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GUIDELINES ON JUVENILE ROOM CONFINEMENT DATA COLLECTION & REPORTING

PURSUANT TO NEB. REV. STAT. §§ 83-4,134.01 and 83-4,125

EFFECTIVE DATE: JULY 1, 2018

Since July 2016, Nebraska law has required juvenile facilities to document and publicly report incidents of juvenile room confinement that last longer than one hour. The law also requires the Office of Inspector General of Nebraska Child Welfare (OIG) to review all data collected on juvenile room confinement and publish an annual report.

In 2018, changes were made to the laws governing documentation and reporting on room confinement with the passage of LB 670. The main changes included:

- Clarifications to the definition of room confinement;
- A requirement that facilities publicly report data on individual juveniles and room confinement events, rather than aggregate numbers; and,
- Consequences for facilities that do not follow room confinement documentation and reporting requirements. According to Neb. Rev. Stat. § 83-4,134.01, facilities that do not follow Nebraska's laws on juvenile room confinement are now subject to discipline by either the Nebraska Commission on Law Enforcement and Criminal Justice's Jail Standards Board or the Nebraska Department of Health and Human Services' Division of Public Health, depending on the type of facility.

The guidelines that follow are intended to help facilities meet their statutory requirements under the updated law and ensure that the OIG's annual report on room confinement is accurate and fair.

These guidelines will address:

1. Which facilities are required to document and report on room confinement;
2. What is considered a juvenile room confinement incident;
3. What information about incidents of room confinement must be documented;
4. What information about room confinement must be reported;
5. How facilities that use room confinement report to the Legislature and OIG; and,
6. How facilities that do not use room confinement report to the Legislature and OIG.

Some of the key differences between these guidelines and the guidelines the OIG sent to facilities in 2016, include:

- Additional information on the types of practices that fall into the category of "room confinement";
- More information on the differences between what facilities must track internally and what facilities must report on to the Legislature;
- Changes in definitions and more detailed recommendations on how facilities capture required information;
- Guidance on providing individualized data on room confinement to the Legislature on a quarterly basis;
- Specifics for facilities using room confinement about the specific data that needs to be provided to the OIG on an annual basis; and,
- A change that allows facilities which do not use room confinement to send their policy on room confinement and a certification that no room confinement events occurred in the previous year to the OIG on an **annual basis**, instead of quarterly.

A copy of Nebraska statutes of juvenile room confinement, updated to reflect the passage of LB 670, can be found at the end of this document.

1. Which facilities must document and report on juvenile room confinement?

Nebraska's law requires all "juvenile facilities" to document incidents of juvenile room confinement which last over one hour. As defined in Neb. Rev. Stat. § 83-4,125, juvenile facilities specifically include:

- Juvenile detention facilities and staff secure juvenile facilities operated by local governments;
- Youth Rehabilitation and Treatment Centers;
- Facilities operated by the Nebraska Department of Correctional Services that house those under the age of 19; and,
- Residential Child-Caring Agencies – facilities that provide 24-hour care to four or more children and are not licensed as foster homes. Many of the facilities that fall into this category are licensed as Residential Child-Caring Agencies by the Nebraska Department of Health and Human Services.

2. What is considered a juvenile room confinement incident?

Neb. Rev. Stat. § 83-4,125 defines room confinement as, "the involuntary restriction of a juvenile placed alone in a cell, alone in a room, or alone in another area, including a juvenile's own room, except during normal sleeping hours, whether or not such cell, room, or other area is subject to video or other electronic monitoring."

A room confinement incident occurs any time a juvenile (person under age 19) is separated alone from a facility's general population or programming, unless the juvenile requested the separation or participated in the separation of their own free will.

The definition of room confinement in Nebraska law is intentionally broad. It could apply to a range of practices that facilities use, including, but not limited to: involuntary cooling off periods and time outs; seclusion; room restriction; restrictive housing, segregation, and disciplinary confinement; investigative safekeeping and protective custody; medical quarantine; and, lockdowns for head count, shift change, or facility emergencies.

The OIG advises facilities to document and report on any practices that could be considered room confinement.

Note:

- Juveniles who are separated from the general population are considered to be in room confinement even when they are continuously monitored by facility staff, whether in person or by electronic or video monitoring.
- Room confinement can occur in locked or unlocked areas.
- Room confinement can occur even if the juvenile initially consented to a removal from the general population, but was then later prevented from returning.

