

Unlocking the Box: Everything Practitioners Need to Know about Nebraska's Juvenile Solitary Confinement Ban



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WEBCAST

Christine Henningsen, *Center on Children, Families and the Law*

Scout Richters, *ACLU of Nebraska*



NEBRASKA
State Bar Association

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SPEAKER BIOS

Christine Henningsen, Center on Children, Families and the Law

Christine is Director of Nebraska Youth Advocates a program at UNL's Center on Children, Families and the Law (CCFL) focusing on training and support for juvenile defense attorneys. Christine received her bachelor's degree in Social Work from Loyola University in Chicago and her law degree from Creighton University School of Law. Prior to joining CCFL, Christine was an Assistant Public Defender in Douglas County working primarily in juvenile court, and continues to take court appointments for juvenile defense. Christine is a consultant at UNL's Children's Justice Clinic and a member of numerous collaborative efforts focusing on improving Nebraska's juvenile court system.

Scout Richters, ACLU of Nebraska

Scout has served as Legal & Policy Counsel at the ACLU of Nebraska since 2017. Scout's areas of focus include juvenile justice, women's rights, and reproductive justice. Scout attended the University of Nebraska-Lincoln and Brooklyn Law School. Before joining the ACLU, Scout worked as a staff attorney at Legal Aid of Nebraska working primarily in Lancaster County Juvenile Court. Since joining the ACLU in 2017, Scout has worked extensively on the issue of juvenile solitary confinement via legislative advocacy, education, and public awareness campaigns.

Unlocking the Box: Everything Practitioners Need to Know about Juvenile Solitary Confinement

Christine Henningsen, Director of Nebraska Youth Advocates, UNL Center for Children, Families, and the Law (CCFL)

Scout Richters, Legal & Policy Counsel, ACLU of Nebraska

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Agenda



- Defining juvenile solitary confinement and its harms, legal framework, best practices, and alternatives to solitary
- Juvenile solitary confinement in Nebraska before legislation
- Timeline of events pre: LB 230
- LB 230 enacted and in effect

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Defining juvenile solitary confinement

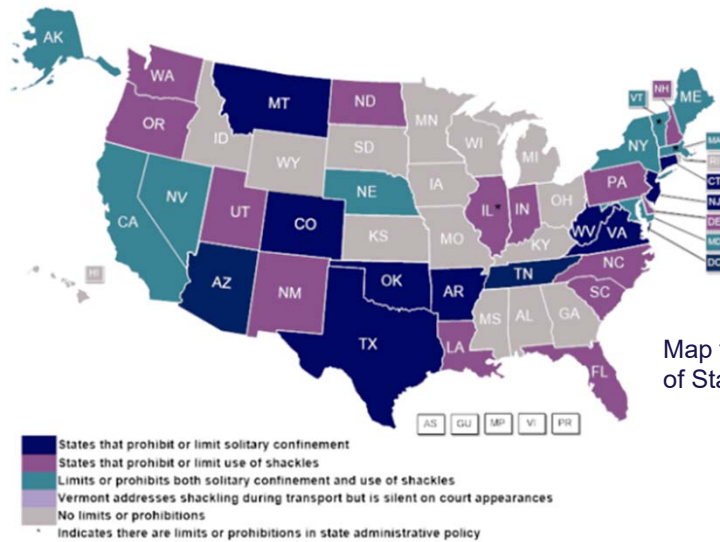
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Lasting effects of juvenile solitary

- Psychological damage
- Increased suicide rates
- Denial of education and rehabilitation
- Stunted development

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States with limits on juvenile solitary confinement and/or shackling of juveniles



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Legal & Constitutional Framework

- Can violate the prohibition on cruel and unusual punishment found in the U.S. and Nebraska State Constitutions
- Can violate the due process guarantee of the 14th amendment and the Nebraska State Constitution.
- Recent Supreme Court Jurisprudence (*Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 453 U.S. 551 (2005))
- Courts increasingly considering constitutional propriety of placing youth in confinement

