

**MINUTES
TRI-COUNTY MEETING
DOUGLAS, LANCASTER AND SARPY COUNTY BOARDS
PINNACLE BANK ARENA, CLUB LOUNGE, 3RD FLOOR
400 PINNACLE ARENA DRIVE, LINCOLN, NEBRASKA
THURSDAY, OCTOBER 23, 2014
8:30 A.M.**

Douglas County: Mary Ann Borgeson, County Board Chair; Pam Tusa, County Board Vice Chair; Clare Duda, County Commissioner; Marc Kraft, County Commissioner; P.J. Morgan, County Commissioner; Patrick Bloomingdale, Chief Administrative Officer; Diane Carlson, Deputy Chief Administrative Officer; Marcos San Martin, Intergovernmental and Labor Relations Specialist; Joe Lorenz, Budget & Finance Director; Larry Miller, Douglas County Register of Deeds; Ellen Sechser, Administrative Assistant, Douglas County Clerk's Office; Mike Kelley and Sean Kelley, Kelley & Jerram Law Firm (Douglas County Lobbyists)

Lancaster County: Larry Hudkins, County Board Chair; Brent Smoyer, County Board Vice Chair; Roma Amundson, County Commissioner; Jane Raybould, County Commissioner; Deb Schorr, County Commissioner; Kerry Eagan, Chief Administrative Officer; Gwen Thorpe, Deputy Chief Administrative Officer; Minette Genuchi, Administrative Assistant to the County Board; Dennis Meyer, Budget and Fiscal Officer; Dan Nolte, County Clerk; Cori Beattie, Deputy County Clerk; Ann Taylor, Lancaster County Clerk's Office; Joe Kohout, Kissel/E&S Associates (Lancaster County Lobbyist)

Sarpy County: Jim Thompson, County Board Chair; Brenda Carlisle, County Board Vice Chair; Don Kelly, County Commissioner; Tom Richards, County Commissioner; Jim Warren, County Commissioner; Mark Wayne, County Administrator; Scott Bovick, Deputy County Administrator; Deb Houghtaling, County Clerk; Fred Uhe, Director of Community and Government Relations; Brian Hanson, Fiscal Administrator; Mike Smith, Deputy County Attorney; Tim Gay (Sarpy County Lobbyist)

Also in attendance: Patte Newman and Todd Wiltgen, Candidates for Lancaster County Commissioner, District 5; Beth Farrell, Nebraska Association of County Officials (NACO) Legal Counsel; Jon Edwards, Cuttshall & Nowka (NACO Lobbyist); Ann Post, Director of Policy and Research for the Lincoln Independent Business Association (LIBA); Kevin Abourezk, Lincoln Journal Star Newspaper

NOTE: A copy of the Nebraska Open Meetings Act was available.

1 RECEPTION & BREAKFAST

A reception and breakfast were held, beginning at 8:30 a.m.

Larry Hudkins, Lancaster County Board Chair, opened the meeting at 9:06 a.m.

2 PINNACLE BANK ARENA TOUR - Blake Flikkema, Event Services Manager

Blake Flikkema, Event Services Manager, led a tour of the facility.

3 SARPY COUNTY'S DRIVING UNDER THE INFLUENCE (DUI) PRETRIAL DIVERSION PROGRAM - Mike Smith, Sarpy County Deputy Attorney

Mike Smith, Sarpy County Deputy Attorney, discussed Sarpy County's Driving Under the Influence (DUI) Pretrial Diversion Program, which was initiated in the 1970's pursuant to a grant from the Federal Highway Safety Administration (FHSA). He said the program is largely self-sustaining, with client fees paying the administration costs. Smith said an attorney examines the file when a DUI case comes in and makes a determination of whether it is suitable for diversion. He said they are generally first offense DUI's, noting they do not allow individuals with enhanced or aggravated DUI's to participate. Individuals with second offense DUI's are rarely allowed to participate and never if they are charged with an implied consent violation (failure to take the Intoxilyzer test). Other factors include whether an accident was involved, if there were victims or property damage, and the severity of any other offenses that occurred during the stop. Smith said individuals that want to participate must undergo an alcohol evaluation and if they are accepted, a treatment program is tailored for them. Charges are then filed and the individual waives their right to a speedy trial and is subject to administrative license revocation. Smith said the County Attorney's Office will agree not to prosecute the case if the individual successfully completes the program. He said Sarpy County diverted 379 DUI's last year (81 did not completed the program and were referred back for prosecution), adding the judiciary has generally been supportive of the program.

Smith disseminated copies of Nebraska Revised Statute §29-3604 (Driving while intoxicated, implied consent refusal; not eligible for pretrial diversion) and a syllabus from a case heard by the Nebraska Supreme Court (270 Neb. 29 (Neb. 2005), S-04-0841, Polikov v Neth) which addressed the constitutionality of Nebraska Revised Statutes §§29-3601 through 29-3609 (Exhibits A and B). He said the case clarified the difference between an executive and legislative power and said "The hallmark of the charging function is case-by-case decision making; the prosecutor weighs the mitigating and aggravating factors surrounding a case and determines how to proceed." Smith said Sarpy County feels it has prosecutorial discretion and that has been the justification for the program.

Mary Ann Borgeson, Douglas County Board Chair, asked if the offense is removed from the individual's record once they have completed the program. Smith said there would not be a conviction on their record but would still show an arrest.

Don Kelly, Sarpy County Commissioner, inquired about costs. Smith said the individual pays a fee to enter the program and for treatment programs. He estimated the cost averages \$500.

Deb Schorr, Lancaster County Commissioner, inquired about program staffing. Smith said it would be difficult to break staffing times out of the larger diversion program.

Jane Raybould, Lancaster County Commissioner, questioned why Lancaster County is not doing more diversion with DUI cases. Smith said it would be up to the County Attorney on whether to do that. He noted there is a law prohibiting diversion for the offense but Sarpy County has been doing it without challenge. Smith suggested county attorneys might be more comfortable offering diversion if the law was modified. Kerry Eagan, Lancaster County Chief Administrative Officer, suggested repeal of the law might be better.

Eagan then asked Smith whether he has statistics on recidivism. Smith said he does not.

Raybould asked whether ignition interlock devices are utilized. Smith said they are allowed in some DUI cases but said he does not know how it is incorporated in diversion.

Raybould then asked how much it has saved Sarpy County in keeping these offenders out of their jail. Smith said most of the cases that are referred to diversion would receive probation, rather than jail time.

4 REVIEW OF LEGISLATIVE AGENDAS

A) LANCASTER COUNTY - Kerry Eagan, Lancaster County Chief Administrative Officer

Kerry Eagan, Lancaster County Chief Administrative Officer, gave an overview of Lancaster County Legislative Proposals, 2015 Session, Lancaster County, Nebraska; Services Provided to the State of Nebraska and 2015 Lancaster County Legislative Priorities (Exhibits C and D).

Jane Raybould, Lancaster County Commissioner, disseminated copies of National Association of County Officials (NACo) policy briefs on the following topics: 1) Protect the Federal-State-Local Partnership for Medicaid; 2) Fund the Substance Abuse and Mental Health Services Administration; and 3) Extend Health Benefit Coverage to Pre-Trial Jail Inmates (Exhibits E-G).

B) DOUGLAS COUNTY - Marcos San Martin, Intergovernmental and Labor Relations Specialist

Marcos San Martin, Douglas County Intergovernmental and Labor Relations Specialist, and Mary Ann Borgeson, County Board Chair, discussed Board of County Commissioners; Douglas County, Nebraska; 2015 Legislative Agenda Discussion Items (Exhibit H).

C) SARPY COUNTY - Fred Uhe, Sarpy County Director of Community and Government Relations

Fred Uhe, Sarpy County Director of Community and Government Relations, reviewed Sarpy County 2015 Legislative Priorities (Exhibit I).

It was suggested that representatives of the three counties, and their lobbyists, meet two or three times throughout the year, to discuss items of mutual interest.

D) NEBRASKA ASSOCIATION OF COUNTY OFFICIALS (NACO) - Beth Farrell, NACO Legal Counsel

Beth Farrell, NACO Legal Counsel, presented 2015 NACO Legislation (Exhibit J).

Mike Kelley, Douglas County Lobbyist, said there is strength in unity and suggested designation of two or three tri-county issues each year.

Joe Kohout, Lancaster County Lobbyist, noted there could be significant changes with a new governor and at least 17 new state senators taking office in January.

Tim Gay, Sarpy County Lobbyist, said some of the experienced senators that counties will want to introduce legislation will be serving as committee chairs and will be focused on their committee jurisdictions. He stressed the need for communication so there isn't duplication of effort in terms of finding senators who are willing to introduce legislation on behalf of the counties.

Borgeson, who serves as the Nebraska representative to the National Association of County Officials (NACo), said there will be a large emphasis this year on the national level on mental health in jails, noting the Council of State Governments (CSG) and U.S. Department of Labor have agreed to partner with NACo in that regard.

5 BREAK

The meeting was recessed at 11:33 a.m. and resumed at 11:40 a.m.

6 STATEWIDE ENHANCED 911 (E-911) - Mark Conrey and Kyle Kramer, Douglas County 911 Communications

Kyle Kramer, Douglas County 911 Communications, said Douglas County experienced a failure of its 911 Communications System on September 9th as a result of an extremely high call volume, particularly from cell phones, related to a heavy storm that had moved through Douglas County. He said their tandem switch technology, which routes an outside call over a facility that carries the call outside the local system, is outdated and said there are no upgrade options as the provider plans to move to new technology. Kramer said telephone companies would like to deliver 911 over Internet Protocol (IP) and will want to house the equipment in one of their large data centers so they can serve a large portion of the country. He said a failure could be catastrophic to a large area.

Kramer noted Douglas County will be implementing "text to 911" in December and would like to limit it to individuals who are hearing impaired or automated systems like OnStar that are in vehicles. He said OnStar is a perfect example of Next Generation 911 (NG911), an initiative aimed at updating the 911 service infrastructure in the United States and Canada to improve public emergency communications services in an increasingly wireless mobile society. Kramer explained when OnStar detects a vehicle has been in a collision, by airbag deployment or other sensors, it notifies an OnStar Service Center, which in turn relays the information to the 911 Center. The 911 operator then types the information into their computer screen. He said it is extremely inefficient. Kramer said the data would come to a 911 Center directly from OnStar's system with NG911, adding there may still be issues getting it to the correct 911 Center. He said having a statewide or consolidated call center would allow that data to be shared.

Mark Conrey, Douglas County 911 Communications, said local government is "on the cusp" of changes and needs to be prepared. He said the State is working on a plan to implement NG911 and one of the biggest issues will be how to pay for it. Conrey said there are approximately 1,400,000 cell phones in Nebraska, with approximately 70% residing within the three counties. He said legislation will be needed to allow the 911 surcharge to be applied to NG911 and to determine the funding model. Conrey said the 911 system will change drastically and counties will need to establish performance standards.

In response to a question from Borgeson, Conrey said the Federal Communications Commission (FCC) has mandated that cell phone companies provide the height of a structure from which an emergency call is placed. He said the cell phone companies are also supposed to provide location information but said 60% of Douglas County's wireless calls are coming in with just the tower location.

Raybould asked if the large data centers provide redundancy (duplication of critical components or functions with the intention of increasing reliability of the system). Kramer said they are fully redundant but could have a problem that spans multiple data centers, such as software issues.

Schorr said the City of Lincoln and Lancaster County are undergoing a study for their 911 and radio systems and will likely have a recommendation before the end of the year. She asked what they should take into consideration knowing that the Public Service Commission will probably bring forward a plan for NG911 in the next eighteen months. Conrey said it is his understanding that Lincoln and Lancaster County have to move forward because their system is at the end of its useful life and said governmental entities need to determine whether they or the State are in a better position to meet their needs. He noted there is another big project that is also coming forward, FirstNet, which will provide emergency responders with the first nationwide, high-speed network dedicated to public safety and will tie all the public safety agencies together.