If juveniles are placed alone in rooms as part of normal sleeping hour practices, this is not considered a room confinement incident.

3. What information about incidents of room confinement must be documented?

Nebraska law requires that any room confinement incident that lasts longer than an hour be approved by a supervisor and documented in writing. Facilities must document specific information on each incident of room confinement, outlined in Neb. Rev. Stat. §83-4,134.01(2). The OIG recommends that facilities fulfill these requirements by documenting the following information on each incident of room confinement:

- **Juvenile Name.**
- **Juvenile Booking ID or Tracking Number.**
- **Demographic Information on Juvenile.**
 - Juvenile's Date of Birth or Age at Incident.
 - Juvenile's Race. Race or races with which the juvenile self-identifies from the following list:
 - American Indian or Alaska Native
 - Asian
 - Black or African American
 - Native Hawaiian or Other Pacific Islander
 - White
 - Other
 - Juvenile's Ethnicity. Whether the juvenile self-identifies as Hispanic or Latino, or Not Hispanic or Latino
 - Juvenile's Sex. The juvenile's biological sex. Male or Female.
- **Date and Time of Room Confinement.** Date should be recorded using the MM/DD/YYYY. Time should be recorded using a 24-hour clock with midnight being 0:00, noon being 12:00, and one minute before midnight being 23:59. **Note:** Even if an incident spans reporting periods, record the actual date and time room confinement began, not the date and time that the reporting quarter or year ended.
- **Date and Time of Return to General Population.** Date and time should be captured the same way as date and time of room confinement (MM/DD/YYYY and 24-hour clock). **Note:** Even if an incident spans reporting periods, record the actual date and time room confinement ended, not the date and time that the reporting quarter or year ended.
- **Name and Signature of Supervisor Approving Room Confinement.** Neb. Rev. Stat. §83-4,134.01(2)(a) requires supervisors at juvenile facilities to approve every room confinement incident that lasts for more than an hour in writing.
- **Number of Direct Care Staff on Unit.** The number of staff charged with day-to-day supervision of juveniles who were present on the unit when the room confinement incident occurred needs to be recorded. Record the number of direct care staff that were present on the unit where the incident occurred, not the unit where the juvenile was kept in room confinement.

- **Number of Juveniles on Unit.** Document the total number of juveniles (including the juvenile placed in room confinement) who were present on the unit when the room confinement incident occurred. Record the number of juveniles that were present on the unit where the incident occurred, not the unit where the juvenile was kept in room confinement.
- **Reason for Placement in Room Confinement.** Provide a *brief description* of the incident **and** mark *all* the options that apply from the following categories:
 - Safety: Juvenile is a danger to other residents. The juvenile has assaulted or seriously threatened other residents and poses an imminent danger to them.
 - Safety: Juvenile is a danger to staff. The juvenile has assaulted or seriously threatened staff and poses an imminent danger to them.
 - Safety: Juvenile is a danger to self. The juvenile is at imminent risk of suicide, demonstrated by active self-harm or a suicide attempt.
 - Safety: Juvenile is in danger due to behaviors of others. The juvenile has been threatened or hurt by others and placed in room confinement for their own protection.
 - Punishment or discipline. The juvenile has broken a rule and has been placed in room confinement as a consequence.
 - Administrative: Staffing. This includes any time youth are placed in room confinement due to shift change, staff breaks, training, or shortages.
 - Administrative: Other. This includes, but is not limited to: head count; facility emergency; medical quarantine; escape risk; situations where sight and sound separation or other policies mandate youth be separated from general; and others.
- **Interventions Attempted Before Room Confinement.** Mark *all* the interventions that were used to respond to the juvenile before the use of room confinement.
 - Staff communication and support for juvenile. Staff identified juvenile was struggling and talked with juvenile.
 - Verbal warning or redirection by staff. Staff verbally warned juvenile about behavior or attempted to direct the juvenile to a different activity.
 - Voluntary cool off/time out. Staff offered the juvenile a cooling off period alone.
 - Mental health or medical staff evaluation or intervention. Juvenile was evaluated or treated by mental health or medical staff. Neb. Rev. Stat. §83-4,134.01(2)(b) requires the results of any evaluations be considered when deciding whether to place in room confinement.
 - Other – please specify. Provide a brief description of any other efforts made to respond to the juvenile without the use of room confinement.
- **Services and Interventions during Room Confinement.** Mark *all* the interventions and services provided to youth during their time in room confinement
 - Basic Services. Juvenile offered participation in basic services at facility, including recreation, shower, and education.

