

FIFTY-SIXTH DAY - APRIL 8, 2022

LEGISLATIVE JOURNAL

**ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION**

FIFTY-SIXTH DAY

Legislative Chamber, Lincoln, Nebraska
Friday, April 8, 2022

PRAYER

The prayer was offered by Pastor Derek Geist, Mercy City Church, Lincoln.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was offered by Senator Dorn.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Foley presiding.

The roll was called and all members were present except Senator Pahls who was excused; and Senators Bostar, M. Cavanaugh, Day, Geist, B. Hansen, Hunt, Morfeld, and Stinner who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

Page 1181, line 25, strike "AM171" and insert "FA171".
The Journal for the fifty-fifth day was approved as corrected.

REPORTS

Agency reports electronically filed with the Legislature can be found on the [Nebraska Legislature's website](#).

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of April 7, 2022, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

Hallman, J. Eric

Nebraska Independent Community Bankers (Withdrawn 04/07/2022)

GENERAL FILE

LEGISLATIVE BILL 984A. Title read. Considered.

Advanced to Enrollment and Review Initial with 37 ayes, 0 nays, 3 present and not voting, and 9 excused and not voting.

LEGISLATIVE BILL 1144A. Title read. Considered.

Advanced to Enrollment and Review Initial with 38 ayes, 0 nays, 2 present and not voting, and 9 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 917A. Senator Wayne offered his amendment, [AM2640](#), found on page 1109.

The Wayne amendment was adopted with 36 ayes, 0 nays, 4 present and not voting, and 9 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1024A. Senator Wayne offered his amendment, [AM2752](#), found on page 1185.

The Wayne amendment was adopted with 29 ayes, 1 nay, 11 present and not voting, and 8 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

GENERAL FILE

LEGISLATIVE BILL 922. Title read. Considered.

Committee [AM2332](#), found on page 880, was offered.

Senator DeBoer offered her amendment, [AM2429](#), found on page 1194, to the committee amendment.

The DeBoer amendment was adopted with 33 ayes, 0 nays, 6 present and not voting, and 10 excused and not voting.

Senator M. Hansen offered the following amendment, to the committee amendment:

[AM2771](#)

(Amendments to Standing Committee amendments, AM2332)

- 1 1. Insert the following new sections:
- 2 Sec. 8. Section 47-502, Reissue Revised Statutes of Nebraska, is
- 3 amended to read:
- 4 47-502 Any person sentenced to or confined in a city or county jail,
- 5 including any person serving a custodial sanction imposed in response to
- 6 a parole or probation violation, shall, ~~after the fifteenth day of his or~~
- 7 ~~her confinement,~~ have his or her remaining term reduced one day for each
- 8 day of his or her sentence or sanction during which he or she has not
- 9 committed any breach of discipline or other violation of jail
- 10 regulations.
- 11 Sec. 9. Section 47-503, Reissue Revised Statutes of Nebraska, is
- 12 amended to read:
- 13 47-503 (1) Credit against a jail term shall be given to any person
- 14 sentenced to a city or county jail for time spent in jail as a result of
- 15 the criminal charge for which the jail term is imposed or as a result of
- 16 conduct upon which such charge is based. Such credit shall include, but
- 17 not be limited to, time spent in jail:
- 18 (a) Prior to trial;
- 19 (b) During trial;
- 20 (c) Pending sentence;
- 21 (d) Pending resolution of an appeal; and
- 22 (e) Prior to delivery of such person to the county board of
- 23 corrections or, in counties which do not have a county board of
- 24 corrections, the county sheriff.
- 25 (2) If a person is arrested on one charge and prosecuted on another
- 26 charge growing out of conduct which occurred prior to such person's
- 27 arrest, credit against the term of any sentence resulting from such
- 28 prosecution shall be given for all time spent in custody under the former
- 29 charge which has not been credited against another sentence.
- 30 ~~(3)~~ (2) Credit to any person sentenced to a city or county jail who
- 31 is eligible for credit pursuant to subsection (1) ~~or (2)~~ of this section
- 32 shall be set forth as part of the sentence at the time such sentence is
- 33 imposed.
- 34 2. Correct the operative date and repealer sections so that the
- 35 sections added by this amendment become operative on their effective
- 36 date.
- 37 3. Renumber the remaining sections and correct internal references
- 38 accordingly.

Senator M. Hansen withdrew his amendment.

Senator J. Cavanaugh offered the following amendment to the committee amendment:

[FA204](#)

Amend AM2332 by striking section 6 and renumbering the remaining sections.

Senator J. Cavanaugh withdrew his amendment.

The committee amendment, as amended, was adopted with 31 ayes, 0 nays, 11 present and not voting, and 7 excused and not voting.

Advanced to Enrollment and Review Initial with 33 ayes, 0 nays, 9 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 922A. Title read. Considered.

Senator Lathrop offered the following amendment:

[AM2767](#)

1 1. Strike the original section and insert the following new
2 sections:

3 Section 1. There is hereby appropriated (1) \$209,768 from the
4 General Fund for FY2022-23 and (2) \$209,768 from the General Fund for
5 FY2023-24 to the Supreme Court, for Program 6, to aid in carrying out the
6 provisions of Legislative Bill 922, One Hundred Seventh Legislature,
7 Second Session, 2022.

8 Total expenditures for permanent and temporary salaries and per
9 diems from funds appropriated in this section shall not exceed \$183,544
10 for FY2022-23 or \$183,544 for FY2023-24.

11 Sec. 2. There is hereby appropriated (1) \$116,125 from the General
12 Fund for FY2022-23 and (2) \$106,731 from the General Fund for FY2023-24
13 to the Supreme Court, for Program 52, to aid in carrying out the
14 provisions of Legislative Bill 922, One Hundred Seventh Legislature,
15 Second Session, 2022.

16 Total expenditures for permanent and temporary salaries and per
17 diems from funds appropriated in this section shall not exceed \$67,942
18 for FY2022-23 or \$67,942 for FY2023-24.

The Lathrop amendment was adopted with 34 ayes, 0 nays, 8 present and not voting, and 7 excused and not voting.

Advanced to Enrollment and Review Initial with 35 ayes, 0 nays, 8 present and not voting, and 6 excused and not voting.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 843. Placed on Select File with amendment.
[ER170](#) is available in the Bill Room.

LEGISLATIVE BILL 686. Placed on Select File.

LEGISLATIVE BILL 1130. Placed on Select File with amendment.
[ER168](#)

1 1. On page 1, strike beginning with "sections" in line 2 through
2 line 10 and insert "section 48-3704, Reissue Revised Statutes of
3 Nebraska; to change reporting requirements; and to repeal the original
4 section."

LEGISLATIVE BILL 1130A. Placed on Select File.

LEGISLATIVE BILL 1150. Placed on Select File with amendment.
[ER169](#) is available in the Bill Room.

LEGISLATIVE BILL 1150A. Placed on Select File.

LEGISLATIVE RESOLUTION 917. Placed on Final Reading Second.

LEGISLATIVE RESOLUTION 1024. Placed on Final Reading Second.

LEGISLATIVE RESOLUTION 1173. Placed on Final Reading Second.

(Signed) Terrell McKinney, Chairperson

ATTORNEY GENERAL'S OPINION

Opinion 22-005

SUBJECT: Constitutionality of Allowing Law Enforcement
 to Access Electronic Monitoring Data for
 Adjudicated Juveniles — LB 1010.

REQUESTED BY: Senator Michael Flood
 Nebraska Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
 Melissa R. Vincent, Assistant Attorney General

INTRODUCTION

Neb. Rev. Stat. § 43-250 (Cum. Supp. 2020) governs the disposition of juveniles taken into temporary custody for various reasons. LB 1010 amends § 43-250(1)(c) to allow the court or a probation officer to place a juvenile on electronic monitoring as an alternative to secure detention and to share the data from the electronic monitoring device with law enforcement "immediately upon request." On March 23, 2022, you requested an opinion from our office concerning the legality of this amendment, specifically whether "there are any privacy and or other legal issues that would prevent law enforcement from accessing the data of an electronic monitoring device on an adjudicated juvenile" and whether this provision is "constitutional as it pertains to adjudicated juveniles."

As a preliminary observation, § 43-250 does not distinguish between adjudicated and unadjudicated juveniles, and when limited to the former, is triggered only if the juvenile is placed on electronic monitoring after being taken into temporary custody for a specified reason. Having read the testimony from the Judiciary Committee's hearing on LB 1010, it appears this amendment is intended to apply to juveniles who have been placed on electronic monitoring as a condition of their probation. If so, that objective may be more effectively accomplished by LB 1010 (AM2435), which amends Neb. Rev. § 43-2,108 (Cum. Supp. 2020) to state that "any court order that places a juvenile on electronic monitoring shall also state whether the data from such electronic monitoring device shall be made available to a law enforcement agency immediately upon request by such

agency."¹ With that understanding, and for the reasons discussed below, we conclude that a statute allowing law enforcement to access a juvenile probationer's electronic monitoring data without first obtaining a warrant is constitutional.

ANALYSIS

The fundamental question presented here is whether authorizing law enforcement to access a juvenile probationer's electronic monitoring data without a warrant violates the Fourth Amendment. For purposes of this analysis, we note that the Fourth Amendment to the U.S. Constitution affords the same protection as article I, § 7, of the Nebraska Constitution. *State v. Smith*, 279 Neb. 918, 782 N.W.2d 913 (2010).

The basic purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by government officials. *U.S. v. Mathews*, 928 F.3d 968 (10th Cir. 2019) [*Mathews*"]. When an individual seeks to preserve something as private, and his expectation of privacy is one that society is prepared to recognize as reasonable, an official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause. *Id.* at 975.

However, the Fourth Amendment does not apply with equal force to probationers.² The U.S. Supreme Court has long recognized that probationers do not enjoy the absolute liberty to which every citizen is entitled and may be subject to reasonable conditions that deprive them of some freedoms enjoyed by law-abiding citizens. *Griffin v. Wisconsin*, 483 U.S. 868 (1987); *U.S. v. Knights*, 534 U.S. 112 (2001) [*Knights*"]. As a result, the U.S. Supreme Court has established two exceptions to the Fourth Amendment's warrant requirement in the parolee/probationer context. *Mathews*, 928 F.3d at 975-76. The first exception, generally described as the "special needs search," holds that it is constitutionally permissible for a

¹ Notably, § 43-253 requires any juvenile taken into temporary custody under § 43-250(1)(c) to be brought before a court of competent jurisdiction within 24 hours for a hearing to determine if continued detention or supervision is necessary. Presumably, the court would then enter an order in accordance with § 43-2,108 as amended by AM2435.

² This statement applies to both adults and juveniles. "No court has ever held that a juvenile is entitled to greater fourth amendment protections by reason of [his or] her minority." *In re Lakisha M.*, 882 N.E.2d 570, 576 (Ill. 2008).

probation officer to search probationers in compliance with a probation agreement search provision, but without a warrant. *Id.* The second exception, known as the totality-of-the-circumstances exception, authorizes warrantless searches without probable cause (or even reasonable suspicion) by police officers with no responsibility for parolees or probationers when the totality of the circumstances renders the search reasonable. *Id.* at 976. The totality-of-the-circumstances exception is predicated on (1) the reduced (or absent) expectation of privacy for probationers and parolees and (2) the needs of law enforcement. *Id.* When the terms of a probation agreement allow officers to search the probationer's person or effects with something less than probable cause, the probationer's reasonable expectation of privacy is "significantly diminished." *Id.* Courts balance this significantly diminished expectation of privacy against the government's interest in apprehending violators of the criminal law. *Id.*

Notably, a primary goal of probation is to protect society from future criminal violations. *Knights*, 534 U.S. at 119. And because the very assumption of the institution of probation is that the probationer is more likely than the ordinary citizen to violate the law, the government may justifiably focus on probationers in a way that it does not on the ordinary citizen. *Mathews*, 928 F.3d at 976.

