

# **JUDICIARY COMMITTEE**

**One-Hundred Second Nebraska Legislature  
First Session  
2011**

## **SUMMARY AND DISPOSITION OF BILLS**



**Senator Brad Ashford, Chairperson  
Senator Steve Lathrop, Vice-Chairperson  
Senator Colby Coash  
Senator Brenda Council  
Senator Burke Harr  
Senator Tyson Larson  
Senator Scott Lautenbaugh  
Senator Amanda McGill**

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# **SUBJECT INDEX**

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LB 521 (*Fulton*) Require the physical presence of a physician who performs, induces, or attempts an abortion

LB 690 (*Brasch*) Change consent and parental notification provisions regarding abortion

### CHILDREN/CHILD VISITATION AND CUSTODY

LB 79 (*McGill*) Provide grants for court appointed special advocate programs

LB 94 (*Howard*) Allow petitioners for adoption of a state ward to read the child's case file

LB 124 (*Avery*) Provide for cultural history information in adoption records

LB 147 (*Hadley*) Change family law provisions relating to court orders, forum, child support, and visitation

LB 324 (*Howard*) Require fetal alcohol determination prior to adoption of a state ward

LB 488 (*Nordquist*) Adopt the Child Support Transparency Act

LB 598 (*Fulton*) Change timing of certain foster care permanency hearings

LB 648 (*Christensen*) Change provisions relating to foster care and juvenile placement

LB 649 (*Christensen*) Require the Judiciary Committee to develop legislative recommendations for guardians ad litem for children and youth

LB 673 (*Flood*) Change support liens and provide for military parents and children in cases of divorce

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LB 15 (*Wightman*) Change district court execution of judgment provisions

LB 17 (*Wightman*) Change civil procedure complete court record provisions

LB 296 (*Coash*) Eliminate oath requirements for filing of a criminal complaint and for verifying information

LB 310 (*McGill*) Change provisions relating to protection orders

LB 349 (*Lautenbaugh*) Change demand for trial by jury provisions

LB 351 (*Lautenbaugh*) Change court procedure relating to substitution of parties

LB 475 (*Lautenbaugh*) Change garnishment provisions to include independent contractors providing services to government entities

LB 476 (*Lautenbaugh*) Change civil procedure service and return of summons provisions

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LB 20 (*McCoy*) Regulate the sale of methamphetamine precursors

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### **CORRECTIONS/COMMUNITY CORRECTIONS**

LB 191 (*Council*) Change provisions relating to sentence reductions

LB 390 (*Ashford*) Change provisions relating to jails and corrections and create the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice

LB 415 (*Wallman*) Change provisions relating to contraband in a detention facility or providing an inmate with contraband

LB 545 (*Pahls*) Establish a copay for medical services provided at a correctional facility

LB 609 (*Pirsch*) Adopt the Correctional Facility Reimbursement Act

### **COURTS**

LB 16 (*Wightman*) Change composition of certain district court judicial districts

LB 137 (*Lautenbaugh*) Change provisions relating to postconviction relief

LB 201 (*Council*) Change Probation Fees

LB 251 (*Council*) Change probation fees

LB 302 (*Ashford*) Provide for a restructuring plan for the court system

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LB 647 (*Christensen*) Prohibit the use of certain foreign laws in Nebraska courts

### **CRIMINAL OFFENSES AND PENALTIES**

LB 12 (*Wightman*) Eliminate "without parole" provisions relating to life imprisonment

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LB 61 (*Heidemann*) Change provisions and penalties relating to unlawful intrusion

LB 226 (*Gloor*) Create the offense of assault with a bodily fluid against a public safety officer

LB 231 (*Christensen*) Change provisions relating to issuing a bad check

LB 242 (*Hadley*) Change provisions relating to assault, assault on an officer, and offenses by a confined person

LB 258 (*Krist*) Provide that entry onto land by land surveyor is not criminal trespass

LB 275 (*Fulton*) Change provisions relating to the offense of escape

LB 284 (*Krist*) Change provisions relating to unlawful picketing of a funeral

LB 402 (*Howard*) Change penalties relating to third-degree assault on a social worker and provide for social worker safety training

LB 469 (*Karpisek*) Prohibit retail sale of novelty lighters and provide a penalty

LB 479 (*Lathrop*) Authorize a person eighteen years of age to give consent to evidence collection and examination and treatment in cases of sexual assault and domestic violence

LB 552 (*Nordquist*) Prohibit impersonation by electronic means and provide penalties

LB 652 (*Christensen*) Change provisions relating to theft penalties

LB 660 (*Karpisek*) Create the offense of providing a bodily fluid sample containing a controlled substance

LB 665 (*Pirsch*) Change provisions relating to criminal child enticement

LB 667 (*Flood*) Change provisions governing motor vehicle homicide, alcohol violations involving minors, operating watercraft or motor vehicles under the influence of alcohol or drugs, administrative license revocation, and ignition interlock devices

LB 675 (*Pirsch*) Provide and change penalty, enforcement, and incarceration provisions relating to driving under the influence and the duty to stop at a motor vehicle accident

LB 677 (*Lathrop*) Provide criminal penalties for assault on a health care provider in the first, second, and third degrees

LB 689 (*Christensen*) Change provisions relating to human trafficking

#### **CRIMINAL PROCEDURE**

LB 100 (*Coash*) Change provisions relating to the criminal responsibility of intoxicated persons and the insanity defense

LB 129 (*Avery*) Eliminate the statute of limitation for certain felonies

LB 133 (*Ashford*) Require inclusion of sentencing costs in presentence reports

LB 202 (*Council*) Authorize petitions for recall and resentencing for certain minors sentenced to life imprisonment

LB 203 (*Council*) Change sentencing requirements with respect to certain minors

#### **DEATH PENALTY**

LB 276 (*Council*) Repeal the death penalty and replace it with life imprisonment without possibility of parole

#### **EMPLOYMENT**

LB 569 (*Coash*) Require employers to e-verify the immigration status of new employees

#### **FIREARMS**

LB 88 (*Christensen*) Provide signage requirements and duties for the Nebraska State Patrol regarding concealed handguns

LB 138 (*Lautenbaugh*) Change residency requirements under the Concealed Handgun Permit Act

LB 512 (*Christensen*) Authorize contracting for law enforcement by natural resources districts, change provisions relating to handguns and firearms, and require the Nebraska State Patrol to provide notice to permit holders

LB 516 (*Christensen*) Authorize carrying of concealed handguns in educational institutions by security personnel, administrators, or teaching staff

LB 518 (*Christensen*) Change certain penalty and violation provisions of the Concealed Handgun Permit Act

LB 538 (*Karpisek*) Change provisions relating to the disposition of seized firearms

LB 565 (*Ashford*) Require secure storage of firearms and notice of such requirement by retailers upon sale and create the offense of improper storage of a firearm

LB 618 (*Harr*) Authorize possession of firearms as prescribed for school or school event security

LB 622 (*Lautenbaugh*) Change provisions relating to confiscation and destruction of firearms

LB 658 (*Karpisek*) Change the fee for obtaining a handgun certificate

## **JUVENILES**

LB 80 (*McGill*) Change Nebraska Juvenile Code provisions relating to juvenile care plans

LB 301 (*Ashford*) Change provisions for sealing records under the Nebraska Juvenile Code

LB 339 (*Ashford*) Change Nebraska Juvenile Code predisposition evaluation procedures

LB 463 (*Ashford*) Change juvenile penalty, records, service plan, probation sanctions, and truancy provisions

LB 669 (*Flood*) Change Small Claims Court, county court, district court, and juvenile court provisions



LB 670 (*Flood*) Authorize court-ordered conditions for dispositions under the Nebraska Juvenile Code

## **LAW ENFORCEMENT**

LB 48 (*Janssen*) Adopt the Illegal Immigration Enforcement Act

LB 66 (*Cornett*) Change provisions relating to DNA collection

LB 128 (*Avery*) Change DNA collection provisions

LR 28 (*Fulton*) Encourage all municipal, county, and state law enforcement agencies to participate in the Secure Communities program by the year 2012

## **LIABILITY**

LB 115 (*Council*) Change limitation of action provisions under the Political Subdivisions Tort Claims Act

LB 350 (*Lautenbaugh*) Change medical lien and personal injury damage suit provisions

LB 447 (*Fulton*) Change provisions relating to vehicular pursuit

LB 693 (*Carlson*) Adopt the Alcoholic Liquor Liability Act

## **MARRIAGE**

LB 408 (*Fulton*) Change provisions relating to divorce

## **MEDICAL ETHICS**

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LB 197 (*Dubas*) Allow breast-feeding as prescribed

LB 232 (*Christensen*) Change use of force provisions to include protection of an unborn child as prescribed

LB 298 (*Christensen*) Change provisions relating to self-protection

LB 398 (*Lathrop*) Change provisions relating to notaries public

LB 513 (*Christensen*) Adopt the Escort Services Accountability and Permit Act

LB 515 (*Christensen*) Adopt the Federal Health Care Nullification Act and provide a civil right of action and criminal penalties relating to enforcement

LB 644 (*Lautenbaugh*) Change provisions applicable to attorney licensure requirements

LB 676 (*Lathrop*) Change provisions relating to emergency protective custody under the Nebraska Mental Health Commitment Act

LR 39 (*Council*) Provide the Nebraska Legislature recommends certain basic principles as a guide for state and federal immigration policy and call upon Congress to enact reforms

### **PROPERTY, REAL ESTATE AND PROBATE**

LB 85 (*Karpisek*) Adopt the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

LB 157 (*Coash*) Change guardianship and conservatorship provisions and adopt the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

LB 167 (*Fischer*) Change the Relocation Assistance Act

LB 293 (*Avery*) Change provisions relating to reclaiming of property from a pawnbroker or junk dealer

LB 536 (*Wightman*) Adopt the Nebraska Uniform Real Property Transfer on Death Act

### **SEX OFFENDER STATUTES**

LB 460 (*Ashford*) Change the Sex Offender Registration Act

LB 508 (*Bloomfield*) Authorize certain residency restrictions near parks for sexual predators

LB 671 (*Flood*) Prohibit a sex offender from changing his or her name

### **STATE AGENCIES**

LB 136 (*Lautenbaugh*) Change number of years between appearances before Board of Pardons

LB 300 (*Ashford*) Change provisions relating to the Community Trust

### **TOBACCO**

## INDEX OF BILLS

LB/LR	INTRODUCER	ONE-LINER	HEARING DATE	COMMITTEE DISPOSITION	FINAL DISPOSITION	COMMENTS
12	Wightman	Eliminate "without parole" provisions relating to life imprisonment	1/21	General File	Governor Approved	
13	Wightman	Change provisions relating to life imprisonment without parole	1/21	IPP'd 1-28-11		
15	Wightman	Change district court execution of judgment provisions	1/28	General File w/AM 161	Governor Approved	
16	Wightman	Change composition of certain district court judicial districts	3/17	Bill Withdrawn		
17	Wightman	Change civil procedure complete court record provisions	1/28	General File w/AM 159	Governor Approved	
19	McCoy	Prohibit the use of certain drug substances as prescribed	1/19	General File	Governor Approved	
20	McCoy	Regulate the sale of methamphetamine precursors	1/19	General File w/AM 64	Governor Approved	
48	Janssen	Adopt the Illegal Immigration Enforcement Act	3/2	Held in Committee		
61	Heidemann	Change and provide penalties relating to unlawful intrusion	1/21	General File w/AM 211	Governor Approved	
66	Cornett	Change provisions relating to DNA collection	1/19	General File w/AM 241		
79	McGill	Provide grants for court appointed special advocate programs	1/20	Partially amended into LB 463		
80	McGill	Change Nebraska Juvenile Code provisions relating to juvenile care plans	2/9	General File w/AM 289	Partially amended into LB 648 then IPP'd 5-26-11	
85	Karpisek	Adopt the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act	1/20	General File	Partially amended into LB 157 then IPP'd 5-26-11	

88	Christensen	Provide signage requirements and duties for the Nebraska State Patrol regarding concealed handguns	1/21	Held in Committee		
94	Howard	Allow petitioners for adoption of a state ward to read the child's case file	1/20	General File w/AM 180	Governor Approved	
100	Coash	Change provisions relating to the criminal responsibility of intoxicated persons and the insanity defense	1/21	General File w/AM 165	Governor Approved	Coash Priority
115	Council	Change limitation of action provisions under the Political Subdivisions Tort Claims Act	2/3	Held in Committee		
124	Avery	Provide for cultural history information in adoption records	1/20	General File w/AM 1037	Governor Approved	
128	Avery	Change DNA collection provisions	1/19	IPP'd 2-11-11		
129	Avery	Eliminate the statute of limitation for certain felonies	1/27	Held in Committee		
133	Ashford	Require inclusion of sentencing costs in presentence reports	2/2	Held in Committee		
136	Lautenbaugh	Change number of years between appearances before Board of Pardons	1/19	Held in Committee		
137	Lautenbaugh	Change provisions relating to postconviction relief	2/2	General File w/AM 735	Governor Approved	Speaker Priority
138	Lautenbaugh	Change residency requirements under the Concealed Handgun Permit Act	2/16	Partially amended into LB 512		
147	Hadley	Change family law provisions relating to court orders, forum, child support, and visitation	2/3	Held in Committee		
157	Coash	Change guardianship and conservatorship provisions	1/20	General File	Governor Approved	
167	Fischer	Change the Relocation Assistance Act	1/26	General File	Governor Approved	

191	Council	Change provisions relating to sentence reductions	2/2	General File	Governor Approved	
197	Dubas	Allow breast-feeding as prescribed	1/26	General File	Governor Approved	
201	Council	Change probation fees	1/27	Held in Committee		
202	Council	Authorize petitions for recall and resentencing for certain minors sentenced to life imprisonment	1/27	General File w/AM 399	Partially amended into LB 251	
203	Council	Change sentencing requirements with respect to certain minors	1/27	Held in Committee		
226	Gloor	Create the offense of assault with a bodily fluid against a public safety officer	2/4	General File w/AM 1068	Governor Approved	Speaker Priority
231	Christensen	Change provisions relating to issuing a bad check	2/2	Held in Committee		
232	Christensen	Change use of force provisions to include protection of an unborn child as prescribed	2/23	Held in Committee		
242	Hadley	Change provisions relating to assault, assault on an officer, and offenses by a confined person	2/4	Held in Committee		
251	Council	Change court fees	1/26	General File w/AM 945		Judiciary Priority
258	Krist	Provide that entry onto land by land surveyor is not criminal trespass	2/10	Held in Committee		
275	Fulton	Change provisions relating to the offense of escape	2/2	Held in Committee		
276	Council	Change a penalty from death to life imprisonment without possibility of parole and change other penalties as prescribed	3/4	General File		
284	Krist	Change provisions relating to unlawful picketing of a funeral	2/4	General File	Governor Approved	Krist Priority

293	Avery	Change provisions relating to reclaiming of property from a pawnbroker or junk dealer	1/26	Held in Committee		
296	Coash	Eliminate oath requirements for filing of a criminal complaint and for verifying information	2/25	General File	Partially amended into LB 669 then IPP'd 5-26-11	
298	Christensen	Change provisions relating to self-protection	2/23	Held in Committee		
300	Ashford	Change provisions relating to the Community Trust	3/4	Amended into LB 390		
301	Ashford	Change provisions for sealing records under the Nebraska Juvenile Code	2/24	Partially amended into LB 463		
302	Ashford	Provide for a restructuring plan for the court system	1/28	General File		
310	McGill	Change provisions relating to protection orders	1/26	General File w/AM 965		
324	Howard	Require fetal alcohol determination prior to adoption of a state ward	2/17	Held in Committee		
339	Ashford	Change Nebraska Juvenile Code predisposition evaluation procedures	2/9	Partially amended into LB 669		
349	Lautenbaugh	Change demand for trial by jury provisions	2/25	Partially amended into LB 669		
350	Lautenbaugh	Change medical lien and personal injury damage suit provisions	3/17	Held in Committee		
351	Lautenbaugh	Change court procedure relating to substitution of parties	2/11	Held in Committee		
390	Ashford	Change provisions relating to jails and corrections and create the Community Corrections Division of the Nebraska Commission on Law Enforcement and Criminal Justice	1/27	General File w/AM 1537	Governor Approved	Speaker Priority

