

**LANCASTER COUNTY BOARD OF COMMISSIONERS
2020 LEGISLATIVE RETREAT
THURSDAY, AUGUST 27, 2020
LANCASTER COUNTY SHERIFF'S TRAINING CLASSROOMS B & C
8:30 A.M.**

Commissioners Present: Sean Flowerday, Chair; Rick Vest, Vice Chair; Roma Amundson, Deb Schorr and Christa Yoakum

Elected Officials Present: Pat Condon, County Attorney; Troy Hawk, Clerk of the District Court; Pam Dingman, County Engineer; Joe Nigro, Public Defender; Terry Wagner, Sheriff; and Rachel Garver, County Treasurer

Others Present: Dave Derbin, Chief Administrative Officer; Ann Ames, Deputy Chief Administrative Officer; Dennis Meyer, Budget & Fiscal Officer; Danielle Buck, Administrative Assistant to the County Board; Cori Beattie, Deputy County Clerk; Scott Gaines, Chief Administrative Deputy Assessor/Register of Deeds; Brad Johnson, Corrections Director; Sheli Schindler, Youth Services Center (YSC) Director; Sara Hoyle, Human Services Director; Scott Etherton, Mental Health Crisis Center Director; Jeff Curry, Chief Probation Officer, Adult Probation; Pat Lopez, Director, Lincoln-Lancaster County Health Department (LLCHD); Kerin Peterson, Facilities and Properties Director; Jim Davidsaver, Emergency Management Director; and Larry Legg, Assistant County Engineer

Present Via Zoom: Joe Kohout and Brennen Miller, Kissel, Kohout ES Associates LLC, Legislative Consultants

Advance public notice of the meeting was posted on the County-City Building bulletin board and the Lancaster County, Nebraska website and provided to the media on August 26, 2020.

The Chair opened the meeting at 8:37 a.m. A copy of the Open Meetings Act was available.

AGENDA ITEM

1. OPENING COMMENTS AND REVIEW OF 2020 LEGISLATIVE SESSION

Copies of "Legislative Proposals for 2021 Session" were available (Exhibit 1).

Joe Kohout, Kissel, Kohout ES Associates, provided an overview of the 2020 legislative session. He noted the primary focus pre-COVID break was on property tax relief, business incentives and the NEXt project at the University of Nebraska Medical Center. Some of the broader issues addressed post-COVID break were budget adjustments, racial injustice and worker safety at packing plants.

Kohout said the County experienced some legislative wins and losses. The latter included bridge bonding and the 24/7 program. A big win included the mental health advanced directives bill. Other wins for the County were an increase in competency funding and mental health boards.

2. GENERAL LEGISLATIVE CONCERNS

Discussion followed on new and existing proposals outlined in Exhibit 1.

NEW PROPOSALS

Priority for Placement at State Hospitals for the Mentally Ill - Scott Etherton, Mental Health Crisis Center Director, noted the Crisis Center has had difficulty getting patients into the Regional Center but this proposal could cause conflict with the efforts to restore competency for those in jail.

Brad Johnson, Corrections Director, also voiced his concerns with the length of stay in jail (currently 86 days) for those awaiting placement at the Regional Center and emphasized the need for the Crisis Center and Corrections to collaborate on this issue.

Flowerday said he was interested in bringing forward legislation that would establish a State daily rate payable to counties once a judge orders someone to the Regional Center. Etherton added that State mental health post-commitment dollars are funneled to the Crisis Center through Region V if no other funding is available so there is a historical basis of having a "stipend." Kohout said if legislation would establish a daily reimbursement rate it might free up Program 38 dollars. Johnson cautioned this approach could backfire as, depending on the fiscal note, the State may not focus on decreasing wait numbers if counties are now being paid. Kohout added it could also undermine the argument about competency restoration in jails. He said related costs and a rate need to be established before talking to potential bill introducers.

Schorr said ongoing discussion has occurred with Douglas and Sarpy Counties as a result of a large SAMHSA (Substance Abuse and Mental Health Services Administration) grant to help reduce wait times. She emphasized the need to communicate Lancaster County's plan with those counties.

Joe Nigro, Public Defender, noted LB881 (Change provisions relating to criminal and civil procedure) goes into effect in November and it may impact this issue as some people with lesser charges may get out of jail quicker. A remodeling project at the Regional Center has also temporarily reduced bed space.