As a general matter, a search of a parolee or probationer authorized by state law satisfies the totality-of-the-circumstances exception. *Mathews*, 928 F.3d at 976. Whether a search is authorized by state law is determined by the offender's probation agreement and the state regulations applicable to his or her case. *Id.* Thus, parolee and probationer searches are examples of the rare instance in which the contours of a federal constitutional right are determined, in part, by the content of state law. *Id.*

Based on the foregoing principles, courts in other jurisdictions have found that law enforcement may conduct warrantless searches of a probationer's electronic monitoring data without violating the Fourth Amendment. In both *Commonwealth v. Johnson*, 481 Mass. 710, 119 N.E.3d 669 (Mass. 2019) ["*Johnson*"], and *U.S. v. Jackson*, 214 A.3d 464 (D.C. 2019) ["*Jackson*"], law enforcement conducted warrantless searches of a probationer's historical GPS data for the limited purpose of determining whether the probationer was present at a particular crime scene. After the GPS data implicated the probationer in additional crimes, he moved to suppress it, alleging law enforcement had violated his Fourth Amendment right to be free from unreasonable searches by accessing the data without a warrant. Both courts rejected the probationer's claim, finding he had no reasonable expectation of privacy in the GPS data due to (1) his status as a probationer, (2) his knowledge that his movements were being monitored

and recorded by the GPS device, and (3) the existence of either a statute (*Johnson*) or a memorandum of understanding (*Jackson*) that specifically authorized law enforcement to access the probationer's GPS data. As the court in *Johnson* explained:

... [A] probationer subject to GPS monitoring as a condition of probation would certainly objectively understand that his or her location would be recorded and monitored to determine compliance with the conditions of probation, including whether he or she had engaged in additional criminal activity, to deter the commission of such offenses, and that police would have access to this location information for that purpose. General Laws c. 276, § 90, which serves the legitimate, even compelling, governmental purpose of detecting and determining whether a probationer engaged in criminal activity during the probationary period, confirms that objective understanding by expressly providing police access to this data.... [C]riminal activity that occurred during the probationary period is of particular concern to the Commonwealth, as it reflects the recidivist nature of the probationer.... Accordingly, as opposed to nonprobationers who have their GPS, CSLI, or other precise location information recorded and reviewed by law enforcement without their knowledge, the defendant could not reasonably expect that his whereabouts while subject to GPS monitoring, particularly his whereabouts at the time and place of criminal activity, would remain private from government eyes....

Moreover, the Commonwealth's conduct did not amount to the same type of conduct we have identified in other contexts as intruding on an individual's reasonable expectation of privacy in his or her whereabouts. The record does not describe law enforcement engaged in an effort to map out and analyze all of the defendant's movements over the 6-month probationary period.... Rather, as the defendant recognized in his motion to suppress, the Commonwealth reviewed the defendant's historical GPS location data to determine whether he was present at the general times and locations where various unsolved break-ins may have occurred.... Simply comparing subsets of the defendant's GPS location data recorded while he was on probation to the general times and places of suspected criminal activity during the probationary period is not a search in the constitutional sense. At least in other contexts, society has not recognized a probationer's purported expectation of privacy in information that identifies his or her presence at the scene of a crime as a reasonable one.

481 Mass. at 724-26, 119 N.E.3d at 683-85 (internal citations omitted).

In *Schall v. Martin*, 467 U.S. 253 (1984), the U.S. Supreme Court recognized that crime prevention is a legitimate and compelling state interest that persists undiluted in the juvenile context since the harm suffered by the victim of a crime is not dependent upon the age of the perpetrator. *Id.* at 264-65. The court also recognized that "the harm to society might be even greater in this context given the high rate of recidivism among juveniles." *Id.* at 265. Thus, although *Johnson* and *Jackson* involved adult probationers, we believe the same legal principles apply here since juvenile probationers have no greater expectation of privacy in their electronic monitoring data than their adult counterparts.

CONCLUSION

For the foregoing reasons, we conclude that a statute authorizing law enforcement to access the data from a juvenile probationer's electronic monitoring device without first obtaining a warrant is constitutional.

Very truly yours,

DOUGLAS J. PETERSON

Attorney General

(Signed) Melissa R. Vincent

Assistant Attorney General

(Signed) Dave Bydalek

Chief Deputy Attorney General

pc Patrick J. O'Donnell
Clerk of the Nebraska Legislature

07-1396-29

GENERAL FILE

LEGISLATIVE BILL 921. Title read. Considered.

Committee [AM2503](#), found on page 955, was offered.

SENATOR WILLIAMS PRESIDING

The committee amendment was adopted with 39 ayes, 0 nays, 4 present and not voting, and 6 excused and not voting.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 4 present

and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 921A. Title read. Considered.

Advanced to Enrollment and Review Initial with 38 ayes, 0 nays, 5 present and not voting, and 6 excused and not voting.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 437. Introduced by Flood, 19.

WHEREAS, Trevor Dredla is a volunteer firefighter for Battle Creek Volunteer Fire and Rescue; and

WHEREAS, Trevor Dredla served his country with the United States Army for a ten-month period from 2021 through 2022; and

WHEREAS, Battle Creek Volunteer Fire and Rescue supported Trevor Dredla's wife, Kacie, and his daughters, Aislynn and Maesyn, during the duration of his deployment; and

WHEREAS, the Nebraska Employer Support of the Guard and Reserve honors those who show patriotism and support of soldiers while the soldiers serve their country; and

WHEREAS, the Seven Seals Award is one of the greatest distinctions granted to recognize individual or organizational efforts promoting the mission of the Employer Support of the Guard and Reserve across the United States; and

WHEREAS, on April 7, 2022, Battle Creek Volunteer Fire and Rescue was presented the Seven Seals Award for their support and care of Trevor Dredla's family during his service.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature recognizes and honors the military service of Trevor Dredla.
2. That the Legislature recognizes the care and support Battle Creek Volunteer Fire and Rescue provided Kacie, Aislynn, and Maesyn Dredla and congratulates Battle Creek Volunteer Fire and Rescue on receiving the Seven Seals Award.
3. That copies of this resolution be sent to the family of Trevor Dredla and Battle Creek Volunteer Fire and Rescue.

Laid over.

LEGISLATIVE RESOLUTION 438. Introduced by Health and Human Services Committee: Arch, 14, Chairperson; Cavanaugh, M., 6; Day, 49; Hansen, B., 16; Murman, 38; Walz, 15; Williams, 36.

PURPOSE: The purpose of this resolution is to propose an interim study to identify potential policy changes for improving communication and sharing of case-specific information among the various state and local government

agencies responsible for the care, custody, treatment, and rehabilitation of youth in Nebraska, including, but not limited to, youth involved in the child welfare system and youth committed to the youth rehabilitation and treatment centers. The sharing of information related to the past treatment, interventions, programming, and support of youth may improve efficiency in treating youth who transition from the care of one agency to another agency and improve outcomes for youth.

The study should include, but not be limited to, an examination of:

- (1) The opportunities for sharing case information between and among state and local government agencies involved in the treatment, rehabilitation, and education of youth in the state's care and custody; and
- (2) The barriers to sharing case information between and among the Department of Health and Human Services, the Department of Correctional Services, the Office of Probation Administration, the State Department of Education, and juvenile detention facilities.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Health and Human Services Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

LEGISLATIVE RESOLUTION 439. Introduced by Hilkemann, 4; Day, 49; Lathrop, 12; McCollister, 20; Pahls, 31; Walz, 15.

WHEREAS, Dr. Jim Sutfin began his teaching career in Bellevue in 1989 and served with Millard Public Schools from 1995 until his retirement as superintendent in 2022; and

WHEREAS, Dr. Sutfin served in a variety of roles during his time at Millard, including principal, assistant principal, science department head, science teacher, and Assistant Superintendent of Human Resources; and

WHEREAS, Dr. Sutfin stepped into the role of superintendent in the fall of 2014 and embraced technology from the onset, connecting with students and families through social media and transitioning Millard to a one-to-one district; and

WHEREAS, Dr. Sutfin was named a Superintendent to Watch in 2016 by the National School Public Relations Association and in 2020 he was selected as Superintendent of the Year by the Nebraska Association of School Administrators; and

WHEREAS, Dr. Sutfin, in transitioning to a one-to-one district, enabled Millard to continue school remotely during the pandemic closures throughout the spring of 2020 and by fall of 2020 the district was able to offer both in-person and remote learning, operating continuously throughout the school year; and

WHEREAS, Dr. Sutfin facilitated additional initiatives that include the #BeKind community movement and the #TeachUp campaign; and

WHEREAS, Dr. Sutfin was instrumental in the creation of Early College at Millard South and Bridge to Early College at Central Middle School; and

WHEREAS, Dr. Sutfin helped bring the first Boys and Girls Club to Millard and the first ROTC program to Millard with the Junior Air Force ROTC program at Millard South; and

WHEREAS, Dr. Sutfin partnered with Avenue Scholars in 2019 to create Intern Omaha, an internship program connecting rising seniors across the city with businesses throughout Omaha.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature congratulates Dr. Jim Sutfin on his retirement and thanks him for his service to the state.
2. That a copy of this resolution be sent to Dr. Jim Sutfin.

Laid over.

LEGISLATIVE RESOLUTION 440. Introduced by Hansen, B., 16.

WHEREAS, the 2022 Nebraska School Activities Association State Wrestling Tournament was held from February 17 through February 19 at the CHI Health Center Omaha; and

WHEREAS, senior Charlie Powers competed in the tournament for the Blair High School wrestling team coached by Erich Warner; and

WHEREAS, Charlie wrestled in the Class B 160-pound championship match against the undefeated Jett Samuelson of Hastings, who had beaten Charlie in two previous matches; and

WHEREAS, after ending regulation time tied, Charlie pushed the pace and hit a knee pull to defeat Jett 5-3 in overtime and win the Class B 160-pound championship; and

WHEREAS, the championship win capped an outstanding career for Charlie who finished his season with an overall record of 51-4 and put an exclamation point on the tournament for Blair High School that finished with school records of 110 team points and six medalists; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature congratulates Charlie Powers on winning the 2022 Class B 160-pound State Wrestling Championship.
2. That copies of this resolution be sent to Blair High School, Charlie Powers, and coach Erich Warner.

Laid over.

UNANIMOUS CONSENT - Add Cointroducer(s)

Unanimous consent to add Senator(s) as cointroducer(s). No objections. So ordered.

Senator Murman name added to LR427.

Senator Brandt name added to LR427.

RECESS

At 11:58 a.m., on a motion by Senator Clements, the Legislature recessed until 1:00 p.m.

AFTER RECESS

The Legislature reconvened at 1:00 p.m., Senator Williams presiding.