398	Lathrop	Change provisions relating to notaries public	1/28	Held in Committee		
402	Howard	Change penalties relating to third-degree assault on a social worker and provide for social worker safety training	2/4	Held in Committee		
408	Fulton	Change provisions relating to divorce	2/3	Held in Committee		
415	Wallman	Change provisions relating to contraband in a detention facility or providing an inmate with contraband	2/10	General File w/AM 525		
447	Fulton	Change provisions relating to vehicular pursuit	2/25	Held in Committee		
451	Ashford	Change court fees, procedures, offices, and judgeships	2/11	Partially amended into LB 669		
452	Ashford	Provide for lottery winnings and tax refund intercept for debts owed to courts	1/28	Held in Committee		
460	Ashford	Change the Sex Offender Registration Act	3/16	Held in Committee		
461	Pirsch	Adopt the Freedom of Conscience Act	3/9	Held in Committee		
463	Ashford	Change juvenile penalty, records, service plan, probation sanctions, and truancy provisions	2/24	General File w/AM 754	Governor Approved	Judiciary Priority
469	Karpisek	Prohibit retail sale of novelty lighters and provide a penalty	2/10	Held in Committee		
475	Lautenbaugh	Change garnishment provisions to include independent contractors providing services to government entities	2/11	Held in Committee		
476	Lautenbaugh	Change civil procedure service and return of summons provisions	2/11	Partially amended into LB 669		
479	Lathrop	Authorize a minor to give consent to evidence collection and examination and	2/10	General File w/AM 335	Governor Approved	Lathrop Priority

		treatment in cases of sexual assault				
488	Nordquist	Adopt the Child Support Transparency Act	2/3	Held in Committee		
508	Bloomfield	Authorize certain residency restrictions near parks for sexual predators	3/16	Held in Committee		
512	Christensen	Change provisions relating to mental health determinations regarding the possession and purchase of handguns	2/23	General File w/AM 225	Governor Approved	Speaker Priority
513	Christensen	Adopt the Escort Services Accountability and Permit Act	2/25	Held in Committee		
515	Christensen	Adopt the Federal Health Care Nullification Act and provide a civil right of action and criminal penalties relating to enforcement	3/17	Held in Committee		
516	Christensen	Authorize carrying of concealed handguns in educational institutions by security personnel, administrators, or teaching staff	2/16	Held in Committee		
518	Christensen	Change certain penalty and violation provisions of the Concealed Handgun Permit Act	2/23	Held in Committee		
521	Fulton	Provide how certain drugs used to induce an abortion shall be administered	3/9	General File w/AM 1100	Governor Approved	Bloomfield Priority
536	Wightman	Adopt the Nebraska Uniform Real Property Transfer on Death Act	2/17	Held in Committee		
538	Karpisek	Change provisions relating to the disposition of seized firearms	2/16	Held in Committee		
545	Pahls	Establish a copay for medical services	3/16	Held in Committee		



		provided at a correctional facility				
552	Nordquist	Prohibit impersonation by electronic means and provide penalties	2/10	Held in Committee		
565	Ashford	Require secure storage of firearms and notice of such requirement by retailers upon sale and create the offense of improper storage of a firearm	3/17	Held in Committee		
569	Coash	Require employers to e-verify the immigration status of new employees	3/2	Held in Committee		
598	Fulton	Change timing of certain foster care permanency hearings	2/9	Held in Committee		
609	Pirsch	Adopt the Correctional Facility Reimbursement Act	3/16	Held in Committee		
612	Pirsch	Increase statute of limitations for plaintiffs suffering injury from sexual assault as a child	3/17	General File w/AM 789		
618	Harr	Authorize possession of firearms as prescribed for school or school event security	2/16	General File w/AM 391	Partially amended into LB 512 then IPP'd 5-26-11	
622	Lautenbaugh	Change provisions relating to confiscation and destruction of firearms	2/16	Held in Committee		
644	Lautenbaugh	Change provisions applicable to attorney licensure requirements	2/11	Held in Committee		
647	Christensen	Prohibit the use of certain foreign laws in Nebraska courts	3/17	Held in Committee		
648	Christensen	Change provisions relating to notice for foster care reviews and hearings	2/9	General File w/AM 802	Governor Approved	Christensen Priority
649	Christensen	Require the Judiciary Committee to develop legislative recommendations for	2/9	Held in Committee		

649	Christensen	Require the Judiciary Committee to develop legislative recommendations for guardians ad litem for children and youth	2/9	Held in Committee		
652	Christensen	Change provisions relating to theft penalties	3/10	Held in Committee		
658	Karpisek	Change the fee for obtaining a handgun certificate	2/23	Held in Committee		
660	Karpisek	Create the offense of providing a bodily fluid sample containing a controlled substance	3/3	Held in Committee		
665	Pirsch	Change provisions relating to criminal child enticement	3/10	General File	Governor Approved	Speaker Priority
667	Flood	Change provisions governing motor vehicle homicide, alcohol violations involving minors, driving under the influence of alcohol or drugs, bail, ignition interlock devices, and administrative license revocation	3/3	General File w/AM 162	Governor Approved	Wallman Priority
668	Flood	Change penalties relating to the purchase, receipt, or acquisition of pseudoephedrine or phenylpropanolamine	3/4	General File	Amended into LB 20	
669	Flood	Change provisions relating to sealing of juvenile court records	2/24	General File w/AM 1342	Partially amended into LB 463 and Governor Approved	Speaker Priority
670	Flood	Authorize court-ordered conditions for dispositions under the Nebraska Juvenile Code	2/24	General File w/AM 1447		Flood Priority
671	Flood	Prohibit a sex offender from changing his or her name	3/16	Held in Committee		
672	Flood	Change support liens and provide for	2/9	General File	Governor	Speaker

675	Pirsch	Provide and change penalties and enforcement relating to driving under the influence and the duty to stop at motor vehicle accidents and create an offense relating to certain controlled substances	3/3	General File w/AM 1380	Governor Approved	Pirsch Priority
676	Lathrop	Change provisions relating to emergency protective custody under the Nebraska Mental Health Commitment Act	2/17	Held in Committee		
677	Lathrop	Provide criminal penalties for assault on a health care provider in the first, second, and third degrees	2/4	Held in Committee		
689	Christensen	Change provisions relating to human trafficking	3/10	Held in Committee		
690	Brasch	Change consent and parental notification provisions regarding abortion	3/9	General File w/AM 1429	Governor Approved	Brasch Priority
693	Carlson	Adopt the Alcoholic Liquor Liability Act	3/3	Held in Committee		
694	Conrad	Change provisions relating to certain medical evidence	2/17	Held in Committee		
LR28	Fulton	Encourage all municipal, county, and state law enforcement agencies to participate in the Secure Communities program by the year 2012	3/2	Held in Committee		
LR39	Council	Provide the Nebraska Legislature recommends certain basic principles as a guide for state and federal immigration policy and call upon Congress to enact reforms	3/2	Held in Committee		

**BILLS PASSED DURING  
THE 2011 LEGISLATIVE SESSION**

**LB 12 (Wightman) Eliminate "without parole" provisions relating to life imprisonment**

LB12, introduced by Sen. Wightman, strikes the phrase “without parole” from the Nebraska Statutes. Currently, penalties for a Class I felony include death and life imprisonment without parole.

In 2002, the Legislature held a special session to address Nebraska’s capital punishment sentencing laws following a ruling by the U.S. Supreme Court in Ring v. Arizona. In that case, the court held that a defendant has the right to have a jury, rather than a judge, decide on the existence of an aggravating factor that makes the defendant eligible for the death penalty.

During the special session, language was adopted to clarify that the penalty for Class I felonies, when the death penalty is not utilized, is life imprisonment “without parole.”

However, in 2005, the Nebraska Supreme Court ruled in State v. Conover, that two of those changes were outside the scope of the governor’s call, which determines the parameters of what lawmakers may consider during a special session. As a result, the addition of the words “without parole” was ruled unconstitutional in those two sections.

The bill passed on a 45-0 vote.

**LB 15 (Wightman) Change district court execution of judgment provisions**

Legislative Bill 15 will provide for the execution of a district court judgment in any county in the state upon request. The garnishment, attachment or other aid to execution will be directed to the requested county without the need for a transcript of the judgment to be filed. Any hearing or proceeding on the execution of the judgment must occur in the county where the judgment was originally rendered.

Committee Amendment AM 161 was adopted on general file to create a distinction between personal property and real property for purposes of the requirement to file a transcript of the judgment in the receiving county. An execution of a judgment shall not serve as a lien on real estate unless the transcript of the judgment is filed in the county where the real estate is located.

On select file, AM 1388 was adopted to clarify that the process to direct the execution of a judgment to a county other than the rendering county applies to the execution of a judgment for wages.

The bill passed on a 44-0-5 vote and was signed into law by the Governor on May 17, 2011.

### **LB 17 (Wightman) Change civil procedure complete court record provisions**

Legislative Bill 17 amended current statute regarding the maintenance of case records. The bill clarifies that a complete record of every case must be made as soon as the case is finally determined by removing the waiver exception. The bill provides that the complete record of a district court case may include scanned images or documents maintained in JUSTICE, the state's electronic case management system. Electronically retained documents have to meet permanency standards and records retention schedules set by the State Records Administrator. Electronic records have to be retained at least twenty years after the last action in the case. Once the record has been retained according to the schedule, the court clerk has to maintain the security copy of the disks, tapes, indexes and other documents.

The bill removed exceptions to the fee obligation for the complete record requirement, thus requiring the parties to pay for the costs associated with making and retaining the complete record. The bill outright repealed statute sections providing exceptions to the complete record requirement.

The operative date of this bill is January 1, 2012

Committee Amendment AM 159 was adopted on general file to harmonize section 25-2209 with the provisions of the bill by striking a provision allowing the complete record to be compiled and filed on microfilm. The amendment clarifies that a complete record of a district court case consists of scanned images and documents maintained in JUSTICE and either on paper or microfilm. The amendment removed language in the bill regarding the permanency standards for maintaining records on JUSTICE.

The bill passed on a 44-0-5 vote and was signed into law by the Governor on May 17, 2011.

### **LB 19 (McCoy) Prohibit the use of certain drug substances as prescribed**

LB19, introduced by Sen. McCoy, expands the Uniform Controlled Substances Act to ban the class of synthetic cannabinoids used to make the drug commonly known as K2 or Spice.

Those found to be in possession of substances related to the drug will be guilty of:

- an infraction, receive a citation and a \$300 fine and could be assigned to attend a course as prescribed for the first offense;
- a Class IV misdemeanor, receive a citation and a \$400 fine and may be imprisoned no longer than five days for a second offense; and
- a Class III misdemeanor, receive a citation and a \$500 fine and be imprisoned no longer than seven days for the third and subsequent offenses.

The bill passed on a 49-0 vote and contained an emergency clause.

### **LB 20 (McCoy) Regulate the sale of methamphetamine precursors**

LB20, introduced by Sen. McCoy, retailers will receive an immediate web-based notification when a person is attempting to purchase illegal amounts of pseudoephedrine, a drug found in over-the-counter cold medications that is used in meth-making.

The system automatically will issue the seller a stop sale alert. Retailers will be required to use the free system unless granted a waiver by the Attorney General.

The bill also will:

- ensure that no claim or cause of action shall arise against a seller based upon the electronic submission of information to the exchange;
- allow the retailer to store certain information obtained from the purchaser's license or identification card in case it is needed by law enforcement; and
- prohibit the sale of products containing more than 9 grams of pseudoephedrine base or 9 grams of phenylpropanolamine base during a 30-day period unless purchased pursuant to a medical order.

The bill has an effective date of Jan. 1, 2012. LB20 was approved on a 44-0 vote.

### **LB 61 (Heidemann) Change provisions and penalties relating to unlawful intrusion**

LB 61 introduced by Sen. Heidemann, increases the penalties for unlawful intrusion under the Nebraska Statutes, by providing that the penalty for viewing or recording a person in a state of undress without his or her knowledge in a place of solitude or seclusion increases from a Class III to a Class I misdemeanor.

Current law defines a place of solitude or seclusion as one in which a person has a reasonable expectation of privacy, such as a restroom, tanning booth, locker room or dressing room.

The bill also increases to a Class IV felony the penalty for making a video or electronic recording of an unlawful intrusion. Distributing such a recording is a Class III felony.

In addition, the bill places a three-year statute of limitations on the crime beginning when a victim reaches the age of 21 or when a victim or law enforcement receives notice of the existence of a video or the distribution of images or video.

Finally, the bill requires a defendant over the age of 19 whose victim was under the age of 18 to register under the Sex Offender Registration and Notification Act.

LB61 passed on a 47-0 vote.

**LB 94 (Howard) Allow petitioners for adoption of a state ward to read the child's case file**

Legislative Bill 94 provide an opportunity for the person or persons petitioning to adopt a state ward to read the child's case file maintained by the Department of Health and Human Services after the petition is filed and prior to the entry of the adoption decree. The Department must file with the court a document signed by the person or persons wishing to adopt showing they have had the opportunity to read the case file. The new provisions applies only to adoption petitions filed on or after the effective date of this act.

Committee Amendment AM 180 was adopted on general file to provide that the case file made available to the petitioner(s) must not include information or documents that the Department determines cannot be released based on state statute or federal statute, rule or regulation. The amendment also provides that the case file will be made available to the adoptive parents following the adoption process upon a written request to the department. The petitioner(s) must sign a document indicating they are aware that the case file will be available to them following the adoption process.

On select file, AM 358 was adopted to clarify that the exclusion of information or documents from the case file may be properly based on federal rules and or federal regulations, not state rules or state regulations.

The bill passed on a 45-0-4 vote and was signed into law by the Governor on March 10, 2011.

**LB 100 (Coash) Change provisions relating to the criminal responsibility of intoxicated persons and the insanity defense**

LB100, introduced by Sen. Coash, eliminates the defense of temporary insanity for crimes committed while the offender is voluntarily under the influence of drugs or alcohol. Defendants charged with committing crimes while intoxicated may no longer use intoxication as a defense, unless they can prove by clear and convincing evidence that they did not know that a substance was an intoxicant when they used it.

LB100 was approved on 42-2 vote.

**LB 124 (Avery) Provide for cultural history information in adoption records**

Legislative Bill 124 requires additional information be provided to the court with a petition for adoption. The bill requires the race, ethnicity, nationality, Indian tribe or other cultural history of both biological parents to be included, if available, in the complete medical history of the child, which is required under current law.

The bill changes the definition of medical history to include race, ethnicity, nationality, Indian tribe or other cultural history of both biological parents, if available.

Committee Amendment AM 1037 was adopted on general file to add language to ensure that inclusion of the additional information in the complete medical history be done in compliance with the Nebraska Indian Child Welfare Act when applicable.

The bill passed on a 44-0-5 vote and was signed into law by the Governor on May 17, 2011.

### **LB 137 (Lautenbaugh) Change provisions relating to postconviction relief**

LB137, introduced by Omaha Sen. Lautenbaugh, requires that a verified motion for post-conviction relief be filed within one year after the date a judgment of conviction becomes final. Currently, a post-conviction relief motion can be filed at any time.

The bill creates an exception to the one-year limitation by providing that the limitation period runs from the latter of the date:

- the judgment of conviction became final by the conclusion of a direct appeal or the expiration of the time for filing a direct appeal;
- on which the factual predicate of the constitutional claims alleged could have been discovered through the exercise of due diligence;
- on which an impediment created by state action, in violation of the federal or state constitutions or laws of Nebraska, is removed if the prisoner was prevented from filing a verified motion by such action; or
- on which the claim was initially recognized by the U.S. Supreme Court or Nebraska Supreme Court if the newly recognized right has been made retroactively applicable to cases on post-conviction collateral review.

The bill passed on a 45-0 vote.

### **LB 157 (Coash) Change guardianship and conservatorship provisions and adopt the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act**

LB 157 enacted changes to the probate code related to guardianships and conservatorships. The changes were contained in the Report of Final Recommendations issued by the Joint Review Committee on the Status of Adult Guardianships and Conservatorships in the Nebraska Court System and approved by the Supreme Court.

The bill includes the following changes:

- Requiring the guardian or conservator to file their Letters with the register of deeds in every county where the ward has real property or an interest in real property.
- Allowing the Office of Dispute Resolution approved mediation centers to accept guardianship and conservatorship cases.



- Authorizing the court to refer guardianship and conservatorship cases to mediation or other alternative dispute resolution.
- Requiring the State Court Administrator to create and maintain a database of active guardianships and conservatorships that is accessible to the public. Each guardian and conservator must register each case they are appointed to with the registry.
- If the court receives an affidavit indicating that the ward's or the protected person's safety, health or financial welfare is at issue, the court may issue ex parte orders to address the situation. The ex parte orders will remain in full force and effect for ten days or until a hearing whichever is earlier. Anyone who violates the ex parte order is guilty of a Class II Misdemeanor. If the court receives information indicating that the ward's or the protected person's safety, health or financial welfare is at issue, the court must set the matter for hearing within 10 days and provide notice to all interested persons.
- Once nominated and prior to appointment to a guardianship or a conservatorship, a person must obtain the following background checks and file them with the court 10 days prior to the appointment hearing: credit check; criminal history; abuse and neglect registry and sex offender registry.
- Prohibiting a guardian or conservator from changing the ward's place of abode out of state without court permission.
- Requiring a guardian to complete and file an inventory of the ward's estate within 30 days of appointment if a conservator has not been appointed. The inventory must be mailed to all interested persons and updated annually.
- Requiring bonds on all assets over \$10,000. Bonding requirement can be waived by court for good cause shown.
- Requiring a conservator to complete and file an inventory of the estate within 30 days (rather than the current 90 days) of appointment. The inventory must be mailed to all interested persons and updated annually. The conservator must also file an annual accounting with the court.