7 LUNCH (OPEN DISCUSSION)

The meeting was recessed at 12:12 p.m. for lunch and resumed at 1:00 p.m.

8 OTHER TOPICS:

A) ROAD AND BRIDGE FUNDING

Virgil Dearmont, Bridge Division Head, Lancaster County Engineering, appeared and discussed bridge funding issues. He said he believes Nebraska counties and municipalities are woefully underfunded in this area. Dearmont said Lancaster County is in better shape than some other counties but is not without bridge problems. He said Lancaster County has 300 bridges greater than 20 feet in length (100 are box culverts), 12 bridges under 20 feet in length and 6,000 culverts. Dearmont said the County typically provides his department with \$500,000 to \$700,000 to maintain and build bridges. He said they use those funds to match federal aid for bridges, noting the County's out-of-pocket expense has ranged from 5% to 15%. Dearmont referenced the Federal Funds Purchase Program which allowed the Nebraska Department of Roads (NDOR) to enter into agreements for purchases of federal aid transportation funds at a discount rate. The state funds obtained must be expended for highway and bridge needs. He said a number of deductions for inspections and the Quality Assurance/Quality Control Program required by the National Bridge Inspection System (NBI) reduce the \$16,000,000 that goes to counties and cities to \$11,293,000. That figure is further reduced by 20% for the Federal Funds Purchase Program and

\$2,000,000 for NDOR's Major Bridge Program. Dearmont said the \$7,000,000 remaining is distributed based on a deficient bridge deck area (sufficiency rating of 50 or less) formula. He said Lancaster County received \$80,000 the first year it was in effect and is projected to receive \$85,000 this year. Dearmont said Lancaster County completed two bridges last year, noting one cost \$750,000 and the other \$820,000. He cited some of the reasons for cost increases: 1) Increasing bridge length to address degradation; 2) Increasing bridge width to better accommodate modern agricultural equipment; 3) Mandatory changes in bridge design; and 4) Environmental studies and permits.

It was noted hearings have been held on Legislative Resolution (LR) 528 (Interim study to examine issues surrounding financing the maintenance and replacement of county bridges).

Don Kelly, Sarpy County Commissioner, inquired about the Railroad Transportation Safety District (RTSD), a political subdivision created by the Nebraska Legislature in 1971 that provides funding for railroad safety related projects throughout Lincoln and Lancaster County. Schorr, the RTSD Chair, outlined some of their projects. She said one area they have focused on is "quiet zones" (railroad grade crossings at which trains are prohibited from sounding their horns in order to decrease the noise level for nearby residential communities). Hudkins noted the County Board has used some of the RTSD's funding authority to maintain the County's property tax levy, but said there are sufficient funds on hand to fund projects that are "in the hopper" for four to five years out.

Kelly suggested the three counties look at ways to limit infrastructure "soft costs", such as engineering and architectural services. Dearmont said all federal aid projects must go through a quality-based system (QBS) to hire engineers, adding those hourly rates are established.

B) JUVENILE PROBATION CONTRACTS FOR COUNTY DETENTION SERVICES

Eagan presented a State Juvenile Probation revenue update and per diem history (Exhibit K). He said State Probation Administration is refusing to sign a contract with Lancaster County to hold State Juvenile Probation youth in Lancaster County's Youth Services Center (YSC), indicating Lancaster County's per diem of \$307 is too high. He said this problem arose after Legislative Bill (LB) 561 (Change provisions and transfer responsibilities regarding the juvenile justice system) and LB 464 (Change provisions relating to the juvenile justice system, arraignment, court jurisdiction, services for juveniles and families, and truancy) were enacted. Eagan asked whether Douglas and Sarpy County have experienced similar problems.

Brian Hanson, Sarpy County Fiscal Administrator, said Sarpy County has calculated its costs, including indirect costs, at \$310 per day. He said they do not have a contract in place but are billing the State \$256 per day. Sarpy County also bills for tracking and electronic monitoring services. Hanson said he is not sure whether they are receiving payment.

Bloomington said Douglas County's per diem is \$210.56. He said Douglas County does not have a contract in place with State Juvenile Probation but said they are current on their payments.

ROUNDTABLE DISCUSSION

Brenda Carlisle, Sarpy County Board Vice Chair, said she believes working jointly on legislation is key.

Mark Wayne, Sarpy County Administrator, said he believes the lobbyists and administrators should get together during the legislative session to discuss areas to focus on.

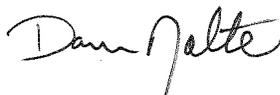
Schorr said she favors holding a legislative breakfast again this year with Douglas, Lancaster and Sarpy County State Senators and NACO representatives to discuss legislative issues.

P.J. Morgan, Douglas County Commissioner, felt meeting twice a year or more, if needed, would be beneficial.

Borgeson said she would like to see the three counties work on mental health issues in the jails. She also stressed the need for the three counties to share data.

9 ADJOURNMENT

There being no further business, the meeting was adjourned at 2:07 p.m.



Dan Nolte
Lancaster County Clerk



§ 29-3604. Driving while intoxicated, implied consent refusal; not eligible for pretrial diversion.

Nebraska Revised Statutes

Chapter 29. Criminal Procedure

Article 36. Pretrial Diversion

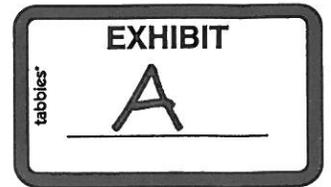
Current through 2014

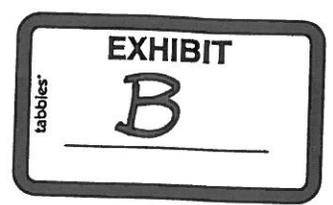
§ 29-3604. Driving while intoxicated, implied consent refusal; not eligible for pretrial diversion

No person charged with a violation of section 60-6,196 or 60-6,197 shall be eligible for pretrial diversion under a program established pursuant to sections 29-3601 to 29-3603 and 29-3605 to 29-3609 .

Cite as Neb. Rev. Stat. § 29-3604

Source: Laws 1982, LB 568, § 4; Laws 1993, LB 370, § 15; Laws 2002, LB 1303, § 4.





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270 Neb. 29 (Neb. 2005)

699 N.W.2d 802

L. Kenneth POLIKOV, county attorney for the County of Sarpy, Nebraska, and Sarpy County Safety Program, Inc., a Nebraska corporation, appellees,

v.

Beverly NETH, director, Nebraska Department of Motor Vehicles, in her official capacity, and Nebraska Department of Motor Vehicles, appellants.

No. S-04-081.

Supreme Court of Nebraska

June 24, 2005

[699 N.W.2d 803]

Syllabus by the Court

1. **Constitutional Law: Statutes: Appeal and Error.** Whether a statute is constitutional is a question of law; accordingly, the Nebraska Supreme Court is obligated to reach a conclusion independent of the decision reached by the trial court.

2. **Constitutional Law: Statutes: Presumptions.** A statute is presumed to be constitutional, and all reasonable doubts will be resolved in favor of its constitutionality.

3. **Constitutional Law: Statutes: Proof.** The burden of establishing a statute's unconstitutionality is on the party claiming it to be unconstitutional.

4. **Constitutional Law.** The separation of powers clause in the Nebraska Constitution prohibits one branch of government from encroaching on the duties and prerogatives of the others or from improperly delegating its own duties and prerogatives.

5. **Constitutional Law: Criminal Law: Prosecuting Attorneys.** When prosecuting criminal cases, the county attorney is functioning as an arm of the executive branch of the state government and the separation of powers clause applies.

6. **Constitutional Law: Prosecuting Attorneys.** Prosecutorial discretion is an inherent executive power.

7. **Criminal Law: Prosecuting Attorneys: Probable Cause.** As a result of the charging function, the prosecutor has the discretion to choose to charge any crime that probable cause will support, or if the prosecutor chooses, not to charge the accused at all.

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8. **Constitutional Law: Criminal Law.** It is the legislative branch of government that is charged with defining crimes and punishments.

9. **Constitutional Law: Criminal Law: Legislature.** The formalization of pretrial diversion programs is the type of broad restructuring of the goals of the criminal justice system that is entrusted to the Legislature rather than to the executive branch.

[699 N.W.2d 804] 10. **Constitutional Law: Legislature: Prosecuting Attorneys.** The Legislature cannot use its power to design formal pretrial diversion programs in a way so as to limit the prosecutor's power to engage in the informal diversion process.

11. Constitutional Law: Criminal Law: Prosecuting Attorneys. Although the power to design a pretrial diversion program is a legislative one, the power to determine whether to divert a particular person to an established formal pretrial diversion program, at least before the accused is charged, is an executive power, encompassed within the charging function.

Jon Bruning, Attorney General, and Lynn A. Melson, Lincoln, for appellants.

L. Kenneth Polikov, Sarpy County Attorney, and Michael A. Smith, Papillion, for appellees.

HENDRY, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, McCORMACK, and MILLER-LERMAN, JJ.

CONNOLLY, J.

At issue is the constitutionality of Neb.Rev.Stat. §§ 29-3601 through 29-3609 (Cum.Supp.2004), which purport to authorize and regulate pretrial diversion programs. The appellees, Sarpy County Safety Program, Inc., and L. Kenneth Polikov, the county attorney for Sarpy County, argue that the statutory scheme violates the constitutional principle of separation of powers by infringing upon a county attorney's prosecutorial discretion. The district court for Lancaster County agreed and permanently enjoined the enforcement of §§ 29-3601 through 29-3609 and the regulations implemented under the authority of these sections. We conclude that the power to design a formal pretrial diversion program is a legislative function and that thus, §§ 29-3601 through 29-3609 do not violate the separation of powers clause.

BACKGROUND

Broadly understood, pretrial diversion could include nearly every disposition of a criminal matter that occurs without a trial.

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See Samuel J. Brakel, *Diversion from the Criminal Process: Informal Discretion, Motivation, and Formalization*, 48 Denv. L.J. 211 (1971). This case, however, involves a particular subset of pretrial diversion: situations when a prosecutor agrees to forgo prosecution in exchange for the accused's promise to perform a condition or set of conditions meant to rehabilitate the accused. As long as the accused completes the condition, charges will not be brought. When we refer to pretrial diversion, this is what we mean.

Individual prosecutors have always practiced pretrial diversion on an informal basis. See 4 Wayne R. LaFare et al., *Criminal Procedure* § 13.6(a) (2d ed.1999). Generally, this had been done in a "haphazard way." *Id.* at 84. They used no eligibility guidelines to decide whether the accused should be allowed to avoid prosecution. Further, the conditions that the accused had to meet were set on a case-by-case basis and usually involved such things as paying restitution to the victim or joining the military. See, *id.*; Brakel, *supra*.

In the late 1960's, however, jurisdictions throughout the nation began to formalize pretrial diversion. These formal programs were different from informal diversion practices in two key respects. First, the formal programs usually had set eligibility guidelines, as well as standardized admission practices. Second, instead of setting the conditions that the accused would have to meet to avoid prosecution on a case-by-

[699 N.W.2d 805] case basis, the accused agreed to complete a preexisting program of supervised rehabilitation. These programs involved elements like classwork, job training, and

substance abuse treatment. See, generally, ABA Comm. on Corr. Facilities and Servs., *Legal Issues and Characteristics of Pretrial Intervention Programs* (1974); Note, *Criminal Practice--Pretrial Intervention Programs--An Innovative Reform of the Criminal Justice System*, 28 Rutgers L.Rev. 1203 (1975); Note, *Pretrial Diversion from the Criminal Process*, 83 Yale L.J. 827 (1974).

In Nebraska, as in many other jurisdictions, the county attorney began formalizing pretrial diversion programs in individual counties. Some county attorneys, however, expressed concern over whether they had the authority to implement formal diversion programs. To address these concerns, the Legislature, in 1979, made

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its initial foray into the world of formalized pretrial diversion. See, Statement of Purpose and Judiciary Committee Hearing, L.B. 573, 86th Leg., 1st Sess. (March 6, 1979).