ROLL CALL

The roll was called and all members were present except Senator Pahls who was excused; and Senators Arch, Bostar, M. Cavanaugh, Clements, DeBoer, Geist, B. Hansen, Hunt, Kolterman, Lathrop, Linehan, Morfeld, Sanders, Vargas, Wayne, and Wishart who were excused until they arrive.

AMENDMENT(S) - Print in Journal

Senator J. Cavanaugh filed the following amendment to LB922:
AM2769

(Amendments to Standing Committee amendments, AM2332)

1 1. Insert the following new sections:

2 Sec. 8. Section 29-3001, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 29-3001 (1) A prisoner in custody under sentence and claiming a
5 right to be released on the ground that there was such a denial or
6 infringement of the rights of the prisoner as to render the judgment void
7 or voidable under the Constitution of this state or the Constitution of
8 the United States, may file a verified motion, in the court which imposed
9 such sentence, stating the grounds relied upon and asking the court to
10 vacate or set aside the sentence.

11 (2) Unless the motion and the files and records of the case show to
12 the satisfaction of the court that the prisoner is entitled to no relief,
13 the court shall cause notice thereof to be served on the county attorney,
14 grant a prompt hearing thereon, and determine the issues and make
15 findings of fact and conclusions of law with respect thereto. If the
16 court finds that there was such a denial or infringement of the rights of
17 the prisoner as to render the judgment void or voidable under the
18 Constitution of this state or the Constitution of the United States, the
19 court shall vacate and set aside the judgment and shall discharge the
20 prisoner or resentence the prisoner or grant a new trial as may appear
21 appropriate. Proceedings under the provisions of sections 29-3001 to
22 29-3004 shall be civil in nature. Costs shall be taxed as in habeas
23 corpus cases.

24 (3) A court may entertain and determine such motion without
25 requiring the production of the prisoner, whether or not a hearing is

26 held. Testimony of the prisoner or other witnesses may be offered by
1 deposition. The court need not entertain a second motion or successive
2 motions for similar relief on behalf of the same prisoner.
3 (4) A one-year period of limitation shall apply to the filing of a
4 verified motion for postconviction relief. The one-year limitation period
5 shall run from the later of:
6 (a) The date the judgment of conviction became final by the
7 conclusion of a direct appeal or the expiration of the time for filing a
8 direct appeal;
9 (b) The date on which the factual predicate of the constitutional
10 claim or claims alleged could have been discovered through the exercise
11 of due diligence;
12 (c) The date on which an impediment created by state action, in
13 violation of the Constitution of the United States or the Constitution of
14 Nebraska or any law of this state, is removed, if the prisoner was
15 prevented from filing a verified motion by such state action;
16 (d) The date on which a constitutional claim asserted was initially
17 recognized by the Supreme Court of the United States or the Nebraska
18 Supreme Court, if the newly recognized right has been made applicable
19 retroactively to cases on postconviction collateral review; or
20 (e) The date on which the Supreme Court of the United States denies
21 a writ of certiorari or affirms a conviction appealed from the Nebraska
22 Supreme Court. This subdivision only applies if, within thirty days after
23 petitioning the Supreme Court of the United States for a writ of
24 certiorari, the prisoner files a notice in the district court of
25 conviction stating that the prisoner has filed such petition August 27,
26 2011.
27 Sec. 9. Section 43-279, Reissue Revised Statutes of Nebraska, is
28 amended to read:
29 43-279 (1) The adjudication portion of hearings shall be conducted
30 before the court without a jury, applying the customary rules of evidence
31 in use in trials without a jury. When the petition alleges the juvenile
1 to be within the provisions of subdivision (1), (2), (3)(b), or (4) of
2 section 43-247 and the juvenile or his or her parent, guardian, or
3 custodian appears with or without counsel, the court shall inform the
4 parties:
5 (a) Of the nature of the proceedings and the possible consequences
6 or dispositions pursuant to sections 43-284 to 43-286, 43-289, and 43-290
7 that may apply to the juvenile's case following an adjudication of
8 jurisdiction;
9 (b) Of such juvenile's right to counsel as provided in sections
10 43-272 and 43-273;
11 (c) Of the privilege against self-incrimination by advising the
12 juvenile, parent, guardian, or custodian that the juvenile may remain
13 silent concerning the charges against the juvenile and that anything said
14 may be used against the juvenile;
15 (d) Of the right to confront anyone who testifies against the
16 juvenile and to cross-examine any persons who appear against the
17 juvenile;
18 (e) Of the right of the juvenile to testify and to compel other
19 witnesses to attend and testify in his or her own behalf;
20 (f) Of the right of the juvenile to a speedy adjudication hearing;
21 and
22 (g) Of the right to appeal and have a transcript for such purpose.
23 After giving such warnings and admonitions, the court may accept an
24 in-court admission or answer of no contest by the juvenile of all or any
25 part of the allegations in the petition if the court has determined from
26 examination of the juvenile and those present that such admission or
27 answer of no contest is intelligently, voluntarily, and understandingly
28 made and with an affirmative waiver of rights and that a factual basis

29 for such admission or answer of no contest exists. The waiver of the
30 right to counsel shall satisfy section 43-3102. The court may base its
31 adjudication provided in subsection (2) of this section on such admission
1 or answer of no contest.

2 (2) If the juvenile denies the petition or stands mute the court
3 shall first allow a reasonable time for preparation if needed and then
4 consider only the question of whether the juvenile is a person described
5 by section 43-247. After hearing the evidence on such question, the court
6 shall make a finding and adjudication, to be entered on the records of
7 the court, whether or not the juvenile is a person described by
8 subdivision (1), (2), (3)(b), or (4) of section 43-247 based upon proof
9 beyond a reasonable doubt. If an Indian child is involved, the standard
10 of proof shall be in compliance with the Nebraska Indian Child Welfare
11 Act, if applicable.

12 (3) If the court shall find that the juvenile named in the petition
13 is not within the provisions of section 43-247, it shall dismiss the
14 case. If the court finds that the juvenile named in the petition is such
15 a juvenile, it shall make and enter its findings and adjudication
16 accordingly, designating which subdivision or subdivisions of section
17 43-247 such juvenile is within; the court shall allow a reasonable time
18 for preparation if needed and then proceed to an inquiry into the proper
19 disposition to be made of such juvenile.

20 Sec. 10. Section 43-280, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 43-280 No adjudication by the juvenile court upon the status of a
23 juvenile shall be deemed a conviction nor shall the adjudication operate
24 to impose any of the civil disabilities ordinarily resulting from
25 conviction. The adjudication and the evidence given in the court shall
26 not operate to disqualify such juvenile in any future civil or military
27 service application or appointment. Any admission, answer of no contest,
28 confession, or statement made by the juvenile in court and admitted by
29 the court, in a proceeding under section 43-279, shall be inadmissible
30 against such juvenile in any criminal or civil proceeding but may be
31 considered by a court as part of a presentence investigation involving a
1 subsequent transaction.

2 Sec. 14. Section 83-4,134.01, Revised Statutes Cumulative
3 Supplement, 2020, is amended to read:

4 83-4,134.01 (1) It is the intent of the Legislature to establish a
5 system of investigation and performance review in order to provide
6 increased accountability and oversight regarding the use of room
7 confinement for juveniles in a juvenile facility.

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

10 (a) Room confinement of a juvenile for longer than one hour during a
11 twenty-four-hour period shall be approved in writing by a supervisor in
12 the juvenile facility;

13 ~~(b) (a) Room confinement of a juvenile for longer than one hour~~
14 ~~during a twenty-four-hour period shall be documented and approved in~~
15 ~~writing by a supervisor in the juvenile facility. Documentation of the~~
16 ~~room confinement shall include the date of the occurrence; the race,~~
17 ~~ethnicity, age, and gender of the juvenile; the reason for placement of~~
18 ~~the juvenile in room confinement; an explanation of why less restrictive~~
19 ~~means were unsuccessful; the ultimate duration of the placement in room~~
20 ~~confinement in hours and minutes; facility staffing levels at the time of~~
21 ~~confinement; and any incidents of self-harm or suicide committed by the~~
22 ~~juvenile while he or she was isolated;~~

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

27 confinement;

28 ~~(d) (e)~~ The juvenile facility shall electronically submit a
 29 ~~quarterly report quarterly~~ to the Legislature on the juveniles placed in
 30 room confinement; the length of time, in hours and minutes, each juvenile
 31 was in room confinement; the race, ethnicity, age, and gender of each
 1 juvenile placed in room confinement; facility staffing levels at the time
 2 of confinement; and the reason each juvenile was placed in room
 3 confinement. The report shall specifically address each instance of room
 4 confinement of a juvenile for more than four hours, including all reasons
 5 why attempts to return the juvenile to the general population of the
 6 juvenile facility were unsuccessful. The report shall also detail all
 7 corrective measures taken in response to noncompliance with this section.
 8 The report shall redact all personal identifying information but shall
 9 provide individual, not aggregate, data. ~~The report shall be delivered~~
 10 ~~electronically to the Legislature.~~ The initial quarterly report shall be
 11 submitted ~~within two weeks after the quarter ending on September 30,~~
 12 ~~2016. Subsequent reports shall be submitted for the ensuing quarters~~
 13 ~~within two weeks after the end of each quarter; and~~

14 ~~(e)~~ By September 15, 2022, and by each September 15 thereafter, the
 15 juvenile facility shall electronically submit to the Legislature an
 16 annual summary report for the immediately preceding fiscal year. The
 17 ~~summary report shall include the total number of available beds in the~~
 18 ~~facility; the total number of juveniles served; the total number of~~
 19 ~~juveniles confined; the total number of occurrences of juvenile room~~
 20 ~~confinement; the total number of confinement hours; the longest single~~
 21 ~~period of room confinement experienced by a specific juvenile, in hours~~
 22 ~~and minutes; the total number of incidents of room confinement lasting~~
 23 ~~less than one hour; the total number of incidents lasting over four~~
 24 ~~hours; and the total number of incidents lasting over twenty-four hours.~~
 25 ~~The report shall redact all personal identifying information but shall,~~
 26 ~~as required by this subdivision, provide individual, not aggregate data;~~
 27 ~~and~~

28 ~~(f) (4)~~ The Inspector General of Nebraska Child Welfare shall review
 29 all data collected pursuant to this section. ~~The Inspector General may~~
 30 ~~request that such data be provided to the Inspector General's office in a~~
 31 ~~format the Inspector General determines is necessary for its review. The~~
 1 ~~Inspector General shall review the data~~ in order to assess the use of
 2 room confinement for juveniles in each juvenile facility and prepare an
 3 annual report of his or her findings, including, but not limited to,
 4 identifying changes in policy and practice which may lead to decreased
 5 use of such confinement as well as model evidence-based criteria to be
 6 used to determine when a juvenile should be placed in room confinement.
 7 The report shall be delivered electronically to the Legislature on an
 8 annual basis.

9 ~~(3) The use of consecutive periods of room confinement to avoid the~~
 10 ~~intent or purpose of this section is prohibited.~~

11 ~~(3) (4)~~ Any juvenile facility which is not a residential child-
 12 caring agency which fails to comply with the requirements of this section
 13 is subject to disciplinary action as provided in section 83-4,134. Any
 14 juvenile facility which is a residential child-caring agency which fails
 15 to comply with the requirements of this section is subject to
 16 disciplinary action as provided in section 71-1940.

17 2. Correct the operative date and repealer sections so that the
 18 sections added by this amendment become operative on their effective
 19 date.