Pat Condon, County Attorney, said some of the people being released early will be back in the system in a few weeks, thus, they will end up spending more time in jail. Nigro added the same can happen for those released by the Regional Center. He felt the real answer is the State needs to spend more on mental health whether that be additional beds at the Regional Center or community programming.

Flowerday said if the State had to pay more to house their prisoners in county jail, maybe they would look for other ways to spend that money, for example, on mental health.

Due to the outcome of the 2020 session, Kohout felt some senators may want to push agendas next year during a long session whereby this issue may be defended. Discussion followed on structured residential placements. Kohout said there is a strong desire by providers to discontinue these services due to abysmally low reimbursement rates. If the desire is for more funding for residential facilities, the need will have to be demonstrated.

Caution Regarding Limitations Attempted to be Placed on Public Building Commission Bonding - Kerin Peterson, Facilities and Properties Manager, said this change would make implementing a long-range plan very difficult and time consuming.

Kohout said Lancaster County will need to monitor what transpires in the Douglas County elections. He felt some of this is being driven by their new juvenile justice center so, depending on the outcome in November, there could be support by more Douglas County Commissioners to tighten up the language.

EXISTING PROPOSALS

LB1057 (Change provisions regarding appeals of certain zoning decision by county planning commissions and county boards) - Dave Derbin, Chief Administrative Officer, indicated this bill will need to be retooled, possibly in consultation with the opposition, before bringing forward something more productive.

LR367 (Interim study to examine set fee and fine amounts and the costs experienced by county governments when administering the associated services) - Kohout suggested if this is to be prioritized, it will take NACO (Nebraska Association of County Officials) and others to move forward with a recommendation on all fees. He added the budget will be a hot topic next year so counties should be prepared to come forward with a plan on the broader issue of revenue enhancements. Schorr said fee data should be gathered from all elected officials and department directors. Kohout emphasized that this bill will need 33 votes for cloture and 30 for an override as the Governor will view it as a tax increase. Amundson added that it would be nice to set the fees commensurate with the cost incurred versus a set rate. Kohout said it would be nice to include an inflation factor or an increase based on the CPI going forward. Senator Dorn was mentioned as a potential carrier of a fee bill.

LR455 (Interim study to examine the burden on counties with regard to the costs paid for office space used by the Department of Health and Human Services (DHHS) for the administration of public health program) – Kohout suggested this be presented as an appropriation to DHHS which the counties are paying. Kohout said he and Brennen Miller will set up a meeting with Senator Wishart who is on the Appropriations Committee.

Provide County Engineer with Statutory Authority to Tow Vehicles Stranded on County Roads During Snow Storms – Pam Dingman, County Engineer, provided an overview of the problems stranded vehicles cause during snow storms. She added that it is illegal to park in the county right-of-way but the County Engineer does not have authority to tow a vehicle even during a snow event. If this issue moves forward, Kohout recommended it include limited authority language such as applying only to county engineers in a county containing a city of the primary class.

In the interest of time, Flowerday asked if there were other existing proposals on the list that anyone specifically wanted to address.

Clarify the Meaning of Public Purpose under Neb. Rev. Stat. §77-202(1)(a) - Schorr asked for further clarification. Scott Gaines, Chief Administrative Deputy, County Assessor/Register of Deeds, said this relates to a case before TERC (Tax Equalization and Review Commission) regarding the University of Nebraska - Lincoln food court. Derbin indicated this will likely be appealed to the Supreme Court so there would be definite clarification and, depending on that outcome, statutory changes may be needed.

Clarify Funding Source When Courts Assign Non-IV-D Cases to a Child Support Referee – Schorr inquired if this bill would provide more revenue to counties if successful. Derbin said he could follow up with the County Attorney's Office. Troy Hawk, Clerk of the District Court, believed that the Child Support Referee would like to handle Non-IV-D cases but they are not statutorily allowed.

3. INFRASTRUCTURE ISSUES

Larry Legg, Assistant County Engineer, was also present for the discussion.

Regarding the bridge bonding bill, Dingman said she is trying to figure out (1) the Board's wishes on moving forward; and (2) what revenue would be generated. Dennis Meyer, Budget & Fiscal Officer,

verified that none of the additional 5.2 cent levy has been allocated. One cent will provide a little over \$2.9 million. Derbin thought the bill included a hard limit of \$2,000,000 per year.

Dingman discussed various fees. Inside the City of Lincoln, a driveway connection costs \$250 and \$1,250 for residential and commercial property, respectively. There is no County fee. The County processes around 200 permits per year. The estimated cost for related expenses is around \$200 per driveway. Dingman reiterated her past comments about the County subsidizing acreage development.