On general file, AM 106 was adopted to amend certain provisions and to add the provisions of Legislative Bill 85 to enact the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The Act addresses issues of multiple jurisdiction, transfer, and out-of-state recognition of adult guardianship and protective proceedings. In addition, LB 85 facilitates communication and cooperation between courts in different states about adult guardianship. The Act provides the following:

- Uniform definitions.
- A three-level priority system to identify the state with jurisdiction to appoint a guardian or conservator or enter a protective order. The Home State has primary jurisdiction followed by the Significant-connection State and then another state if the Home State and the Significant-connection State decline jurisdiction or the ward does not have a Home State and the Significant-connection State.
- In an emergency, the court in a state where the individual is physically present or where the property is located has special jurisdiction to appoint a guardian or conservator.

- Once a court has jurisdiction, it continues until the proceeding is terminated or the appointment or order expires.
- The court may decline jurisdiction upon determining the court of another state is a more appropriate forum based on specified factors.
- Regulation of communication between courts in other states and taking testimony in other states.
- Procedures for transferring a guardianship or conservatorship to another state. Orders are required from both the transferring court and the accepting court.
- Procedures for registering orders in another state to facilitate enforcement of such orders.
- For purposes of the Act, the age of majority is lowered to 18.

Other amendments adopted under AM 106 include: “interested party” is changed to “interested person” and a definition is provided; removing the provision for information concerning the ward’s or the protected person’s safety, health or financial welfare to be submitted to the court without affidavit for a hearing to be set; exceptions to the background checks for financial institutions serving as conservators and expedited, temporary and/or emergency guardians and conservators; the bond on assets greater than \$10,000 is fixed at the aggregate capital value of the personal property of the estate plus one year’s estimated income minus the value of the securities and other assets deposited under arrangements requiring an order of the court for their removal; and removal of the condition that a ward have sufficient mental capacity to receive a copy of his or her inventory.

On general file, AM 107 was adopted to remove the requirement for nominated guardians and conservators to file a credit report with the court. AM 112 was adopted to create an exception to the bonding requirement if the protected person executed a written, valid power of attorney that specifically nominates a guardian or conservator and specifically does not require a bond. AM 140 was adopted to harmonize provisions.

On select file, AM 215 was adopted to harmonize provisions and make substantive changes. Under the amendment, reports must be sent to interested persons and the bonding company by first class mail rather than certified mail. The age of majority is reinstated at 19 for purposes of the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The amendment removes the requirement for potential guardians and conservators to complete and file registry checks with the court 10 days prior to the appointment hearing. The amendment provides for court costs as a civil penalty for filing an affidavit in bad faith.

The bill passed on a 49-0 vote and was signed into law by the Governor on February 22, 2011.

### **LB 167 (Fischer) Change the Relocation Assistance Act**

Legislative Bill 167 amends N.R.S. §§76-1221 and 76-1228 to update the current Relocation Assistance Act (Act) into conformity with the current federal version of the

Act. The bill narrows the application of the Act by placing added restrictions on who qualifies for assistance under the provisions. The Act must be followed by any state or local government entity carrying out a publicly financed project which displaces individuals.

The bill authorizes the lead agency (Nebraska Department of Roads) to establish, by rule and regulation, a reasonable maximum payment for the expense of searching for a replacement business or farm that is consistent with the federal regulations under the federal Act.

The bill passed on a 44-0-5 vote and was signed into law by the Governor on May 17, 2011.

### **LB 191 (Council) Change provisions relating to sentence reductions**

LB191, introduced by Omaha Sen. Council, allows the Nebraska Department of Corrections to reduce the time an inmate or parolee serves by three days each month during a 12 month period of incarceration during which the inmate has not been found guilty of a Class I or Class II offense or has not had more than three Class III offenses of the department's disciplinary code.

LB 191 also directs the Parole Board to reduce a parolee's parole term by an additional 10 days for each month of his or her term for good conduct in conformity with the conditions of a parole. Parolees are currently eligible for a reduction of two days for each month.

The bill passed on a 45-0 vote with an emergency clause.

### **LB 197 (Dubas) Allow breast-feeding as prescribed**

Legislative Bill 197 authorize a woman to breast feed her child in any place she is authorized to be.

The bill passed on a 46-0-3 vote and was signed into law by the Governor on March 10, 2011.

### **LB 390 (Ashford) Change provisions relating to jails, community corrections, and the Community Trust**

LB390, as introduced by Sen. Ashford at the request of Gov. Heineman, would make the following changes to Nebraska Statute:

- Eliminate the Jail Standards Board and replace it with a manual of recommended guidelines published by the Crime Commission;
- Eliminate the Community Corrections Council and replace it with a Community Corrections Division of the Crime Commission;
- Would provide that the Director of the law Enforcement Training Center and the

Director of the Office of Violence Prevention would be appointed and removed by the Director of the Nebraska Commission on Law Enforcement and Criminal Justice; and

- Eliminate the responsibility of the Crime Commission to annually produce a homicide study.

LB 390 was amended in Committee by Committee Amendment 1537, which was adopted by a 5-0 vote w/ 3 members absent and made the following changes:

- Removes the provisions eliminating the Jail Standards Board;
- Provides that nationally certified correctional facilities are not subject to the supervision of the Jail Standards Board; and
- Clarifies the structure and operation of the Community Trust.

### **LB 284 (Krist) Change provisions relating to unlawful picketing of a funeral**

LB284, introduced by Omaha Sen. Krist, increases the minimum distance required for picketing funerals by prohibiting the picketing of a funeral or memorial service within 500 feet of a cemetery, mortuary, church or other place of worship at the time of a funeral or memorial service. The previous limit was 300 feet.

The bill passed on a 48-0 vote.

### **LB 463 (Ashford) Change juvenile penalty, records, service plan, probation sanctions, and truancy provisions**

Legislative Bill 463 was introduced at the request of the Governor and originally provided the following:

- At least 50% of the learning community coordinating council operating fund (\$882,275 total) would be used for truancy intervention programs that incorporate evidence-based practices pursuant to a plan developed by the superintendents of member districts. The programs must be approved by a majority of the council members and two-thirds of the superintendents of the districts within the learning community. The funds would be used this way until the annual rate of truancy (absent more than 10 days), as calculated at the end of the each school year by the State Department of Education, in learning community school districts is reduced by 50% from the rate calculated for the 2010-11 school year.
- The goals and objectives of the learning community would include the reduction of excessive absenteeism for purposes of the annual evaluation conducted to measure the progress toward such goals and objectives.
- The written policy on excessive absenteeism must include a provision indicating how the district and the county attorney will handle cases in which excessive absences are due to documented serious illnesses.
- When a child is absent more than 10 days or is suspended, there would be an exchange of information between the school district, Probation, DHHS and its

contract providers and the crime commission about the child's involvement with the juvenile justice and/or child welfare systems, if any.

- The administrative sanctions provisions enacted in 2010 under LB 800 would move from the criminal procedure chapter to the juvenile code.
- Language would be added to the end of § 28-416 to limit the sending of abstracts of the conviction or adjudication to the Department of Motor Vehicles to cases in which the conviction or adjudication resulted in a license or permit being impounded or in the prohibition on obtaining a license or permit.
- An exception would be created for law enforcement agencies to have access to sealed juvenile records for purposes of considering applicants for employment.

On general file, Committee Amendment AM 754 was adopted to replace the original provisions of LB 463 and AM 1131 was adopted to replace the provisions of AM 754. As amended by AM 1131, the bill includes:

- A technical correction to provisions from LB 800 to limit the need to send abstracts of a conviction or adjudication for a controlled substance offense to the Department of Motor Vehicles to cases in which the conviction or adjudication resulted in a license or permit being impounded or in the prohibition on obtaining a license or permit.
- Transfer of the administrative sanctions provisions adopted in LB 800 from the criminal procedure chapter to the juvenile code and insert references to the provisions in other probation statutes.
- An exception in the sealed records process to allow law enforcement agencies to have access to sealed records for purposes of considering applications for employment.
- A transfer \$100,000 from the operations cash fund of the Commission on Public Advocacy to the State Court Administrator to assist juvenile justice entities providing diversion and early intervention programs to address truancy.
- An amended version of LB 79, introduced by Senator McGill, to provide resources to Court Appointed Special Advocates programs around the state. The bill would transfer \$100,000 in 2011 and \$200,000 in 2012 to the CASA fund created under the bill. The fund would be administered by the State Court Administrator through a grant process recruit and train new CASAs, to enhance programming and to expand into areas of the state that do not have CASAs available.
- A mandate for a school district's written policy on excessive absenteeism, developed in collaboration with the county attorney, to include a provision indicating how the district and the county attorney will handle cases in which excessive absences are due to a documented illness that makes attendance impossible or impracticable.
- The authority for the Learning Community Coordinating Council to fund private or public juvenile justice entities providing diversion and early intervention programs to address truancy.
- A mandate for the goals and objectives of the learning community shall include the reduction of excessive absenteeism for purposes of the annual evaluation conducted to measure the progress toward such goals and objectives.

- A mandate for the 11 superintendents of the metro area schools to develop and participate in a plan by August 1, 2011 to reduce excessive absenteeism including a process to share information about at-risk youth. At-risk youth include those involved with the juvenile justice system, Probation, HHS or who have been absent from school for more than 10 days for reasons other than illness.
- An emergency clause.

On select file, AM 1297 was adopted to make several technical changes to the CASA grant funding provisions of the bill. In the section of the bill referring to the learning community superintendents' plan, the definition of at-risk youth was amended to make technical corrections to the reference to children involved with Probation and HHS. The absence provision of the definition of at-risk youth was amended to include those absent more than 5 days per quarter, or hourly equivalent, except when excused by school authorities or when a documented illness makes attendance impossible or impracticable.

Also on select file, AM 1306 was adopted to revise the process for sealing juvenile records. The amendment represents a combination of amended versions of both LB 301 and 669. The amendment provides the following:

- Expands eligibility for sealing process to those taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation.
- Removes eligibility to get the sealing process initiated automatically at age 17 for those who are filed on in county court for misdemeanors or infractions under a city or village ordinance that has no possible jail sentence, except that offenses for possession of marijuana and possession of drug paraphernalia will be eligible.
- Clarifies the records to be sealed by removing the term "original record" and replacing it with "record".
- Provides consistency in lists of records that may be sealed. Adds records generated when charges are filed and then dismissed after such filing to the list of records that may be sealed.
- Expands timeframe from thirty days to sixty days for when the court must conduct a hearing on its own discretion or based on the objection of a party that received notice of the sealing process.
- Requires the Office of Juvenile Services to provide the committing court with written notification of the juvenile's discharge from the care and custody of the Office of Juvenile Services or from parole within thirty days of a juvenile being discharged from the supervision of the Office of Juvenile Services.
- Expands access to sealed records to include the court, city attorney or county attorney for purposes of collection of any remaining parental support or obligation balances under section 43-290; and by the Department of Correctional Services, the Office of Juvenile Services, a Juvenile Assessment Center, a criminal detention facility, or a juvenile detention facility, for an individual committed to it, placed with it, or under its care.

- Requires the court to send notice of the order to seal the record to the transferring court if the case was transferred from district court to juvenile court, or was transferred under section 43-282 to the county where the juvenile lives or is domiciled.
- Allows the parent or guardian of the juvenile to file a motion to have a juvenile record sealed.
- Expands the factors that the judge may consider in determining whether a juvenile has been rehabilitated to a satisfactory degree in order to seal the juvenile's record.
- Clarifies the effect of having a juvenile record sealed.
- Clarifies that no person may release any information concerning a sealed record unless specifically authorized under this law.
- When a juvenile record has been sealed and the person subject to the record subsequently applies for bonding or education, the person cannot be questioned with respect to the offense for which the record was sealed.
- Removes the provision that prevents the person who is the subject of a sealed record from being subjected to any adverse action for responding to questions as if the offense never occurred.

The bill passed on a 46-2-1 vote and was signed into law by the Governor on May 11, 2011.

**LB 479 (Lathrop) Authorize a person eighteen years of age to give consent to evidence collection and examination and treatment in cases of sexual assault and domestic violence**

LB479, introduced by Sen. Lathrop, provides that a victim of sexual or domestic assault who is at least 18 years of age could be examined and treated by a physician without the consent or notification of a parent or guardian.

The bill passed on a 46-0 vote.

**LB 512 (Christensen) Change provisions relating to unlawful possession of a firearm at a school and mental health determinations and residency requirements regarding handgun purchase and possession**

LB512, introduced by Sen. Christensen, would remove a maximum five-year retention requirement for mental health records at the state Department of Health and Human Services. Records would include whether a person is disqualified from purchasing or possessing a handgun and would be made available to the National Instant Criminal Background Check System. The Nebraska State Patrol could access the system when determining a person's eligibility to own a gun.

Additionally, the bill would enable a person who has been barred from buying or possessing a gun for mental health reasons to resubmit an application if he or she no

longer suffers from the disqualifying condition. An individual could request a mental health board hearing at which the board would consider:

- circumstances surrounding the subject's mental health commitment;
- the subject's record, including mental health and criminal history records; and
- the subject's reputation, developed through character witness statements, testimony or other character evidence.

LB 512 was amended by Judiciary Committee amendment 225, which outlined the process to appeal a denial of requested relief and also would require the courts to send an order to remove a subject's firearm-related disability to HHS and the state patrol within 30 days. The committee amendment was adopted 39-0

Sen. Lautenbaugh offered amendment 976 to the committee amendment that requires the state of Nebraska to recognize valid handgun permits issued by other states in lieu of the 180 day residency requirement for new citizens of the state who are trying to obtain a Nebraska Concealed Carry Permit. Amendment 976 was originally introduced as LB138, and was adopted 35-0.

LB 512 was passed 43-0.

**LB 521 (Fulton) Require the physical presence of a physician who performs, induces, or attempts an abortion**

Legislative Bill 521 would require that drugs used for the purpose of inducing abortions be administered by or in the physical presence of the physician who prescribed, dispensed or provided it. The physician would have to make reasonable efforts to see the patient 12-18 days after the drug is administered to confirm the pregnancy was terminated and assess the patient's medical condition. The knowing or reckless violation of the provisions above would be a Class I misdemeanor. The bill would also create a civil cause of action against a person who performed an abortion in knowing or reckless violation of the provisions above for actual or consequential damages. The cause of action would be available to the patient, the father if married to the patient or a maternal grandparent. A cause of action would be available to the patient for an attempt to abort in knowing or reckless violation of the provisions above for actual or consequential damages. A cause of action for injunctive relief against the person who performed or attempted to perform an abortion in violation of the provisions above would be available to the patient; the patient's spouse, parent, sibling, guardian, current or former licensed health care provider; a county attorney; or the Attorney General. Reasonable attorney's fees would be awarded to the prevailing party in civil litigation under this bill. The patient would not be subject to civil or criminal liability under this bill. In litigation brought under this bill, the court would determine whether to maintain the anonymity of the patient if she does not consent to disclosure of her identity.

Committee Amendment AM 1100 was adopted on general file to strike all of the original sections and amend statute section 28-335 to create a new criminal penalty for a physician who is not in the room with the patient when performing, inducing or



attempting an abortion. Any physician who knowingly or recklessly uses or prescribes any instrument, device, medicine, drug or other substance to perform, induce or attempt an abortion without being physically present in the same room as the patient is guilty of a Class IV felony. No civil or criminal penalty can be assessed against the patient under this subsection.

There is a severability clause attached to this bill.

The bill passed on a 38-9-2 vote and was signed into law by the Governor on May 26, 2011.

### **LB 648 (Christensen) Change provisions relating to foster care and juvenile placement**

Legislative Bill 648 amends provisions of the Foster Care Review Act related to review and hearing notice and participation. Under the bill, hearings pertaining to a child in foster care placement will carry the same notice and right of participation requirements as court reviews. Notice of any hearing or court review must be mailed or personally delivered by the court to the counsel or party five full days prior to the hearing or review. The Department of Health and Human Services or contract agency must maintain contact information for all placements for the court to use in providing notice. The contact information must be updated within 72 hours of any change of placement.

The bill provides that foster parents are necessary parties to a hearing regarding removal of a child from a foster parents' home, thus allowing foster parents to call and cross-examine witnesses and to appeal. The bill requires the court to ask any present and willing foster parent, preadoptive parent or relative caring for the child about the well-being of the child at the hearing.

Committee Amendment AM 802 was adopted on general file to strike the provisions for foster parents to have standing as necessary parties in removal hearings.

Also on general file, an amendment was adopted to add the provisions of LB 80 to strike language in § 43-285 providing that the court must disapprove the case plan submitted by the Department of Health and Human Services after adjudication if one of the parties proves by a preponderance of the evidence that the plan does not meet the standard of being the best interest of the child. Under current law, the case plan is presumed to be in the juvenile's best interest and it is up to the parties to rebut the presumption. This bill would remove the presumption.