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

Senator Linehan filed the following amendment to [LB927](#):
[AM2778](#)

(Amendments to E&R amendments, ER166)

- 1 1. Strike section 3.
- 2 2. On page 1, lines 9 and 10, strike the new matter and reinstate
- 3 the stricken matter.
- 4 3. On page 28, line 14, strike "13-2605,".
- 5 4. Renumber the remaining sections accordingly.

GENERAL FILE

LEGISLATIVE BILL 661. Considered.

Senator McKinney offered the following amendment:

AM2772

- 1 1. Insert the following new sections:
- 2 Sec. 11. Section 29-2101, Reissue Revised Statutes of Nebraska, is
- 3 amended to read:
- 4 29-2101 A new trial, after a verdict of conviction, may be granted,
- 5 on the application of the defendant, for any of the following grounds
- 6 affecting materially his or her substantial rights:
- 7 (1) Irregularity in the proceedings of the court, of the prosecuting
- 8 attorney, or of the witnesses for the state or in any order of the court
- 9 or abuse of discretion by which the defendant was prevented from having a
- 10 fair trial;
- 11 (2) ~~Misconduct~~ ~~misconduct~~ of the jury, of the prosecuting attorney,
- 12 or of the witnesses for the state;
- 13 (3) ~~Accident~~ ~~accident~~ or surprise which ordinary prudence could not
- 14 have guarded against;
- 15 (4) ~~The~~ ~~the~~ verdict is not sustained by sufficient evidence or is
- 16 contrary to law;
- 17 (5) ~~Newly~~ ~~newly~~ discovered evidence material for the defendant which
- 18 he or she could not with reasonable diligence have discovered ~~or~~ ~~and~~
- 19 produced at the trial. For purposes of this subdivision, testimony or
- 20 evidence from a codefendant witness shall be considered newly discovered
- 21 evidence if:
- 22 (a) Such codefendant previously had a testimonial or constitutional
- 23 privilege and, because of such privilege, refused to testify or produce
- 24 evidence in a prior proceeding; and
- 25 (b) Such codefendant was charged or tried in a separate trial which
- 26 was severed pursuant to section 29-2002 at the request of the
- 27 prosecution;
- 1 (6) ~~Newly~~ ~~newly~~ discovered exculpatory DNA or similar forensic
- 2 testing evidence obtained under the DNA Testing Act; or
- 3 (7) ~~Error~~ ~~error~~ of law occurring at the trial.
- 4 The changes made to this section by this legislative bill shall
- 5 apply to all persons, otherwise eligible in accordance with the
- 6 provisions of this section, whether convicted prior to, on, or subsequent
- 7 to the effective date of this section.
- 8 Sec. 12. Section 29-2103, Reissue Revised Statutes of Nebraska, is
- 9 amended to read:
- 10 29-2103 (1) A motion for new trial shall be made by written
- 11 application and may be filed either during or after the term of the court
- 12 at which the verdict was rendered.
- 13 (2) A motion for a new trial shall state the grounds under section
- 14 29-2101 which are the basis for the motion and shall be supported by
- 15 evidence as provided in section 29-2102.
- 16 (3) A motion for new trial based on the grounds set forth in
- 17 subdivision (1), (2), (3), (4), or (7) of section 29-2101 shall be filed
- 18 within ten days after the verdict was rendered unless such filing is
- 19 unavoidably prevented, and the grounds for such motion may be stated by

20 directly incorporating the appropriate language of section 29-2101
 21 without further particularity.
 22 (4)(a) Except as provided in subdivision (4)(b) of this section, a
 23 (4) A motion for new trial based on the grounds set forth in subdivision
 24 (5) of section 29-2101 shall be filed within a reasonable time after the
 25 discovery of the new evidence and cannot be filed more than five years
 26 after the date of the verdict, unless the motion and supporting documents
 27 show the new evidence could not with reasonable diligence have been
 28 discovered or and produced at trial and such evidence is so substantial
 29 that a different result may have occurred.
 30 (b) The time limitation in this subsection does not apply if the
 31 motion for a new trial involves a conviction for a Class I, IA, or IB
 1 felony.
 2 (5) A motion for new trial based on the grounds set forth in
 3 subdivision (6) of section 29-2101 shall be filed within ninety days
 4 after a final order is issued under section 29-4123 or within ninety days
 5 after the hearing if no final order is entered, whichever occurs first.
 6 (6) The changes made to this section by this legislative bill shall
 7 apply to all persons, otherwise eligible in accordance with the
 8 provisions of this section, whether convicted prior to, on, or subsequent
 9 to the effective date of this section.
 10 2. Renumber the remaining sections and correct the repealer
 11 accordingly.

Senator McDonnell requested a ruling of the Chair on whether the McKinney amendment is germane to the bill.

The Chair ruled the McKinney amendment is not germane to the bill.

Senator McKinney challenged the ruling of the Chair. The question is, "Shall the Chair be overruled?"

Senator McKinney moved for a call of the house. The motion prevailed with 22 ayes, 5 nays, and 22 not voting.

Senator McKinney requested a roll call vote, in reverse order, on the motion to overrule the Chair.

Voting in the affirmative, 4:

Cavanaugh, M. Hansen, M. Hunt McKinney

Voting in the negative, 31:

Aguilar	Cavanaugh, J.	Gragert	Lathrop	Stinner
Albrecht	Clements	Halloran	Lindstrom	Walz
Blood	DeBoer	Hilgers	Lowe	Williams
Bostelman	Dorn	Hilkemann	McDonnell	
Brandt	Erdman	Hughes	Moser	
Brewer	Flood	Jacobson	Murman	
Briese	Friesen	Kolterman	Slama	

Present and not voting, 5:

Day McCollister Pansing Brooks Vargas Wishart

Excused and not voting, 9:

Arch Geist Linehan Pahls Wayne
Bostar Hansen, B. Morfeld Sanders

The McKinney motion to overrule the Chair failed with 4 ayes, 31 nays, 5 present and not voting, and 9 excused and not voting.

The Chair was sustained.

The Chair declared the call raised.

Senator M. Cavanaugh offered the following motion:

[MO227](#)

Bracket until April 20, 2022.

SENATOR HUGHES PRESIDING

Pending.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 800. Placed on Final Reading.

[ST69](#)

The following changes, required to be reported for publication in the Journal, have been made:

1. In the E&R amendments, ER143:
 - a. On page 2, line 12, "and 77-2704.15" has been struck and "77-2501, 77-2502, 77-2503, 77-2505, 77-2704.15, and 81-523" inserted; and
 - b. On page 3, line 4, "to change provisions of the Affordable Housing Tax Credit Act;" has been inserted after the semicolon.
2. In the Standing Committee amendments, AM2035:
 - a. On page 227, line 2, "339, 341, and 343" has been struck and "338, 339, 340, 341, 342, 344, 345, 347, and 349" inserted; and
 - b. On page 228, line 10, "and 31-735" has been struck and "31-735, 77-2501, 77-2502, 77-2503, 77-2505, and 81-523" inserted.

LEGISLATIVE BILL 917A. Placed on Final Reading.

LEGISLATIVE BILL 1024A. Placed on Final Reading.

[ST71](#)

The following changes, required to be reported for publication in the Journal, have been made:

1. In the Wayne amendment, AM2752, on page 2, lines 11 and 21, "(1)" has been struck.

LEGISLATIVE BILL 1102. Placed on Final Reading.

LEGISLATIVE BILL 1102A. Placed on Final Reading.

(Signed) Terrell McKinney, Chairperson

AMENDMENT(S) - Print in Journal

Senator Day filed the following amendment to LB888:

AM2785

(Amendments to AM1995)

1 1. Strike the Wayne amendment, FA193.

Senator J. Cavanaugh filed the following amendment to LB921:

AM2768

(Amendments to Standing Committee amendments, AM2503)

1 1. Insert the following new sections:

2 Sec. 2. Section 29-3001, Reissue Revised Statutes of Nebraska, is

3 amended to read:

4 29-3001 (1) A prisoner in custody under sentence and claiming a
5 right to be released on the ground that there was such a denial or
6 infringement of the rights of the prisoner as to render the judgment void
7 or voidable under the Constitution of this state or the Constitution of
8 the United States, may file a verified motion, in the court which imposed
9 such sentence, stating the grounds relied upon and asking the court to
10 vacate or set aside the sentence.

11 (2) Unless the motion and the files and records of the case show to
12 the satisfaction of the court that the prisoner is entitled to no relief,
13 the court shall cause notice thereof to be served on the county attorney,
14 grant a prompt hearing thereon, and determine the issues and make
15 findings of fact and conclusions of law with respect thereto. If the
16 court finds that there was such a denial or infringement of the rights of
17 the prisoner as to render the judgment void or voidable under the
18 Constitution of this state or the Constitution of the United States, the
19 court shall vacate and set aside the judgment and shall discharge the
20 prisoner or resentence the prisoner or grant a new trial as may appear
21 appropriate. Proceedings under the provisions of sections 29-3001 to
22 29-3004 shall be civil in nature. Costs shall be taxed as in habeas
23 corpus cases.

24 (3) A court may entertain and determine such motion without
25 requiring the production of the prisoner, whether or not a hearing is
26 held. Testimony of the prisoner or other witnesses may be offered by
1 deposition. The court need not entertain a second motion or successive
2 motions for similar relief on behalf of the same prisoner.

3 (4) A one-year period of limitation shall apply to the filing of a
4 verified motion for postconviction relief. The one-year limitation period
5 shall run from the later of:

6 (a) The date the judgment of conviction became final by the
7 conclusion of a direct appeal or the expiration of the time for filing a
8 direct appeal;

9 (b) The date on which the factual predicate of the constitutional
10 claim or claims alleged could have been discovered through the exercise
11 of due diligence;

12 (c) The date on which an impediment created by state action, in
13 violation of the Constitution of the United States or the Constitution of
14 Nebraska or any law of this state, is removed, if the prisoner was
15 prevented from filing a verified motion by such state action;

16 (d) The date on which a constitutional claim asserted was initially
17 recognized by the Supreme Court of the United States or the Nebraska
18 Supreme Court, if the newly recognized right has been made applicable
19 retroactively to cases on postconviction collateral review; or

20 (e) The date on which the Supreme Court of the United States denies
21 a writ of certiorari or affirms a conviction appealed from the Nebraska