In reference to utility permits, Dingman said the fee ranges from \$0 to \$25 and the bridge or road overload/over width permit fee is \$5. The County processes roughly 150 of these permits annually. Dingman also pointed out that garbage trucks in the county were left out during the last statute update.

Schorr questioned whether the same limited scope approach should be taken with a potential fee bill. Kohout thought that was a great idea. He also suggested modeling bills after ones which have already passed with provisions (i.e., LB117 – Change provisions relating to bridge and highway construction contracts, certification of financial showing and obtaining contract plans prepared by the Department of Transportation). Dingman said LB117 applied to beltway bonding. She thought the concept was interesting but the County's contractors are primarily small businesses so she would need to review this option to see if it would be feasible. Kohout mentioned the ongoing misperception that fee increases are property tax increases. He said he would like this bill to go before the Transportation Committee and offered to meet with Dingman, Meyer and Derbin to discuss options.

Flowerday said he would like to pursue this bill and include it on the County's priority list.

County lapel pins were made available to those in attendance.

4. BREAK

The meeting was recessed at 10:12 a.m., and reconvened at 10:40 a.m.

5. CRIMINAL JUSTICE ISSUES

NEW PROPOSALS

Public Defender Issues

Nigro provided a brief overview of the Public Defender's issues. He said he assumed that LB335 (Authorize 24/7 sobriety programs permit for operating a motor vehicle as a condition of bail) would be reintroduced. Flowerday said this will likely be on the County's priority list.

Regarding LB500 (Prohibit participation in pretrial diversion programs for certain driving under the influence (DUI) and driver's license offenses), Nigro said this bill would allow county attorneys to have pretrial diversion for DUIs. Sarpy County has this program and there is an interim study on DUI alternatives.

Nigro felt LB646 (Eliminate cash bail bonds, appearance bonds and related provisions) will continue to be an issue nationally and many senators appear to be interested in it. He added LB652 (Change a penalty for controlled substance possession as prescribed), also has a fair chance to be reintroduced.

In reference to the legalization of marijuana, Nigro said this will likely pass for medical use and there will continue to be a push for full legalization.

Due to recent circumstances and the Governor's veto of LB1004 (Change provisions relating to age of majority and the administration of and eligibility for parole), Nigro said there will likely be future significant proposals related to police and criminal justice reform. Kohout said it can be presumed that LB1004 will be back next session.

Amundson returned at 10:47 a.m.

EXISTING PROPOSALS

LB335 (Authorize 24/7 sobriety programs permit for operating a motor vehicle as a condition of bail) - Kohout thought the goal may be to get the language redrafted before floating it around. He suggested the Lancaster County Board Chair reach out to the Douglas County Board Chair prior to the Tri-County Meeting to garner support as Douglas County had some initial concerns. Flowerday agreed and felt the 24/7 program should continue to be pursued.

Amend the Mental Health Commitment Act to Allow Sharing of Mental Health Information Among Providers and Law Enforcement Agencies – Kohout said this language should revert to the original intent and stay away from the gun-related issue. Miller indicated they will work with Senator Geist's office on the issue.

LR453 (Interim study to examine barriers to obtaining state identification that may exist for inmates in county correctional facilities who are in the process of being released or who have been recently released) – Miller said Senator Geist was happy to introduce this and has a strong interest in working with the Judiciary Committee on justice reform.

Automatic Expungement of Criminal Records – Kohout said this was a last-minute issue with no specific bill. Johnson noted he uses these records for hiring purposes. Schorr mentioned that the County was sued in the past by someone who was denied a job due to their inaccurate criminal history information being posted on the County Attorney's website. Condon explained that the original case was dismissed but it didn't get removed from the website.

House Arrest for Work Release and Child Support Inmates – It was noted that moving those who are not a security threat to house arrest would reduce the jail population. Condon said these people are in jail because of a court order. Some threaten to not work so it might not be a good option to have them at home, not working and not paying child support. Others have animosity against a spouse and refuse to pay. Nigro said some owe a lot of money and it is not possible to catch up. He felt the idea that having them in jail is going to get them working is a misguided notion. Condon added that jail is always the last resort. Johnson said work release is fraught with abuse. He felt these people should either be in jail or be released and working. Flowerday agreed that those on work release could be on home arrest. Johnson said he and Kim Etherton, Community Corrections Director, are working with District Court and heading in that direction. The problem is child support statutes reference work release. Johnson confirmed that he would support eliminating work release. Flowerday added the child support element would need to be a separate issue. Kohout said he could bring this up with Senators McDonnell and Lathrop.