- Staff monitoring every 15 minutes or less. Staff checked on juvenile well-being in person every 15 minutes or less.
 - Continuous monitoring by staff. Staff observed juvenile well-being continuously in person.
 - Mental health or medical staff evaluation or intervention. Juvenile was evaluated or treated by mental health or medical staff while in room confinement. Neb. Rev. Stat. §83-4,134.01(2)(b) requires the results of any evaluations be considered when deciding whether room confinement should continue.
 - Participation in programming with staff. Juvenile participated in programming with a staff member. For example, staff reviewed and discussed incident with juvenile or actively interacted with the juvenile during recreation or other programs.
 - Participation in programming with other youth. Juvenile joined other youth for programming while on room confinement status. For example, attending school with other youth or therapeutic groups.
 - Contact with family. Juvenile allowed calls or visits with family.
 - Individualized Behavior/Programming Plan. Staff developed and implemented an individualized plan for the juvenile while in room confinement.
 - Other – please specify. Provide a brief description of any other services offered to the juvenile or efforts made to return them to General Population.
- **Incidents of Self-Harm or Suicidal Behavior.** Briefly describe any incidents when juvenile harmed themselves or engaged in suicidal behavior while alone in room confinement.
 - **Room Confinement Analysis.** Following the room confinement incident, facilities should review the incident and document answers, at a minimum, to the following questions:
 - Why were interventions to prevent room confinement unsuccessful?
 - What barriers prevented the juvenile from returning to general population? This question especially applies to all *incidents that lasted more than 4 hours*. Include a brief description and mark *all* of the following reasons that apply:
 - Continued danger to others.
 - Continued danger to self.
 - Mental health.
 - Facility design or capacity.
 - Juvenile needs different placement or level of care.
 - Other – please specify.

4. What information about room confinement must be reported?

Neb. Rev. Stat. §83-4,134.01(2)(c) requires any juvenile facility that uses room confinement to submit **quarterly reports** to the Legislature.

After July 1, 2018, quarterly reports submitted **must include individualized information**, rather than aggregate numbers. **However, quarterly reports shall not contain personal or identifying information**, such as the names of youth.

By law, quarterly reports are to contain the following information:

- **Information on juveniles placed in room confinement.** For each juvenile placed in room confinement during the quarter, the facility must report:
 - Demographic information. This includes information on race, ethnicity, age, and gender.
 - Information on each incident of room confinement. List information on each incident where a juvenile was placed in room confinement, including:
 - Date and Time of Room Confinement
 - Date and Time of Return to General Population
 - Reason for Room Confinement
 - Number of Direct Care Staff on Unit
 - Number of Juveniles on Unit
 - Barriers Preventing Return to General Population (for incidents that lasted more than 4 hours).
- **Corrective measures.** Include a description of any action taken when statutory requirements related to room confinement were not followed. One example of a description might be, “Staff were provided additional training or disciplined due to failure to seek supervisory approval for room confinement or failure to document an incident.”

Facilities may also provide additional information and data about room confinement incidents and juveniles placed in room confinement that can help members of the public better understand when and why room confinement is used.

5. How should facilities that use room confinement report to the Nebraska Legislature and OIG?

The law requires reports be submitted on or before:

- October 15, for room confinement incidents occurring July through September;
- January 15, for room confinement incidents occurring October through December;
- April 15, for room confinement incidents occurring January through March; and,
- July 15, for room confinement incidents occurring April through June.

Reports must be submitted electronically on the Nebraska Legislature’s Website. Facilities can upload reports at the following web address: <https://nebraskalegislature.gov/agencies/index.php/>.

Facilities should select “Juvenile Facilities” as their agency. Reports must be in a PDF format. For concerns or questions about uploading reports, facilities can contact support@leg.ne.gov or call the Clerk of the Legislature’s office – 402.471.2271.

Note: reports uploaded to the Nebraska Legislature’s website should not contain personal or identifying information.