22 Supreme Court. This subdivision only applies if, within thirty days after
23 petitioning the Supreme Court of the United States for a writ of
24 certiorari, the prisoner files a notice in the district court of
25 conviction stating that the prisoner has filed such petition August 27,
26 2011.
27 Sec. 3. Section 43-279, Reissue Revised Statutes of Nebraska, is
28 amended to read:
29 43-279 (1) The adjudication portion of hearings shall be conducted
30 before the court without a jury, applying the customary rules of evidence
31 in use in trials without a jury. When the petition alleges the juvenile
1 to be within the provisions of subdivision (1), (2), (3)(b), or (4) of
2 section 43-247 and the juvenile or his or her parent, guardian, or
3 custodian appears with or without counsel, the court shall inform the
4 parties:
5 (a) Of the nature of the proceedings and the possible consequences
6 or dispositions pursuant to sections 43-284 to 43-286, 43-289, and 43-290
7 that may apply to the juvenile's case following an adjudication of
8 jurisdiction;
9 (b) Of such juvenile's right to counsel as provided in sections
10 43-272 and 43-273;
11 (c) Of the privilege against self-incrimination by advising the
12 juvenile, parent, guardian, or custodian that the juvenile may remain
13 silent concerning the charges against the juvenile and that anything said
14 may be used against the juvenile;
15 (d) Of the right to confront anyone who testifies against the
16 juvenile and to cross-examine any persons who appear against the
17 juvenile;
18 (e) Of the right of the juvenile to testify and to compel other
19 witnesses to attend and testify in his or her own behalf;
20 (f) Of the right of the juvenile to a speedy adjudication hearing;
21 and
22 (g) Of the right to appeal and have a transcript for such purpose.
23 After giving such warnings and admonitions, the court may accept an
24 in-court admission or answer of no contest by the juvenile of all or any
25 part of the allegations in the petition if the court has determined from
26 examination of the juvenile and those present that such admission or
27 answer of no contest is intelligently, voluntarily, and understandingly
28 made and with an affirmative waiver of rights and that a factual basis
29 for such admission or answer of no contest exists. The waiver of the
30 right to counsel shall satisfy section 43-3102. The court may base its
31 adjudication provided in subsection (2) of this section on such admission
1 or answer of no contest.
2 (2) If the juvenile denies the petition or stands mute the court
3 shall first allow a reasonable time for preparation if needed and then
4 consider only the question of whether the juvenile is a person described
5 by section 43-247. After hearing the evidence on such question, the court
6 shall make a finding and adjudication, to be entered on the records of
7 the court, whether or not the juvenile is a person described by
8 subdivision (1), (2), (3)(b), or (4) of section 43-247 based upon proof
9 beyond a reasonable doubt. If an Indian child is involved, the standard
10 of proof shall be in compliance with the Nebraska Indian Child Welfare
11 Act, if applicable.
12 (3) If the court shall find that the juvenile named in the petition
13 is not within the provisions of section 43-247, it shall dismiss the
14 case. If the court finds that the juvenile named in the petition is such
15 a juvenile, it shall make and enter its findings and adjudication
16 accordingly, designating which subdivision or subdivisions of section
17 43-247 such juvenile is within; the court shall allow a reasonable time
18 for preparation if needed and then proceed to an inquiry into the proper
19 disposition to be made of such juvenile.

20 Sec. 4. Section 43-280, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 43-280 No adjudication by the juvenile court upon the status of a
23 juvenile shall be deemed a conviction nor shall the adjudication operate
24 to impose any of the civil disabilities ordinarily resulting from
25 conviction. The adjudication and the evidence given in the court shall
26 not operate to disqualify such juvenile in any future civil or military
27 service application or appointment. Any admission, ~~answer of no contest,~~
28 confession, or statement made by the juvenile in court and admitted by
29 the court, in a proceeding under section 43-279, shall be inadmissible
30 against such juvenile in any criminal or civil proceeding but may be
31 considered by a court as part of a presentence investigation involving a
1 subsequent transaction.

2 Sec. 8. Section 83-4,134.01, Revised Statutes Cumulative Supplement,
3 2020, is amended to read:

4 83-4,134.01 (1) It is the intent of the Legislature to establish a
5 system of investigation and performance review in order to provide
6 increased accountability and oversight regarding the use of room
7 confinement for juveniles in a juvenile facility.

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

10 (a) Room confinement of a juvenile for longer than one hour during a
11 twenty-four-hour period shall be approved in writing by a supervisor in
12 the juvenile facility;

13 ~~(b) (a) Room confinement of a juvenile for longer than one hour~~
14 ~~during a twenty-four-hour period shall be documented and approved in~~
15 ~~writing by a supervisor in the juvenile facility. Documentation of the~~
16 ~~room confinement shall include the date of the occurrence; the race,~~
17 ~~ethnicity, age, and gender of the juvenile; the reason for placement of~~
18 ~~the juvenile in room confinement; an explanation of why less restrictive~~
19 ~~means were unsuccessful; the ultimate duration of the placement in room~~
20 ~~confinement in hours and minutes; facility staffing levels at the time of~~
21 ~~confinement; and any incidents of self-harm or suicide committed by the~~
22 ~~juvenile while he or she was isolated;~~

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

28 ~~(d) (e) The juvenile facility shall electronically submit a~~
29 ~~quarterly report quarterly to the Legislature on the juveniles placed in~~
30 ~~room confinement; the length of time, in hours and minutes, each juvenile~~
31 ~~was in room confinement; the race, ethnicity, age, and gender of each~~
1 ~~juvenile placed in room confinement; facility staffing levels at the time~~
2 ~~of confinement; and the reason each juvenile was placed in room~~
3 ~~confinement. The report shall specifically address each instance of room~~
4 ~~confinement of a juvenile for more than four hours, including all reasons~~
5 ~~why attempts to return the juvenile to the general population of the~~
6 ~~juvenile facility were unsuccessful. The report shall also detail all~~
7 ~~corrective measures taken in response to noncompliance with this section.~~

8 The report shall redact all personal identifying information but shall
9 provide individual, not aggregate, data. ~~The report shall be delivered~~
10 ~~electronically to the Legislature. The initial quarterly report shall be~~
11 ~~submitted within two weeks after the quarter ending on September 30,~~
12 ~~2016. Subsequent reports shall be submitted for the ensuing quarters~~
13 ~~within two weeks after the end of each quarter; and~~

14 ~~(e) By September 15, 2022, and by each September 15 thereafter, the~~
15 ~~juvenile facility shall electronically submit to the Legislature an~~
16 ~~annual summary report for the immediately preceding fiscal year. The~~
17 ~~summary report shall include the total number of available beds in the~~

18 facility; the total number of juveniles served; the total number of
 19 juveniles confined; the total number of occurrences of juvenile room
 20 confinement; the total number of confinement hours; the longest single
 21 period of room confinement experienced by a specific juvenile, in hours
 22 and minutes; the total number of incidents of room confinement lasting
 23 less than one hour; the total number of incidents lasting over four
 24 hours; and the total number of incidents lasting over twenty-four hours.
 25 The report shall redact all personal identifying information but shall,
 26 as required by this subdivision, provide individual, not aggregate data;
 27 and
 28 (f) (4) The Inspector General of Nebraska Child Welfare shall review
 29 all data collected pursuant to this section. The Inspector General may
 30 request that such data be provided to the Inspector General's office in a
 31 format the Inspector General determines is necessary for its review. The
 1 Inspector General shall review the data in order to assess the use of
 2 room confinement for juveniles in each juvenile facility and prepare an
 3 annual report of his or her findings, including, but not limited to,
 4 identifying changes in policy and practice which may lead to decreased
 5 use of such confinement as well as model evidence-based criteria to be
 6 used to determine when a juvenile should be placed in room confinement.
 7 The report shall be delivered electronically to the Legislature on an
 8 annual basis.
 9 (3) ~~The use of consecutive periods of room confinement to avoid the~~
 10 ~~intent or purpose of this section is prohibited.~~
 11 (3) (4) Any juvenile facility which is not a residential child-
 12 caring agency which fails to comply with the requirements of this section
 13 is subject to disciplinary action as provided in section 83-4,134. Any
 14 juvenile facility which is a residential child-caring agency which fails
 15 to comply with the requirements of this section is subject to
 16 disciplinary action as provided in section 71-1940.
 17 2. Renumber the remaining section and correct the repealer
 18 accordingly.

Senator Flood filed the following amendment to LB709:
AM2675

(Amendments to Standing Committee amendments, AM1936)

1 1. On page 7, after line 30 insert the following new subsection:
 2 "(5) This section does not apply to any occupation regulated by the
 3 Board of Engineers and Architects, the Department of Banking and Finance,
 4 or the State Real Estate Commission."
 5 2. On page 12, line 30, after the second comma insert "the Board of
 6 Engineers and Architects, the Department of Banking and Finance, the
 7 State Real Estate Commission."
 8 3. On page 18, after line 18 insert the following new subsection:
 9 "(10) This section does not apply to any occupation regulated by the
 10 Board of Engineers and Architects, the Department of Banking and Finance,
 11 or the State Real Estate Commission."

RESOLUTION(S)

LEGISLATIVE RESOLUTION 441. Introduced by Health and Human Services Committee: Arch, 14, Chairperson; Cavanaugh, M., 6; Day, 49; Hansen, B., 16; Murman, 38; Walz, 15; Williams, 36.

WHEREAS, the fortieth anniversary of the Foster Care Review Office is on July 1, 2022; and

WHEREAS, the Legislature passed Legislative Bill 714 in 1982 to establish the Foster Care Review Board, the precursor to the Foster Care Review Office, in an effort to improve outcomes for children in foster care in Nebraska; and

WHEREAS, Governor Charles Thone appointed the first members of the Foster Care Review Board which held its first meeting on August 26, 1982; and

WHEREAS, the Legislature passed Legislative Bill 998 in 2012, renaming the agency the Foster Care Review Office and replacing the state board with the Foster Care Advisory Committee, consisting of five members appointed by the Governor and confirmed by the Legislature; and

WHEREAS, the Foster Care Review Office independently tracks children in foster care, reviews the cases of children utilizing local volunteer citizen review boards, collects and analyzes data to monitor and evaluate the effectiveness of care for children in foster or trial home visit placements, submits outcome reports quarterly and annually to the Legislature, and makes individual and systemic recommendations on conditions and outcomes for children of Nebraska in foster care; and

WHEREAS, over three hundred twenty-five volunteer foster care review board members serving on fifty-three local foster care review boards across Nebraska meet monthly to review cases of children in foster care in order to promote safety, permanency, and well-being for children and youth in foster care; and

WHEREAS, the volunteer foster care review board members collectively contribute over thirty thousand hours of time annually reviewing the cases of children and youth in the foster care system of Nebraska to ensure that services are in place, that children are in safe and appropriate placements, and that children find timely permanency; and

WHEREAS, over the last forty years, over one hundred fifty thousand cases of children in foster care have been reviewed by local foster care review boards which submitted findings and recommendations to courts across the state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature congratulates the Foster Care Review Office for forty years of pursuing meaningful change, great outcomes, and hopeful futures for children in foster care.

2. That the Legislature recognizes all past and current Foster Care Review Office volunteers and staff for their dedicated service to the children and families of Nebraska.

3. That copies of this resolution be sent to the Foster Care Review Offices in Lincoln and Omaha.

Laid over.

LEGISLATIVE RESOLUTION 442. Introduced by Erdman, 47.

WHEREAS, May 30, 2022, marks the one hundredth anniversary of the dedication of the Lincoln Memorial in Washington, D.C.; and

WHEREAS, the National Park Service held a centennial anniversary celebration of the dedication of the Lincoln Memorial honoring the legacy of Abraham Lincoln, the sixteenth president of the United State of America, on March 26, 2022; and

WHEREAS, the Bayard High School choir, under the direction of choir director Linda Pilkington, was a featured choir at the celebration and sang four patriotic songs; and

WHEREAS, the Bayard High School choir sang with the Massed Honor Choir, consisting of choirs from all fifty states.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature congratulates the twenty-nine member Bayard High School choir for being selected to perform at the National Park Service's centennial anniversary celebration of the dedication of the Lincoln Memorial and the legacy of Abraham Lincoln.

2. That copies of this resolution be sent to Bayard High School and to Linda Pilkington.

Laid over.

LEGISLATIVE RESOLUTION 443. Introduced by Erdman, 47.