This initial attempt to regulate formal pretrial diversion programs was not extensive. The statutory scheme assured county attorneys that they had the authority to establish a formal pretrial diversion program, providing "[t]he county attorney of any county may establish a pretrial diversion program with the concurrence of the county board." § 29-3602. If the county attorney decided to create a formal program, he or she had wide discretion in designing the program. The only limits the Legislature placed on the county attorney's discretion were meant to ensure fair treatment for the accused. Specifically, the Legislature required (1) formal, written eligibility guidelines; (2) maximum time limits on participation; (3) the opportunity for defendants and their attorneys to review program requirements; (4) the dismissal of charges upon completion of the program; (5) a guarantee that participants could withdraw from the program and be returned to the court process; (6) that enrollment could not be conditioned upon a plea of guilty; and (7) that if enrollment in a program was denied, written reasons for the denial had to be made and the defendant had to be given the opportunity for administrative review of the denial. § 29-3603.

Between 1979 and 2002, only two minor changes were made to the statutory oversight of pretrial diversion programs. In 1982, the Legislature made any person charged with either driving while intoxicated or refusing to submit to a chemical test ineligible to participate in a pretrial diversion program. § 29-3604 (Reissue 1995). And, in 1999, the Legislature gave city attorneys express permission to establish pretrial diversion programs. § 29-3602 (Cum.Supp.2004).

In 2002, however, the Legislature amended the pretrial statutory scheme to create a dichotomy between two types of offenses, "minor traffic violations" and "criminal offenses." Excluded from the definition of "minor traffic violations" are a wide variety of traffic violations as well as any felony or misdemeanor. § 29-3605 (Cum.Supp.2004). "Criminal offenses," although not expressly defined, would seem to include any crime excluded from the definition of "minor traffic violations."

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Under the 2002 amendments, the legislative oversight of pretrial diversion programs for "criminal offenses" is unchanged. If a county attorney decides to set up a program for "criminal offenses," it must include the requirements, set out in § 29-3603, that ensure the accused is treated fairly. But beyond these minimal limitations, county attorneys retain the same broad discretion to determine the [699 N.W.2d 806] type of diversion program or programs that they used under the 1979

legislation.

On the other hand, for the other class of offenses, i.e., minor traffic violations, the 2002 legislation reduced the authority of the county attorney to design a formal pretrial diversion program. Under § 29-3606(1), if a county attorney decides to set up a pretrial diversion program for minor traffic violations, the program must "consist of a driver's safety training program." The curriculum used in the driver's safety training program and the fee charged must be approved by the Department of Motor Vehicles (Department). § 29-3606(2)(a) and (b). In addition, program administrators are required to keep a record for attendees and share those records with similar programs throughout the state. § 29-3606(3). Program administrators are to use these records to ensure that no individual takes an approved driver's safety training course in Nebraska more than once within any 3-year period. *Id.* Before any organization or governmental entity can offer a driver's safety training program, it must obtain certification from the Department. § 29-3607. Finally, the amendments prevent the diversion of any person holding a commercial driver's license to a driver's safety training program to the extent that doing so would be "in noncompliance with federal law or regulation and subject the state to possible loss of federal funds." § 29-3608.

After the 2002 legislation was passed, the Department, acting under the authority granted to it by the Legislature, adopted regulations governing driver's safety training programs. See, generally, 250 Neb. Admin. Code, ch. 3 (2003). Among these regulations was the requirement that to be certified, a program had to include an 8-hour class. § 003.01

PROCEDURAL BACKGROUND

Before the 2002 amendments to the pretrial diversion statutes, Polikov, as the county attorney for Sarpy County, diverted

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persons accused of minor traffic offenses to a driver's safety training program operated by Sarpy County Safety Program, a private, nonprofit corporation. The program, however, did not meet the requirements set out in the regulations adopted by the Department. Thus, after the 2002 legislation and the Department regulations became effective, the appellees filed this lawsuit, naming as defendants the Department and its director (collectively the DMV).

In the appellees' amended complaint, they alleged that §§ 29-3601 through 29-3609 violate the constitutional principle of separation of powers. They requested that the court grant an injunction staying the enforcement of the statutes as well as the regulations adopted under the statutes. The district court for Lancaster County agreed and granted a permanent injunction forbidding the enforcement of §§ 29-3601 through 29-3609 and the regulations implemented under the authority of these sections.

ASSIGNMENT OF ERROR

The DMV assigns that the district court erred in determining that §§ 29-3601 through 29-3609 and the Department regulations adopted under the authority of those statutes were unconstitutional.

STANDARD OF REVIEW

Whether a statute is constitutional is a question of law; accordingly, the Nebraska Supreme Court is obligated to reach a conclusion independent of the decision reached by the trial court.

State v. Van, 268 Neb. 814, 688 N.W.2d 600 (2004).

[699 N.W.2d 807] A statute is presumed to be constitutional, and all reasonable doubts will be resolved in favor of its constitutionality. *Id.* The burden of establishing a statute's unconstitutionality is on the party claiming it to be unconstitutional. *Id.*

ANALYSIS

The powers of government of this state are divided into three distinct departments, the legislative, executive, and judicial, and no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted. Neb. Const. art. II, § 1. This clause prohibits one branch of

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government from encroaching on the duties and prerogatives of the others or from improperly delegating its own duties and prerogatives. *State ex rel. Shepherd v. Neb. Equal Opp. Comm.*, 251 Neb. 517, 557 N.W.2d 684 (1997). It is the beam from which our system of checks and balances is suspended. *Id.*; *State ex rel. Spire v. Conway*, 238 Neb. 766, 472 N.W.2d 403 (1991).

Because the Nebraska Constitution, unlike the federal Constitution and those of several other states, contains an express separation of powers clause, this court has been less willing to find overlapping responsibilities between the three branches of government. See *State v. Philipps*, 246 Neb. 610, 521 N.W.2d 913 (1994). Thus, regarding the separation between the legislative and executive branches, we have said that they should be "kept as distinct and independent as possible." *Shepherd*, 251 Neb. at 532, 557 N.W.2d at 695 (quoting 16 Am.Jur.2d Constitutional Law § 323 (1979)).

PARTIES' ARGUMENTS

As we understand their argument, the appellees contend that the county attorney, at least when prosecuting criminal cases, is a member of the executive branch of government and that as a result, the county attorney has the authority to wield the inherent executive power of prosecutorial discretion. According to them, the power of prosecutorial discretion includes the authority to design a formal pretrial diversion program as the county attorney sees fit, and thus the separation of powers clause prevents the Legislature from regulating the design of formal pretrial diversion programs.

At trial, Polikov testified that §§ 29-3601 through 29-3609 and the regulations adopted under these sections have prevented him from designing the formal pretrial diversion program of his choice in three particular ways. First, he testified that his pretrial diversion program for minor traffic violations would require only a 4-hour class, while the regulations would require an 8-hour class. Second, the statutory scheme requires him to exclude persons who have taken a driver's safety training program once in the last 3 years, but according to Polikov, he would adopt a more flexible rule. Finally, Polikov claimed that in at least some situations, he would allow persons accused of committing criminal

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offenses other than minor traffic violations to avoid prosecution by taking a driver's safety training program.

The DMV makes two counterarguments. First, it contends that the county attorney's office is part of a political subdivision rather than part of the executive branch and that therefore, the principle of separation of powers between the executive and the legislative branch is inapplicable. Second, it argues that to the extent § 29-3602 places limits on a county attorney's prosecutorial discretion, the limits are minimal and thus constitutional.

COUNTY ATTORNEY AND APPLICABILITY OF SEPARATION OF POWERS

First, we consider the DMV's argument that the office of the county attorney is [699 N.W.2d 808] part of a political subdivision rather than the executive branch and that therefore, the separation of powers clause is inapplicable.

The extent to which the separation of powers clause applies in the relationship between the Legislature and political subdivisions like cities and counties is not entirely clear. Compare *State v. Ure*, 91 Neb. 31, 37-38, 135 N.W. 224, 226-27 (1912) (stating separation of powers clause "does not attempt to limit the [L]egislature as to its power to prescribe the manner in which municipalities or local subdivisions of the state may administer their local affairs"), with *Searle v. Yensen*, 118 Neb. 835, 226 N.W. 464 (1929) (stating that Legislature may delegate part of its legislative function to subdivision but only to extent that recipient is member of same branch of government), and *State v. Neble*, 82 Neb. 267, 117 N.W. 723 (1908) (suggesting that separation of powers clause extends to counties).

To answer the DMV's argument, however, we need not resolve this ambiguity. Although the county attorney is a county officer, when the county attorney prosecutes cases, he or she does so not only on behalf of the county, but also on behalf of the state. Neb.Rev.Stat. § 23-1201 (Cum.Supp.2004). See, also, *Dinsmore v. State*, 61 Neb. 418, 85 N.W. 445 (1901). Thus, when prosecuting criminal cases, the county attorney is functioning as an arm of the executive branch of the state government and the separation of powers clause applies. Accord *State v. Moore*, 210 Neb. 457, 316 N.W.2d 33 (1982).

SEPARATION

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OF POWERS AND FORMAL PRETRIAL DIVERSION PROGRAMS

Next, we turn to the heart of the matter: whether the pretrial diversion statutes violate the separation of powers clause. Sections 29-3601 through 29-3609 regulate the prosecutor's ability to design a formal diversion program as he or she sees fit. Thus, the issue is whether the power to design a formal pretrial diversion program is an executive function or a legislative function.

In arguing that the power to design a formal pretrial diversion program is an executive function, the appellees rely on the power of prosecutorial discretion. We have recognized that prosecutorial discretion is an inherent executive power. See, *Moore, supra*; *State v. Grayer*, 191 Neb. 523, 215 N.W.2d 859 (1974). One of the key aspects of prosecutorial discretion is the charging function, the power to determine what, if any, charges should be brought against a person accused of committing a crime. See *Moore, supra*. As a result of the charging function, the prosecutor has the discretion to choose to charge any crime that probable cause will support or, if the prosecutor chooses, not to charge the accused at all. See, generally, 4 Wayne R. LaFave et al., *Criminal Procedure* § 13.2(a) (2d ed.1999). Some commentators suggest that this discretion

makes the prosecutor the single most powerful person in the criminal justice system. Kenneth J. Melilli, *Prosecutorial Discretion in an Adversary System*, 1992 BYU L.Rev. 669 (1992); Robert L. Misner, *Recasting Prosecutorial Discretion*, 86 J.Crim. L. & Criminology 717 (1996).

The informal diversion practices traditionally engaged in by prosecutors have been seen as a part of the charging function. See, *Davis v. Municipal Court (People)*, 46 Cal.3d 64, 757 P.2d 11, 249 Cal.Rptr. 300 (1988); *State v. Greenlee*, 228 Kan. 712, 620 P.2d 1132 (1980); ABA Comm. on Corr. Facilities and Servs., *Legal Issues and Characteristics of Pretrial Intervention Programs* (1974). According to the appellees, the charging function is [699 N.W.2d 809] also broad enough to allow the county attorney to formalize diversion practices.

We recognize that other courts have endorsed language supporting the appellees' claim. See, e.g., *Irby v. United States*, 464

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A.2d 136, 141 (D.C.1983) ("diversion is a program initiated by the United States Attorney's Office and 'owes its existence and operation solely to prosecutorial discretion' "). We also recognize that other courts that follow a more malleable approach to separation of powers have characterized the power to design formal pretrial diversion programs as "quasi-legislative" and thus, within the purview of both the legislative and executive branches of government. See, e.g., *Davis, supra*. We conclude, however, that formalizing the diversion process is something separate and apart from the mere exercise of the charging function and is better understood as a legislative function.