Previous County Attorney Topics

Condon provided a brief overview of previous County Attorney topics. He said he is hopeful jails costs will be reduced with post-release supervision sanctions and sentences. Johnson said Probation has seen a decrease, but the jail has not.

Regarding competency, Condon said his concern is the lack of supervision for those being released into the community which relates to inadequate mental health funding.

In reference to Mental Health Board funding, Condon said he would like to see something included about limiting one's ability to possess a firearm for one year if there has been a mental health filing. Sheriff Terry Wagner added that those committed to the Regional Center for competency restoration are prohibited from possessing firearms, but law enforcement is unable to track these cases.

Condon said Expansion of Set Aside and Sealing criteria has increased County Attorney court time as people move to set aside certain cases. There has also been an increase in gun permits which creates more work and confusion.

Regarding juvenile transportation costs, Condon said if someone leaves the State the County pays the cost to bring them back. Sheli Schindler, Youth Services Center Director, added this expense comes out of her budget and transportation costs were missed in a past bill. Kohout asked that the last six months of costs and travel locations be compiled. Schindler said she can work with the Sheriff's Office on these numbers as they are also involved with transportation.

Make Texting/Emailing a Primary Criminal Offense – Wagner explained that Nebraska is only one of a few states that does not have texting while driving as a primary violation. He said the bill never got out of committee. Kohout felt it may have a better chance of advancing next year.

Appointed Counsel Costs – It was noted that the former Public Defender worked on this bill and it was likely just carried over. Nigro said the issues are still present. Kohout thought Item A (restrict the right to appointed counsel in juvenile court cases for non-custodial parents who do not have charges filed against them) passed a few years ago but he would research it. He added there would likely be interest in pursuing Items D (expand the State contribution for indigent defense) and E (increase the indigent defense fee). Kohout felt Item B (examine low-level misdemeanors to determine which offenses could be reduced to infractions) was a broader part of criminal justice reform.

Conduct a Legislative Review to Examine How the Length of Time Post Adjudicated Youth Spend in Secure Detention While Awaiting Placement Can Be Reduced – Schindler said community aid has helped decrease the youth population but post-adjudicated kids are waiting a long time for placement for services. She added not all county costs are being covered. Amundson questioned how things are going with CenterPointe. Sara Hoyle, Human Services Director, said CenterPointe received a SAMHSA grant but it will not help with this issue. Schindler said this like the Regional Center placement issue and thought perhaps the two could be addressed simultaneously. Hoyle said there are a lot of viewpoints on this issue, but the overall bottom line is no kid should have to wait 100+ days for services.

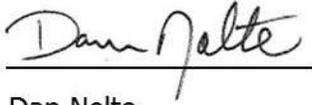
Amundson asked if a legislative review is needed. Flowerday said while this isn't ready for a legislative solution, someone could have routine dialog with the YRTC (Youth Rehabilitation and Treatment Center) Committee. Kohout suggested Senator Pansing Brooks or Senator Wishart be contacted.

Amend Neb. Rev. Stat. §29-2022 to Give Trial Courts Discretion with Regard to Sequestered Juries in Criminal Cases – Nigro opposed the change.

Regarding other proposals, Schorr brought up the confusing public health regulations, specifically on oversight and mandates. She suggested this be a future interim study.

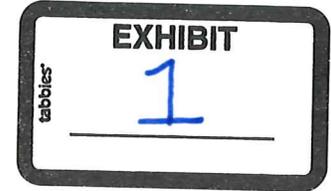
6. ADJOURNMENT

MOTION: Schorr moved and Vest seconded to adjourn the meeting at 11:46 a.m. Schorr, Vest, Amundson, Yoakum and Flowerday voted yes. Motion carried 5-0.