The bill was amended into LB 648 with a technical amendment to make explicit the authority of the court to approve the case plan submitted by the Department.

The bill passed on a 44-0-5 vote and was signed into law by the Governor on May 4, 2011.

## **LB 665 (Pirsch) Change provisions relating to criminal child enticement**

LB665, introduced by Sen. Pirsch, prohibits attempts to solicit, coax, entice or lure a child under the age of 14 to enter a place intending to seclude him or her from a parent, guardian, legal custodian or the general public, whether or not the person knows the age of the child.

Current law prohibits only the luring of a child into a vehicle.

Violations will be a Class IIIA felony. If a perpetrator has been previously convicted of criminal child enticement, assault or sexual assault of a child, or kidnapping or false imprisonment of a victim younger than 18, he or she could be guilty of a Class III felony.

The bill passed on a 45-0 vote

## **LB 667 (Flood) Change provisions governing motor vehicle homicide, alcohol violations involving minors, operating watercraft or motor vehicles under the influence of alcohol or drugs, administrative license revocation, and ignition interlock devices**

LB667, introduced by Sen. Flood, is a bill that changes provisions related to driving under the influence (DUI) as well as makes the following changes to Nebraska Statute:

- Creates a new offense of motor vehicle homicide of an unborn child;
- Makes motor vehicle homicide and DUI-serious bodily injury separate crimes from DUI;
- Creates penalties for boating while under the influence of alcohol or drugs;
- Provides for a Class III-A felony and a minimum of 30 days imprisonment for procuring alcohol for minors, when the procuring is the proximate cause of a serious bodily injury or death;
- Makes ignition interlock devices mandatory for those offenders with a first and second offense DUI and seek to drive; and
- Repeals ALR .

LB 667 was amended by Committee Amendment 162, which advanced from committee by an 8-0 vote and made the following changes:

- Revises the administrative license revocation (ALR) process by:
  - Provides a 15 day temporary license for people arrested for a dui, that is issued at the time of arrest;
  - Provides that license revocation is automatic after 15 days;
  - Provides no suspension of driving privileges for first offense dui as long as individual does not appeal ALR and installs an ignition interlock device, which is available immediately after arrest for dui;
  - Provides for 90 day suspension of driving privileges and one year revocation for offenders who refuse B.A.C test;

- Creates penalties for tampering with ,or driving without an ignition interlock device if it is required under ALR;
- Provides that a person who is driving under an ignition interlock permit and has no prior DUI convictions can operate a vehicle only for purposes of employment, education, substance abuse treatment, parole or probation supervision, health care for themselves or their dependents, court-ordered community service obligations and ignition interlock servicing.
- Provides that an offender receive credit for the days that they drive with an ignition interlock device towards any period of revocation that a judge may order as part of a dui sentence.

Finally LB 667 increases the 12-year look-back period to 15 years under the DUI statutes for the enhancement of criminal sentences.

LB667 passed on a 46-0 vote.

### **LB 669 (Flood) Change Small Claims Court, county court, district court, and juvenile court provisions**

Legislative Bill 669 would make changes to the process for sealing records of involvement with the juvenile justice system that was enacted under LB 800 in 2010.

The proposed changes include:

- The sealing process would not be available for any waiverable offense.
- Allowing the parent or guardian of the juvenile to file a motion to have a juvenile record sealed.
- Removing the authority for the court to initiate the sealing process and the automatic initiation of the sealing process when the juvenile reaches the age of 17.
- Extending the timeframe for hearings on a motion to seal the record from 30 days to 60 days.
- Expanding the factors that the judge may consider in determining whether a juvenile has been rehabilitated to a satisfactory degree in order to seal the juvenile's record.
- Clarifying the effect of having a juvenile record sealed.
- Clarifying that no person may release any information concerning a sealed record unless specifically authorized under this law.
- When a juvenile record has been sealed and the person subject to the record subsequently applies for bonding or education, the person cannot be questioned with respect to the offense for which the record was sealed.
- Removing the provision that prevents the person who is the subject of a sealed record from being subjected to any adverse action for responding to questions as if the offense never occurred.

Committee Amendment AM 1342 was adopted on general file to strike the original sections and insert provisions from the following bills:

Legislative Bill 451, as included in AM 1342, includes provisions to increase flexibility for the Judiciary to administer justice across the state. The bill expands the Supreme Court's options for funding sources from which to compensate interpreters used by the court. The bill provides for clerks and staff of the district courts and the county courts to assist one another in the provision of court services based on agreements with the Supreme Court and the State Court Administrator. The bill provides for the creation of the new position of Judicial Hearing Officer. The Supreme Court is authorized to appoint judicial hearing officer(s) as needed in county courts sitting as separate juvenile courts or separate juvenile courts to preside in, hear and determine cases initiated under the juvenile code. The bill provides greater flexibility for scheduling the administrative offices of the courts by requiring that court services must be available on all days except weekends, the holidays mentioned in statute section 25-2221 and those days specifically designated by the Supreme Court. The bill provides for a divorce decree to be entered without a hearing if: both parties waive the hearing requirement; both parties certify in writing that the marriage is irretrievably broken; at least one of the parties certifies that reasonable efforts at reconciliation have been made and both parties have signed an agreement resolving all issues of the divorce. The bill outright repeals statute section 24-512 which provided for divisions of a county court to be at a location other than the county seat and required certain cases to be filed with the county court clerk in the county seat.

Legislative Bill 339, as included in AM 1342, amends statute section 43-258 relating to pre-adjudication evaluations, placement, reports, and costs. The bill repeals current language that authorizes the court to order a juvenile to be placed in one of the facilities or institutions of the State of Nebraska for the completion of a pre-adjudication evaluation. The bill adds language authorizing the court to order a juvenile to be placed directly with the Department of Health and Human Services for the purpose of obtaining a pre-adjudication evaluation. The Department will make arrangements for the evaluation. The Department will determine whether the evaluation is made on a residential or nonresidential basis and placement with the Department for the evaluation will be for a period not to exceed thirty days. If necessary to complete the evaluation, the court may order an extension not to exceed an additional thirty days. The bill clarifies the responsibilities of the county and the state for covering costs incurred during the period of detention or evaluation of the juvenile prior to adjudication.

Legislative Bill 349 amends statute sections 25-2705 and 25-2805 relating to the demand for a jury trial in county court cases and cases transferred from small claims court to county court. The bill provides various deadlines for the filing of a jury demand in civil cases depending on the role of the litigant doing the filing. Under LB 349, the procedure for filing a jury demand in a case that is transferred from small claims court to county court would correspond to the jury demand procedure for other civil cases as changed in this bill.

Legislative Bill 476 amends a law passed in 2009 under LB 35. The bill clarifies the authority for delivery of service by a commercial courier such as FedEx or UPS, known in the law as a designated delivery service. Under the bill, service by designated delivery

service must be made within ten days of issuance, which is consistent with the certified mail service method. In addition, designated delivery service requires the filing of proof of service with the court including a copy of the signed delivery receipt. The bill requires the State Court Administrator to maintain a list of designated delivery services on the Supreme Court website. There is an emergency clause attached to this section of AM 1342.

On select file, AM 1448 was adopted to incorporate the provisions of LB 296 into LB 669 by removing the oath requirement for the filing of complaints and information in criminal cases to allow for electronic filing. AM 1471 was adopted to make technical changes and to clarify provision regarding the agreements to allow district court clerks offices and county court clerks offices to assist one another in times of need. AM 1452 was adopted to clarify that the 60 day waiting period for a divorce is not waived by the new provision allowing the decree to be entered without a hearing under certain circumstances. Also under AM 1452, both parties must certify that they have made every reasonable effort to effect reconciliation in order to have a divorce decree entered without a hearing.

The bill passed with an emergency clause on a 47-0-2 vote and was signed into law by the Governor on May 26, 2011.

### **LB 673 (Flood) Change support liens and provide for military parents and children in cases of divorce**

Legislative Bill 673 amends § 42-371 to require the court to order a judgment creditor to pay a judgment debtor's court costs and attorney's fees when the judgment creditor has refused, without a good faith reason, to execute a release of the judgment for child support or spousal support or subordination of the lien. A showing that all support payments are current is prima facie evidence that the judgment creditor refused to release or subrogation without a good faith reason.

The bill provides procedural protections for families with a military parent in the midst of mobilization or deployment in cases involving custody, parenting time, visitation, access or modification.

The bill provides a definition of military parent and adds stepparents and step-siblings to the definition of parenting time.

Committee Amendment AM 1254 was adopted to authorize, rather than require, the court to order a judgment creditor to pay a judgment debtor's court costs and attorney's fees when the judgment creditor has refused, without a good faith reason, to execute a release of the judgment for child support or spousal support or subordination of the lien. The amendment also provides that support payments being current would be evidence - not prima facie evidence - that the judgment creditor refused to release or subrogate without a good faith reason. The amendment also removes a limitation in the definition of military parent in order to include all members of the National Guard.

The bill passed on a 49-0 vote and was signed into law by the Governor on May 24, 2011.

**LB 675 (Pirsch) Provide and change penalty, enforcement, and incarceration provisions relating to driving under the influence and the duty to stop at a motor vehicle accident**

LB675, introduced by Sen. Pirsch, revises penalties for drinking and driving under the influence, increases penalties for DUI offenders with prior convictions and creates a felony penalty for failing to stop after an accident that results in serious bodily injury or death.

LB 675 was advanced from Committee by an 8-0 vote with Committee Amendment 1380 attached. Committee Amendment 1380 made the following changes to LB 675:

- Increased the fine amount required as a condition of probation for a person with three or more prior convictions from \$1,000 to \$2,000;
- Increased the fine amount for Class W misdemeanors from the current range of \$400 to \$600 to a range of \$500 to \$1,000;
- Changed the look-back period for sentence enhancement purposes from 12 years to 15 years;
- Creates a new offense for driving with a blood alcohol content level of .02 or higher, for individuals with a prior DUI conviction. A violation of this new offense will be a Class IIIA misdemeanor; and
- Requires a person who has at least four prior convictions to serve a minimum of two years of imprisonment and complete a diagnostic evaluation before being eligible for parole.

The bill passed on a 46-0 vote and goes into effect Jan. 1, 2012.

**LB 690 (Brasch) Change consent and parental notification provisions regarding abortion**

Legislative Bill 690 amends the current parental notification requirements for a woman less than eighteen years of age to get an abortion to require notarized written consent from the pregnant woman and one of her parents or a legal guardian before getting an abortion.

Under the bill, except in the case of a medical emergency where there is insufficient time to obtain consent or a judicial bypass waiver is granted, an abortion may not be performed on a pregnant woman less than 18 years of age without notarized written consent from the woman and her parent or guardian. The parent or guardian shall consider only the woman's best interest when deciding whether to consent.

If the pregnant woman signs a statement that she is a victim of abuse by her parent(s) or guardian, the physician shall obtain notarized written consent

from a sibling 21 years of age or older or from a stepparent or grandparent. A physician relying on the written statement of abuse in good faith will not be civilly or criminally liable for failure to obtain consent. The physician must inform the woman of his or her duty to report the abuse to law enforcement or HHS.

A pregnant woman shall not be coerced to obtain an abortion, and she shall be deemed emancipated to receive public-assistance benefits if she is denied financial support by her parents, guardians, or custodians because she refuses to get an abortion. Such benefits may not be used for an abortion.

The provisions of the bill apply to residents and non-residents of Nebraska. The bill amends the judicial bypass provisions by inserting clear and convincing evidence as the standard of proof to show that the woman is both sufficiently mature and well-informed to decide whether to have the abortion. The bill adds a provision to the judicial bypass process to authorize a judge to issue an order authorizing a woman to consent to an abortion if the court finds by clear and convincing evidence that there has been a pattern of abuse by a parent or guardian. The best interest pathway to a judicial bypass of the consent requirement is amended to require that the court find by clear and convincing evidence that the notification of the parent is not in the best interest of the pregnant woman.

Under the bill, any person who provides unauthorized consent or who coerces a minor to have an abortion is guilty of a Class III misdemeanor. The bill adds reckless disregard to the existing law that criminalizes any physician or attending physician who knowingly and intentionally performs an abortion in violation of the consent requirement.

The bill requires a monthly report of the number of consents obtained and the number of times exceptions and types of exceptions to the consent requirement that were granted to be filed with the Department of Health and Human Services. The department must compile the data and report it to the public annually.

The bill clarifies that the provisions shall not be construed as creating or recognizing a right to abortion and that it is not the intent of this bill to make lawful an abortion that is currently unlawful.

The bill includes a severability clause.

Committee Amendment AM 1429 was adopted on general file to remove from section 4 of the bill an exception to the consent requirement in cases of abuse by a parent or guardian to allow the physician to obtain notarized written consent from a sibling 21 years of age or older or from a stepparent. The woman may obtain consent from a grandparent under such circumstances.

The amendment removes the requirement that the court find a pattern of abuse by a parent or guardian in providing a judicial bypass of the consent requirement for abuse by a parent or guardian. The amendment changes the best interest provision of the judicial

bypass process to require that the court find by clear and convincing evidence that an abortion without the consent of a parent or guardian is in the best interest of the pregnant woman rather than the finding that notification of the parent or guardian is not in the best interest of the pregnant woman.

The amendment clarifies that the monthly report to HHS regarding the number of consents and the number of exceptions made to the consent requirement must be provided by the physician.

The amendment strikes section 14 and adds a revised severability clause.

On select file, AM 1571 was adopted to make technical amendments, to change the definition of consent and to limit the information contained in the monthly report provided by physicians to DHHS. Also on select file, AM 1573 was adopted to provide that declarations made to a notary public pursuant to the process for a minor seeking an abortion be kept confidential.

The bill passed on a 41-6-2 vote and was signed into law by the Governor on May 26, 2011.



## **BILLS ADVANCED TO SELECT FILE DURING THE 2011 SESSION**

### **LB 41 (*Flood*) Clarify references to the county sheriff**

LB 41 would amend 29-4004 (9) by clarifying that an individual who is required to register or who is already registered under the Sex Offender Registration Act must notify in writing the sheriff of the county to which the offender has moved of their arrival within five working days.

LB 41 advanced from Committee by an 8-0 vote and advanced to select file by a 40-0 vote on January 29, 2009.

### **LB 670 (*Flood*) Authorize court-ordered conditions for dispositions under the Nebraska Juvenile Code**

Legislative Bill 670 would authorize the juvenile court to order juveniles on probation, as a condition of probation, to participate in non-probation-based programs or services and to pay fees to do so. Under the bill, the juvenile court would have authority to order the restitution of medical expenses incurred. Under the bill, the juvenile court would have authority to place a juvenile on probation under any conditions deemed by the court to insure that the juvenile will lead a law-abiding life or deemed by the juvenile court to be reasonably related to the rehabilitation of the juvenile. Such conditions would include, but not be limited to, ordering the juvenile to attend or reside in an institution or facility established for the instruction, recreation, staff secure detention, or residence of juveniles.

Committee Amendment AM 1447 was adopted on general file to strike the provision allowing the juvenile court to order, as a condition of probation, the juvenile to attend or reside in an institution or facility established for the instruction, recreation, staff secure detention, or residence of juveniles. The amendment would add authority for the juvenile court to order, as a condition of probation, that a juvenile submit to day reporting or to participate in a drug court program.

**BILLS ADVANCED TO GENERAL FILE  
DURING THE 2011 SESSION**

**LB 66 (Cornett) Change provisions relating to DNA collection**

LB 66 would amend 29-4106 to require that DNA samples that are required to be collected under this section be collected by a probation officer from all persons placed on probation. The DNA sample will be collected at the probation office. LB 66 clarifies that the collection of a DNA sample from those individuals who are not placed on probation and only receive a fine shall be collected at a detention facility or institution.

Finally, LB 66 provides that if the court waives the cost of taking a DNA Sample for any reason, a county jail or other county detention facility or institution shall not be financially responsible for the cost of the sample.

LB 66 was amended in Committee by AM241 by an 8-0, and made the following changes to section 1 of LB 66:

- Subdivision (1)(a), which provides that a person upon intake to a prison, jail, or other detention facility will have a DNA sample taken, is clarified to provide that if a person is placed in a county facility, the DNA sample shall be collected by the county sheriff.
- Subdivision (1) (b) (i) was created to provide that in any county containing a city of the metropolitan class, a person placed on probation or who receives a penalty of a fine or time served shall have their DNA sample collected by a probation officer at the probation office.
- Subdivision (1) (b) (ii) was created to provide that in all other counties that do not have a city of the metropolitan class, A person placed on probation shall have their DNA sample collected by a probation officer at a probation office and a person not placed on probation who receives a fine or time served shall have their DNA sample collected by the county sheriff.