The hallmark of the charging function is case-by-case decisionmaking; the prosecutor weighs the mitigating and aggravating factors surrounding a case and determines how to proceed. While informal diversion can fairly be described as an application of this power, the very purpose of formalizing pretrial diversion is to exchange this case-by-case analysis for uniform eligibility requirements and standardized, government-monitored rehabilitative programs. See Note, *Pretrial Diversion from the Criminal Process*, 83 Yale L.J. 827 (1974). So, in designing a formal pretrial diversion program, the prosecutor is no longer determining that a certain type of rehabilitation will benefit a particular person, but, rather, is making a broader public policy decision that a particular type of rehabilitative program is the best way to deal with a particular type of crime. Cf. *State v. Leonardis*, 73 N.J. 360, 375 A.2d 607 (1977) (concluding that setting up pretrial diversion program goes beyond prosecutor's charging function); *State v. Tracy M.*, 43 Wash.App. 888, 720 P.2d 841 (1986).

Moreover, formalization creates a mechanism to move large numbers of persons accused of committing particular types of crimes away from adjudication and into rehabilitative programs supervised by government officials. As a result, the adoption of formal pretrial diversion programs shifts the focus of the criminal justice system. When the system favors adjudication followed by punishment for a particular crime, the goals are primarily deterrence and retribution. But formal pretrial diversion programs, by creating greater access to the diversion process, make the rehabilitation of the accused the primary goal.

Thus, formal pretrial diversion does not represent a natural outgrowth of the charging function, but, rather, a substantial change in the way society responds to the challenge of crime. It is the legislative branch of government that is charged with defining crimes and punishments. See,

State v. Divis, 256 Neb. 328, 589 N.W.2d 537 (1999); *State v. Stratton*, 220 Neb. 854, 374 N.W.2d 31 (1985). In doing so, it sets the broad policy goals of this state's criminal justice system, including whether for a particular type of crime the corrective goal should be retribution, deterrence, or rehabilitation. We believe that the formalization of pretrial diversion programs is the type of broad restructuring of the goals of the criminal justice system that is entrusted to the Legislature rather than to the executive branch. Therefore, we hold that the power to design formal pretrial diversion programs is a legislative power and that thus, the district court erred in holding that §§ 29-3601 through 29-3609 are unconstitutional.

We find it necessary, however, to make two additional points to clarify the scope of our holding. First, although the power to design formal pretrial diversion [699 N.W.2d 810] programs is a legislative function, the use of informal diversion is included in the executive power of prosecutorial discretion. Thus, the Legislature cannot use its power to design formal pretrial diversion programs in a way so as to limit the prosecutor's power to engage in the informal diversion process. Here, the pretrial diversion statutes have not crossed this line; under § 29-3602, the prosecutor has the authority to continue to use informal diversion, i.e., case-by-case diversion decisions, rather than set up a formal pretrial diversion program.

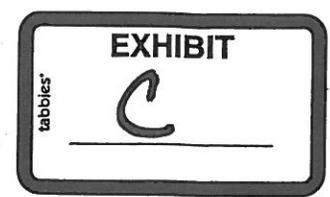
Second, although the power to design a pretrial diversion program is a legislative one, the power to determine whether to divert a particular person to an established formal pretrial diversion program, at least before the accused is charged, is an executive power, encompassed within the charging function. See *Clayton v. Lacey*, 256 Neb. 282, 589 N.W.2d 529 (1999) (concluding that person accused of burglary could not bring petition in error challenging county attorney's decision to exclude him from preestablished diversion program because county attorney's decision was exercise of prosecutorial discretion rather than judicial act).

CONCLUSION

We conclude that the power to design a pretrial diversion program is a legislative function and that therefore, in enacting §§ 29-3601 through 29-3609, the Legislature did not run afoul of the separation of powers clause. Accordingly, we reverse the decision of the district court.

REVERSED.

**LANCASTER COUNTY LEGISLATIVE PROPOSALS
2015 SESSION**



INTRODUCTION

The Legislature begins a new biennial budget cycle with the 2015 legislative session, but much unfinished business remains from the previous session. During the 2014 session, Lancaster County's legislative efforts were concentrated on the following areas: expansion of Medicaid under LB 887, monitoring the implementation of comprehensive juvenile justice reform under 2013 Neb. Laws LB 561, and the County's on-going effort to reduce the tremendous pressure on the local real property tax. These three themes will again take center stage as the new biennium begins. In addition, the question of unfunded mandates will be studied under LR's 812 and 960, which will dovetail with the County's efforts to relieve the excessive pressure on the property tax.

During the 2014 session, the Legislature addressed several ambiguities created by LB 561 regarding the role of counties under juvenile justice reform. With the passage of LB 464, the Legislature reaffirmed that counties are primarily responsible for the pre-adjudication phase of juvenile proceedings, and are not responsible for the transport of post adjudication youth in county custody who are not technically on probation. This clarification will save the County from a significant increase in transportation costs. Although LB 464 also called for a \$5 million increase in funding for community-based aid for counties, no appropriation for this purpose was made by the Legislature.

Inadequate funding for juvenile justice reform continues to be a serious concern for Lancaster County. If the State fails to adequately fund Juvenile Probation's obligation to provide for the care, custody, education, or maintenance of a child, counties are statutorily obligated to annually appropriate a fund to pay for these services until suitable funding can be found. See Neb. Rev. Stat. §§43-284, 286, and 290. In the upcoming session Lancaster County will continue to monitor the implementation of juvenile justice reform to help guarantee that adequate funding is appropriated.

Expansion of Medicaid will again have strong support. The County spends approximately \$2.8 million per year on medical costs for general assistance clients. Virtually 100% of these costs would be covered under expanded Medicaid.

Property tax relief continues remains a top priority for Lancaster County. The final report of the of Nebraska Tax Modernization Committee indicates that the State's reliance on property taxes as a share of state and local taxes is greater than the national average and greater than most of our border states. The elimination of state aid to counties and the state prison reimbursement program has exacerbated this imbalance, and on-going efforts to eliminate the inheritance tax would put even more pressure on the property tax. At the same time revenue sources are decreasing, unfunded mandates continue to be a problem for county government. LR's 812 and 960 will provide an opportunity to demonstrate to the Legislature the large fiscal impact of unfunded mandates. See Attachment A for a list of uncompensated services the County provides to the State.

Another Lancaster County priority which will carry over to the 2015 legislative session is the elimination of the County's obligation to provide office and service facilities for the Nebraska Department of Health and Human Services, as such facilities existed on April 1, 1984. See Neb. Rev. Stat. §68-130. Senator Kate Bolz introduced LB 632 for the purpose of eliminating the obligation of counties to provide these facilities at no cost to the State. Although LB 632 did not advance out of committee, it will be reintroduced in the next session. Lancaster County believes it is time to repeal this outdated form of county aid to the State.

The final County priority from the 2014 session was to monitor adult corrections reform. Several solutions to prison overcrowding involved housing more state prisoners in county jails, thereby shifting the financial burden to counties. Although a final plan to reduce prison overcrowding has not yet been identified, the Legislature did pass LB 907, which sets forth the State's intent to work with the Council of State Governments Justice Center to study and identify solutions to reduce overcrowding. LB 907 also creates the Nebraska Justice Reinvestment Working Group, which will include four local government officials, to conduct the study. Lancaster County will continue to monitor developments in adult corrections reform.

NEW PROPOSALS

1. Address Lancaster County Obligations Under the 300,000 Population Threshold

Informal estimates indicate Lancaster County's population exceeded 300,000 in May of 2014. Nebraska statutes contain a number of requirements which apply only to counties which have reached the 300,000 population threshold, including: increase the county board to seven county commissioners, formation of a civil service commission, changes to the sheriff's office merit commission, and changes to the enabling statutes for the Lancaster County Retirement Plan. Some of these statutory requirements specify that the most recent federal decennial census shall be used in determining population, while other provisions are silent as to how the population is determined. Given the ambiguity on when these statutes apply, as well as the lack of a clear purpose for making many of these changes, Lancaster County believes the Legislature should review the need for the changes required by the 300,000 population threshold.

2. Amend Mental Health Commitment Act to Include A Sex Offender Disorder As a Diagnosed Mental Illness / Funding for Community-Based Sex Offender Treatment

An effective community-based treatment program is essential to protect our community from sex offenders. However, mental abnormalities or personality disorders which may cause a person to engage in acts of sexual violence are not recognized as a mental illness for purposes of the Mental Health Commitment Act. Consequently, funding is not available through the mental health regions for community-based sex offender treatment. Without adequate funding, the Sex Offender

Treatment Program (STOP) in Lancaster County will not be able to continue offering services. Amending the Nebraska Mental Health Commitment Act to include a diagnosis for sex offender disorders could help provide the needed funding.

Adult corrections reform to relieve prison overcrowding is another potential source of funding for community-based sex offender treatment. The County should support legislation which increases funding for parole and probation sex offender treatment programs.

3. Increase Marriage License, Locksmith and Amusement License Fees

The statutory fee for the issuance of a marriage license is \$15.00. The cost of processing a marriage license is \$55.00. Additionally, the State Department of Vital Statistics can now charge \$16.00 for a certified copy of a marriage license, while counties can only charge \$5.00. The fee for issuing a locksmith license is only \$5.00, but costs Lancaster County \$80.00 to process. Another issue concerning locksmith licenses is whether there should be a renewal process after the initial issuance. With regard to amusement licenses, the county fee is \$10.00, while the processing costs are \$200.00. A Legislative review of all county fees should be conducted, and fees should be raised where appropriate. Also, language should be included in any legislation allowing automatic increases based on a cost of doing business formula. Property tax payers should not be subsidizing significant portions of the licensing process, especially for private businesses or events intended to make a profit.

PROPOSALS FROM 2014

1. Limit Workers' Compensation Awards to Retirement Age

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

2. Clarify Management Right to Select Benefit Providers without Negotiating

Recent court decisions have held that government employers cannot change providers for a benefit plan (health insurance, dental insurance, pensions, health retirement savings plans, etc.) without first negotiating with unions. See Scottsbluff Police Officers Association, Inc., F.O.P. Lodge 38 v. City of Scottsbluff, Nebraska, 282 Neb. Reports 676 (2011). The County believes this requirement infringes on a traditional management right to make such business decisions. Recently, Lancaster County changed providers for its post employment health plan after issuing an RFP and carefully analyzing the proposals with the help of a specialist. Although the data clearly indicated

the County selected the best provider, one of the unions decided to remain with the old provider. The County is now forced to maintain two plans; which creates inefficiencies, additional costs, and weakens the County's bargaining authority with existing and potential providers. The law should be clarified that government employers do not need union approval to change providers for benefit plans.

3. Increase County Treasurer's Sales Tax Collection Fee Charged to the State

Pursuant to Neb. Rev. Stat. §§77-2703(1)(i) and 77-2703(2)(d)(Reissue 2009), counties are entitled to retain a sales tax collection fee of 2.5% on the first \$3,000 of sales tax remitted each month to the State. This fee is collected separately for (a) motor vehicles, semitrailers and trailers registered with the County, and (b) motorboats registered with the County. Based on this formula, last year Lancaster County collected a fee of \$1,800. During the same year the County remitted \$30.6 million of sales tax to the State.

In contrast, the amount of time and resources devoted by the Lancaster County Treasurer's Office to collection of the State sales tax is staggering. The twenty-eight (28) clerks in the Treasurer's motor vehicle division spend more than 10% of their work day processing sales tax returns, while the four (4) supervisors spend nearly 10% of their time working on sales tax issues. This amounts to an annual expenditure by the County of \$116,473. Under these circumstances, a higher sales tax collection fee is clearly justified. (For a list of other uncompensated services provided to the State see Attachment A).

4. Extend Deadline for Issuing Greenbelt Valuation Notice

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

5. Provide Flexibility with Regard to Treasurer's Obligation to Invest County Funds on a Pro Rata Basis with Banks, Capital Stock Institutions, and Qualifying Mutual Financial Institutions

Neb. Rev. Stat. §77-2314 imposes a duty on county treasurers to invest county funds on a pro rata basis with a list of banks, capital stock institutions, and qualifying mutual financial institutions, as that list is determined by the county board as of December 31. However, some of the financial entities on the list are refusing to accept county funds over the FDIC guaranteed amount because of narrow interest rate spreads and the added cost of collateral requirements. This makes it very difficult if not impossible for some treasurers to meet the pro rata requirements of §77-2314. This statute should be amended to provide treasurers with more flexibility with regard to the investment of county funds. Additionally, the treasurer should be given discretion to work with their county board to add financial entities to invest with which are not on the annual list because they are new or have a name change.

