

AMENDMENTS TO LB922

(Amendments to Standing Committee amendments, AM2332)

Introduced by Cavanaugh, J., 9.

1 1. Insert the following new sections:

2 Sec. 8. 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. 9. 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. 10. 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. 14. Section 83-4,134.01, Revised Statutes Cumulative
3 Supplement, 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. Correct the operative date and repealer sections so that the
18 sections added by this amendment become operative on their effective
19 date.

20 3. Renumber the remaining sections and correct internal references
21 accordingly.