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Best Practices

- Clear consensus among mental health professionals: we should not use isolation of juveniles except when it is absolutely necessary, and even then only for extremely short periods
- Temporary response to behavior that threatens immediate harm
- Not used for punishment, administrative convenience of staff shortage.
- Maximum of four hours, and during that time, the staff should be actively engaging with the youth with mental health professionals to address the crisis

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Alternatives to solitary can be used safely

- Emphasis on positive reinforcement over punishment
- Changes have been made in other states by the creation of state laws, changes to internal policies, and litigation.
- Massachusetts example
- Ohio example
- Early resistance in Nebraska focused on the necessity of using solitary confinement for juveniles

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Juvenile solitary confinement in Nebraska before legislation

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Growing Up Locked Down

- Examined policies from Nebraska youth facilities
- Sent open records requests for logs of length of stay and frequency of use of solitary for period between from January 2014-June 2015
- Data was from 9 facilities in Nebraska
- Some facilities didn't keep logs of this data at all.
- Lack of uniformity within or between the facilities
- Wide array of reasons for confinement

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Growing Up Locked Down: Facility's Policies

Youth Rehabilitation and Treatment Center - Kearney

- e. **Confinement in a security room for any offense should not exceed five days, unless otherwise provided by law. Juveniles placed in confinement are afforded living conditions and privileges that may be earned approximating those available to the general population. (Standard 4-JCF-3C-04)**

Youth Rehabilitation and Treatment Center - Geneva

- b) A juvenile may not be placed in room confinement for over 5 days.

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Growing Up Locked Down: Facility's Policies

Nebraska Correctional Youth Facility and Nebraska Correctional Center for Women²²

- a. The total number of days that an inmate may be placed on restriction, for each convicted offense, shall not exceed 90 calendar days

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Growing Up Locked Down: Facility's Policies

Douglas County Youth Center

A detainee charged with violating a Class (1) or (2) Major Rule of the facility may result in a disciplinary hearing and placed in Secure Detention. The detainee's due process rights shall be protected throughout the process. These violations can result in sanctions or lockdown for periods not to exceed seven (7) days for each infraction unless violation includes violence, which can result in lockdown not to exceed 30 days.

Lancaster County Youth Services

Classification 1: 11-15 day room restriction

Classification 2: 6-10 day room restriction

Classification 3: 4-5 day room restriction

Classification 4: 1-3 day room restriction

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Growing Up Locked Down: Facility's Policies

Northeast Nebraska Juvenile Services Center (Norfolk)

4. Major Rule Violation A resident found guilty of a major rule violation by the Disciplinary Hearing Officer may be placed on Room Restriction for no more than nine (9) days per rule violation.

Sarpy County Juvenile Justice Center

Sarpy County has not promulgated any policies which limit time that youth may be subjected to solitary confinement.

Scotts Bluff County Detention Center

You will not have any contact with people at court without permission from the supervising staff. Inappropriate behavior in the court room may earn a consequence up to 3-7 day lock down with administrator approval.

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Growing Up Locked Down: placement examples

Wide variation in use and no state-wide standards...

05/08/2014 07:35 V201400434
SANCTION DATES: 05/08/2014 15:00:00 05/08/2014 18:00:00 RM RESTRICTION 1-6 HOURS
OTHER SANCTION: TOO MANY BOOKS IN ROOM AGAIN

03/03/2014 09:31 V201400238
SANCTION DATES: 03/03/2014 15:00:00 03/03/2014 21:00:00 RM RESTRICTION 1-6 HOURS
OTHER SANCTION: NOTE PASSING

06/09/2014 13:03 V201400556
SANCTION DATES: 06/09/2014 15:00:00 06/09/2014 21:00:00 RM RESTRICTION 1-6 HOURS
OTHER SANCTION: PUTTING THE STRING OF HIS SOCK IN HIS MOUTH

02/26/2015 11:22 V201500289
SANCTION DATES: 02/26/2015 14:00:00 02/26/2015 15:00:00 RM RESTRICTION 1-6 HOURS
OTHER SANCTION: EXCESSIVE BOOKS IN ROOM