Dan Nolte
Lancaster County Clerk





**LANCASTER COUNTY BOARD OF COMMISSIONERS
LEGISLATIVE RETREAT
THURSDAY, AUGUST 27, 2020
LANCASTER COUNTY SHERIFF'S TRAINING CLASSROOMS B & C
8:30 A.M.**

LEGISLATIVE PROPOSALS FOR 2021 SESSION

- 1) **8:30 A.M. – OPENING COMMENTS AND REVIEW OF 2020 LEGISLATIVE SESSION** – Sean Flowerday, Lancaster County Board Chair; and Joe Kohout and Brennen Miller, Kissel, Kohout, ES Associates LLC.
- 2) **9:00 A.M. GENERAL LEGISLATIVE CONCERNS**

NEW PROPOSALS

1. **Priority for Placement at State Hospitals for the Mentally Ill**
Section 83-338 sets priorities for admission to state hospitals for the mentally ill. The priorities do not necessarily reflect the public health and safety concerns related to clients awaiting placement at the Regional Center. These wait times adversely impact available capacity at the Mental Health Crisis Center, among others.
2. **Caution Regarding Limitations Attempted to be Placed on Public Building Commission Bonding**
The language of AM1428 to LB177 included the requirement of a vote of approval by the electors of the county to issue bonds by commissions like the Public Building Commission. Although the amendment ultimately was withdrawn, changes to the statute requiring a vote of the electorate would impede the timely ability to acquire, construct, renovate or finance public facilities, making long-range planning very difficult.

EXISTING PROPOSALS

3. **LB1057 (Lowe) Change provisions regarding appeals of certain zoning decisions by county planning commissions and county boards. INDEFINITELY POSTPONED ON A PROCEDURAL MOTION**

The Nebraska Supreme Court has ruled there are two procedures under which an appeal can be made to the district court from a decision rendered by a county board on a zoning request for a special or conditional permit: 1) a petition in error under §25-1901; or 2) an appeal pursuant to §25-1937. See Olmer v. Madison County Bd. of Comm'rs, 275 Neb. 852, 752 N.W. 2d 124. When reviewing a decision under a petition in error the district court determines whether the county board acted within its jurisdiction and whether the decision rendered is supported by sufficient relevant evidence. Under §25-1937, the district court decides the appeal de novo, which requires the district court to conduct a trial to produce a new record on the appeal, and then rule independently based on that record. Under this procedure the district court may be required to conduct a new public hearing to create a record. The Supreme Court noted the potential burden that could be placed on the district court for appeals conducted under §25-1937. The simple solution is to amend §23-114.01(5) to provide that all appeals are made pursuant to the petition in error process under §25-1901.

4. **LR367 (Dorn) Interim study to examine set fee and fine amounts and the costs experienced by county governments when administering the associated services.**
5. **LR455 (Wishart) Interim study to examine the burden on counties with regard to the costs paid for office space used by the Dept. of Health and Human Services for the administration of public health program.**
6. **Provide County Engineer with Statutory Authority to Tow Vehicles Stranded on County Roads During Snow Storms**
During snow storms motor vehicles can get stuck and abandoned by the owners, which interferes with the County Engineer's snow removal operations. Under existing law, only the Sheriff's Office has authority to ticket an abandoned vehicle and have it towed. Providing legislative authority to the Engineer to tow such abandoned vehicles would expedite the snow removal process on County roads.

7. **Amend the Open Meetings Act to Allow Director Evaluations to Be Performed in Closed Session**

Counties are not authorized to charge a fee for a petition filed under §39-1723 requesting the vacation or abandonment of a county road. When a petition is filed the county is obligated to perform a study as defined under §39-1722. The vacation study required to be conducted can be costly, and counties should be allowed to charge a reasonable filing fee for the petition to help cover the cost of the study.

The Lancaster County Board conducts annual evaluations of its appointed directors at the Board's Thursday Staff Meetings. Neb. Rev. Stat. §84-1410(1)(d) should be amended to allow the Board to conduct director evaluations in closed session, regardless of whether it is necessary to prevent needless injury to the reputation of the person being evaluated.

8. **Authorize a Reasonable Fee for the Filing of a Petition to Vacate or Abandon a County Public Road under Neb. Rev. Stat. §39-1723**

Counties are not authorized to charge a fee for a petition filed under §39-1723 requesting the vacation or abandonment of a county road. When a petition is filed the county is obligated to perform a study as defined under §39-1722. The vacation study required to be conducted can be costly, and counties should be allowed to charge a reasonable filing fee for the petition to help cover the cost of the study.

9. **Clarify the Meaning of Public Purpose under Neb. Rev. Stat. §77-202(1)(a)**

§77-202(1)(a) provides that property of the state and its subdivisions is exempt from property taxes to the extent it is used for a public purpose. Although an extensive definition of public purpose is provided under §77-202(1)(a)(ii), recent cases decided by the Lancaster County Board of Equalization have shown that the definition public purpose is vague and should be further clarified.

