraska or any law of this state, is removed, if the prisoner was  
15 prevented from filing a verified motion by such state action;

16 (d) The date on which a constitutional claim asserted was initially  
17 recognized by the Supreme Court of the United States or the Nebraska  
18 Supreme Court, if the newly recognized right has been made applicable  
19 retroactively to cases on postconviction collateral review; or

20 (e) The date on which the Supreme Court of the United States denies  
21 a writ of certiorari or affirms a conviction appealed from the Nebraska  
22 Supreme Court. This subdivision only applies if, within thirty days after  
23 petitioning the Supreme Court of the United States for a writ of  
24 certiorari, the prisoner files a notice in the district court of  
25 conviction stating that the prisoner has filed such petition August 27,  
26 2011.

27 Sec. 3. Section 43-279, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 43-279 (1) The adjudication portion of hearings shall be conducted  
30 before the court without a jury, applying the customary rules of evidence  
31 in use in trials without a jury. When the petition alleges the juvenile

1 to be within the provisions of subdivision (1), (2), (3)(b), or (4) of  
2 section 43-247 and the juvenile or his or her parent, guardian, or  
3 custodian appears with or without counsel, the court shall inform the  
4 parties:

5 (a) Of the nature of the proceedings and the possible consequences  
6 or dispositions pursuant to sections 43-284 to 43-286, 43-289, and 43-290  
7 that may apply to the juvenile's case following an adjudication of  
8 jurisdiction;

9 (b) Of such juvenile's right to counsel as provided in sections  
10 43-272 and 43-273;

11 (c) Of the privilege against self-incrimination by advising the  
12 juvenile, parent, guardian, or custodian that the juvenile may remain  
13 silent concerning the charges against the juvenile and that anything said  
14 may be used against the juvenile;

15 (d) Of the right to confront anyone who testifies against the  
16 juvenile and to cross-examine any persons who appear against the  
17 juvenile;

18 (e) Of the right of the juvenile to testify and to compel other  
19 witnesses to attend and testify in his or her own behalf;

20 (f) Of the right of the juvenile to a speedy adjudication hearing;  
21 and

22 (g) Of the right to appeal and have a transcript for such purpose.

23 After giving such warnings and admonitions, the court may accept an  
24 in-court admission or answer of no contest by the juvenile of all or any  
25 part of the allegations in the petition if the court has determined from  
26 examination of the juvenile and those present that such admission or  
27 answer of no contest is intelligently, voluntarily, and understandingly  
28 made and with an affirmative waiver of rights and that a factual basis  
29 for such admission or answer of no contest exists. The waiver of the  
30 right to counsel shall satisfy section 43-3102. The court may base its  
31 adjudication provided in subsection (2) of this section on such admission

1 or answer of no contest.

2 (2) If the juvenile denies the petition or stands mute the court  
3 shall first allow a reasonable time for preparation if needed and then  
4 consider only the question of whether the juvenile is a person described  
5 by section 43-247. After hearing the evidence on such question, the court  
6 shall make a finding and adjudication, to be entered on the records of  
7 the court, whether or not the juvenile is a person described by  
8 subdivision (1), (2), (3)(b), or (4) of section 43-247 based upon proof  
9 beyond a reasonable doubt. If an Indian child is involved, the standard  
10 of proof shall be in compliance with the Nebraska Indian Child Welfare  
11 Act, if applicable.

12 (3) If the court shall find that the juvenile named in the petition  
13 is not within the provisions of section 43-247, it shall dismiss the  
14 case. If the court finds that the juvenile named in the petition is such  
15 a juvenile, it shall make and enter its findings and adjudication  
16 accordingly, designating which subdivision or subdivisions of section  
17 43-247 such juvenile is within; the court shall allow a reasonable time  
18 for preparation if needed and then proceed to an inquiry into the proper  
19 disposition to be made of such juvenile.

20 Sec. 4. Section 43-280, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 43-280 No adjudication by the juvenile court upon the status of a  
23 juvenile shall be deemed a conviction nor shall the adjudication operate  
24 to impose any of the civil disabilities ordinarily resulting from  
25 conviction. The adjudication and the evidence given in the court shall  
26 not operate to disqualify such juvenile in any future civil or military  
27 service application or appointment. Any admission, answer of no contest,  
28 confession, or statement made by the juvenile in court and admitted by  
29 the court, in a proceeding under section 43-279, shall be inadmissible  
30 against such juvenile in any criminal or civil proceeding but may be  
31 considered by a court as part of a presentence investigation involving a

1 subsequent transaction.

2 Sec. 8. Section 83-4,134.01, Revised Statutes Cumulative Supplement,  
3 2020, is amended to read:

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

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

10 (a) Room confinement of a juvenile for longer than one hour during a  
11 twenty-four-hour period shall be approved in writing by a supervisor in  
12 the juvenile facility;

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

23 (c) (b) If any physical or mental health clinical evaluation was  
24 performed during the time the juvenile was in room confinement for longer  
25 than one hour, the results of such evaluation shall be considered in any  
26 decision to place a juvenile in room confinement or to continue room  
27 confinement;

28 (d) (c) The juvenile facility shall electronically submit a  
29 quarterly report ~~quarterly~~ to the Legislature on the juveniles placed in  
30 room confinement; the length of time, in hours and minutes, each juvenile  
31 was in room confinement; the race, ethnicity, age, and gender of each

1 juvenile placed in room confinement; facility staffing levels at the time  
2 of confinement; and the reason each juvenile was placed in room  
3 confinement. The report shall specifically address each instance of room  
4 confinement of a juvenile for more than four hours, including all reasons  
5 why attempts to return the juvenile to the general population of the  
6 juvenile facility were unsuccessful. The report shall also detail all  
7 corrective measures taken in response to noncompliance with this section.  
8 The report shall redact all personal identifying information but shall  
9 provide individual, not aggregate, data. ~~The report shall be delivered~~  
10 ~~electronically to the Legislature. The initial quarterly report shall be~~  
11 ~~submitted within two weeks after the quarter ending on September 30,~~  
12 ~~2016. Subsequent reports shall be submitted for the ensuing quarters~~  
13 ~~within two weeks after the end of each quarter; and~~

14 (e) By September 15, 2022, and by each September 15 thereafter, the  
15 juvenile facility shall electronically submit to the Legislature an  
16 annual summary report for the immediately preceding fiscal year. The  
17 summary report shall include the total number of available beds in the  
18 facility; the total number of juveniles served; the total number of  
19 juveniles confined; the total number of occurrences of juvenile room  
20 confinement; the total number of confinement hours; the longest single  
21 period of room confinement experienced by a specific juvenile, in hours  
22 and minutes; the total number of incidents of room confinement lasting  
23 less than one hour; the total number of incidents lasting over four  
24 hours; and the total number of incidents lasting over twenty-four hours.  
25 The report shall redact all personal identifying information but shall,  
26 as required by this subdivision, provide individual, not aggregate data;  
27 and

28 (f) ~~(d)~~ The Inspector General of Nebraska Child Welfare shall review  
29 all data collected pursuant to this section. The Inspector General may  
30 request that such data be provided to the Inspector General's office in a  
31 format the Inspector General determines is necessary for its review. The

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

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

11 (3) ~~(4)~~ Any juvenile facility which is not a residential child-  
12 caring agency which fails to comply with the requirements of this section  
13 is subject to disciplinary action as provided in section 83-4,134. Any  
14 juvenile facility which is a residential child-caring agency which fails  
15 to comply with the requirements of this section is subject to  
16 disciplinary action as provided in section 71-1940.

17 2. Renumber the remaining section and correct the repealer  
18 accordingly.