02/27/2015 18:07 V201500299
SANCTION DATES: 02/27/2015 18:10:00 02/27/2015 20:30:00 RM RESTRICTION 1-6 HOURS
OTHER SANCTION: DIGGING IN TRASH FOR COOKIES/TOLD STOP/IN MO

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Growing Up Locked Down: Data

- Some facilities did not keep logs
- Those that did, average length of solitary:
 - YRTC Kearney: 20.80 hours
 - YRTC Geneva: 43.78 hours
 - Lancaster County: 14.15 hours
 - Sarpy County: 1.76 hours
 - NCYF (NDCS): 187.66 hours
 - Northeast Juvenile Services: 189.16 hours

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Timeline of events before LB 230

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April 2016: LB 894 is passed

- Along with other juvenile justice provisions, the bill required juvenile facilities to file quarterly reports on their use of room confinement.
- Annual Report by Nebraska Inspector General of Child Welfare

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January 2018: LB 870 Introduced

WHY ARE YOUNG NEBRASKANS IN SOLITARY CONFINEMENT?

Reasons for Solitary & Number of Incidents

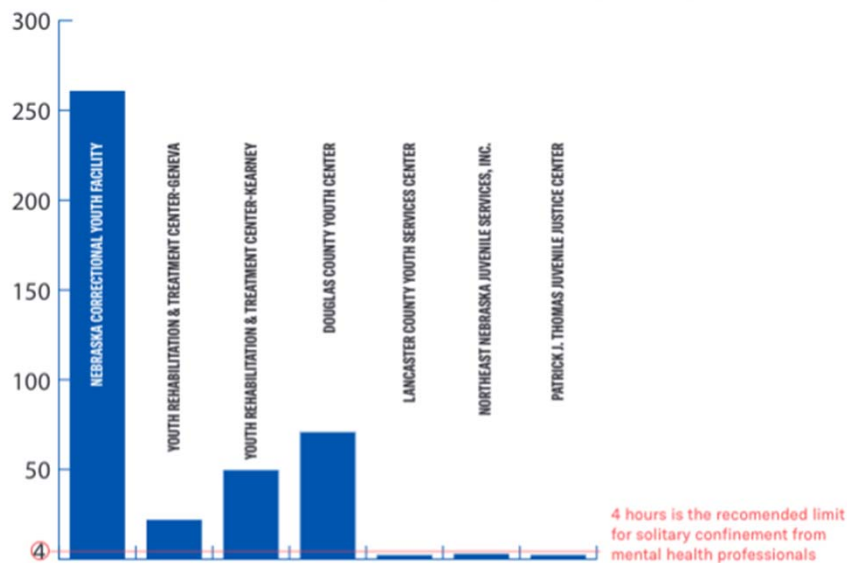
Rule violations/disobeying orders	646
Administrative including staff breaks	481
Verbal Aggression including cussing	193
Self-harm (threats and attempts)	84

These are the types of reasons for solitary that LB 870 would prohibit.

Source: Mandatory data reporting from facilities for the period of July 2016 to September 2017.

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AVERAGE DURATION OF EACH USE OF SOLITARY CONFINEMENT IN NEBRASKA FACILITIES IN HOURS*



Source: 2017 Juvenile Room Confinement Annual Report, Office of Inspector General of Nebraska Child Welfare Reports

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YOUTH OF COLOR ARE OVERREPRESENTED IN USE OF SOLITARY CONFINEMENT

Race	Percent of Solitary Incidents ¹	Percent of Child Population in Nebraska ²
White	45.3%	70.0%
Black	33.4%	5.8%
American Indian or Alaska Native	9.4%	1.1%
Asian	20.0%	2.4%
Multi-Race	5.5%	6.4%
Hispanic	15.6%	14.3%

¹Mandatory data reporting from facilities for the period of July 2016 to September 2017. Hispanic data from facilities based on ethnicity reporting.
² U.S. Census Bureau, Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin, July 1, 2015, Table PEPASR6H.

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Katie

Katie is a Caucasian female

"The only thing to do if you are in solitary is sleep. I get extremely depressed being in isolation. You don't have any contact with anyone else in the facility. I have hurt myself while I have been in room confinement."