**LB 202 (Council) Authorize petitions for recall and resentencing for certain minors sentenced to life imprisonment**

LB 202 is a bill that authorizes a person who was under 18 years of age at the time of committing an offense for which the person was sentenced to life without the possibility of parole (LWOP) to petition the court for re-sentencing.

Specifically, LB 202 provides the following:

- 1) Provides that when a defendant who, was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to LWOP, has served

at least 15 years, the defendant may submit to the sentencing court a petition for recall and re-sentencing.

2) Requires the petition for hearing to include the defendant's statement that one of the following is true:

- The defendant was convicted pursuant to section 28-303(Murder in the first degree) or 28-304(Murder in the second degree) or aiding and abetting another person in violation of such section.
- The defendant has no juvenile felony adjudications for assault or other felonies with a significant potential for personal harm to victims prior to the murder conviction.
- The defendant committed the offense with at least one adult co-defendant.
- The defendant has performed acts that indicate potential for rehabilitation, including participating in educational, or vocational programs and showing evidence of remorse.

3) Provides that if any of the information required in subsection (2) of this section is missing, or if proof of service on the Attorney General or county attorney is not provided, the person may resubmit a petition with the information or proof of service.

4) A reply to the petition if any, shall be filed with the court within sixty days after the Attorney General or county attorney was served with the petition unless a continuance is provided

5) Provides that if the court finds by a preponderance of the evidence that the statements in the petition are true, the court shall hold a hearing to consider whether to recall the sentence previously ordered and to re-sentence the defendant in the same manner as if the defendant had not been previously sentenced. This section also specifies that victims, or family members if the victim is deceased, retain the right to participate in the hearing.

6) Specifies the factors that the court may consider when determining whether to recall and re-sentence an individual include, but are not limited to:

- The defendant was convicted pursuant to felony murder or aiding and abetting murder;
- The defendant committed the murder with at least one adult co-defendant;
- The defendant has no juvenile felony adjudications for assault or other felonies with a significant potential for personal harm to victims prior to the murder conviction;
- Prior to the murder conviction, the defendant had insufficient adult support or supervision and suffered from psychological or physical trauma;
- The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors;
- The defendant has performed acts that indicate the potential for rehabilitation, including participating in rehabilitative, educational, or vocational programs; and
- The defendant has had no disciplinary actions for violent activities in the last five years.

7) Provides that the court shall have the discretion to recall a sentence and commitment previously ordered and as if the person seeking the recall had not been sentenced if the new sentence if any is not greater than the initial sentence.

8) States that if the sentence is not recalled, the defendant may submit another petition for re-sentencing to the court when the defendant has been committed to the custody of the department for at least 15 years; or if not granted, after 20 years; or if not granted, after 24 years. A final petition may be submitted during the 25th year of the defendant's sentence.

9) Provides that the court may consider any other criteria that the court deems relevant as long as the court identifies the criteria on the record.

10) Provides retroactive application of this act.

LB 202 was amended in Committee by AM399, which advanced by a 7-0 vote, with 1 member absent and makes the following changes to LB 202:

- a) Revises section 2 (1) to provide that the "petition for recall" shall now be filed with the Board of Pardons instead of the "sentencing court" and that the petition is called a "petition for sentence commutation." This change was needed because under The Nebraska Constitution, the only entity that can change a valid sentence of conviction is the Board of Pardons.
- b) Strikes section 2, 1(b) through (d) to clarify that a person must have been sentenced while under eighteen years of age and has served at least twenty years of incarceration before being able to file a petition for sentence commutation.
- c) Revises (8) to clarify that if the initial petition for sentence commutation is denied that the individual can submit another petition after five years from the initial petition, and then ten years, then fifteen years and the final petition may be submitted twenty years after the initial petition is denied

### **LB 251 (Council) Change court fees**

Legislative Bill 251 would increase all court filing fees by \$20

LB 251 was amended in Committee by AM945, which advanced by an 8-0 vote. AM945 would gut all sections of LB 251 and replace it with what is currently LB 202 as amended by the Judiciary Committee. LB 202 is a bill that authorizes a person who was under 18 years of age at the time of committing an offense for which the person was sentenced to life imprisonment to petition the Board of Pardons for a commutation of their sentence.

Specifically, AM945 provides the following:

1) Provides that when a petitioner who, was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to life imprisonment, and has served at least 20 years, the defendant may submit to the Board of Pardons a petition for a sentence commutation.

2) Requires the petitioner to file the original petition with the Board, that a copy of petition be served on the Attorney General or county attorney that prosecuted the case, include the defendant's statement that he or she was under 18 years of age at the time of the offense, was sentenced to life imprisonment and that one of the following is true:

- The petitioner was convicted pursuant to section 28-303(Murder in the first degree) or 28-304(Murder in the second degree) or aiding and abetting another person in violation of such section.
- The petitioner has no juvenile felony adjudications for assault or other felonies with a significant potential for personal harm to victims prior to the murder conviction.
- The petitioner committed the offense with at least one adult co-defendant.
- The petitioner has performed acts that indicate potential for rehabilitation, including participating in educational, or vocational programs and showing evidence of remorse.

3) Provides that if any of the information required in subsection (2) of this section is missing, or if proof of service on the Attorney General or county attorney is not provided, the person may resubmit a petition with the information or proof of service.

4) A reply to the petition if any, shall be filed with the Board within sixty days after the Attorney General or county attorney was served with the petition unless a continuance is provided

5) Provides that if the Board finds by a preponderance of the evidence that the statements in the petition are true, the Board shall hold a hearing to consider whether to commute the sentence previously ordered. Also provides that victims or family members of deceased victims may participate in the hearing. This section also specifies that victims, or family members if the victim is deceased, retain the right to participate in the hearing.

6) Specifies factors that the Board of Pardons may consider when determining whether to commute the sentence of the petitioner, but are not limited to:

- The petitioner was convicted pursuant to 28-303 or 28-304 or of aiding and abetting murder;
- The petitioner has no juvenile felony adjudications for assault or other felonies with a significant potential for personal harm to victims prior to the murder conviction;
- The petitioner committed the murder with at least one adult co-defendant;
- Prior to the offense under consideration for commutation, the defendant had insufficient adult support or supervision and suffered from psychological or physical trauma;
- The petitioner suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors;

- The petitioner has performed acts that indicate the potential for rehabilitation, including participating in rehabilitative, educational, or vocational programs; and
- The petitioner has maintained family ties or connections with others through letter writing, calls, or visits and eliminated contact with individuals outside of prison who are involved in crime.
- The petitioner has had no disciplinary actions for violent activities in the last five years.

7) Provides that the Board shall have the discretion to commute the sentence of the petitioner and that such discretion shall be exercised taking subsection (6) under consideration. This section also provides victim notification of the sentence commutation hearing and may take part in the hearing.

8) States that if the sentence is not commuted, the defendant may submit another petition for commutation to the Board of Pardons when the defendant has been committed to the custody of the department for at least 20 years; if commutation is not granted, the individual may submit another petition after five years from the initial petition, and then ten years, then fifteen years and the final petition may be submitted twenty years after the initial petition is denied

9) Provides that the Board of Pardons may consider any other criteria that the board deems relevant as long as the board identifies the criteria on the record.

10) Provides retroactive application of this act.

**LB 276 (Council) Change a penalty from death to life imprisonment without possibility of parole and change other penalties as prescribed**

Legislative Bill 276 proposes to change the maximum penalty for first degree murder in Nebraska from death to life imprisonment without possibility of parole. Below is a section by section description of LB 276.

Section 1 - Legislative Intent

Section 2 - Amends 23-3406 relating to counties contracting with public defenders to strike the phrase "including capital cases"

Section 3 - Amends 24-1106 relating to appeals to replace a reference to capital cases with a reference to cases in which life imprisonment without parole has been imposed.

Section 4 - Amends 25-1140.09 to remove a reference to a capital sentencing notice provision which required preparation of transcripts in all capital cases and is no longer applicable.

Section 5 - Amends 28-104 to strike a reference to a criminal violation for which death may be imposed

Section 6 - Amends 28-105, the change the penalty for a Class I felony from death to life imprisonment without possibility of parole and with order of restitution. Also replaces the penalty for a Class IA felony from life imprisonment without parole to life imprisonment.

Section 7 - Amends 28-303, the first degree murder statute, to remove the death penalty and replace it with life imprisonment without possibility of parole.

Section 8 - Amends 29-1602, Strikes notice of aggravation from inclusion in the criminal information that must be filed in cases seeking the "death penalty".

Section 9 - Amends 29-1603, which sets forth the required contents of criminal information, to remove reference to the death penalty and replace it with life imprisonment without possibility of parole.

Section 10 - Amends 29-1822, relating to mentally incompetent criminal defendants, to remove language staying the imposition of the death penalty during a period of mental incompetence.

Section 11 - Amends 29-2004, relating to jury selection, to replace language referring to the death penalty with life imprisonment without possibility of parole.

Section 12 - Amends 29-2005, which provides the number of preemptory juror challenges a defendant is entitled to in capital cases, to replace references to the death penalty with life imprisonment without possibility of parole.

Section 13 - Amends 29-2006, which lists the basis for good cause challenges of prospective jurors, to strike as the basis for a challenge in death eligible cases that a juror would be unable to render a guilty verdict if the accused faced the possibility of receiving the death penalty.

Section 14 - Amends 29-2020, relating to requesting a bill of exceptions, to strike language referring to a procedure only used in death penalty cases.

Section 15 - Amends 29-2027 to change a statutory reference to remove an unnecessary reference to a legislative intent section (29-2519) and a title section (29-2524).

Section 16 - Amends 29-2204, the indeterminate sentencing statute, to remove outdated language and references to the death penalty

Section 17 - Amends 29-2261, by striking reference that when a conviction of murder in the first degree, a jury renders a verdict finding the existence of one or more aggravating circumstance, the information contains a notice of aggravation, the court shall not commence the sentencing determination proceeding as provided in section 29-2521 without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

Section 18 - Amends 29-2282, the restitution statute, to include the pain and suffering of the victim as an item for which restitution may be ordered in cases where the victim dies as a result of the offense.

Section 19 - Amends 29-2407, which provides that criminal fines and costs are to be a lien against a defendant, to remove references to the death penalty.

Section 20 - New Language clarifying that a sentence of life imprisonment without possibility of parole means there is no parole eligibility unless such a sentence is first commuted by the Board of Pardons.

Section 21 - New language clarifying that the changes made by this bill shall not restrict or limit the ability of a court to order restitution in cases other than first degree murder convictions or restrict the ability of the Department of Corrections to determine appropriate security considerations for confined offenders.

Section 22 - New Language requiring death sentences issued prior to effective date of this act which have not been carried out to be changed to life imprisonment without possibility of parole and with order of restitution.

Section 23 - Amends 29-2801, establishing the procedures for state habeas corpus petitions, to remove references to capital sentences and make other technical corrections.

Section 24 - Amends 29-3205 to correct a statutory reference and remove a reference to a death sentence.

Sections 25 to 29 - Amends sections 29-3920, 3922, and 3928-3930, relating to the Public Advocacy Commission, to strike references to capital cases and insert first degree murder.

Section 30 - Amends section 55-480 to clarify a statutory reference to the Nebraska Code of Military Justice.

Section 31 - Amends 83-1,110.02, the medical parole statutes to replace death penalty with life imprisonment without possibility of parole.

Section 32 - Amends 83-4,143, the Work Ethic Camp eligibility statute, to remove a reference to a capital crime.

Section 33 - Repealer

### **LB 302 (Ashford) Provide for a restructuring plan for the court system**

Legislative Bill 302 would require the Supreme Court to analyze the structure of the Nebraska court system and develop a court restructuring plan using the analysis. The plan would be submitted to the Legislature prior to January 1, 2012. The bill was debated



on general file. Senator Ashford moved to bracket the bill and the motion was approved by unanimous consent.

### **LB 310 (McGill) Change provisions relating to protection orders**

Legislative Bill 310 would authorize the court to appoint an attorney for an indigent person seeking a harassment protection order or a protection order under the Protection from Domestic Abuse Act if the respondent has an attorney and a hearing is held on the petition. The appointment would be for the hearing only and the hearing cannot be continued beyond one week. If an ex parte order is issued, it shall stay in effect until the date of the continued hearing. If a petitioner requests that a protection order be dismissed or if a protection order is denied, it cannot be considered bad faith for purposes of assessing fees and costs without additional evidence of bad faith.

The bill would change the definition of abuse under the Protection from Domestic Abuse Act to include placing, by means of credible threat, another person in fear of bodily injury. The bill would remove from the definition of abuse: placing, by *physical menace*, another person in fear of *imminent* bodily injury. The bill would also increase penalties for violating a protection order under the Act from a Class II Misdemeanor to a Class I Misdemeanor. For those with a prior conviction for violating a protection order under the Act, the penalty would increase from Class I Misdemeanor to a Class IV Felony, regardless of who the protection order was granted to.

The bill was advanced to general file with Committee Amendment AM 965 to strike the proposed provisions regarding the appointment of attorneys for indigent petitioners as well as the provisions regarding what can be considered bad faith for purposes of assessing fees and costs.

### **LB 415 (Wallman) Change provisions relating to contraband in a detention facility or providing an inmate with contraband**

LB 415 amends 28-913 to provide that a person commits an offense under this act, if they provide an inmate with any article prohibited by law, regulation, or order of the detaining authority.

LB 415 would also make it an offense of this section of statute for an inmate to make, procure or possess a "prohibited article".

A violation of this section of statute would be a Class I misdemeanor (1yr/ \$1,000/or both).

LB 415 was amended in Committee by Am 525, by a 7-0 vote, which made the following change to LB 415:

- On page 2, after line 15 insert the following new section: "(3) any article prohibited by law, regulation, or order of the detaining authority shall be listed on

a sign that is clearly posted and visible to all persons entering the detention facility."

**LB 612 (Pirsch) Increase statute of limitations for plaintiffs suffering injury from sexual assaults as a child**

Legislative Bill 612 would create a specific statute of limitations for civil actions in cases of sexual assault of a child. A child victim of sexual assault would have 12 years after the cause of action accrues to file the lawsuit. Under current law, the victim would have four years from the time he or she reaches the age of 21 to file the lawsuit.

The bill was advanced to general file with Committee Amendment AM 789 to clarify the intent of the bill by providing that the victim would have 12 years after their 21<sup>st</sup> birthday to file the lawsuit.

## **BILLS HELD DURING THE 2011 SESSION**

### **LB 48 (Janssen) Adopt the Illegal Immigration Enforcement Act**

Legislative Bill 48 would enact the Illegal Immigration Enforcement Act.

Under the Act, reasonable suspicion shall not be based solely on a person's race, color, religion, sex, or national origin.

Officials and agencies of the state and political subdivisions may not limit or restrict the enforcement of federal immigration law or restrict the sending, receiving or maintaining of information related to a person's immigration status for the following purposes:

- Determining eligibility for a public benefit, service or license;
- Verifying a claim of residence or domicile;
- Determining compliance with federal registration requirements; or
- For communication with the Immigration and Naturalization Service.

A peace officer must determine the immigration status of a person who has been lawfully stopped, detained or arrested when reasonable suspicion exists that the person is unlawfully present in the U.S. The immigration status must be determined prior to releasing the person from custody. If the person is unlawfully present, the peace officer or custodial authority must immediately notify U.S. Immigration and Customs Enforcement or the U.S. Customs and Border Protection. Lawful presence can be demonstrated with the following documents: valid driver's license; valid state or tribal ID card; or any valid federal, state or tribal government issued ID when such entity requires proof of lawful presence prior to issuance. A law enforcement agency (police department, town marshal, the office of the sheriff and NE State Patrol) may securely transport a person who is unlawfully present to a federal facility in NE or to any other point of transfer to federal custody outside the jurisdiction of the agency.

Under the Act, it would be a crime to fail to register as an alien pursuant to 8 U.S.C. 1306(a) if required to do so under federal law. The violation of this crime would be a Class II misdemeanor. It would also be a crime to fail to carry any certificate or alien registration or alien registration receipt card if required to do so under federal law. The violation of this crime would be a Class V misdemeanor. Any record relating to the immigration status of a person is admissible in any court and judicial notice may be taken if it is certified by a government agency responsible for maintaining it.

Under the Act, it would be a crime for a person who is unlawfully present in the U.S. to work as an employee or an independent contractor in Nebraska. The violation of this crime would be a Class I misdemeanor.

Under the Act, it would be a crime for a person to knowingly or recklessly conceal, harbor, transport, or move a person in Nebraska who is unlawfully present in the U.S. for

the purpose of shielding the person from detection or to attempt to do so. It would also be a crime to induce a person who is unlawfully present in the U.S. to come to or reside in Nebraska. Violations of these crimes would be a Class I misdemeanor.

Under the Act, a person's immigration status may be determined by a peace officer authorized to do so, by U.S. Immigration and Customs Enforcement or by the U.S. Customs and Border Protection.