In addition to public reporting, facilities that use room confinement should **provide room confinement data to the OIG annually**. This data should include:

- **Individualized data on each incident of room confinement.** This includes:
 - Juvenile Name;
 - Juvenile ID or Tracking Number;
 - Demographic Information on Race, Ethnicity, Age, and Gender;
 - Date and Time of Room Confinement;
 - Date and Time of Return to General Population;
 - Reason for Room Confinement;
 - Number of Direct Care Staff on Unit;
 - Number of Juveniles on Unit;
 - Interventions Attempted Before Room Confinement;
 - Services and Interventions during Room Confinement;
 - Incidents of Self-Harm or Suicidal Behavior; and,
 - Barriers Preventing Return to General Population.
- Provide this individualized data in an editable spreadsheet –either Microsoft Excel or Google Sheets. The OIG has provided a sample spreadsheet along with this guidance that facilities can use.
- **Number of juveniles placed at facility:** The total number of juveniles who spent any time as residents of the facility during each quarter, and annually from July 1 – June 30.
- **Total days of juvenile placement at facility:** The total number of days juveniles were placed at the facility during each quarter, and annually from July 1 – June 30. For example, if A was placed for 30 days and B was placed for 25 days, the total placement days are equal to 55. Facilities should not count time that juveniles spent in their custody, but placed elsewhere, for example – time spent in a local hospital or county jail.

Send all data to oig@leg.ne.gov by **July 15** each year. Please note that the OIG may request and review additional documentation about room confinement incidents at facilities as it prepares its annual report or to ensure statutory compliance.

6. How should facilities that do not use room confinement report to the Nebraska Legislature and OIG?

If your facility does not use juvenile room confinement:

- You **do not** need to submit a quarterly report to the Legislature.
- Provide a **copy of your current policy** on room confinement and a confirmation **letter certifying that juvenile room confinement has not occurred** from July 1 – June 30 to the OIG annually.
- **This certification should be provided by July 15 each year.** Information should be sent to oig@leg.ne.gov or Office of Inspector General of Nebraska Child Welfare, P.O. Box 94604, Lincoln, NE 68509-4604.

NEBRASKA STATUTES ON JUVENILE ROOM CONFINEMENT

Neb. Rev. Stat. § 83-4,134.01.

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

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

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

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

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

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

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

Neb. Rev. Stat. § 83-4,125

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

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

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

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

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

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

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

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

Neb. Rev. Stat. §71-1940

The department may deny, refuse to renew, or take disciplinary action against a license issued under the Children's Residential Facilities and Placing Licensure Act on any of the following grounds:

- (1) Failure to meet or violation of any of the requirements of the act or the rules and regulations adopted and promulgated under the act;
- (2) Violation of an order of the department under the act;
- (3) Conviction, admission, or substantial evidence of committing or permitting, aiding, or abetting another to commit any unlawful act, including, but not limited to, unlawful acts committed by an applicant or licensee under the act, household members who reside at the place where children's residential care or child-placing services are provided, or employees of the applicant or licensee that involve:
 - (a) Physical abuse of children or vulnerable adults as defined in section 28-371;
 - (b) Endangerment or neglect of children or vulnerable adults;
 - (c) Sexual abuse, sexual assault, or sexual misconduct;
 - (d) Homicide;
 - (e) Use, possession, manufacturing, or distribution of a controlled substance listed in section 28-405;
 - (f) Property crimes, including, but not limited to, fraud, embezzlement, and theft by deception; or
 - (g) Use of a weapon in the commission of an unlawful act;
- (4) Conduct or practices detrimental to the health, safety, or welfare of any individual residing in, served by, or employed at the residential child caring agency or child-placing agency;
- (5) Failure to allow an agent or employee of the department access to the residential child-caring agency or child-placing agency for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;
- (6) Failure to allow local or state inspectors, investigators, or law enforcement officers access to the residential child-caring agency or child placing agency for the purposes of investigation necessary to carry out their duties;
- (7) Failure to meet requirements relating to sanitation, fire safety, and building codes;
- (8) Failure to comply with or violation of the Medication Aide Act;
- (9) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711;

(10) Violation of any city, village, or county rules, regulations, resolutions, or ordinances regulating licensees;

(11) A history of misconduct or violations by an applicant or licensee involving children or vulnerable adults;

(12) Violation of the requirements of section 83-4,134.01; or

(13) Violation of any federal, state, or local law involving care of children.