Darryl

Darryl is an African American male

"When I was in solitary, no one talked to me. Staff would look at me through a window every once in a while. Before I went to solitary, I had individual therapy. I did not get therapy while I was locked in my room. I did not get school work. The only thing to sit on during the day was a concrete slab."

Malik

Malik is an African American male

"There is nothing to do in confinement. You only get out of your room for 1 hour a day. Staff can extend your time in solitary for any reason they want. I was in confinement for over a week for cussing at a staff member. Being in solitary does not help me. It only makes me angry."

Jada

Jada is an African American female

"Being in confinement made me have an anxiety attack. I was locked in my room. You eat meals in your room and don't have any contact with anyone. I was not even allowed to have a book. I slept most of the time. Being in solitary made me feel like I was going crazy. I think putting people in solitary causes them to cut themselves. I could hear other people screaming, crying, and yelling."

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LB 870 Committee Hearing

- Supporters at the hearing
- Opposition at the hearing
- Large fiscal note attached
- Bill not prioritized for advancement

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July 2018: LB 670 goes into effect

- Clarified reporting requirements
- Mandated reports contain individual instances of confinement, not aggregate data

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May 2019: LB 686 passes

- Ban on solitary confinement for vulnerable populations in Nebraska prisons and includes youth sentenced as adults.

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LB 230

- Introduced in January 2019
- Committee Hearing
- Placed on General File, not prioritized
- Fall 2019: reports of unacceptable conditions at YRTC Geneva
- January 2020, remains on general file
- February 2020 LB 230 is passed (44-0), signed into law by Gov. Ricketts

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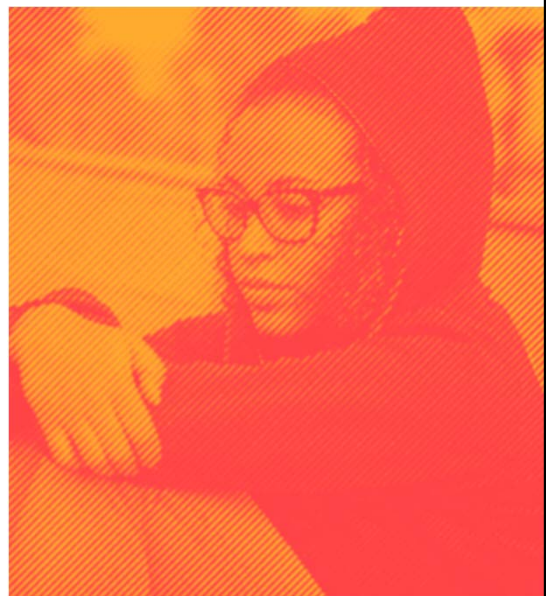
LB 230 enacted and in effect

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83-4,134.02

Placement of juvenile in room confinement; restrictions on placement; conditions; release; facility; duties; monitoring.

- Effective date: November 14, 2020
- Applies to juvenile facilities:
 - Juvenile detention facility
 - Staff secure juvenile facility
 - Facility operated by NDCS
 - YRTC operated by DHHS



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83-4,134.02

- Requires that any room confinement for longer than 1 hour during a 24-hour period be documented and approved by a supervisor.
- Confinement cannot be used as punishment, as a response to a staffing shortage, or in retaliation against the young person.

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83-4,134.02

- Only used when less-restrictive alternative have been exhausted and juvenile poses immediate and substantial risk of harm to self or others.
- Only held until the immediate and substantial risk is resolved.
- Within one day of placement, facility must notify parents or guardians and juvenile's attorney.

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83-4,134.02

- Requires certain minimum standards for rooms used for room confinement.
- Requires that youth in confinement have equal access to meals, family, contact, legal assistance, and educational programming.
- Requires that youth in room confinement have access to mental health care and medical care.
- Requires that those in confinement be continuously monitored.

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Wrap Up

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Thank you!

For more information:

Christine Henningsen: christine.henningsen@unl.edu

Scout Richters: srichters@aclunebraska.org

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Questions

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