The bill contains a severability clause. The severability clause states that the Legislature would have passed the bill regardless of the unconstitutionality of any part of it.

### **LB 79 (McGill) Provide grants for court appointed special advocate programs**

Legislative Bill 79 would add provisions to the Court Appointed Special Advocate Act to provide a grant program for Court Appointed Special Advocates (CASAs). The bill includes legislative intent language indicating the importance of CASA volunteers. The CASA cash fund would be created under the control of the Supreme Court and administered by the State Court Administrator. The Supreme Court would award grants to CASA programs that apply and meet the qualifications, including: being a nonprofit organization, operating statewide and having an affiliation agreement with local programs. A new court fee of \$1.25 would be assessed on each case and appeal filed in county court, district court, the Court of Appeals and the Supreme Court and would be credited to the CASA cash fund. The Supreme Court would award the grants according to the following provisions: up to \$25,000 to administer the grant process; 80% of remaining amount, but no more than \$400,000 for grants to recruit and train new CASA volunteers; 10% of remaining amount, but no more than \$50,000 to create innovative programming to implement the Act; and 10% of remaining amount, but no more than \$50,000 to expand CASA programs into counties that have no or limited programs. Any program awarded a grant would have to report on its activities to the Supreme Court, the Legislature and the Governor each year.

An amended version of this bill was amended into LB 463, which passed on a 46-2-1 vote and was signed into law by the Governor on May 11, 2011. The Supreme Court would award grants to CASA programs that apply and meet the qualifications, including: being a nonprofit organization, operating statewide and having an affiliation agreement with local programs. To fund the grants, \$100,000 would be transferred from the Commission on Public Advocacy Operations Cash Fund to the CASA cash fund in 2011 and \$200,000 in 2012. The Supreme Court would award the grants according to the following provisions: up to \$10,000 to administer the grant process; 80% of remaining amount, but no more than \$400,000 for grants to recruit and train new CASA volunteers; 10% of remaining amount, but no more than \$50,000 to create innovative programming to implement the Act; and 10% of remaining amount, but no more than \$50,000 to expand CASA programs into counties that have no or limited programs. Any program awarded a grant would have to report on its activities to the Supreme Court, the Legislature and the Governor each year.

**LB 88 (Christensen) Provide signage requirements and duties for the Nebraska State Patrol regarding concealed handguns**

Legislative Bill 88 would amend the Concealed Handgun Permit Act to provide for uniform signs and placement of such signs when a property owner desires to prohibit a permit holder from carrying a concealed handgun on his or her property as authorized in the Concealed Handgun Permit Act. This is to reduce confusion and limit the potential of a permit holder unintentionally entering a posted place.

LB 88 defines "posted conspicuous notice" to clarify the term, and requires the Nebraska State Patrol to design a sign meeting all the specifications in the bill. Any controllers of property seeking to exercise their current right to prohibit a permit holder from carrying on their premises will be required to use such sign designed by the Nebraska State Patrol, and follow all requirements in the bill as to where the sign should be placed, to be considered a posted place under the law.

**LB 115 (Council) Change limitation of action provisions under the Political Subdivisions Tort Claims Act**

Under the Political Subdivisions Tort Claims Act, all claims must first be made, in writing, to the governing body of the political subdivision before a claimant may file a lawsuit. The claimant must make the claim to the governing body within one year of the occurrence or discovery of the alleged tort, or the claim is forever barred.

After the claim is filed with the governing body, the political subdivision has six months in which to make final disposition of the claim. If the political subdivision does not make a final disposition within six months, the claimant may withdraw the claim and file a lawsuit. The claimant has two years from the time the claim accrued to file suit. Such two-year limitation may be extended for an additional six months if the statute of limitations expires prior to the time when the claimant withdraws the claim.

Legislative Bill 115 amends §§13-919 and 13-920 to extend the time in which a claimant may file an initial claim from one year to two years.

**LB 129 (Avery) Eliminate the statute of limitation for certain felonies**

LB 693 adopts the Alcohol Liquor Liability Act. The Act creates a cause of action, in addition to those available in tort, against a bar tender or licensee, who serves liquor by the drink to an intoxicated person when the server knew or should have known that the customer was intoxicated or knew or should have known that the person would become intoxicated.

**LB 133 (Ashford) Require inclusion of sentencing costs in presentence reports**

LB 133 is a bill that requires the Probation Administration to include the cost to the state of the imposition of statutory maximum and minimum sentences of incarceration or probation for specified offenses in their presentence investigation reports.

LB 133 also directs the Probation Administrator to adopt the rules and regulations necessary to comply with LB 133.

### **LB 136 (Lautenbaugh) Change number of years between appearances before Board of Pardons**

LB 136 increases from two years to five years the prescribed amount of time the Board of Pardons can decline to accept subsequent applications for pardon from an offender following his or her initial application for pardon. Streamlining the pardons process would reduce the number of ineligible applications each year and provide better service for those applicants meeting the criteria.

### **LB 147 (Hadley) Change family law provisions relating to court orders, forum, child support, and visitation**

Legislative Bill 147 would amend statute sections related to ex-parte orders in family law cases, forums for custody determinations, parenting time and child support.

The bill would provide that a determination by a Nebraska court to decline or retain jurisdiction on the issue of the state being an inconvenient forum, is a final appealable order.

The bill would require the Supreme Court, by January 1, 2012, to adopt a court rule that provides a standard visitation schedule and to adopt advisory guidelines for use in developing parenting plans. There would have to be a schedule for children under five years old and another schedule for child between five and nineteen years old. The schedules must address: midweek and weekend time-sharing; differing geographical residences; holidays; summer vacation; mid-term school breaks; notice requirements and visitation cancellations; transportation of child; religious, school and extracurricular activities; grandparent and relative contact; birthdays; sibling visitation; special circumstances/emergencies and any other standards deemed necessary by the State Court Administrator. The advisory guidelines for the district and county courts must give preference to schedules which: are agreed upon by parents over a court-imposed solution; maximize continuity and stability of the child's life; give special consideration to each parent for significant events that may conflict with schedule; will not interrupt school hours; reasonably accommodates work schedule of both parents; reasonably accommodates distance and expense of visitation; permits and encourages electronic contact and uncensored mail privileges and gives equal division of major religious holidays. The Supreme Court must periodically review and update the schedules and guidelines as deemed necessary by the Chief Justice.

The bill would provide authority for the court to order divorced parents to pay for college for their child beyond the child's 19<sup>th</sup> birthday for good cause shown. In determining whether good cause exists, the court shall consider the child's age, academic ability, financial resources and the financial condition of each parent. In determining the amount of the postsecondary education subsidy, the court shall:

- Determine the cost of attending college in-state and earning an undergraduate degree, including reasonable costs for necessary expenses;
- Determine the amount, if any, that the child could reasonably contribute in light of the child's financial resources, availability of financial aid and the ability of the child to earn income while in college; and
- Deduct the child's expected contribution and apportion responsibility for the rest of the cost to each parent, but neither parent shall be responsible for more than 50% of the total cost of the child's college education.

Under LB 147, the subsidy will be payable to the child or the college, but not to the custodial parent. The judge cannot award a subsidy to a child who has repudiated or disowned the parent. The child must send his or her grade reports to each parent within 10 days of receiving the report. The court awarded subsidy will be terminated after the first year of the child's attendance if the child fails to maintain a passing grade point average.

The bill would add a duty for the Child Support Advisory Commission to consider whether changes should be made to the child support guidelines with respect to the age a child should be before support ends. If the Commission develops a recommendation, it would be reported to the Judiciary Committee before January 1, 2012.

### **LB 201 (Council) Change probation fees**

LB 201 would provide for an increase in adult probation costs from twenty-five dollars to fifty dollars and add a one-time administrative enrollment fee of fifty-five dollars.

### **LB 203 (Council) Change sentencing requirements with respect to certain minors**

LB 203 would remove life imprisonment for youth who are convicted of a Class I felony. This allows the court to take into consideration the lack of maturity, age, physical, and mental condition of those youth under the age of eighteen. Youth who are at least sixteen years of age and under eighteen years of age at the time the crime is committed would be sentenced to fifty years. Youth under the age of sixteen who commit a Class I felony crime would be sentenced to forty years.

### **LB 231 (Christensen) Change provisions relating to issuing a bad check**

Legislative Bill 231 would amend section 28-611 that defines the offense of issuing a bad check, so that all bad checks are treated the same.

Currently, this section requires a person to obtain property, services, or present value for the offense of issuing a bad check. This creates a situation where a person who issues a

bad check after receiving property, services, or any other present value is treated differently, than if that person had paid at the time of receiving property, services, or any other present value.

To treat all bad checks equally, this bill would strike the requirement for present value.

**LB 232 (Christensen) Change use of force provisions to include protection of an unborn child as prescribed**

Legislative Bill 232 amends section 28-1410, which describes when an individual may legally use force, or even deadly force, in the protection of a third person.

LB 232 would clarify that an unborn born child is included in the definition of third person, which would make it clear that an individual can use force to protect an unborn child under the same circumstances that an individual may use force to protect any other third person as currently provided under the law.

**LB 242 (Hadley) Change provisions relating to assault, assault on an officer, and offenses by a confined person**

The LB 242 changes the provisions relating to assault, assault on an officer and offenses by a confined person to provide that if an employee of DHHS, while in the course of their employment at a youth rehabilitation and treatment center is assaulted by a person confined in the facility, the incident will be treated in the same manner as Nebraska law provides in the case of an assault on a correctional officer.

**LB 258 (Krist) Provide that entry onto land by land surveyor is not criminal trespass**

Legislative Bill 258 would provide for a right of entry upon private property for registered surveyors in performance of their duties. The bill would limit their ability to enter premises to the following activities:

- determination of section quarters, quarter corners, property corners, boundary lines, rights-of way and easements;
- to make surveys;
- to conduct examinations or investigations;
- to perform tests; or
- to acquire other necessary and relevant data in contemplation of:
  1. Establishing the location of a street, road, or highway;
  2. Acquiring of land, property, and road building materials; or
  3. Performing other operations incident to the construction, reconstruction, or maintenance of a road, street, or highway.

It requires an effort on the part of the surveyor to make a good faith attempt to announce and identify themselves and the purpose for entry to the owner. The surveyor would be



responsible for any actual or demonstrable damages to the property.

LB 258 also subjects any surveying, examining, or testing to the same statutes of limitation and repose that currently exist for design, planning, supervision, construction, or construction of an improvement.

### **LB 275 (Fulton) Change provisions relating to the offense of escape**

LB275 adds "court-ordered commitment to a regional center" to the definition of "official detention" in section 28-912. This addition will allow for prosecution for the offense of escape when one escapes after being committed to one of the state's three regional centers.

At present, no legal mechanism exists to prevent or prosecute escape from regional centers, thus leaving county attorneys no means of addressing the public endangerment incurred by recent escapes from the Lancaster county regional center.

### **LB 293 (Avery) Change provisions relating to reclaiming of property from a pawnbroker or junk dealer**

Legislative Bill 293 would add language to N.R.S. § 69-204 regarding pawnbrokers and dealers of secondhand goods and junk. The provisions would add protections for owners of stolen goods and the pawnbrokers and dealers in possession of them. If a person's property is stolen and ends up at a pawn shop, junk shop or secondhand goods shop and the person can provide sufficient identifying information or a police report regarding the theft to the pawnbroker or dealer, the person shall recover the property. The pawnbroker or dealer may charge the person recovering the property up to the amount they paid or loaned for the item.

### **LB 298 (Christensen) Change provisions relating to self-protection**

Legislative Bill 298 would amend Nebraska's use of force statutes, or self-defense statutes, to strengthen and simplify when a resident of Nebraska can use force to defend themselves, others, or their property. Specifically, LB 298 amends 28-1409 and 28-1410 to remove the difficult obligation for an actor to discern when they are required to retreat in certain situations and not use force against unlawful force. Instead, it inserts the right for an actor to stand their ground and meet unlawful force with force, as long as the actor is not engaged in illegal activity and the actor has a right to be in that location.

The bill also amends 28-1411, which addresses the use of force in regards to the protection of property, and specifically the subsection describing when the use of deadly force is justified. It would add a new subdivision in subsection (6) of section 28-1411 allowing the use of deadly force when a person has unlawfully entered an occupied dwelling or occupied motor vehicle and is not attempting to exit the dwelling or vehicle.

Finally, LB 298 would provide for civil immunity to an actor for such conduct of self-defense that is justified under 28-1406 to 28-1416, unless such conduct recklessly or negligently injured an innocent person.

### **LB 301 (Ashford) Change provisions for sealing records under the Nebraska Juvenile Code**

Legislative Bill 301 would provide the following:

- Clarifies the records to be sealed by removing the term “original record” and replacing it with “record”.
- Provides consistency in lists of records that may be sealed. Adds records generated when charges are filed and then dismissed after such filing to the records that may be sealed.
- Expands timeframe from thirty days to sixty days for when the court must conduct a hearing on its own discretion or based on the objection of a party that received notice of the sealing process.
- Requires the Office of Juvenile Services to provide the committing court with written notification of the juvenile's discharge from the care and custody of the Office of Juvenile Services or from parole within thirty days of a juvenile being discharged from the supervision of the Office of Juvenile Services.
- Expands access to sealed records to include the court, city attorney or county attorney for purposes of collection of any remaining parental support or obligation balances under section 43-290; and by the Department of Correctional Services, the Office of Juvenile Services, a Juvenile Assessment Center, a criminal detention facility, or a juvenile detention facility, for an individual committed to it, placed with it, or under its care.
- Requires the court to send notice of the order to seal the record to the transferring court if the case was transferred from district court to juvenile court, or was transferred under section 43-282 to the county where the juvenile lives or is domiciled.
- Removes the age requirement for initiating the sealing so that court would automatically initiate the process of record sealing for all juveniles who successfully complete their sentencing and who meet the statutorily provided eligibility criteria, regardless of their age.

An amended version of this bill was amended into LB 463, which passed on a 46-2-1 vote and was signed into law by the Governor on May 11, 2011.

### **LB 324 (Howard) Require fetal alcohol determination prior to adoption of a state ward**

Legislative Bill 324 would amend the adoption statutes to require the judge to order that a child, who is under ten years old and a ward of the state, be evaluated for fetal alcohol spectrum disorders upon the filing of an adoption petition for the child if the child shows indications of such disorders. If the child does not show indications of such disorders, then a physician's statement must be provided to the court indicating so. The evaluation results or the physician's statement must be made part of the court record. After the adoption decree is entered, the court must give the original evaluation or statement to the Department of Health and Human Services and keep a copy. The evaluation or statement would be treated like medical history for purposes of release to the adopting parents or the adopted person.

### **LB 339 (Ashford) Change Nebraska Juvenile Code predisposition evaluation procedures**

Legislative Bill 339 would amend §43-258 relating to pre-adjudication evaluation, placement, reports, and costs. The bill would:

- Repeal current language that the court may order a juvenile to be placed in one of the facilities or institutions of the State of Nebraska for the completion of a pre-adjudication evaluation.
- Amend current language to provide that the court may order a juvenile to be placed with the Department of Health and Human Services for the purposes of a pre-adjudication evaluation. The Department would make arrangements for the pre-adjudication evaluation including any authorized area of inquiry ordered by the court. The Department would determine whether the evaluation is made on a residential or nonresidential basis and placement with the Department for the evaluation will be for a period not to exceed thirty days. If necessary to complete the evaluation, the court may order an extension not to exceed an additional thirty days.
- Clarify when a juvenile is the responsibility of a county and when the juvenile is the responsibility of the state.

This bill was amended into LB 669, which passed with an emergency clause on a 47-0-2 vote and was signed into law by the Governor on May 26, 2011.

### **LB 349 (Lautenbaugh) Change demand for trial by jury provisions**

Legislative Bill 349 would amend statute sections 25-2705 and 25-2805 related to the demand for a jury trial in county court cases and cases transferred from small claims court to county court. The bill would provide various deadlines for the filing of a jury demand in civil cases depending on the role of the litigant doing the filing. Under LB 349, the procedure for filing a jury demand in a case that is transferred from Small Claims Court to county court would correspond to the jury demand procedure for other civil cases as changed in this bill.

This bill was amended into LB 669, which passed with an emergency clause on a 47-0-2 vote and was signed into law by the Governor on May 26, 2011.

**LB 350 (Lautenbaugh) Change medical lien and personal injury damage suit provisions**

Legislative Bill 350 would strike provisions of law requiring the amount of a medical lien be reduced by the discount that would have been applied if the claim had been submitted for reimbursement. The provision indicating the measure of damages for medical expenses in personal injury cases would be the private party rate, not the discounted rate would also be stricken.

The bill would also regulate the evidence presented to prove damages in personal injury actions. Evidence of previous payments or future right of payment actual economic losses except to the extent pursuant to a state or federal program or from assets of claimant or claimant's family. If such evidence is presented, any party may present evidence of the cost of procuring previous payments or future rights of payment and existing rights of indemnification or subrogation relating to previous payments or future rights of payment. The bill would restrict a jury from being informed of collateral sources or future benefits payable to the plaintiff. The following would be relevant for purposes of discovery in personal injury cases: the amount of previous payments or future right of payment of actual economic losses and cost of procuring such and any existing rights of indemnification or subrogation relating to previous payments or future rights of payment.