6. Update Civil Service Statutes to Anticipate Population Increase of Lancaster County

The County Civil Service Act has specific provisions which apply only to counties with a population of 150,000 to 300,000. See Neb. Rev. Stat. §§23-2517 through 2533 (Reissue 2012). Within the next few years Lancaster County's population will exceed 300,000, which could potentially make Lancaster County subject to the set of provisions under the County Civil Service Act which govern Douglas County. There are substantial differences between these two sets of statutory provisions. For example, Lancaster County sponsored legislation in 2006, which was enacted under 2006 Neb. Laws LB 808, to help facilitate the transfer of employees from the State or other political subdivisions to the County. LB 808 does not apply to counties over 300,000. Legislation is needed to clarify how the County Civil Service Act will apply to Lancaster County after it reaches a population of 300,000. The Act should also be amended to clarify how it is determined when a population threshold is reached, e.g., the most recent United States census.

7. Clarify How Funds Raised under Neb. Rev. Stat. §33-109 Can be Used to Modernize Technology Related to the Preservation and Maintenance of Register of Deeds Records

2012 Neb. Laws LB 14 created a special fund to be used exclusively for the purposes of preserving and maintaining public records in the office of the register of deeds and for modernization and technology needs relating to those records. The additional fees used to create the fund will sunset January 1, 2018. Different counties have different modernization and technology needs relating to register of deeds records. §33-109 should be clarified to allow each county to benefit fully from the fund.

OTHER EXISTING PROPOSALS

1. Eliminate Jail Time on Appropriate Low-Level Misdemeanors

The Legislature should conduct a study on misdemeanor penalties to determine whether jail time is necessary to protect the public safety on low-level criminal offenses. The study should include both state law and city ordinances. The reduction in the County jail population could result in a significant savings.

2. Examine Allowing Pretrial Diversion for Driving While Intoxicated (DWI)

Neb. Rev. Stat. §29-3604 provides that no person charged with driving while intoxicated shall be eligible for pretrial diversion. However, Sarpy County has been allowed to continue its grandfathered DWI diversion program in spite of this blanket prohibition. The Legislature should conduct a study to examine the effectiveness of the Sarpy program and determine the feasibility of allowing other counties to offer DWI diversion. The recidivism rate of first-time DWI offenders is low. It is possible a well-run program could enhance public safety and result in a substantial savings to counties.

3. Increase the Indigent Defense Fee

Neb. Rev. Stat. §33-156 provides for a three dollar indigent defense fee which is taxed as costs for each case filed in each county court and district court, and credited to the Public Advocacy Operations Cash Fund. Pursuant to Neb. Rev. Stat. §29-3933, this Fund is used to reimburse counties for a portion of their indigent defense system expenditures. Increasing the indigent defense fee would help defray the growing cost of providing indigent defense.

4. Tax Incentives for Compressed Natural Gas (CNG)

The County is investigating the possibility of converting a portion of its motor vehicle fleet to CNG. However, conversion costs are high and state tax incentives could help speed the switch to this more efficient fuel.

5. Clarify Funding Source When Courts Assign Non-IV-D Cases to a Child Support Referee

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

6. Corrections Booking Fee

A significant portion of the cost for housing inmates is incurred during the booking process. The Lancaster County Corrections Department has recommended the imposition of a booking fee to help recoup these expenses. However, legislation is needed to create statutory authority for the County to charge booking fees.

7. Increase the Cigarette Tax

The average cost per pack of cigarettes in the United States is \$1.49, and the Nebraska tax on a pack of cigarettes is only 64¢. Statistics indicate price increases on cigarettes cause adults to quit smoking and prevent teenagers from starting to smoke.

8. Clarify Election Commissioner's Responsibilities When Caucus System Used to Select Delegates to County Convention During a Presidential Election Year

Neb. Rev. Stat. §32-707 should be amended to clarify the responsibilities of the election commissioner, including that the election commissioner is taken out of the process once a political party has chosen to use the caucus system to select delegates to the county convention in a presidential election year. The County would realize a small savings with this legislation.

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

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

10. Modify Strict Liability Provisions of Neb. Rev. Stat. §13-911 When a Vehicular Pursuit Is Terminated by a Law Enforcement Officer

As interpreted by the Nebraska Supreme Court, a political subdivision can be held strictly liable under §13-911 for damages to an innocent third party caused by a fleeing motorist, even after a pursuing law enforcement officer has stopped the pursuit. §13-911 should be amended to eliminate strict liability when the damages are caused by the fleeing motorist after the pursuit has been terminated by the officer. This amendment would provide an incentive to law enforcement to stop pursuits which have become dangerous to innocent third parties.

11. Increase Funding for Sex Offender Treatment and Tracking

All sex offenders are transferred to the Lincoln Regional Center prior to release from state custody. This policy results in a disproportionate number of sex offenders in our community. Since state policy is increasing the number of sex offenders in the County, additional funding should be provided by the State to address this problem.

Also, the Lancaster County Sheriff is statutorily required to register sex offenders under the Sex Offender Registration Act, Neb. Rev. Stat. §29-4004 (Reissue 2008). The Sheriff devotes a full time employee to perform this mandated function. Likewise, the Corrections Department has additional duties under §29-4007. To help defray these costs sex offenders should be required to pay a registration fee.

12. Review and Revise the Criminal Code Regarding Appropriate Use of Jail Time

LR 272 was enacted by the Legislature for the purpose of studying the fiscal impact of the criminal law on counties, especially new criminal laws and procedures. LR 272 will also examine if the criminal law is effectively addressing the problems it is trying to solve, and whether a cost-benefit analysis could be performed prior to enacting new criminal offenses and enhanced criminal procedures. Criminal offenses which carry jail time increase county costs for jails and indigent defense, and the Legislature very seldom if ever appropriates funding to assist counties with these costs. The criminal justice system continues to grow at an alarming rate, and Lancaster County could benefit from a sensible approach to the creation of new jailable offenses, as well as a review of the effectiveness of the imposition of jail time on existing offenses.

13. Clarify Who is Entitled to the Proceeds in a Tax Increment Financing Special Fund Upon Payment of All Bonds, Loans and Other Indebtedness for a Redevelopment Project

Tax increment financing is widely used by cities and villages to finance community redevelopment projects. Essentially, two land values are established for tax parcels lying within the boundaries of a project: the value of the parcel prior to redevelopment and the value of the project after redevelopment. Any property taxes collected as a result of the increase in the value of the parcel because of the redevelopment project are placed in a special fund to be used solely to pay the principal, interest, and premiums on any bonds, loans, notes, or other indebtedness incurred to finance the redevelopment project. Neb. Rev. Stat. § 18-2147(1)(b)(Reissue 2007) provides, “When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the county assessor and county treasurer and all ad valorem taxes upon taxable real property in such a redevelopment project shall be paid into the funds of the respective public bodies...”

A question has arisen regarding whether a city has the authority to amend a redevelopment project after all indebtedness has been paid, and thus continue using the proceeds in the special fund for redevelopment purposes, instead of distributing the balance of the special fund to the respective public bodies which levy on the property. Legislation is needed to clarify whether a city or village has the authority to amend a redevelopment project after the original indebtedness has been paid.

14. Clarify Inheritance Tax Rules on Treatment of Non-Children as Children for Purposes of Determining Tax Rate

Nebraska law allows a more favorable tax rate with regard to recipients with which the decedent had a close relationship resembling that of a parent and child, even though the recipient was not the actual child of the decedent. Additional clarification should be provided in the statutes for when this favorable treatment is appropriate.

15. Provide Statutory Guidance on Enforcement of Insurance Subrogation Clauses

In the case of Blue Cross and Blue Shield of Nebraska, Inc. v. Dailey, 268 Neb. 733 (2004), the Nebraska Supreme Court held a subrogation clause in the insurance contract could not be

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

16. Amend Neb. Rev. Stat. §32-1203(2) to Allow Recovery of Ballot Costs

Although counties can recover from political subdivisions some of the cost of producing ballots, the cost recovery formula described in §32-1203(2) does not adequately reimburse counties for their actual costs. This section should be amended to allow counties to recover all expenses, such as the cost of programming counting machines, as well as other actual costs not addressed in the existing formula.

17. Create the Position of Magistrate

In 2009 the Legislature passed LR 183 to examine the creation of a specialized magistrate for the State's largest courts. The magistrate would have authority to issue search warrants, subpoenas, arrest warrants, summonses, and set bail. The purpose for creating this position is to help reduce jail populations, as well as reduce the need for new judges.

18. County Input in the Approval of Tax Increment Finance Districts Which Affect the County Tax Base

The Nebraska Redevelopment Act, Neb. Rev. Stat. §58-501 et seq. is intended to encourage economic growth through redevelopment of blighted and substandard areas within cities. The Act generates funds for redevelopment projects by creating tax increment financing (TIF) districts. Essentially, property tax increases within a TIF district attributable to valuation increases from redevelopment projects are deposited into a special fund and used to pay the cost of financing the projects for up to fifteen (15) years. Consequently, other taxing entities in the county where the TIF district is located lose the benefit of the property valuation increase for the entire district during the period the project is financed. In recent years there has been a sharp increase in the number of TIF districts created by the City of Lincoln. TIF districts often encompass a large area, regardless of the size or number of the individual projects within the TIF, and regardless of whether the entire district is blighted or substandard. Since the other taxing entities, including counties, are being denied essential tax revenue, they should have direct input into the establishment of TIF districts. This would help guarantee TIF districts are actually targeted to blighted or substandard areas and do not unnecessarily remove growth from the assessed valuation for other taxing entities.

19. Occupation Tax on Wineries

Neb. Rev. Stat. §53-132(4) gives authority to cities, villages and counties to charge an occupation tax on retail, craft brewery, and microdistillery licenses. However, no such authority exists for farm winery licenses. Given the growing number of farm wineries, it may be advisable to authorize an occupation tax on farm winery licenses.

20. Amend Neb. Rev. Stat. § 83-1,103.04 to Provide for the Appointment of a Private Attorney Rather than the Public Defender

When the Office of Parole Administration determines an amendment of the conditions of community supervision is necessary for an individual subject to lifetime supervision, if the person requests legal counsel and is indigent, an attorney from the public defender office is appointed. Since this proceeding is civil in nature, appointment of the public defender is not appropriate. Also, the cost of appointing a private attorney should be borne by the State.

21. Clarify How the County Visitors Improvement Fund Can be Spent

Lancaster County established the County Visitors Improvement Fund in 2005. Neb. Rev. Stat §81-1255 generally authorizes the Improvement Fund to be used to improve the visitor attractions and facilities in the county. However, if the Visitors Promotion Committee (VPC) determines visitor attractions in the county are adequate and do not require improvement the Fund can also be used to promote, encourage, and attract visitors to the county to use its travel and tourism facilities.

The implementation of this statute is cumbersome, requiring the VPC to repeatedly make specific findings regarding the adequacy of travel and tourism facilities prior to the funds being used for such worthwhile purposes as targeted promotion for large events. The statute should be amended to streamline the procedure for using the Improvement Fund for specific promotional purposes.

22. Revise Consolidation Statutes to Facilitate Governmental Mergers

A number of state laws authorize the consolidation of governmental functions, including the Interlocal Cooperation Act, the Joint Public Agency Act, and the Consolidation of Counties and Offices Act. These statutes should be reviewed and revised to remove possible barriers to potential tax saving consolidations, including mergers such as City Public Works/County Engineer and City Police/County Sheriff.

23. Review County Elected Positions

A review of existing county elected positions should be conducted by the Legislature to determine whether the positions should continue to be elected, or whether the public would be better served if the positions were appointed by the county board.