WHEREAS, the 2022 Nebraska State Athletic Association Basketball Championships were held March 7 through 12 in Lincoln, Nebraska; and

WHEREAS, Coach Dave Kuhlen led the Bridgeport High School Bulldogs girls basketball team to an overall record of 26-2; and

WHEREAS, the Bulldogs girls basketball team played in the high school's first ever Class C-2 Girls State Basketball Championship game; and

WHEREAS, the team finished second in the state after losing to Saint Cecilia Hastings by a score of 40-38.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature congratulates the Bridgeport High School Bulldogs girls basketball team for playing in the school's first Class C-2 Girls State Basketball Championship game and finishing in second place.

2. That copies of this resolution be sent to the Bridgeport High School and Coach Dave Kuhlen.

Laid over.

GENERAL FILE

LEGISLATIVE BILL 709. Title read. Considered.

Committee [AM1936](#), found on page 696, was offered.

Senator Lowe requested a division of the question on the committee amendment.

The Chair sustained the division of the question.

The first committee amendment is as follows:

[AM2787](#) is available in the Bill Room.

The second committee amendment is as follows:

[AM2786](#)

1 1. Strike the original sections and insert the following new
 2 sections:
 3 Sec. 7. (1) An individual who has a criminal conviction may submit
 4 to the appropriate occupational board an application for an occupational
 5 license, government certification, or state recognition of the
 6 individual's personal qualifications and may include with the application
 7 additional information about the individual's current circumstances,
 8 mitigating factors, and other evidence of rehabilitation, including:
 9 (a) The age of the individual when the individual committed the
 10 offense;
 11 (b) The time elapsed since the offense;
 12 (c) The circumstances and nature of the offense;
 13 (d) The completion of the criminal sentence;
 14 (e) The completion of, or active participation in, rehabilitative
 15 drug or alcohol treatment;
 16 (f) Testimonials and recommendations, which may include a progress
 17 report from the individual's probation or parole officer;
 18 (g) Other evidence of rehabilitation;
 19 (h) Education and training;
 20 (i) Employment history;
 21 (j) Employment aspirations;
 22 (k) Family responsibilities at the time of application;
 23 (l) Whether the individual is required to be bonded in the
 24 occupation; and
 25 (m) Other information the individual submits to the appropriate
 26 occupational board.
 27 (2) Upon receipt of the application pursuant to subsection (1) of
 1 this section and any applicable fees, the appropriate occupational board
 2 shall make a determination of whether the individual's criminal
 3 conviction disqualifies the individual from obtaining such occupational
 4 license, government certification, or state recognition of the
 5 individual's personal qualifications from that occupational board. In
 6 making such determination, an individual's criminal history shall
 7 disqualify the individual from obtaining an occupational license,
 8 government certification, or state recognition of the individual's
 9 personal qualifications only if:
 10 (a) Beginning January 1, 2024, the individual has a felony
 11 conviction expressly listed as a disqualifying offense in the statutes
 12 governing the occupation;
 13 (b) The individual's conviction directly and specifically relates to
 14 the duties and responsibilities of the occupation; and
 15 (c) The individual obtaining such license, certification, or state
 16 recognition of the individual's personal qualifications would pose a
 17 direct and substantial risk to public safety because the individual has
 18 not been rehabilitated, as evidenced by information described in
 19 subsection (1) of this section, to safely perform the duties and
 20 responsibilities of the occupation.

21 (3) An individual shall not be required to disclose nor shall
 22 consideration be given in a determination under this section to the
 23 following:
 24 (a) A deferred adjudication, participation in a diversion program,
 25 or an arrest not followed by a conviction;
 26 (b) A conviction of an offense for which no sentence of
 27 incarceration is statutorily authorized;
 28 (c) A conviction that has been sealed, annulled, dismissed,
 29 expunged, or pardoned;
 30 (d) A juvenile adjudication;
 31 (e) A nonviolent misdemeanor;
 1 (f) A conviction older than three years for which the individual was
 2 not incarcerated; or
 3 (g) A conviction for which the individual's incarceration ended more
 4 than three years before the date of the application except for a
 5 conviction of a felony related to:
 6 (i) A sexual act subject to criminal penalties as provided in
 7 sections 28-317 to 28-322.05;
 8 (ii) Fraud subject to criminal penalties as provided in sections
 9 28-505, 28-631, 28-638, 28-639, 28-640, and 28-935;
 10 (iii) Assault in the first or second degree as provided in sections
 11 28-308 and 28-309;
 12 (iv) Robbery as provided in section 28-324;
 13 (v) Child abuse as provided in section 28-707;
 14 (vi) Arson as provided in sections 28-502, 28-503, and 28-504;
 15 (vii) Theft as provided in section 28-511;
 16 (viii) Kidnapping as provided in section 28-313;
 17 (ix) Manslaughter as provided in section 28-305; or
 18 (x) Murder as provided in sections 28-303, 28-304, and 28-306.
 19 (4) The individual may appeal the determination of the occupational
 20 board. The appeal shall be in accordance with the Administrative
 21 Procedure Act.
 22 Sec. 10. Section 84-947, Revised Statutes Cumulative Supplement,
 23 2020, is amended to read:
 24 84-947 (1) The fundamental right of an individual to pursue an
 25 occupation includes the right of an individual with a criminal history to
 26 obtain an occupational license, government certification, or state
 27 recognition of the individual's personal qualifications.
 28 (2)(a) An individual who has a criminal conviction may submit to the
 29 appropriate occupational board a preliminary application for an
 30 occupational license, government certification, or state recognition of
 31 the individual's personal qualifications for a determination as to
 1 whether the individual's criminal conviction would disqualify the
 2 individual from obtaining the occupational license, government
 3 certification, or state recognition of the individual's personal
 4 qualifications from that occupational board. The preliminary application
 5 may be submitted at any time, including prior to obtaining required
 6 education or paying any fee, other than the fee for the preliminary
 7 application if required under subsection (9) (7) of this section.
 8 (b) The individual may include with the preliminary application
 9 additional information about the individual's current circumstances,
 10 mitigating factors, and other evidence of rehabilitation, including:
 11 including the time since the offense, completion of the criminal
 12 sentence, other evidence of rehabilitation, testimonials, employment
 13 history, and employment aspirations.
 14 (i) The age of the individual when the individual committed the
 15 offense;
 16 (ii) The time elapsed since the offense;
 17 (iii) The circumstances and nature of the offense;
 18 (iv) The completion of the criminal sentence;

19 (v) The completion of, or active participation in, rehabilitative
 20 drug or alcohol treatment;
 21 (vi) Testimonials and recommendations, which may include a progress
 22 report from the individual's probation or parole officer;
 23 (vii) Other evidence of rehabilitation;
 24 (viii) Education and training;
 25 (ix) Employment history;
 26 (x) Employment aspirations;
 27 (xi) Family responsibilities at the time of the application;
 28 (xii) Whether the individual is required to be bonded in the
 29 occupation; and
 30 (xiii) Other information the individual submits to the board.
 31 (3) Upon receipt of a preliminary application under subsection (2)
 1 of this section and a fee if required under subsection (9) (7) of this
 2 section, the appropriate occupational board shall make a determination of
 3 whether the individual's criminal conviction would disqualify the
 4 individual from obtaining an occupational license, government
 5 certification, or state recognition of the individual's personal
 6 qualifications from that occupational board in accordance with subsection
 7 (4) of this section. In making such determination, an individual's
 8 criminal history disqualifies the individual from obtaining an
 9 occupational license, government certification, or state recognition of
 10 the individual's personal qualifications only if: -
 11 (a) Beginning January 1, 2024, the individual has a felony
 12 conviction expressly listed as a disqualifying offense in the statutes
 13 governing the occupation;
 14 (b) The individual's conviction directly and specifically relates to
 15 the duties and responsibilities of the occupation; and
 16 (c) The individual obtaining such license, certification, or state
 17 recognition would pose a direct and substantial risk to public safety
 18 because the individual has not been rehabilitated, as evidenced by
 19 information described in subdivision (2)(b) of this section, to safely
 20 perform the duties and responsibilities of the occupation.
 21 (4) In determining whether an individual's criminal history is
 22 disqualifying under subsection (3) of this section, the occupational
 23 board shall only make an adverse determination after:
 24 (a) The executive director or employee designee of the occupational
 25 board issues a preliminary adverse determination after completing the
 26 following actions:
 27 (i) Providing an opportunity for an informal meeting with the
 28 individual, which shall be held in-person, by remote video, or by
 29 teleconference within sixty days after receiving an application for
 30 consideration. The individual shall be allowed to include character
 31 witnesses at such informal meeting. The executive director shall not make
 1 an adverse determination based on an individual's decision not to attend
 2 an informal meeting or not to include character witnesses; and
 3 (ii) Issuing and submitting a written preliminary determination to
 4 the appropriate occupational board for consideration and ratification
 5 within sixty days after receiving preliminary application for
 6 consideration or of the informal meeting, whichever is later. A
 7 preliminary adverse decision shall not become final without consideration
 8 and ratification by the appropriate occupational board; and
 9 (b) The occupational board ratifies the preliminary adverse
 10 determination and issues a final adverse determination in writing within
 11 ninety days after the issuance of the preliminary adverse determination.
 12 (5) (4) The determination of the occupational board shall issue its
 13 determination in writing within ninety days after receiving a preliminary
 14 application under subsection (2) of this section. The determination shall
 15 include findings of fact and conclusions of law, including clear and
 16 convincing evidence for any adverse determination made by the

17 occupational board. If the occupational board determines that the
18 individual's criminal conviction would disqualify the individual, the
19 occupational board may advise the individual of any action the individual
20 may take to remedy the disqualification. If the occupational board finds
21 that the individual has been convicted of a subsequent criminal
22 conviction, the occupational board may rescind a determination upon
23 finding that the subsequent criminal conviction would be disqualifying
24 under subsection (3) of this section.

25 (6) An individual shall not be required to disclose nor shall
26 consideration be given in a determination under this section to the
27 following:

28 (a) A deferred adjudication, participation in a diversion program,
29 or an arrest not followed by a conviction;

30 (b) A conviction of an offense for which no sentence of
31 incarceration is statutorily authorized;

1 (c) A conviction that has been sealed, annulled, dismissed,
2 expunged, or pardoned;

3 (d) A juvenile adjudication;

4 (e) A nonviolent misdemeanor;

5 (f) A conviction older than three years for which the individual was
6 not incarcerated; or

7 (g) A conviction for which the individual's incarceration ended more
8 than three years before the date of the application except for a
9 conviction of a felony related to:

10 (i) A sexual act subject to criminal penalties as provided in
11 sections 28-317 to 28-322.05;

12 (ii) Fraud subject to criminal penalties as provided in sections
13 28-505, 28-631, 28-638, 28-639, 28-640, and 28-935;

14 (iii) Assault in the first or second degree as provided in sections
15 28-308 and 28-309;

16 (iv) Robbery as provided in section 28-324;

17 (v) Child abuse as provided in section 28-707;

18 (vi) Arson as provided in sections 28-502, 28-503, and 28-504;

19 (vii) Theft as provided in section 28-511;

20 (viii) Kidnapping as provided in section 28-313;

21 (ix) Manslaughter as provided in section 28-305; or

22 (x) Murder as provided in sections 28-303, 28-304, and 28-306.

23 (7) (5) The individual may appeal the determination of the
24 occupational board. The appeal shall be in accordance with the
25 Administrative Procedure Act.