**LB 351 (Lautenbaugh) Change court procedure relating to substitution of parties**

Legislative Bill 351 would provide that the insurer of a defendant who files for bankruptcy cannot be substituted for the defendant as a party to a cause of action.

**LB 398 (Lathrop) Change provisions relating to notaries public**

Legislative Bill 398 would amend current statute sections related to notaries public and other public officers. The bill includes the following provisions:

- Election commissioners would have the authority to administer oaths and affirmations and to take acknowledgments of deeds, mortgages and all other instruments in writing.
- A notary public may be appointed in spite of a conviction for felony or other crime involving fraud or dishonesty if it was prior to the five years previous to the application.
- A person would have to reside in or have a regular place of work or business in the state in order to be appointed a notary public.
- Would modify application requirements.

- Would disqualify a notary public from notarizing if they have a financial or beneficial interest in the transaction, is a party in the transaction or does not understand the certification method used in the transaction.
- Would remove powers and authorizations of notaries public related to acceptance and payment and foreign laws.
- Would amend the procedure for removal of notaries public.
- Would authorize the Secretary of State to promulgate rules and regulations.

**LB 402 (Howard) Change penalties relating to third-degree assault on a social worker and provide for social worker safety training**

LB 402 would require social workers who are licensed, certified or employees of the Department of Health and Human Services or contractors of the Department to attend 6 hours of one time safety training.

Additionally, it would increase the penalty for assault from a class I misdemeanor to a class IV felony.

**LB 408 (Fulton) Change provisions relating to divorce**

Legislative Bill 408 would amend §§ 42-360 and 42-361 to change provisions related to divorce decrees. The bill would remove a prohibition on ordering a couple to marriage counseling if only one party or their attorney requests it. The bill would also include the existence of minor children in the process of determining whether a marriage is irretrievable broken. If there are no minor children and both parties tell the court the marriage is irretrievable broken or do not deny that the marriage is irretrievable broken, the court would have to make a finding on whether the marriage is irretrievable broken. If there are minor children *or* one party denies to the court that the marriage is irretrievable broken, the court must: 1) refer the couple to marriage counseling or conciliation services, 2) continue the proceedings for no more than six months in order to allow time for reconciliation and 3) take other action in the best interest of the parties and the child(ren).

**LB 447 (Fulton) Change provisions relating to vehicular pursuit**

Legislative Bill 447 would amend sections 13-911 and 81-8,215.01 relating to the definition of vehicular pursuit. The bill would provide that a vehicular pursuit ends when the law enforcement officer has made a conscious decision and taken action to terminate the pursuit.

**LB 451 (Ashford) Change court fees, procedures, offices, and judgeships**

Legislative Bill 451 would enact the following provisions to increase flexibility for the Judiciary to administer justice:

- Expand the Supreme Court's options for funding sources from which to compensate interpreters used by the court.
- Delay the establishment of an eighth judgeship in the Lancaster County District Court from July 1, 2011 to July 1, 2012. The judgeship was passed into law under LB 35 in 2009.
- Provide for clerks of the district courts to assist clerks of the county courts in the provision of court services when the county court staff is unavailable.
- Provide for the new position of Judicial Hearing Officer. The bill would authorize the Supreme Court to appoint one or more judicial hearing officer(s) in each district and county judicial district or separate juvenile court to preside in, hear and determine certain cases including: misdemeanors; traffic violations; juvenile cases; noncontested estate, inheritance tax and guardianship and conservatorship matters; small claims actions and uncontested divorce matters.
- Provide for more flexibility in determining when court offices must be open.
- Allow for a divorce decree to be entered without a hearing if: both parties waive the hearing requirement; both parties certify in writing that the marriage is irretrievably broken; at least one of the parties that reasonable efforts at reconciliation have been made and both parties have signed an agreement resolving all issues of the divorce.
- Outright repeal of § 24-512 which provides for a county court to be at a location other than the county seat and requires cases to be filed with the county court clerk in the county seat.

Portions of his bill were amended into LB 669, which passed with an emergency clause on a 47-0-2 vote and was signed into law by the Governor on May 26, 2011.

**LB 452 (Ashford) Provide for lottery winnings and tax refund intercept for debts owed to courts**

Legislative Bill 452 would establish a procedure for intercepting the income tax refunds and lottery prizes (in excess of \$500) of those who own debt (of at least \$25) to the Nebraska court system for court costs, fines, fees or other sums ordered by the court. The collection system would be implemented in cooperation with the Department of Revenue, the Department of Administrative Services and the State Court Administrator.

The State Court Administrator would submit a list of people who owe a debt to the court of at least \$25 to the Department of Revenue. If the Department of Revenue determines that a debtor to the court is entitled to a refund or a lottery prize, the Department would notify the State Court Administrator. Within 20 days, the State Court Administrator would have to send a written notification to the debtor that the court has a right to all or a portion of the refund or prize and indicating the debtor's opportunity to contest the claim. The debtor would have 20 days to file a written request for a hearing to contest the claim. The Department of Administrative Services would distribute any balance to the debtor remaining after a setoff. The State Court Administrator would reimburse the Department of Revenue and the Department of Administrative Services for costs of administering this procedure.

The priority order of those agencies receiving setoffs against state income tax refunds is:

1. The Department of Health and Human Services
2. The Internal Revenue Service
3. The State Court Administrator
4. The Department of Labor
5. The Department of Motor Vehicles

### **LB 460 (Ashford) Change the Sex Offender Registration Act**

LB 460 would change the word "address" to "residence" in sections 29-4001.01, 29-4004, 29-4006, 29-4007, 29-4007, 29-4013 and 83-174.03 to provide that a person required to register and provide updated information regarding a change of address, will now provide that information for a change of residence as the Nebraska Court of Appeals in the case State of Nebraska v. Frey, 18 Neb. App. 653, ruled that the state sex offender registry does not define what constitutes an "address" change. The term residence is a judicially recognized term that corrects the problem.

### **LB 461 (Pirsch) Adopt the Freedom of Conscience Act**

Legislative Bill 461 would enact the Freedom of Conscience Act. The Act would prohibit a health care facility from discriminating against an employee or prospective employee by refusing to reasonably accommodate religious observance or practice unless the facility can demonstrate undue hardship in the following circumstances: abortion unless the woman is in imminent danger of death; experiment or procedure that destroys an in vitro embryo or uses cells derived from the embryo; experiment or procedure on an in vitro embryo not for beneficial treatment to the embryo; experiment or procedure on developing child not for beneficial treatment of the child; procedure using fetal tissue or organs from source other than a stillbirth or miscarriage; or an act intentionally causing or assisting in causing death of an individual. Health care providers and insurers could not refuse to provide, perform or cover a procedure based on the patient's age, disability or innate personal characteristic unless it would reduce the effectiveness of the procedure or increase the risks.

Health care facilities would not be required to admit a patient or allow the facility to be used for any of the acts listed above. If an employee of, member of, or person associated with a health care facility refuses in writing to participate in any of the acts listed above on religious or moral grounds, the person would not be required to participate and would not be subject to discipline. An employee of, member of, or person associated with a health care facility is immune from liability for any damage caused by the refusal of a person to participate in any of the acts listed above on religious or moral grounds.

This state or the state health insurance exchange could not require a religiously affiliated health insurance plan or insurer to cover any of the acts listed above. Any health insurance plan or health insurance insurer offering coverage within this state would have

to accommodate the conscientious objection of the purchaser of an individual or institutional health care provider when any of the acts listed above are contrary to their religious or moral precepts.

The Act would prohibit health care facilities, schools and employers from discriminating against a person who refuses or states intention to refuse to participate in any of the acts listed above based on religious or moral grounds for purposes of admission, hiring, firing, tenure, term, condition, privilege or status.

The bill would create a civil cause of action for equitable relief, including reinstatement or damages or both, for a person adversely affected by conduct in violation of the Act. The action must be brought within one year after the cause of action accrues. The court must order reasonable attorney's fees in favor of the prevailing party.

The bill includes a severability clause.

#### **LB 469 (Karpisek) Prohibit retail sale of novelty lighters and provide a penalty**

Legislative Bill 469 prohibits the retail sale of novelty lighters and provides a penalty of a Class IV misdemeanor.

#### **LB 475 (Lautenbaugh) Change garnishment provisions to include independent contractors providing services to government entities**

Legislative Bill 475 would provide that independent contractors are subject to garnishment when providing services to a government entity.

#### **LB 476 (Lautenbaugh) Change civil procedure service and return of summons provisions**

Legislative Bill 476 would amend a law passed in 2009 under LB 35. The bill would clarify the authority for delivery service by a commercial courier such as FedEx or UPS, known in the law as a designated delivery service. Under the bill, service by designated delivery service must be made within ten days of issuance, which is consistent with the certified mail service method. In addition, designated delivery service requires the filing of proof of service with the court including a copy of the signed delivery receipt. The bill would also require the State Court Administrator to maintain a list of designated delivery services on the Supreme Court website.

There is an emergency clause attached to this bill.

This bill was amended into LB 669, which passed with an emergency clause on a 47-0-2 vote and was signed into law by the Governor on May 26, 2011.

#### **LB 488 (Nordquist) Adopt the Child Support Transparency Act**



Legislative Bill 488 would adopt the Child Support Transparency Act into law. Under the Act, a list of people who are delinquent with their child support payments would be maintained and published by the State Treasurer on the Nebraska Child Support Payment Center web site. The following conditions must be present to place a name on the list: 1) the delinquent support must exceed \$5,000; 2) no payments have been made in the past six months; 3) the obligor is not involved in bankruptcy proceedings or receiving public assistance and 4) the custodial parent has signed a confidentiality waiver. The list would include the following: the name of the obligor; the amount of support owed; the time period of delinquency; the most recent city of residence of the obligor and the contact information for the Department of Health and Human Services. The list would not include the names of the child(ren) or custodial parent or any information that must remain confidential under the law. A name must be removed from the list within 30 days after payment in full, within 30 days after the obligor enters into a payment plan, or as ordered by the court. The Department must provide a list of obligors that meet the conditions for publication to the State Treasurer on a monthly basis and the State Treasurer must update the published list on a monthly basis. The Department must provide written notice to all child support obligors about the list.

Additionally, the bill would provide for reimbursement for annual fees assessed to the person getting the child support under section 7310 of the federal Deficit Reduction Act of 2005. (Section 7310 requires states to impose an annual fee of \$25 on families who have never received TANF assistance in child support cases with collections of at least \$500.)

### **LB 508 (Bloomfield) Authorize certain residency restrictions near parks for sexual predators**

LB 508 amends the Sexual Predator Residency Restriction Act to allow political subdivisions to adopt regulations to restrict sexual predators from living within five hundred feet from a park.

The restriction would not apply if the sexual predator had established a residence before the effective date of this act and has not moved from that residence; or established a residence after the effective date of this act and the park triggering the restriction was established after the initial date of the sexual predator's residence at that location.

The restriction does not apply to a sexual predator who resides within a prison or a correctional or treatment facility operated by the state or a political subdivision.

LB 508 provides that any restriction prescribing where sex offenders may reside that does not meet the requirements of this subsection is void

### **LB 513 (Christensen) Adopt the Escort Services Accountability and Permit Act**

Legislative Bill 513 would adopt the Escort Services Accountability and Permit Act.

The act would define escort and permit political subdivisions to issue permits for the operation escort agencies and permits for employment as an escort.

LB 513 would make it unlawful for a person to operate an escort agency without a permit; for an escort agency to employ an individual who does not hold a permit to be escort agency employee; for a person to hold themselves out as an escort agency or use or display the words escort agency without a permit; and for a person to act as an escort agency employee without a permit or for an escort agency to provide service to someone who is under the age of 18. A violation of an escort agency permit is a Class I misdemeanor, and a violation of an escort agency employee permit is a Class IV misdemeanor.

The operative date of this act is October 1, 2011. There is a severability clause attached to this bill.

**LB 515 (Christensen) Adopt the Federal Health Care Nullification Act and provide a civil right of action and criminal penalties relating to enforcement**

Legislative Bill 515 would adopt the Federal Health Care Nullification Act, which declares the federal Patient Protection and Affordable Care Act is not authorized under the United States Constitution, and therefore null and void, and of no effect in the State of Nebraska.

**LB 516 (Christensen) Authorize carrying of concealed handguns in educational institutions by security personnel, administrators, or teaching staff**

Legislative Bill 516 amends section 69-2441 within the Concealed Handgun Permit Act to allow all governing bodies of educational institution in Nebraska the option to create a security policy that enables their security guards, administrators, teaching staff, or a combination of all three to carry a concealed handgun in or on school property.

LB516 requires that any governing body that desires to adopt such a policy must do it by a two thirds vote, and that all students and parents or guardians, if applicable, be notified of such concealed handgun policy. In addition, all such personnel given permission to carry a concealed handgun must be in compliance with the Concealed Handgun Act and possess a Concealed Handgun permit.

Finally, any private educational institution that leases school property could not adopt a concealed handgun policy that was in violation of the terms of any real property lease agreement between the private educational institution and the lessor.

**LB 518 (Christensen) Change certain penalty and violation provisions of the Concealed Handgun Permit Act**

Legislative Bill 518 amends sections 69-2441 and 69-2443 in order to change the penalty for carrying a concealed handgun by a permit holder entering a prohibited or posted place or premises so such penalty resembles the penalty for Second Degree Criminal Trespass currently in Nebraska law.

Similar to the penalty for Second Degree Criminal Trespass, LB518 would require that the permit holder knew he or she was entering a prohibited or posted place. The bill would also provide clarification that a permit holder who is asked to remove their concealed handgun from a place or premises where the prohibition of concealed carry was not conspicuously posted, does not violate 69-2441 unless they refuse to obey such request from the owner or controller of property.

Finally, section 69-2443 is amended to make the penalties for violating subsection (2) of section 69-2441 similar to second degree trespass.

### **LB 536 (Wightman) Adopt the Nebraska Uniform Real Property Transfer on Death Act**

Legislative Bill 536 would enact the Nebraska Real Property Transfer on Death Act. The bill would provide an asset specific mechanism for the non-probate transfer of land. The Nebraska Real Property Transfer on Death Act mirrors the Uniform Real Property Transfer on Death Act, promulgated by the Uniform Law Commission in 2009. The Act would permit owners of interests in real property to execute and record a transfer on death (TOD) deed which would enable an owner of real property to pass the property to a beneficiary on the owner's death simply, directly, and without probate. By this deed, the owner identifies the beneficiary or beneficiaries who will succeed to the property at the owner's death. During the owner's lifetime, the beneficiaries would have no interest in the property, and the owner would retain full power to transfer or encumber the property or to revoke the TOD deed.

The Nebraska Real Property Transfer on Death Act would establish the requirements for the creation and revocation of a TOD deed and clarifies the effect of the TOD deed on all parties while the transferor is living and after the transferor dies. The Nebraska Real Property Transfer on Death Act would provide optional forms to create or revoke a TOD deed. The TOD deed must contain all of the essential elements and formalities of a properly recordable inter vivos deed. The TOD deed must state that the transfer to the beneficiary occurs on the transferor's death and must be properly recorded during the transferor's lifetime in the office of the recorder of deeds where the property is located. The capacity required to create a TOD deed is the same as the capacity to make a will.

A TOD deed does not operate until the transferor's death and remains revocable until then. The transferor may revoke the deed by recording an instrument of revocation such as a direct revocation of the TOD deed or a subsequent TOD deed that names a different beneficiary. If the transferor disposes of the property during lifetime, the TOD deed is ineffective. Until the transferor's death, a recorded TOD deed has no effect — it does not affect any right or interest of the transferor or any other person in the property. The TOD

deed creates no legal or equitable interest in the designated beneficiary. Liability of the beneficiary and property for claims against the transferor's estate is limited to cases where the estate is insolvent. A designated beneficiary may disclaim all or part of the transferred interest.

**LB 538 (Karpisek) Change provisions relating to the disposition of seized firearms**

LB 538 would amend section 29-820 to clarify that, firearms in the possession of law enforcement agencies through a voluntary surrender or which have been taken into custody for safekeeping and which have not been seized or used in the commission of a crime can be released to the owner without obtaining a court order.

**LB 545 (Pahls) Establish a copay for medical services provided at a correctional facility**

LB 545 requires any individual who is arrested, detained, taken into custody, or incarcerated to pay a co pay for all medical services sought. Any individual who is not of sufficient means to afford the co pay shall not be required to pay the co pay.

**LB 552 (Nordquist) Prohibit impersonation by electronic means and provide penalties**

LB 552 makes it a Class I misdemeanor to knowingly and without consent, credibly impersonate another actual person through or on an Internet web site or by other electronic means for purposes of harming, intimidating, threatening, or defrauding another person.