ATTACHMENT A

Lancaster County, Nebraska Services Provided to the State of Nebraska

		Budget Year <u>2012-13</u>	<u>Updated Information</u>	Budget Year, <u>2013-14</u>
County Treasurer	The Treasurer collects sales tax and remits to the State through the motor vehicles division. Collected \$29,238,776 in FY12 and collections fees kept by the county were \$1,800.		Collected \$30,638,953 in FY13 and collection fees kept by the county were \$1,800.	
West O Building	Lancaster County provides 4,075 square feet to the State for Drivers License Examiners. This includes utilities and custodial services. The cost per sq/ft at West O is \$14.88.	\$ 60,636	The cost per sq/ft at West O is \$15.67 (2013-14)	\$ 63,855
Motor Vehicle Building	Lancaster County provides 1,651 square feet to the State. This includes utilities and custodial services. The cost per sq/ft is \$7.47.	\$ 12,334	The cost per sq/ft is \$7.84 (2013-14)	\$ 12,944
Register of Deeds	The Register of Deeds does all of the work required to file land records yet is required to send a portion of the documentary stamp tax to the state to fund other programs. County keeps 22.22% and the State receives 77.78%. Based on \$2 million collected - state receives \$1,555,000. (76-903)	\$ 1,555,000	Calculated amount is still reasonable	\$ 1,555,000
Election Commissioner	Billable costs for elections are not allowed to be billed to the state. Costs are passed down to other political subdivisions but not to the state. State costs would range from 50% to 60% of billable costs. Last primary billable costs were \$356,000.			
County Court (BU 6280)	Lancaster County is required to remit certain court costs to the State. If those fees cannot be collected from defendants, the County must pay.	\$ 145,000	Court Costs (Budget 2013-14)	\$ 136,700
County Court	All County Court staff are state employees. Lancaster County pays for operating expenses, computers, and office equipment.	\$ 399,770	Budget 2013-14	\$ 375,202
	Lancaster County is required to provide for office space and courtrooms. Cost includes custodial services, utilities, security, and parking. 29,195 sq/ft at a cost of \$14.72 per sq/ft.	\$ 469,654	Budget 2013-14 includes new courtroom	\$ 480,066

(New Courtroom is under construction)

Juvenile Court	Juvenile Court Judges are state employees. The County pays for a Court Administrator, 3 Clerk Typists, and 4 bailiffs. (Personnel Costs)	\$ 519,554	Budget 2013-14	\$ 545,824
	Lancaster County also pays for Court Appointed Attorneys, Boarding contracts, and other operating expenditures.	\$ 1,053,948	Budget 2013-14	\$ 1,140,495
	Lancaster County is required to provide for office space and courtrooms. Cost includes custodial services, utilities, security, and parking. 12,632 sq/ft at a cost of \$14.72 per sq/ft.	\$ 190,623	Budget 2013-14	\$ 188,680
District Court	Lancaster County is required to remit certain court costs to the State. If those fees cannot be collected from defendants, the County must pay.	\$ 62,250	Budget 2013-14	\$ 65,000
	District Court Judges are state employees. The County pays for a Court Administrator, 2 Law Clerks, and 8.75 bailiffs. (Personnel Costs)	\$ 811,186	Budget 2013-14	\$ 1,052,005
	Lancaster County has had a District Court Referee for many years. State Statute states the county and state should pay for the costs. IV D pays for 2/3 of the costs but the state pays zero.			
	Lancaster County also pays for Court Appointed Attorneys, juror fees, and other operating expenditures.	\$ 1,110,979	Budget 2013-14	\$ 1,003,857
	Lancaster County is required to provide for office space and courtrooms. Cost includes custodial services, utilities, security, and parking. 33,524 sq/ft at a cost of \$14.72 per sq/ft.	\$ 499,954	Budget 2013-14	\$ 499,954
County Sheriff	Special Services Division provides security for the courtrooms. This cost is incorporated into the cost per sq/ft in rent calculations.			
	The Civil Division is responsible for the process of writs and documents. Sheriff does receive revenue			

but it does not offset the cost of performing the service.

	Register sex offenders and complete handgun registrations in the Administrative Support Division. 2 employees - does not include supervisor time.	\$	85,000		
Corrections	The Jail has provided 859 DNA tests for the State over the last 2.5 years.	\$	4,500		
	The Jail has completed 7,175 full sets of fingerprints for the State system (NSP) over the last 2 years.	\$	33,400		
	The Jail has completed 22 sex offender registrations over the last 2 years.	\$	1,100		
	The Jail has had to answer 138 Ombudsman's request with time spent researching, interviewing, making repeated phone calls, and email contacts with the Ombudsman's office over the last 2 years.	\$	15,000		
	The Jail has completed approximately 18,000 warrant checks on offenders before releasing over the last 2 years.	\$	42,000		
	Time and staff effort to send inmate medical files to the State of Nebraska over the last 2 years.	\$	1,900		
	Jail Reimbursement - housing of prisoners on behalf of the State. The State's rate was only \$35 per day and funding would run out during the fiscal year. Funding ended after FY11.	\$	7,070,523		
	Amount billed FY00-FY11		15,696,765		
	Amount collected		8,626,242		
	Amount unable to be billed because funding ended:	\$	2,478,560		
	FY12		1,809,255		
	FY13 - 10-31-12		669,305		
Juvenile Probation	Juvenile Probation staff are state employees. Lancaster County pays for operating expenses, computers, and office equipment. This also includes contracts with the State Probation Office.	\$	223,425	Additional costs due to LB561	\$ 291,125
				Microcomputer Request 2013-14	\$ 10,970

	The Juvenile Drug Court was funded by the State with grants but the County started funding in FY05.			
	Lancaster County provides space for the department and the juvenile drug court. Cost includes custodial services, utilities, security and parking. 3,736 sq/ft at a cost of \$14.72 per sq/ft.	\$ 60,591	Rent plus additional due to LB561	\$ 153,378
Adult Probation	Adult Probation staff are state employees. Lancaster County pays for operating expenses, computers, and office equipment. This also includes a contract with the State Probation Office.	\$ 149,303	Budget 2013-14 Microcomputer Request 2013-14	\$ 152,111 \$ 25,706
	Lancaster County provides space at the Jail and office space at Trabert Hall. Cost includes custodial services, utilities, security and parking. 6,323 sq ft at a cost of \$11.75 per sq/ft at the jail and 17,572 sq ft at a cost of \$10 per sq/ft at Trabert Hall.	\$ 251,816	same square fee - additional parking (2013-14)	\$ 252,176
Community Corrections	Drug Court - reimbursement for employees. Dollar amount of reimbursement has not changed over 6 years - despite Kim's request. Employee Costs - \$276,156 State Reimb - \$183,839	\$ 92,317		
Youth Services Center	The state does not reimburse the county for the cost of care for youth detained and/or in an alternative to detention post adjudication and beyond. The requirement is only when the youth is committed to HHS/OJS and should be adjudicated youth in juvenile court. The state should also be responsible for the cost of care for youth who are detained due to a violation of probation pre-adjudication status.	\$ 715,000		
General Assistance	Lease agreement with Health & Human Services - 41,267 square feet x 13.60 per sq ft. x 51.62% nonfederal share = \$289,707.55 (Included on legislative list)	\$ 292,000	41,267 square feet x 14.01 per sq ft x 52.03% nonfederal share = \$300,811.79 (Included on legislative list)	\$ 300,812
County Fees	A number of county statutory fees have not been raised for many years. Fees are not allowed to be			

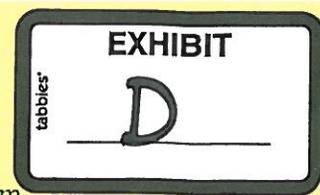
increased to cover costs. A few examples:

- locksmith license
- marriage license
- handgun permits
- motor vehicle inspection fees

Other Court Related
Costs

Clerk of the District Court (Adopted Budget 2012-13)	\$ 1,579,711	Adopted Budget 2013-14	\$ 1,633,560
Jury Commissioner (Adopted Budget 2012-13)	\$ 147,694	Adopted Budget 2013-14	\$ 156,405
Mental Health Board (Adopted Budget 2012-13)	\$ 149,170	Adopted Budget 2013-14	\$ 140,000

2015 LANCASTER COUNTY LEGISLATIVE PRIORITIES



1. Property Tax Relief

- a. Restore State Aid to Counties and the State Prisoner Reimbursement Program
- b. Oppose Elimination of the Inheritance Tax
- c. Eliminate Unfunded Mandates
- d. Raise County Fees (Marriage License, Locksmith, Amusement License, etc.)
- e. Support Adequate Appropriations for the Implementation of 2013 Neb. Laws LB 561

2. Support Expansion of Medicaid under the Affordable Care Act

Lancaster County expends over \$2 million a year for General Assistance medical services. If Medicaid is expanded under the Affordable Care Act, virtually all of these medical services would be covered by Medicaid.

3. Address Lancaster County Obligations Under the 300,000 Population Threshold

Informal estimates indicate Lancaster County's population exceeded 300,000 in May of 2014. Nebraska statutes contain a number of requirements which apply only to counties which have reached the 300,000 population threshold, including: increase the county board to seven commissioners, formation of a civil service commission, changes to the sheriff's office merit commission, and changes to the enabling statutes for the Lancaster County Retirement Plan. Some of these statutory requirements specify that the most recent federal decennial census shall be used in determining population, while others are silent as to how the population is determined. Given the ambiguity on when these statutes apply, as well as the lack of a clear purpose for making many of these changes, the Legislature should review the need for the changes required by the 300,000 population threshold, and harmonize the effective date for all statutes.

4. Eliminate Responsibility of Counties to Pay HHS rent

When the State assumed responsibility for welfare, a legislative provision was added requiring counties to maintain facilities for the Department of Health and Human Services (HHS) as they existed on April 1, 1983. See Neb. Rev. Stat. §68-130. Although some relief from this antiquated statute was provided in 2011 Neb. Laws LB 234 (allowing payment reductions for HHS space eliminated since 1983 and determining whether additional space can be eliminated), the use of local property tax to pay for HHS facilities should be eliminated in its entirety. This is especially true in light of the State's total elimination of state aid to counties. LB 632 will accomplish this purpose.

5. Amend Mental Health Commitment Act to Include A Sex Offender Disorder As a Diagnosed Mental Illness / Funding for Community-Based Sex Offender Treatment

Effective community-based treatment for sex offenders is essential to protect the public safety. Since mental abnormalities or personality disorders which may cause a person to engage in acts of sexual violence are not recognized as a mental illness for purposes of the Mental Health Commitment Act, funding is not available through the mental health regions for treatment of sex offenders in the community. Without adequate funding, the Sex Offender Treatment Program (STOP) in Lancaster County will not be able to continue offering services. Amending the Nebraska Mental Health Commitment Act to include a diagnosis for sex offender disorders could help provide the needed funding. Adult corrections reform to relieve prison overcrowding is another potential source of funding for community-based sex offender treatment. The County supports increasing funding for parole and probation sex offender treatment programs.

6. Monitor Adult Corrections Reform

Prison overcrowding in Nebraska is at a critical stage. Possible solutions being discussed by the Legislature could result in housing more state prisoners in county jails, thereby shifting the financial burden to counties. Lancaster County strongly opposes solutions which transfer state responsibilities to the counties.

PROTECT THE FEDERAL-STATE-LOCAL PARTNERSHIP FOR MEDICAID

ACTION NEEDED: Urge your Senators and Representatives to support the federal-state-local partnership structure for financing and delivering Medicaid services and to oppose any measure that would further shift federal and state Medicaid costs to counties including cuts, caps, block grants and new limits on counties' ability to raise the non-federal match or receive supplemental payments. This will enable counties to continue to maintain their local health care safety-net systems with a balanced mix of federal, state and local resources, while adjusting to a rapidly changing health care environment.

BACKGROUND: Authorized under the Social Security Act, Medicaid is a means-tested entitlement program administered by the states that provides health and long-term care insurance to over 62 million low-income children, families, seniors and persons with disabilities at a total cost of over \$400 billion. Medicaid is financed by both federal and state governments based on the federal medical assistance percentage (FMAP), which is individually calculated for each state.