10. Enforcement of Noxious Weed Violations on Out-Lots with \$0 Value

As a by-product of the subdivision process, out-lots are sometimes created which have little or no independent value. Maintenance of the out-lots usually falls to a home owner association created in conjunction with the subdivision. If noxious weed assessments are levied against a 0-value out-lot, the only remedy for collection is through foreclosure or a treasurer's deed. Like property taxes, special assessments are not personal obligations of the property owner. Since the property has no value, it is unlikely a buyer will bid on the property, and the certificate for the weed assessment will go unpaid. A potential solution to this problem is to make the special assessment for weed violations applicable to every individual lot subject to the authority of the home owner association, with joint and several liability for the weed assessment.

11. Broaden Enforcement Remedies for Special Permit Violations to Include Financial Sanctions to Cover Damages Caused by the Violation

Neb. Rev. Stat. §23-114.05 sets forth a county's enforcement authority when the terms, conditions and requirements of a special permit have been violated by the permit holder. Sanctions may include criminal charges, injunctive relief, or termination of the special permit. Special permit violations could be enforced more effectively and economically if counties are given the authority to impose financial sanctions for damages caused by the violation and to help cover the cost of enforcement.

12. Strengthen Prisoner Litigation Statutes to Discourage Frivolous Lawsuits

Frivolous litigation filed by state and local prisoners is time consuming, expensive, and a waste of limited judicial resources. The deliberate filing of frivolous lawsuits by prisoners could be discouraged if all prisoners were required to have some financial stake in filing an action. Federal statutes governing civil rights actions of prisoners require that a prisoner seeking to proceed in forma pauperis is still required to pay the full amount of the

filing fee. Along with the affidavit seeking to proceed in forma pauperis, a prisoner is also required to submit to the court a certified copy of their institutional trust fund account for the six-month period immediately preceding the complaint or notice of appeal. The prisoner may then be allowed to pay the filing fee over time based on a payment formula in the federal statutes. Federal law also gives judges greater discretion in dismissing actions filed by prisoners which the court determines to be frivolous, malicious, or fail to state a claim upon which relief can be granted.

Presently, Neb. Rev. Stat. §25-3401(2)(a) provides, "A prisoner who has filed three or more civil actions, commenced after July 19, 2012, that have been found to be frivolous by a court of this state or a federal court for a case originating in this state shall not be permitted to proceed in forma pauperis for any further civil actions without leave of the court..." This statute should be amended to include the federal law provisions which require the prisoner to pay the filing fee and which provide greater discretion to judges to dismiss frivolous or malicious claims.

13. Reasonable Fees for Services Provided by the County Engineer for Issuance of Driveway Permits, Right-of-Way Utility Permits, Subdivision Reviews, and Load Permits

The Lancaster County Engineer's Office spends a significant amount of time issuing driveway permits, right-of-way permits for utilities, vehicle load permits, and reviewing proposed land subdivisions. These services primarily benefit individual companies or persons. Enabling legislation is necessary to give counties the authority to charge a reasonable fee for these services.

14. Limit Workers' Compensation Awards to Retirement Age Rising workers' compensation costs are a concern to the County. Awards for permanent disability are expensive and can extend an indefinite period into the future. Limiting disability awards to the age of retirement would still benefit the injured worker by helping replace lost wages during wage-earning years. At retirement other revenue sources, such as social security and pensions, then become available to support the injured worker. The benefit to the County would be lower costs and a greater ability to manage workers' compensation cases.

15. **Extend Deadline for Issuing Greenbelt Valuation Notice**
When a property owner simultaneously has a pending board of equalization valuation protest and an application for special Greenbelt valuation, it is possible that a landowner will receive conflicting valuation notices. This problem can be solved by amending Neb. Rev. Stat. §77-1345.01(2) to extend the final date for the board of equalization to send a notice of special valuation from July 22nd to August 15th.

16. **Modify Strict Liability Provisions of Neb. Rev. Stat. §13-911 When a Vehicular Pursuit Is Terminated by a Law Enforcement Officer**
As interpreted by the Nebraska Supreme Court, a political subdivision can be held strictly liable under §13-911 for damages to an innocent third party caused by a fleeing motorist, even after a pursuing law enforcement officer has stopped the pursuit. §13-911 should be amended to eliminate strict liability when the damages are caused by the fleeing motorist after the pursuit has been terminated by the officer. This amendment would provide an incentive to law enforcement to stop pursuits which have become dangerous to innocent third parties.