LB 552 allows a person who suffers damage or loss by reason of violation of LB 552 to bring a civil action against the violator for compensatory damages and injunctive relief or other equitable relief. LB 552 shall not preclude prosecution under any other law and shall be in addition to any other offense in which impersonation is an element of the offense.

**LB 565 (Ashford) Require secure storage of firearms and notice of such requirement by retailers upon sale and create the offense of improper storage of a firearm**

LB 565 is a bill that would create the new criminal offense of "improper storage of a firearm" which would occur if a person stores a loaded firearm or a firearm and its ammunition, within the reach or easy access of a juvenile and the juvenile takes the loaded weapon or the weapon and ammunition and hurts or kills themselves or another person. A violation of this act would be a class IV felony.

LB 565 would also require the inclusion of a gun or trigger lock with the sale at retail of all firearms in this state as well as for retailers to post a sign warning their customers of the dangers of leaving weapons unsecured.

**LB 596 (Coash) Require employers to e-verify the immigration status of new employees**

Legislative Bill 569 would amend statute section 4-114 by expanding the requirement for public employers and contractors to use e-verify on new hires to include private employers and contractors. All contracts must contain a provision requiring contractors to use e-verify on all new hires physically performing services in Nebraska. The bill would remove the two year limitation on the requirement for the Department of Labor to provide information to private employers about e-verify. The bill would also remove the provision limiting the applicability of the e-verify requirement to contracts awarded prior to October 1, 2009. Employers who violate the provisions of the e-verify requirement would be guilty of a Class III misdemeanor.

The bill would be operative on January 1, 2012.

**LB 598 (Fulton) Change timing of certain foster care permanency hearings**

Legislative Bill 598 would amend § 43-1312 to provide that children who enter foster care at age six or younger shall have a permanency hearing within three months of entering foster care.

**LB 609 (Pirsch) Adopt the Correctional Facility Reimbursement Act**

LB 609, which adopts the Correctional Facility Reimbursement Act, provides a mechanism for a state, county, or city correctional facility to seek reimbursement from prisoners for the cost of their incarceration.

Under LB 609, reimbursement could only be sought if the prisoner had sufficient assets to recover not less than ten percent of the estimated cost of care of the prisoner, or ten percent of the estimated cost of care of the prisoner for two years, whichever is less. Not more than ninety percent of the value of the assets of the prisoner could be sought for reimbursement, and certain assets would be specifically excluded from the act.

**LB 622 (Lautenbaugh) Change provisions relating to confiscation and destruction of firearms**

LB 622 seeks to prevent the unwarranted destruction of firearms confiscated by law enforcement officials in the course of an investigation. LB 622 would require the return of the firearm to its lawful owner if the owner is found not guilty of the charges associated with an investigation.

LB 622 also provides civil remedy for lawful gun owners who must resort to legal action to have their firearm returned.

### **LB 644 (Lautenbaugh) Change provisions applicable to attorney licensure requirements**

Legislative Bill 644 would prohibit the Supreme Court from requiring the lawyers to be members of the Nebraska State Bar Association in order to be members of the bar or to practice in the state. The bill would allow the Supreme Court to collect a membership fee from lawyers for purposes of professional responsibility and regulation of the profession and to fund the Nebraska State Bar Commission.

### **LB 647 (Christensen) Prohibit the use of certain foreign laws in Nebraska courts**

Legislative Bill 647 would prohibit a Nebraska court, arbitrator, tribunal or administrative agency from basing its rulings or decisions on any foreign law, legal code, or system of a jurisdiction that would not grant the same fundamental liberties, rights and privileges granted under the U.S. Constitution and the Nebraska Constitution. Contracts would not be enforceable in Nebraska if they provide for choice of foreign law, legal code, or system or for a jurisdiction for purposes of resolution of disputes that would not grant the same fundamental liberties, rights and privileges granted under the U.S. Constitution and the Nebraska Constitution.

### **LB 649 (Christensen) Require the Judiciary Committee to develop legislative recommendations for guardians ad litem for children and youth**

Legislative Bill 649 would require the Judiciary Committee to examine the report entitled Evaluation of the Guardian ad Litem System in Nebraska that was completed for the Legislature in 2009 by the National Association of Counsel for Children. The bill would require the Judiciary Committee to develop legislative recommendations based on the results of the study and any other information by October 1, 2011.

### **LB 652 (Christensen) Change provisions relating to theft penalties**

LB 652 would make the following changes to 28-518 (**Grading of theft offenses; aggregation allowed**) of the Nebraska Statutes:

- Increases the dollar amount required for a “theft” to constitute a Class III felony from “~~\$1,501 or more~~”, to “\$5,001 or more” ;
- Increases the dollar amount required for a theft to constitute a Class IV felony from the current range of ~~\$500 to \$1,500~~ to the new range of \$1,000 to \$5000;
- Increases the dollar amount required for a theft to constitute a Class I misdemeanor from the current range of ~~\$201 to \$499~~ to the new range of \$501 to \$999; and
- Increases the dollar amount required for a Class II misdemeanor from the current range of ~~\$200 or less~~, to the new range of \$500 or less.

LB 652 would also provide regarding any sentencing for theft under this section, that if a person has not had a prior criminal conviction, the court shall order probation with a

condition of restitution as determined under 29-2280 to 29-2289 if in the court's discretion, restitution is a reasonable possibility and is in the interest of justice.

LB 652 would finally provide that it is the intent of the legislature when appropriate and in the interest of justice that sentences issued under this section be served under house arrest or at the Department of Correctional Services work ethic camp.

**LB 658 (Karpisek) Change the fee for obtaining a handgun certificate**

Legislative Bill 658 proposes to change the application fee for obtaining a handgun certificate from five dollars to ten dollars.

**LB 660 - Create the offense of providing a bodily fluid sample containing a controlled substance**

Legislative Bill 660 amends the Uniform Controlled Substances Act so that any person who provides a sample of bodily fluid containing any amount of a controlled substance commits an offense punishable in the same manner as if the person otherwise possessed that substance.

LB 660 also provides an absolute affirmative defense against such charge if the person is or was legally entitled to use the controlled substance.

**LB 671 (Flood) Prohibit a sex offender from changing his or her name**

LB 671 would amend Neb. Rev. Stat. § 25-21,271(1) and prohibit a person required to register under the Sex Offender Registration Act from changing his or her name.

**LB 676 (Lathrop) Change provisions relating to emergency protective custody under the Nebraska Mental Health Commitment Act**

Legislative Bill 676 would amend §71-919 to prohibit a law enforcement officer who has taken a person into emergency protective custody from relinquishing custody of the person to a medical facility until the medical facility determines it is safe to do so.

**LB 677 (Lathrop) Provide criminal penalties for assault on a health care provider in the first, second, and third degrees**

The purpose of Legislative Bill 677 is to increase the penalties for assault on a health care provider while the health care provider is engaged in the performance of his or her official duties by adding a specific reference to assault on a health care provider to the offenses of Assault in the first, second and third degree. LB 677 defines a health care provider as a practitioner licensed or certified under the Uniform Credentialing Act; and to provide for signage in all offices and facilities where health care services are offered.

**LB 689 (Christensen) Change provisions relating to human trafficking**

The purpose of Legislative Bill 689 is to strengthen Nebraska's human trafficking laws, and include new protections for human trafficking victims.

The bill would amend the definitions of "commercial sexual activity" and "forced labor or services" in section 28-830.

In addition, LB 689 would add two new sections to our human trafficking statutes. The first new section would allow an affirmative defense that the defendant was also a victim of a crime that is a violation of section 28-831, and committed the crime under threat or compulsion and the defendant's belief were reasonable under the circumstances. This new section would also require restitution to the victim in addition to any penalties. The second new section would expressly provide new protection to human trafficking victims.

### **LB 693 (Carlson) Adopt the Alcoholic Liquor Liability Act**

LB 693 adopts the Alcohol Liquor Liability Act. The Act creates a cause of action, in addition to those available in tort, against a bar tender or licensee, who serves liquor by the drink to an intoxicated person when the server knew or should have known that the customer was intoxicated or knew or should have known that the person would become intoxicated.

### **LB 694 (Conrad) Change provisions relating to certain medical evidence**

Legislative Bill 694 would enact additional provisions to the Nebraska Evidence Rules regarding medical records for cases in which the amount in controversy is less than \$25,000. Under the bill, the court would have discretion to receive into evidence written reports signed by the healthcare provider and itemized bills in lieu of or in addition to personal testimony of the medical provider. A signed narrative report by a healthcare provider about the treatment which is relevant to the case shall be considered evidence on which a reasonable prudent person is accustomed to rely. Any party to a case against whom the report may be used has a right, at the party's expense to cross-examine the healthcare provider. If the original deposition is not in the possession of the party who wants to offer it, such party must give notice to the party in possession that it will be needed at trial. Upon such notice, the party in possession of the deposition must make it available. Reports and billing statements offered under this section shall not require supporting testimony to identify or authenticate it or to establish it as a record of a regularly conducted business activity. Reports and billing statements offered under this section are competent evidence of: a) the existence and treatment of a medical, dental or other health condition, b) that the treatment was reasonable and necessary and c) of the opinions of the provider without supporting testimony.

### **LB 28 (Fulton) Encourage all municipal, county, and state law enforcement agencies to participate in the Secure Communities program by the year 2012**



Legislative Resolution would indicate the Legislature's encouragement to all Nebraska law enforcement agencies to participate in the Secure Communities Program by 2012. The Secure Communities program is a federal program implemented by the Department of Homeland Security to match fingerprints collected by participating state and local law enforcement agencies against federal data bases used to determine immigration status.

**LR 39 (Council) Provide the Nebraska Legislature recommends certain basic principles as a guide for state and federal immigration policy and call upon Congress to enact reforms**

Legislative Resolution 39 would recognize the negative impact on the State of Nebraska of the federal government's failure to update the immigration system. The resolution would recognize that immigration reform is an issue of federal policy and would urge the Nebraska Congressional Delegation to act toward immigration reform. The resolution would recognize that local law enforcement resources should not be focused on civil violations of federal law. The resolution would indicate that the Legislature opposes policies that unnecessarily separate families and champions policies that support families and improve the health, education and well-being of all Nebraska children. The resolution would acknowledge the importance of immigrants to the state as workers, entrepreneurs and taxpayers. The resolution would urgently call upon the Nebraska Congressional Delegation to enact immigration reform and would cause a copy of the resolution to be delivered to the U.S. President, the Speaker of the House, the President of the Senate and to each member of the Nebraska Congressional Delegation.

**BILLS INDEFINITELY POSTPONED BY THE JUDICIARY COMMITTEE  
DURING THE 2011 SESSION**

**LB 13 (Wightman) Change provisions relating to life imprisonment without parole**

LB 13 proposes to reinstate language found unconstitutional by the Nebraska Supreme Court in 2005. In 2002, the legislature held a special session to address Nebraska's capital punishment sentencing scheme in light of a U.S. Supreme Court case, Ring v. Arizona. During the special session, language was adopted to clarify that the current penalty for Class I felonies, when the death penalty is not utilized, is life imprisonment without parole. Six sections of law were amended to add the words "without parole."

However, in 2005, the Nebraska Supreme Court, in State v. Conover, struck down the "without parole" language in two of the six sections where it had been added during the special session, holding that the changes were unconstitutional because they were outside the scope of the Governor's call, which related only to the Ring v. Arizona decision.

The Committee Indefinitely Postponed LB 13 on January 1, 2011.

**LB 80 (McGill) Change Nebraska Juvenile Code provisions relating to juvenile care plans**

Legislative Bill 80 would strike language in § 43-285 providing that the court must disapprove the case plan submitted by the Department of Health and Human Services after adjudication if one of the parties proves by a preponderance of the evidence that the plan does not meet the standard of being the best interest of the child. Under current law, the case plan is presumed to be in the juvenile's best interest and it is up to the parties to rebut the presumption. This bill would remove the presumption.

The bill was amended into LB 648 with a technical amendment to make explicit the authority of the court to approve the case plan submitted by the Department. LB 648 passed on a 44-0-5 vote and was signed into law by the Governor on May 4, 2011.

**LB 85 (Karpisek) Adopt the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act**

Legislative Bill 85 would enact the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The Act would address issues relating to multiple jurisdiction, transfer, and out-of-state recognition of adult guardianship and protective proceedings. In addition, LB 85 would facilitate communication and cooperation between courts in different states about adult guardianship.

The Act would provide the following:

- Uniform definitions.
- A three-level priority system to identify the state with jurisdiction to appoint a guardian or conservator or enter a protective order. The Home State has primary

- jurisdiction followed by the Significant-connection State and then another state if the Home State and the Significant-connection State decline jurisdiction or the ward does not have a Home State and the Significant-connection State.
- In an emergency, the court in a state where the individual is physically present or where the property is located has special jurisdiction to appoint a guardian or conservator.
  - Once a court has jurisdiction, it continues until the proceeding is terminated or the appointment or order expires.
  - The court may decline jurisdiction upon determining the court of another state is a more appropriate forum based on specified factors.
  - Regulation of communication between courts in other states and taking testimony in other states.
  - Procedures for transferring a guardianship or conservatorship to another state. Orders are required from both the transferring court and the accepting court.
  - Procedures for registering orders in another state to facilitate enforcement of such orders.
  - Lowers the age of majority from 19 to 18 for purposes of this Act.

On general file for LB 157, the provisions of this bill were amended into LB 157, which passed on a 49-0 vote and was signed into law by the Governor on February 22, 2011.

#### **LB 128 (Avery) Change DNA collection provisions**

LB 128 amends 29-4106 which provides for the collection of DNA samples from those individuals convicted of certain crimes. To require that any sentence requiring the collection of DNA, that does not involve an intake into a prison, jail, or other detention facility, that a person shall have their DNA sample collected by the county sheriff or a probation officer at a detention facility or institution as determined by the court.

The Committee Indefinitely Postponed LB 128 on February 9, 2011.

#### **LB 296 (Coash) Eliminate oath requirements for filing of a criminal complaint and for verifying information**

Legislative Bill 296 would remove the oath requirement for the filing of complaints and information in criminal cases to allow for electronic filing.

On select file for LB 669, the provisions of LB 296 were amended into LB 669, passed with an emergency clause on a 47-0-2 vote and was signed into law by the Governor on May 26, 2011.

**REPORT ON THE PRIORTIZING  
OF INTERIM STUDY RESOLUTIONS**  
Pursuant to Rule 4, Section 3(c)

COMMITTEE: Judiciary

DATE:

The following resolutions were referred to the Committee on May 23<sup>rd</sup>, 2011  
\_\_\_\_\_. The committee has prioritized the resolutions in the following  
order:

<b><u>Resolution No.</u></b>	<b><u>Subject</u></b>
<u>LR214 Mello</u>	Interim study to examine issues surrounding graffiti, vandalism, the sale of spray paint or markers, destruction of property, and graffiti abatement
<u>LR228 Hadley</u>	Interim study to examine the safety of staff members at the Youth Rehabilitation and Treatment Centers at Geneva and Kearney
<u>LR229 Hadley</u>	Interim study to examine the feasibility of requiring all law enforcement personnel to complete continuing education courses on an annual basis
<u>LR243 McGill</u>	Interim study to examine the extent of human trafficking in Nebraska in connection with labor and sex trafficking
<u>LR249 Harr</u>	Interim study to examine the impact of recidivism rates of persons convicted of driving under the influence
<u>LR250 Janssen</u>	Interim study to examine human trafficking in Nebraska
<u>LR251 Janssen</u>	Interim study to examine immigration-related marriage fraud
<u>LR254 Ashford</u>	Interim study to examine the Adam Walsh Child Protection and Safety Act of 2006 and Nebraska's Sex Offender Registration Act
<u>LR255 Ashford</u>	Interim study to examine issues within the jurisdiction of the Judiciary Committee
<u>LR275 Flood</u>	Interim study to examine Nebraska's behavioral health model concerning transport service of persons who have been placed in emergency protective custody
<u>LR283 Conrad</u>	Interim study to examine Nebraska's judicial system, specifically issues affecting judicial effectiveness and independence
<u>LR284 Conrad</u>	Interim study to examine current law with respect to the changing of surnames as a result of marriage
<u>LR288 Ashford</u>	Interim study to examine issues relating to standing for foster parents in removal proceedings
<u>LR289 Ashford</u>	Interim study to address the undocumented immigrant population that have been initiated at both the state and local level around the country since the Judiciary Committee completed its report in December 2008

LR290 Howard

Interim study to examine the procedures of the Dept. of Health and Human Services relating to the evaluation of state wards for fetal alcohol spectrum disorders prior to adoption

LR298 McGill

Interim study to examine the usage of models of collaborative management of multiagency services provided to children and families in Nebraska and other states

LR321 Pirsch

Interim study to examine the experiences of child victims and child witnesses with respect to their interaction with the criminal justice system