26 (8) (6) An individual shall not file another preliminary application
27 under this section with the same occupational board within two years
28 after the final decision on the previous preliminary application, except
29 that if the individual has taken action to remedy the disqualification as
30 advised by the occupational board, the individual may file another
31 preliminary application under this section with the same occupational
1 board six months after the final decision on the previous preliminary
2 application.

3 (9) (7) An occupational board may charge a fee not to exceed one
4 hundred dollars for each preliminary application filed pursuant to this
5 section. The fee is intended to offset the administrative costs incurred
6 under this section. If an individual's income at the time of the
7 preliminary application is at or below three hundred percent of the
8 federal poverty level, such individual may submit with the preliminary
9 application a request for a waiver of the application fee along with
10 supporting documentation to show such individual's income. If the
11 occupational board determines that the individual's income is at or below
12 three hundred percent of the federal poverty level, the occupational
13 board shall waive such individual's application fee.

The first committee amendment, [AM2787](#), found in this day's Journal, was offered.

Senator Brewer withdrew his amendment, [AM2171](#), found on page 775.

Senator Flood withdrew his amendment, [AM2521](#), found on page 931.

Senator Hilkemann offered his amendment, [AM2248](#), found on page 976, to the first committee amendment.

Senator Hilkemann moved for a call of the house. The motion prevailed with 18 ayes, 4 nays, and 27 not voting.

Senator Hilkemann requested a roll call vote on his amendment.

Voting in the affirmative, 8:

Bostelman	Dorn	Kolterman	Wayne
Brandt	Hilkemann	Stinner	Williams

Voting in the negative, 20:

Aguilar	Briese	Halloran	Lindstrom	Moser
Albrecht	Clements	Hilgers	McCollister	Murman
Blood	Flood	Hughes	McDonnell	Pansing Brooks
Brewer	Friesen	Jacobson	McKinney	Slama

Present and not voting, 8:

Bostar	Cavanaugh, M.	Hansen, M.	Lowe
Cavanaugh, J.	DeBoer	Hunt	Walz

Excused and not voting, 13:

Arch	Geist	Lathrop	Pahls	Wishart
Day	Gragert	Linehan	Sanders	
Erdman	Hansen, B.	Morfeld	Vargas	

The Hilkemann amendment lost with 8 ayes, 20 nays, 8 present and not voting, and 13 excused and not voting.

The Chair declared the call raised.

Senator McCollister withdrew his amendment, [AM2707](#), found on page 1196.

Senator Flood offered the following amendment to the first committee amendment:

[AM2791](#)

(Amendments to AM2787)

1 1. On page 10, line 15, after the second comma insert "the Board of
2 Engineers and Architects, the State Real Estate Commission,".

SPEAKER HILGERS PRESIDING

SENATOR HUGHES PRESIDING

The Flood amendment was adopted with 25 ayes, 0 nays, 12 present and not voting, and 12 excused and not voting.

Senator Hilkemann offered the following motion:

[MO228](#)

Recommit to Government, Military and Veterans Affairs Committee.

Pending.

SELECT FILE

LEGISLATIVE BILL 1144. [ER161](#), found on page 1096, was adopted.

Senator Friesen offered the following amendment:

[AM2679](#)

(Amendments to E&R amendments, ER161)

1 1. Insert the following new section:

2 Sec. 17. (1) For purposes of this section:

3 (a) Authority means any county, city of the first class, city of the
4 second class, or village whose authorization is necessary prior to the
5 deployment of a wireless facility;

6 (b)(i) Base station means a structure or equipment at a fixed
7 location that enables Federal Communications Commission-licensed or
8 authorized wireless communications between user equipment and a
9 communications network. The term does not encompass a tower as defined in
10 this section or any equipment associated with a tower. The term includes,
11 but is not limited to:

12 (A) Equipment associated with wireless communications services such
13 as private, broadcast, and public safety services, as well as unlicensed
14 wireless services and fixed wireless services such as microwave backhaul;
15 (B) Radio transceivers, antennas, coaxial or fiber-optic cable,
16 regular and backup power supplies, and comparable equipment, regardless
17 of technological configuration, including distributed antenna systems and
18 small-cell networks; and

19 (C) Any structure other than a tower that, at the time the relevant
20 application is filed with the authority, supports or houses equipment
21 described in subdivision (1)(b)(i)(A) or (B) of this section that has
22 been reviewed and approved under the applicable zoning or siting process,
23 or under another state or local regulatory review process, even if the
24 structure was not built for the sole or primary purpose of providing such
25 support.

26 (ii) Base station does not include any structure that, at the time
1 the relevant application is filed with the authority, does not support or
2 house equipment described in subdivision (1)(b)(i)(A) or (B) of this
3 section;

4 (c) Collocate or collocation means the mounting or installation of
5 transmission equipment on an eligible support structure for the purpose
6 of transmitting or receiving radio frequency signals for communications

7 purposes:

8 (d) Eligible facilities request means any request for modification
 9 of an existing tower or base station that does not substantially change
 10 the physical dimensions of such tower or base station involving (i)
 11 collocation of new transmission equipment, (ii) removal of transmission
 12 equipment, or (iii) replacement of transmission equipment;

13 (e) Eligible support structure means any tower or base station as
 14 defined in this section that is existing at the time the relevant
 15 application is filed with the authority;

16 (f) Site means for towers other than towers in the public rights-of-
 17 way, the current boundaries of the leased or owned property surrounding
 18 the tower and any access or utility easements currently related to the
 19 site, and, for other eligible support structures, further restricted to
 20 that area in proximity to the structure and to other transmission
 21 equipment already deployed on the ground. The current boundaries of a
 22 site are the boundaries that existed as of the date that the original
 23 support structure or a modification to that structure was last reviewed
 24 and approved by a state or local government, if the approval of the
 25 modification occurred prior to the passage of the federal Middle Class
 26 Tax Relief and Job Creation Act of 2012 or otherwise outside of the
 27 process provided in section 6409(a) of such act;

28 (g) Small wireless facility has the same meaning as in section
 29 86-1226;

30 (h) Substantially change means a modification that substantially
 31 changes the physical dimensions of an eligible support structure if such
 1 modification meets any of the following criteria:

2 (i) For towers other than towers in the public rights-of-way, it
 3 increases the height of the tower by more than ten percent or by the
 4 height of one additional antenna array with separation from the nearest
 5 existing antenna not to exceed twenty feet, whichever is greater. For
 6 other eligible support structures, it increases the height of the
 7 structure by more than ten percent or more than ten feet, whichever is
 8 greater. Changes in height should be measured from the original support
 9 structure in cases where deployments are or will be separated
 10 horizontally, such as on building rooftops. In other circumstances,
 11 changes in height should be measured from the dimensions of the tower or
 12 base station, inclusive of originally approved appurtenances and any
 13 modifications that were approved prior to the passage of the federal
 14 Middle Class Tax Relief and Job Creation Act of 2012;

15 (ii) For towers other than towers in the public rights-of-way, it
 16 involves adding an appurtenance to the body of the tower that would
 17 protrude from the edge of the tower more than twenty feet, or more than
 18 the width of the tower structure at the level of the appurtenance,
 19 whichever is greater. For other eligible support structures, it involves
 20 adding an appurtenance to the body of the structure that would protrude
 21 from the edge of the structure by more than six feet;

22 (iii) For any eligible support structure, it involves installation
 23 of more than the standard number of new equipment cabinets for the
 24 technology involved, but not to exceed four cabinets, or, for towers in
 25 the public rights-of-way and base stations, it involves installation of
 26 any new equipment cabinets on the ground if there are no pre-existing
 27 ground cabinets associated with the structure, or involves installation
 28 of ground cabinets that are more than ten percent larger in height or
 29 overall volume than any other ground cabinets associated with the
 30 structure;

31 (iv) It entails any excavation or deployment outside the current
 1 site, except that for towers other than towers in the public rights-of-
 2 way, it entails any excavation or deployment of transmission equipment
 3 outside of the current site by more than thirty feet in any direction.
 4 The site boundary from which the thirty feet is measured excludes any

5 access or utility easements currently related to the site;
6 (v) It would defeat the concealment elements of the eligible support
7 structure; or
8 (vi) It does not comply with conditions associated with the siting
9 approval of the construction or modification of the eligible support
10 structure or base station equipment, except that this limitation does not
11 apply to any modification that is noncompliant only in a manner that
12 would not exceed the thresholds identified in subdivisions (1)(h)(i)
13 through (iv) of this section;
14 (i) Tower means any structure built for the sole or primary purpose
15 of supporting any Federal Communications Commission-licensed or
16 authorized antennas and their associated facilities, including structures
17 that are constructed for wireless communications services, including, but
18 not limited to, private, broadcast, and public safety services, as well
19 as unlicensed wireless services and fixed wireless services such as
20 microwave backhaul, and the associated site;
21 (j) Transmission equipment means equipment that facilitates
22 transmission for any Federal Communications Commission-licensed or
23 authorized wireless communication service, including, but not limited to,
24 radio transceivers, antennas, coaxial or fiber-optic cable, and regular
25 and backup power supply. The term includes equipment associated with
26 wireless communications services, including, but not limited to, private,
27 broadcast, and public safety services, as well as unlicensed wireless
28 services and fixed wireless services such as microwave backhaul;
29 (k)(i) Wireless facility means equipment at a fixed location that
30 enables wireless communications between user equipment and a
31 communications network including (A) equipment associated with wireless
1 communications and (B) radio transceivers, antennas, coaxial or fiber-
2 optic cable, regular power supply, and small back-up battery, regardless
3 of technological configuration.
4 (ii) Wireless facility does not include a small wireless facility.
5 Wireless facility does not include (A) the structure or improvements on,
6 under, or within the equipment which is collocated, (B) coaxial or fiber-
7 optic cable that is between wireless structures or utility poles or that
8 is otherwise not immediately adjacent to, or directly associated with, a
9 particular antenna, or (C) a wireline backhaul facility;
10 (l) Wireless support structure means a structure, such as a tower or
11 other existing or proposed structure, designed to support or capable of
12 supporting wireless facilities other than a structure designed solely for
13 the collocation of a small wireless facility; and
14 (m) Wireline backhaul facility has the same meaning as in section
15 86-1235.
16 (2)(a) Subject to the limitations in this section, an authority may
17 fix and charge an application fee for the submission, processing, and
18 review of an eligible facilities request to collocate a new wireless
19 facility, site a new wireless support structure, or substantially change
20 an existing wireless facility or wireless support structure. The
21 application fee shall be based on the authority's actual, direct, and
22 objectively reasonable costs incurred for all aspects of an application
23 review process. Any costs incurred by an authority for review by an
24 outside consultant shall be included in the application fee, be based on
25 objectively reasonable costs, and not exceed the usual and customary fee
26 charged for the services provided. The charges included in the
27 application fee or amended application fee shall be itemized and
28 separately identified and disclosed to the applicant.
29 (b) The application fee imposed by an authority shall not be used
30 for (i) travel time or expenses, meals, or overnight accommodations
31 incurred in the review of an application by an outside consultant or (ii)
1 reimbursement for a consultant that is based on a contingent fee or a
2 results-based arrangement.