17. **Clarify Funding Source When Courts Assign Non-IV-D Cases to a Child Support Referee**
Under Neb. Rev. Stat. §43-1610 funding for a child support referee shall be provided by the county and state to the district Court, separate juvenile court, and county court. Neb. Rev. Stat. §43-1611 provides these courts may by rule or order assign any matter regarding the establishment and collection of child, spousal, or medical support, paternity matters, and protection orders to a child support referee. However, when a child support referee is assigned non-IV-D cases federal funds may not be used to cover the cost. Since the courts have complete discretion in assigning cases to a child referee, it is possible the county may incur additional costs under the IV-D program over which it has no control. The statutes should be clarified to provide state funding will be used in this situation rather than county funding.

18. **Provide Statutory Guidance on Enforcement of Insurance Subrogation Clauses**
In the case of Blue Cross and Blue Shield of Nebraska, Inc. v. Dailey, 268 Neb. 733 (2004), the Nebraska Supreme Court held a

subrogation clause in the insurance contract could not be enforced against the insured under the equitable made whole doctrine. The Dailey case involved an employee covered under an insurance contract between his employer, the Nebraska Association of County Officials, and Blue Cross. The employee was injured as a result of the negligence of a third party, and subsequently recovered a one-time payment of \$1,225,000 and monthly payments of \$10,000 for life against the third party. Even though the contract clearly provided Blue Cross would be entitled to recover approximately \$794,000 it had paid on behalf of the insured for injuries caused by a third party, the Supreme Court held Blue Cross was not entitled to recover these funds because the insured had not yet been made whole for the injuries. A statutory solution is needed to provide for the enforcement of reasonable subrogation clauses to help control health insurance costs.

3) 9:30 A.M. – INFRASTRUCTURE ISSUES

NEW PROPOSALS

1. None received.

EXISTING PROPOSALS

2. **LB267 (Bolz) Provide a duty for the county board relating to deficient bridges and authorize a tax levy. INDEFINITELY POSTPONED ON A PROCEDURAL MOTION**
The number of structurally deficient county bridges in Nebraska is increasing at an alarming rate. Amending Neb. Rev. Stat. §23-120(3)(b) to include county bridges could provide a steady source of revenue to address this public safety issue.

4) 10:15 A.M. - BREAK

5) 10:30 A.M. – CRIMINAL JUSTICE ISSUES

NEW PROPOSALS

1. **Public Defender issues:**
 - a. **Reintroduce or monitor:**

- i. **LB335**, identified below (24/7)
 - ii. **LB500**, to allow pretrial diversion for DUIs. It is supported by the Sarpy County Attorne if made consistent with Sarpy County's DUI diversion program.
 - iii. **LB646**, to eliminate money bond.
 - iv. **LB652**, to make possession of residue of a controlled substance other than marijuana a misdemeanor.
- b. **Legalization of marijuana**

EXISTING PROPOSALS

2. **LB335 (M. Hansen) Authorize a 24/7 sobriety program permit for operating a motor vehicle as a condition of bail.**
INDEFINITELY POSTPONED ON A PROCEDURAL MOTION

LR388 (Hansen, M.) Interim study to examine the coordination of efforts to find alternatives to incarceration for offenses that involve operating a motor vehicle under the influence of alcohol or other drugs (24/7)

The 24/7 Sobriety Program has been successfully used in other states to reduce recidivism for alcohol-related offenses such as driving under the influence. Lancaster County is in the process of establishing a 24/7 program under the supervision of the County's Community Corrections Department. Statutory changes are needed to mandatory sentencing and driver's license provisions to provide incentives for participants to actively participate and complete the program.

3. **Amend the Mental Health Commitment Act to allow Sharing of Mental Health Information Among Providers and Law Enforcement Agencies.** INTERIM STUDY INTRODUCED TO CONTINUE THIS PRIORITY

LR379 (Geist) Interim study to examine whether continuity of care and safety for individuals and the public can be enhanced by allowing mental health providers to coordinate with law enforcement.

The strict limitations on the release of mental health records under Neb. Rev. Stat. §71-961 can interfere with continuity of care and the ability of law enforcement to protect the public safety. §71-961 should be broadened to allow providers to share mental health records when it will assist in providing better continuity of care or when the safety of an individual or the public can be enhanced by allowing law enforcement agencies to have such information.