Counties are required to provide health care for low income, uninsured or underinsured residents in 32 states. There are 964 county hospitals and 647 county nursing homes serving Medicaid beneficiaries in communities nationwide. Additionally, counties put up part of the non-federal match for Medicaid in 21 states. Deficit reduction measures that reduce the federal financial contribution to Medicaid puts counties at risk for absorbing shifted costs by raising local taxes or cutting other local budget line items since counties are often required by state law to provide health care services for vulnerable populations.

Under the Affordable Care Act (ACA), states have the option to expand Medicaid coverage for all non-elderly adults with incomes below 133 percent of the federal poverty level beginning in 2014. The ACA offers 100 percent federal funding to cover the expansion population for 2014 through 2016, ramping down to 90 percent in 2020 and the years thereafter. Medicaid expansion will reduce counties' costs for providing often mandatory care to low income, uninsured or underinsured residents.

QUICK FACTS

- In 32 states, counties are required to provide health care for low income, uninsured or underinsured residents
- In 21 states, counties are required to contribute to the non-federal share of Medicaid
- Counties spend \$68 billion annually on health care services
- Counties run 964 hospitals nationwide
- Counties run 647 nursing homes – 75 percent of publicly owned facilities

KEY TALKING POINTS:

- **Medicaid is already a lean program.** Medicaid's average cost per beneficiary is significantly lower than private insurance, even with its comprehensive benefits and lower cost-sharing. Counties have made the most of Medicaid's flexibility by leveraging local funds to construct systems of care for populations that private insurance does not cover. New limits on counties' ability to receive supplemental payments or raise

the non-federal match through certified public expenditures (CPEs) and intergovernmental transfers (IGTs) would compromise the stability of the local health care safety-net.

- **A Medicaid block grant would not reform Medicaid – it would merely cut federal spending by shifting expenses to state and county taxpayers.** According to the Congressional Budget Office, the House FY2013 budget resolution block grant would have cut \$770 billion over ten years and would have caused states either to increase health care spending to make up for the federal cut or to reduce access to care for beneficiaries. Either option would shift costs to county taxpayers and reduce county capacity to provide health care services – including those mandated by state laws.
- **Imposing spending caps on Medicaid will not address the underlying drivers of the program’s costs.** Caps do not account for long-term trends like the aging population and rising health care costs that are projected to drive higher federal entitlement spending in the coming years. Complying with a cap designed to reduce the deficit significantly would require significant cuts to the federal contribution, making states, and ultimately counties, absorb the cost shift.

For further information, contact: Paul Beddoe at 202.942.4234 or pbeddoe@naco.org

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<p><i>*Member of Health Subcommittee</i></p>	<p><i>*Members of Health Care Subcommittee</i></p>

FUND THE SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

ACTION NEEDED: Urge your Senators and Representatives to maintain funding for the U.S. Department of Health and Human Services (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA) in the FY2015 Labor-HHS-Education appropriations bill at least at FY2014 levels, especially the Community Mental Health Services (CMHS), and Substance Abuse Prevention and Treatment (SAPT) block grants.

BACKGROUND: SAMHSA was established in 1992 and directed by Congress to target substance abuse and mental health services to the people most in need and to translate research in these areas into the general health care system. To accomplish its work SAMHSA administers a combination of competitive, formula and block grant programs and data collection activities, including the CMHS and SAPT block grants, which states use to fund direct services through the 750 county behavioral health authorities nationwide and through other community providers. Behavioral health services improve population health status, and reduce health care and justice system costs to counties.

QUICK FACTS

- There are more than 750 county behavioral health and developmental disability authorities nationwide
- Counties plan, operate and finance community-based services for persons with mental illness, substance abuse disorders and developmental disabilities

KEY TALKING POINTS:

- **Congress should fund the Community and Mental Health Services Block Grant at \$484 million in the FY2015 Labor-HHS-Education appropriations bill.** The CMHS Block Grant is the principal federal discretionary program supporting community-based mental health services for adults and children. Counties may use block grant dollars to provide a range of services for adults with serious mental illnesses and children with serious emotional disturbances, including employment and housing assistance, case management (including Assertive Community Treatment), school-based support services, family and parenting education, and peer support. The CMHS Block Grant received \$459.7 million in FY2012 and \$484 million in the FY2014 omnibus appropriations bill.
- **Congress should fund the Substance Abuse Prevention and Treatment Block Grant at \$1.8 billion in the FY2015 Labor-HHS-Education appropriations bill.** County behavioral health authorities use the SAPT Block Grant to serve vulnerable, low-income populations—those with HIV/AIDS, pregnant and parenting women, youth and others—by ensuring access to substance abuse services. An independent 2009 study of the SAPT Block Grant found the program to produce positive outcomes, including increased abstinence from alcohol and other drugs, increased employment and decreased criminal justice involvement. The SAPT Block Grant received \$1.8 billion in FY2012 and also in the FY2014 omnibus appropriation.

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For further information, contact: Paul Beddoe at 202.942.4234 or pbeddoe@naco.org

EXTEND HEALTH BENEFIT COVERAGE TO PRE-TRIAL JAIL INMATES

ACTION NEEDED: Urge your Senators and Representatives to require the U.S. Department of Health and Human Services (HHS) Centers for Medicare and Medicaid Services (CMS) to allow an otherwise eligible person who is in custody, pending disposition of charges, to continue receiving federal health benefits until they are convicted, sentenced and incarcerated. This will enable counties to provide better health care to pretrial inmates at lower cost to local property taxpayers.

BACKGROUND: Title XIX of the Social Security Act, which governs the Medicaid program, prohibits Federal Financial Participation (FFP) – the federal match – for services provided to “inmates of a public institution” even if they are eligible for, and enrolled in, Medicaid (Section 1905(a)(A)). States refuse to assume the federal share of providing Medicaid services to eligible persons in county custody, terminating benefits and even eligibility. As a consequence, the entire cost of medical care for all arrested and detained individuals falls to the counties – *note, these individuals have NOT been convicted and are presumed innocent.*

Once an individual’s Medicaid eligibility has been terminated, it may take months to reenroll and for benefits to be restored when they are released back into the community. These coverage gaps result in discontinued care and contribute to recidivism (repeat offenses). Medicare, the Children’s Health Insurance Program (CHIP) and Veterans Administration health benefits are similarly restricted.

The Affordable Care Act (ACA) requires Qualified Health Plans (QHPs) offered on the new Affordable Health Insurance Exchanges, also called Marketplaces, to cover qualified individuals who are incarcerated pending disposition of charges. An estimated one-third of the pre-trial jail population may be eligible for subsidized QHP coverage and many more for Medicaid coverage (in states that choose to expand Medicaid under the ACA) based on income and/or disability status in 2014. CMS has so far declined NACO’s request (1) to harmonize the definition of “inmate” for Medicaid purposes with the ACA “incarcerated pending disposition” provision, (2) to clarify that jail officials may submit enrollment applications on behalf of persons in custody, and (3) to require that states stop terminating eligibility for persons in custody pending disposition.

QUICK FACTS

- Counties spend approximately \$73.6 billion each year on the operation of corrections, legal (courts), firefighting and law enforcement
- There are 13 million jail admissions and releases annually in county jails, involving about 10 million individuals
- 68 percent of jail inmates meet clinical criteria for substance abuse or dependence
- 96 percent of jail inmates do not go to prison, return directly to the community, with their health conditions
- Study shows health care costs drop between 4.4 percent and 7.7 percent after expanding access to substance use treatment to low income population

KEY TALKING POINTS: Extending health benefit coverage to those in pre-trial custody enables counties to provide better health care to:

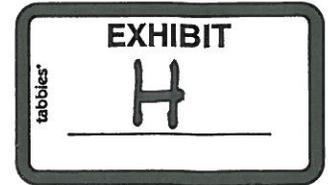
- Increase access to primary care, and behavioral health and substance abuse treatment for justice involved individuals, which has been shown to reduce health care, disability and criminal justice costs
- Provide access to required jail health care at very low cost to states and counties, relieving pressure on local tax payers
- Advance public health and social stability by integrating and coordinating care and reducing gaps in health care for those in pretrial custody and then released back into communities
- Reduce health disparities by providing health insurance coverage to a population of low-income adults with substantial physical, mental health and substance abuse needs
- Position jails as potential enrollment catchment areas for vulnerable populations, providing an opportunity to break the cycle of recidivism caused or exacerbated by untreated mental illness, substance abuse and other co-occurring disorders

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* Members of Health Subcommittee		*Members of Health Care Subcommittee

BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY, NEBRASKA



2015 LEGISLATIVE AGENDA DISCUSSION ITEMS

PART A: DISCUSSION ITEMS SUBMITTED DURING THE INTERIM

ELECTIONS

1. **SUPPORT** revising 'Elections' section §32-559, or appropriate section, adding language setting out the procedures to withdraw a bond off the election ballot; revisions are necessary to allow an item to be withdrawn preventing unnecessary expenditure by political subdivisions and by the election commission through allowing withdrawal prior to publication of notice and printing of ballots.
2. **SUPPORT** legislation relating to 'Elections', to expand Counties' ordinance making authority (or to grant 'home-rule' authority) to allow Counties to choose whether to have all elections conducted exclusively by mail-in (or drop-off) ballot only.
3. **SUPPORT** legislation relating to 'Elections' to revise section §32-814(4) in order to strike unnecessary and obsolete language requiring the rotation of candidate names on an official election ballot; specifically to strike various sections that require the 'rotation' of the candidate names 'precinct by precinct' in each office division.

COURTS AND CRIME

4. **SUPPORT** revising 'Infants and Juveniles' at section §43-3001, amending provisions for a child in state custody allowing for the sharing of juvenile court records and any other pertinent information held by any of the agencies or organizations listed in §43-3001(1) and sets out requirements and procedures for sharing the information. This

change is necessary to allow for a cost-effective process of disclosing the information to the individual who is the subject of the information, upon becoming an adult, without a court order identifying the individual.

5. **SUPPORT** a legislative initiative to allow a County Sheriff to ‘deputize’ the County’s Director of Corrections and/or his designee, for the limited purpose of administering and facilitating the local registration requirements for a sexual offender, as mandated by Nebraska’s *Sex Offender Registration Act §29-4003, et seq.*; or in the alternative, **SUPPORT** revising Nebraska’s *Sex Offender Registration Act* to allow a County, at the option of the presiding County Board, to designate and direct the County’s Corrections Director or designee, to obtain and record local sexual offender registration documentation and to remit this information directly to the County Sheriff in satisfaction of the registration requirements of the *Sex Offender Registration Act*.
6. **SUPPORT** a legislative initiative to eliminate all filing fees paid to the court of jurisdiction associated with filing charges against a person accused of a crime by a County or City Attorney’s Office.
7. **SUPPORT** a legislative initiative to revise sections §§23-104; 43-273 through 43-292.01, or appropriate section, to clarify whether a County Board of Commissioners has the authority to contract for guardian ad litem services, and to clearly address in what manner counties are to facilitate the accounting of or audit the activities of any guardian ad litem provider, in order to monitor any services that have been provided.
8. **SUPPORT** a legislative initiative relating to ‘Infants and Juveniles’ sections §§43-272; 43-3708 through 43-3712, or appropriate section, to determine whether the juvenile justice system could be enhanced by requiring in certain cases, that both an attorney guardian ad litem and a non-attorney social worker representative be assigned to an

individual juvenile; these representatives will be required to share or co-serve in the appropriate roles and duties relating to the case management and/or representation of the juvenile.

AUTO

9. **SUPPORT** revising 'Revenue and Taxation' at section §77-202.2, or appropriate section, to remove provisions requiring the annual re-filing of a tax-exempt vehicle application; require an applicant to file an exemption application only when there has been a change in entity or ownership status, etc.

10. **SUPPORT** legislation allowing Counties to share in the revenue collected from automotive sales tax for the limited purpose of maintaining and facilitating the operations of a County Treasurer.