3 (3) Nothing in this section shall be construed to otherwise limit
 4 alter, or expand an authority's existing ability to charge an applicant a
 5 rate or fee for the use of or access to a public right-of-way for the
 6 construction, installation, maintenance, modification, or operation of
 7 fiber-optic cables, coaxial cables, or conduit facilities.
 8 (4) Nothing in this section shall be construed to apply to an
 9 application submitted to an authority pursuant to the Small Wireless
 10 Facilities Deployment Act.
 11 (5) A reviewing authority shall be subject to a sixty-day shot clock
 12 to review and approve or deny an application for an eligible facilities
 13 request or modification. For purposes of this subsection, the authority
 14 shall follow the guidelines set by the Federal Communications Commission
 15 in its decisions issued in FCC 14-153, 29 FCC Record 12865 (16), and FCC
 16 20-75, 35 FCC Record 5977 (7), as guidance for compliance with section
 17 6409(a) of the federal Middle Class Tax Relief and Job Creation Act of
 18 2012, 47 U.S.C. 1455, and 47 C.F.R. 1.6100(c)(2), as such order, ruling,
 19 section, act, and regulations existed on January 1, 2022.
 20 (6) This section shall terminate on September 30, 2026, unless
 21 extended by the Legislature.
 22 2. On page 15, line 28, strike "and 18" and insert "17, and 19".
 23 3. Renumber the remaining sections accordingly.

SENATOR WILLIAMS PRESIDING

Senator Friesen withdrew his amendment.

Senator Flood withdrew his amendment, [AM2408](#), found on page 1044.

Senator Flood offered the following amendment:

[AM2757](#)

(Amendments to E&R amendments, ER161)

1 1. Insert the following new section:
 2 Sec. 11. Any political subdivision of the state that allocates funds
 3 received under the federal American Rescue Plan Act of 2021 for eligible
 4 broadband infrastructure projects may coordinate with the commission by
 5 mutual consent to administer such federal funds in a manner consistent
 6 with the Nebraska Broadband Bridge Act.
 7 2. On page 2, line 4, strike "section" and insert "sections 86-1307
 8 and".
 9 3. On page 8, line 11, strike "section 10" and insert "sections 10
 10 and 11".
 11 4. On page 11, line 31, strike "may" and insert "shall".
 12 5. On page 12, line 2, after "area" insert "in which the provider
 13 submitting the challenge states that broadband service is currently
 14 available at minimum speeds of one hundred megabits per second for
 15 downloading and twenty megabits per second for uploading"; in line 16
 16 strike beginning with "provider" through the second "the", show as
 17 stricken, and insert "commission shall impose a civil penalty for each
 18 day such provider fails to provide service after the expiration of such
 19 eighteen-month period, and such provider shall not challenge any grant
 20 application or make any application for a grant under the Nebraska
 21 Broadband Bridge Act for the"; and in line 17 after "failure" insert "to
 22 provide such service".
 23 6. On page 13, line 29, strike "11 to 16" and insert "12 to 17".
 24 7. On page 14, line 7, strike "13" and insert "14".
 25 8. On page 15, line 14, strike "14" and insert "15"; and in line 28
 26 strike "11, 12, 13, 14, 15, 16, and 18" and insert "12, 13, 14, 15, 16,
 1 17, and 19".
 2 9. Renumber the remaining sections accordingly.

The Flood amendment was adopted with 29 ayes, 0 nays, 3 present and not voting, and 17 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 876. [ER162](#), found on page 1110, was adopted.

Senator Briese withdrew his amendment, [AM2276](#), found on page 789.

Senator Geist withdrew her amendment, [AM2282](#), found on page 804.

Senator Geist offered her amendment, [AM2665](#), found on page 1136.

Senator Geist withdrew her amendment.

Senator Blood offered her amendment, [AM2666](#), found on page 1151.

Senator Slama moved for a call of the house. The motion prevailed with 22 ayes, 3 nays, and 24 not voting.

Senator Blood requested a roll call vote, in reverse order, on her amendment.

Voting in the affirmative, 22:

Aguilar	Brandt	Flood	Moser	Wayne
Albrecht	Brewer	Hansen, M.	Murman	Wishart
Blood	Briese	Lowe	Pansing Brooks	
Bostar	DeBoer	McDonnell	Slama	
Bostelman	Dorn	McKinney	Walz	

Voting in the negative, 9:

Friesen	Hughes	Kolterman	McCollister	Williams
Hilkemann	Jacobson	Lindstrom	Stinner	

Present and not voting, 1:

Halloran

Excused and not voting, 17:

Arch	Day	Hansen, B.	Linehan	Vargas
Cavanaugh, J.	Erdman	Hilgers	Morfeld	
Cavanaugh, M.	Geist	Hunt	Pahls	
Clements	Gragert	Lathrop	Sanders	

The Blood amendment lost with 22 ayes, 9 nays, 1 present and not voting, and 17 excused and not voting.

The Chair declared the call raised.

Senator Briese offered the following amendment:

[AM2764](#)

(Amendments to E&R amendments, ER162)

1 1. Strike section 6 and insert the following new section:

2 Sec. 6. Section 2-1208, Revised Statutes Supplement, 2021, is

3 amended to read:

4 2-1208 (1)(a) For all race meetings, every corporation or

5 association licensed under the provisions of sections 2-1201 to 2-1218

6 relating to horseracing shall pay the tax imposed by section 2-1208.01

7 and shall also pay to the commission:

8 (i) Beginning on the effective date of this act through June 30,

9 2023, the sum of sixty-four one hundredths of one percent of the gross

10 sum wagered by the parimutuel method at each licensed racetrack enclosure

11 during the calendar year; -

12 (ii) Beginning July 1, 2023, through June 30, 2024, the sum of one

13 percent of the gross sum wagered by the parimutuel method at the licensed

14 racetrack enclosure during the previous calendar year; and

15 (iii) Beginning July 1, 2024, and each year thereafter, the sum of

16 two percent of the gross sum wagered by the parimutuel method at the

17 licensed racetrack enclosure during the previous calendar year.

18 (b) For race meetings devoted principally to running live races, the

19 licensee shall pay to the commission the sum of one hundred ~~forty~~ dollars

20 for each live racing day that the licensee serves as the host track for

21 intrastate simulcasting and fifty ~~twenty-five~~ dollars for any other live

22 racing day.

23 (2) No other license tax, permit tax, occupation tax, or excise tax

24 or racing fee, except as provided in this section and in sections 2-1203

25 and 2-1208.01, relating to horseracing shall be levied, assessed, or

26 collected from any such licensee by the state or by any county, township,

1 district, city, village, or other governmental subdivision or body having

2 power to levy, assess, or collect any such tax or fee.

The Briese amendment was adopted with 26 ayes, 0 nays, 5 present and not voting, and 18 excused and not voting.

Pending.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 852. Placed on Final Reading.

LEGISLATIVE BILL 902. Placed on Final Reading.

LEGISLATIVE BILL 902A. Placed on Final Reading.

LEGISLATIVE BILL 977. Placed on Final Reading.

LEGISLATIVE BILL 977A. Placed on Final Reading.

LEGISLATIVE BILL 1016. Placed on Final Reading.

LEGISLATIVE BILL 1068. Placed on Final Reading.

LEGISLATIVE BILL 1068A. Placed on Final Reading.

LEGISLATIVE BILL 1069. Placed on Final Reading.

(Signed) Terrell McKinney, Chairperson

AMENDMENT(S) - Print in Journal

Senator Flood filed the following amendment to [LB709](#):
[AM2792](#)

(Amendments to AM2786)

- 1 1. On page 3, after line 21 insert the following new subsection:
- 2 "~~(5) This section does not apply to any occupation regulated by the~~
- 3 ~~Board of Engineers and Architects or the State Real Estate Commission.~~".
- 4 2. On page 8, after line 13 insert the following new subsection:
- 5 "~~(10) This section does not apply to any occupation regulated by the~~
- 6 ~~Board of Engineers and Architects or the State Real Estate Commission.~~".

Senator Lowe filed the following amendment to [LB792](#):
[FA206](#)

Amend AM2700: Line 3 strike \$3,000,000 and replace with \$500,000.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 444. Introduced by Walz, 15.

WHEREAS, the 2022 High School Slam Dunk and 3-Point Championships were held on March 29, 2022, in New Orleans, Louisiana; and

WHEREAS, Taylor McCabe of Fremont High School competed in the 2022 High School Slam Dunk and 3-Point Championships and won the girls three-pointer contest; and

WHEREAS, Taylor McCabe was named the Lincoln Journal Star's Super-State honorary captain and the Nebraska Gatorade Player of the Year; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature congratulates Taylor McCabe on winning the girls three-pointer contest at the 2022 High School Slam Dunk and 3-Point Championships.

2. That copies of this resolution be sent to Fremont High School and Taylor McCabe.

Laid over.

LEGISLATIVE RESOLUTION 445. Introduced by Stinner, 48.

WHEREAS, Margo Hartman has served the Community Action Partnership of Western Nebraska for forty-one years. She started as a trainer for the Head Start program in 1981, worked in various roles over the years in the community including leadership roles, and served as chief executive officer since 2016; and

WHEREAS, Margo Hartman has exhibited the qualities of a servant leader. She aided families in her community at a neighborhood family service center, helped teenage parents receive needed resources, and served employees, the board of directors, and community leaders while leading Community Action Partnership of Western Nebraska; and

WHEREAS, Margo Hartman has significantly contributed her talents to the Community Action Partnership of Western Nebraska during its various changes, including a restructuring of the organization, multiple relocations, the addition of new programs and services to the community, and the implementation of a strategic plan during her time as chief executive officer.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature recognizes and thanks Margo Hartman for her servant leadership to her community through her roles with the Community Action Partnership of Western Nebraska and her many years of community service.

2. That a copy of this resolution be sent to Margo Hartman.

Laid over.

COMMITTEE REPORT(S)

General Affairs

The General Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Jana Goranson - Nebraska Arts Council
Alec Gorynski - Nebraska Arts Council
Amy M. Haddad - Nebraska Arts Council
Ellen L. Hornady - Nebraska Arts Council
Sarah G. Peetz - Nebraska Arts Council
Clark Roush - Nebraska Arts Council
Walter A. Seiler - Nebraska Arts Council

Aye: 8. Arch, Brandt, Brewer, Briese, Cavanaugh, J., Jacobson, Lowe, Wayne. Nay: 0. Absent: 0. Present and not voting: 0.

(Signed) Tom Briese, Chairperson

ANNOUNCEMENT

Senator Bostelman announced the Natural Resources Committee will hold an executive session Monday, April 11, 2022, at 10:00 a.m., under the South Balcony.

UNANIMOUS CONSENT - Add Cointroducer(s)

Unanimous consent to add Senator(s) as cointroducer(s). No objections. So ordered.

Senator M. Hansen name added to LB921.

Senator M. Hansen name added to LB922.

Senator Bostar name added to LR427.

Senator Lindstrom name added to LR427.

VISITOR(S)

Visitors to the Chamber were high school students from Keya Paha County Schools, Springview; fourth-grade students from Aspen Creek Elementary, Gretna, members of Angel Guardians, Omaha; fourth-grade students from Golden Hills Elementary, Bellevue; fourth-grade students from Messiah Lutheran School, Lincoln; and high school students from Lutheran High Northeast, Norfolk.

The Doctor of the Day was Dr. Pat Hotovy of York.

ADJOURNMENT

At 5:55 p.m., on a motion by Speaker Hilgers, the Legislature adjourned until 9:00 a.m., Monday, April 11, 2022.

Patrick J. O'Donnell
Clerk of the Legislature