4. **LR453 (Geist) Interim study to examine barriers to obtaining state identification that may exist for inmates in county correctional facilities who are in the process of being released or who have been recently released.**
5. **Automatic expungement of Criminal Records**

A criminal conviction for even a minor offense can have a devastating impact on a person's life by affecting opportunities for education, employment, housing, etc. For this reason, most states have procedures for the expungement or sealing of criminal records, including convictions for most misdemeanors. However, petitioning for a clean record can be confusing and expensive. Research shows that most people who could expunge their criminal record never do so. Two states, Pennsylvania and Utah, have addressed this issue by adopting legislation for the automatic expungement of criminal records. In Nebraska expungement is available on a limited basis under Neb. Rev. Stat. §29-3523. Automatic expungement could be an important component of criminal justice reform in Nebraska.
6. **House Arrest for Work Release and Child Support Inmates**

Administering work release for inmates is time consuming and costly. If these inmates qualify for work release then perhaps they are trust worthy enough for house arrest rather than serving their time at the jail. Also, inmates serving time for nonsupport of their children should also be placed on house arrest to give them the opportunity to maintain or find employment in order to support their children.

7. Previous County Attorney topics:

- A. Jail costs associated with post-release supervision sanctions and sentences (29-2266; 29-2266.02; 29-2268) (LB 686 FIV optional PRS). Cost of jail/detention of any individual whose status is State supervised
- B. Competency evaluations (29-1823).
- C. Mental Health Board funding to incorporate changes to or expansion of MHB jurisdiction to include firearm prohibition proceedings (71-915) See, LB 58 “Red Flag” law.
- D. Expansion of Set Aside (29-2264) and Sealing (29-3523) criteria has led to more filings and more attorney court time, particularly given that Domestic Violence and Drug convicted individuals are getting set asides and then making application for handguns in greater numbers now.
- E. Juvenile transportation costs when juvenile on probation (43-1005).

8. Make Texting/Emailing a Primary Criminal Offense

Under Neb. Rev. Stat. § 60-6,179.01(4) the criminal offense of reading, writing or sending a written communication while operating a motor vehicle which is motion can only be enforced “...as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.” Nebraska is one of only a few states which don’t enforce this conduct as a primary offense. Texting or emailing while operating a moving motor vehicle is a serious problem which jeopardizes the safety of the traveling public, and should be enforceable as a primary offense

9. Appointed Counsel Costs

For many years Lancaster County has struggled with the escalating cost of court appointed counsel. In 2011 the Lancaster County Indigent Defense Advisory Committee undertook a complete review of the issue. The Committee made a number of recommendations, including the following legislative proposals:

- a. Restrict the right to appointed counsel in juvenile court cases for non-custodial parents who do not have charges filed against them;
- b. Examine low-level misdemeanors to determine which offenses could be reduced to infractions which do not carry jail time;
- c. Amend Neb. Rev. Stat. §29-3604 to allow diversion for driving under the influence cases;
- d. Expand the State contribution for indigent defense, including more funding for the Commission on Public Advocacy; and
- e. Increase the indigent defense fee under Neb. Rev. Stat. §33-156.

10. Conduct a Legislative Review to Examine How the Length of Time Post Adjudicated Youth Spend in Secure Detention While Awaiting Placement Can Be Reduced

Post adjudicated youth held in the County's Youth Services Center should be placed into community treatment as soon as possible. However, placement can be difficult because of a number of issues involving these youth. The Legislature should conduct a legislative review to examine how the length of stay in secure detention can be reduced for post adjudicated youth.

11. Amend Neb. Rev. Stat. §29-2022 to Give Trial Courts Discretion with Regard to Sequestered Juries in Criminal Cases

Defendants in criminal cases have the right to keep a jury sequestered until a verdict is reached, regardless of the severity of the case or the actual risk the jury members may be influenced by improper contact or communications. See Neb. Rev. Stat. §29-2022. When a jury is sequestered counties are responsible for paying all the costs of housing and feeding the jury members, as well as the costs of providing security. These expenses can be significant. Additionally, sequestration can result in a substantial hardship to the members of the jury. This statute should be amended to give the trial court discretion in deciding whether a jury in a criminal case should be sequestered until a verdict is reached, based on the actual potential of the jury being improperly influenced. 2016 Neb. Laws LB 976 would have given trial courts discretion on jury sequestration. However, it was withdrawn prior to consideration by the Judiciary Committee.