11. **SUPPORT** legislation to remove as a duty of County Treasurer offices the receiving, storing and in-person issuance of license plates and to require that the State of Nebraska directly issue by mail, all license plates in a uniform and statewide manner preferably from a single, central facility.

12. **SUPPORT** legislation to require that all law enforcement, fire and public safety vehicles statewide utilize a uniform non-numerical license plate and to have a single, fixed squad/division identification number, which is to be clearly marked in large numbers on the vehicle for easy identification.

13. **SUPPORT** legislation to extend the length of time between "plate years", or years that license plates must be replaced with a new plate/new design; this is to utilize license plates for a longer period of time (currently plates are cycled out every 6 years).

REVENUE AND TAXATION

14. **SUPPORT** a legislative initiative to revise sections §§18-2101 through 18-2144 known as the Community Development Law, or appropriate section, to require the State of Nebraska to fund all TIF (Tax Increment Financing) backed projects as part of Nebraska's statewide responsibility of economic development.

15. **SUPPORT** a legislative initiative to revise 'Revenue and Taxation' sections §§77-201 through 77-212, or appropriate section, to clarify and define what specific medical services-provider business operations should qualify for charitable, tax-exempt real property designation; or in the alternative, revise these sections to reflect a strict 'payment in lieu of taxes' treatment of the exempt medical providers' non-medical business operations (back-office activities).

16. **SUPPORT** a legislative initiative to revise 'Revenue and Taxation' sections §§77-201 through 77-212, or appropriate section, to revise the "Greenbelt designation" exemption provisions to more clearly define what types of property should qualify for Greenbelt and to narrow the definition of Greenbelt to more accurately reflect the original intent of the legislature.

17. **SUPPORT** a legislative initiative to revise 'Revenue and Taxation' sections §§77-201 through 77-212, or appropriate section, to revise the Homestead exemption provisions to reflect a permanent exemption status for qualifying property owners; such status will 'roll-over' year to year, without requiring a separate application each year by the property owner and then to provide for a process or method of monitoring for any significant change in financial or ownership status (example, an annual mailing for updates, etc).

PUBLIC INTEREST

18. **SUPPORT** *expanding the services covered (reimbursed) under Nebraska Medicaid to include ‘para-medical assistance’ services (also known as ‘Community Paramedicine and Home Paramedic Assistance Services’), geared for high-risk, Medicaid-eligible recipients; and to provide for the appropriate revisions to state law in order to allow paramedics and emergency medical technicians to operate in expanded healthcare delivery roles; coverage and implementation will reduce the occurrences of preventable return-hospitalizations and significantly reduce the unnecessary dispatch of ambulatory services (overreliance on 911).*

19. **SUPPORT** *revising ‘Livestock’ at section §54-603, or appropriate section, to add provisions providing for an identification document (ID card) and/or statewide registration for working service animals in order that the public may more easily identify a working service animal; facilitate easier access by a working service animal into public facilities through some form of visible identification.*

20. **SUPPORT** *a legislative initiative to expand Nebraska Medicaid coverage to eligible individuals in the County’s custody until their sentencing and/or post-adjudication.*

21. **SUPPORT** *a legislative initiative to require that private health insurers in Nebraska continue to provide health coverage to insured individuals in the County’s custody until their sentencing and/or post-adjudication (applicable to individuals who enter the County’s custody covered by a private health insurance policy).*

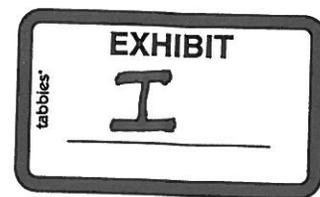
22. **SUPPORT** *a legislative initiative relating to ‘Counties’ to revise section §22-417, or the appropriate section, for the purpose of specifying that upon the consolidation (merger) of two or more elected County Offices, the newly consolidated officeholder (single office) will be limited to employing one ‘Chief Deputy’.*

PART B: POSSIBLE CARRYOVER ITEMS FROM LAST SESSION

1. **SUPPORT** legislative efforts to provide statewide uniformity in the collection of 911 surcharges. **LB 11 (Krist)** allows counties containing a city of the metropolitan class the ability to collect the same surcharge amount per active telephone number as those counties not containing a city of the metropolitan class. *103rd – LB 11 (Krist); indefinitely postponed.*
2. **SUPPORT** legislative efforts to revise non-profit tax-exemption language in §77-202 and §77-202.01, to allow certain tax-exempt (non-profit/charitable/religious) buyers of real property the ability to apply for full or partial tax-exempt benefits on property purchased throughout the calendar year based on the purchase date.
3. **SUPPORT** efforts to revise changes made to §25-2701, et al., as a result of LB 800 (Ashford; 2010), relating to the methods of early intervention for children at risk, to require the retroactive sealing of all juvenile records. *103rd – LB 1021 (Seiler); indefinitely postponed.*
4. **SUPPORT** the expansion of Medicaid eligibility within Nebraska. **LB 577 (Campbell)** amends Nebraska law to increase the number of individuals eligible for Medicaid within the state. Medicaid expansion could save counties statewide millions of dollars in medical costs annually for persons who otherwise would be eligible for County services at the property taxpayer's direct expense. *103rd – LB 577; LB 887 (Campbell); indefinitely postponed.*

5. **SUPPORT** *funding for rehabilitative alternatives to incarceration.* Metropolitan communities in Nebraska need adequate funding to implement meaningful reentry programs as alternatives to incarceration for both adult and juvenile offenders. This funding will promote rehabilitation and reduce recidivism.
6. **SUPPORT** *discussion of correctional system reform alternatives - methods to accomplish reductions in overall County facility costs, incarceration costs per inmate, reducing recurring-offender inmate populations, and implementing reentry programs as alternatives to incarceration.*
7. **SUPPORT** *legislation to expand Counties' ordinance making authority.* The concern has recently been expressed regarding door-to-door solicitors in unincorporated areas of the counties and how the counties currently do not have the authority to regulate that activity. *103rd – LB 1013 (Murante); indefinitely postponed.*
8. **SUPPORT** *revising language in §86-437 pertaining to recordkeeping by telecommunication service suppliers for 911 surcharge collection and to add language providing a penalty if a service supplier fails to remit fee payments in the amounts required by law.* Revise language that currently requires a telecommunication service supplier to maintain records of service surcharges for a period of one year, instead to maintain records for a period of five years. *103rd – LB 990 (Nordquist); indefinitely postponed.*

9. **SUPPORT** adding exemption language in §4-110 pertaining to public benefits. Add language to the list of public benefit exemptions listed in §4-110 to allow for the burial or cremation of an unclaimed body, who is an indigent person or any other person that the disposition of whose remains has become the responsibility of the State or County. *103rd – LB 821 (Lautenbaugh); indefinitely postponed.*
10. **SUPPORT** revising language pertaining to public bodies covered by the Nebraska Open Meetings Act, to include that any subcommittee formed by the Nebraska Workforce Investment Board be subject to the Open Meetings Act in the same manner as other public bodies. *103rd – LB 825 (Lautenbaugh); indefinitely postponed.*
11. **OPPOSE** efforts to alter the tax-exempt status of municipal bonds. Local governments could be directly affected by increased borrowing costs if the interest earned from municipal bonds becomes taxable. Eliminating the tax-exempt status of municipal bonds will reduce the effectiveness of a critical financing tool that local governments use to build infrastructure such as bridges, maintain roads, and construct schools and hospitals.
12. **OPPOSE** efforts to eliminate the inheritance tax. In fiscal year 2012-13, Douglas County collected \$8.9MIL of inheritance tax. Loss of the inheritance tax would have a significant impact on the county's budget and would likely result in property tax increases.



Sarpy County 2015 Legislative Priorities

***Unfunded and underfunded State mandates.**

LR582 (*Crawford*) Interim study to review the work of the Task Force on Unfunded Mandates created in 1996 and to study the impacts of unfunded and underfunded mandates on counties and county governments. Hearings Friday, October 24 at 1:30 Room 1507, State Capitol and Wednesday, October 29 at 1:00 in the City Council Chambers, South Sioux City Hall, 1615 1st Avenue. In working with Sen. Crawford's office they have identified at least 17 areas of potential legislation. Not every area will be addressed in 2015 but we intend to continue the discussion with the Legislature.

-Increase fees collected by the County and provide for an indexing mechanism to address future inflation.

-Restore Treasurer's commission on the collection of Motor Vehicle Sales Tax (LB581 2014 session, LB 581 restores a .5% monthly commission to counties across the state for all motor vehicle sales tax collections over \$3,000. Prior to October 1, 2002, counties received this commission in addition to the 2.5% monthly commission on the first \$3,000 of motor vehicle taxes collected by the county.

-Amend 29-2709 to eliminate County obligations to pay uncollectable court costs.
(See attached Supreme Court rule)

29-2709. Uncollectible costs; certification; payment; conditions.

When any costs in misdemeanor, traffic, felony preliminary, or juvenile cases in county court, except for those costs provided for in subsection (3) of section 24-703, two dollars of the fee provided in section 33-107.01, the court automation fee provided in section 33-107.03, and the uniform data analysis fee provided in section 47-633, are found by a county judge to be uncollectible for any reason, including the dismissal of the case, such costs shall be deemed waived unless the judge, in his or her discretion, enters an order assessing such portion of the costs as by law would be paid over by the court to the State Treasurer as follows:

(1) In all cases brought by or with the consent of the county attorney, all such uncollectible costs shall be certified by the clerk of the court to the county clerk who shall present the bills therefor to the county board. The county board shall pay from the county general fund all such bills found by the board to be lawful; and

(2) In all cases brought under city or village ordinance, all such uncollectible costs shall be certified to the appropriate city or village officer authorized to receive claims who shall present the bills therefor to the governing body of the city or village in the same manner as other claims. Such governing body shall pay from the general fund of the city or village all such bills as are found to be lawful.

-Repeal or Amend 68-130 so that HHS must either vacate County office space or pay market based rent for the space they occupy.

68-130. Counties; maintain office and service facilities; review by department.

(1) Counties shall maintain, at no additional cost to the Department of Health and Human Services, office and service facilities used for the administration of the public assistance programs as such facilities existed on April 1, 1983.

(2) The county board of any county may request in writing that the department review office and service facilities provided by the county for the department to determine if the department is able

to reduce or eliminate office and service facilities within the county. The department shall respond in writing to such request within thirty days after receiving the request. The final decision with respect to maintaining, reducing, or eliminating office and service facilities in such county shall be made by the department, and the county may reduce or eliminate office and service facilities if authorized by such final decision.

-Require the State to pay election costs for State offices and amendments.

***Establish County ordinance authority to regulate peddlers and solicitors.**

(LB1013 2014 Session. Legislative Bill 1013 amends section 23-187 to provide that counties may regulate the operation of peddlers, hawkers, or solicitors by the imposition of fees, issuance of a permit, or both. Any permit obtained by the county allows the operation or conduct in all areas of the county where it has jurisdiction. May amend to apply to only Counties over 100,000 population.

***NextGen 911.** Current law limits expenditures from the Enhanced Wireless 911 Fund to only Phase I and Phase II technology. Law needs to be amended to allow for expenditures for future technology.

***Juvenile Justice Issues.** Continue to monitor changes to the system required by the Legislature's passage of LB464 and 561. Probation office costs and medical costs may require future legislation to protect the interests of the counties.

***Adult Prison Reform.** Oppose efforts to shift any State correctional costs to the counties.

New Crime Commission Director

Mike Behm was appointed by the Governor as the new Executive Director of the Nebraska Commission on Law Enforcement and Criminal Justice. He currently serves as executive assistant to the Superintendent of the Nebraska State Patrol.

Behm, originally from Council Bluffs, Iowa, comes to the Crime Commission after a career in law enforcement. He retired as a Lt. Colonel in March 2003, having served 26 years with the State Patrol. Before returning to the Patrol for his current post in 2004, he coordinated Project Safe Neighborhood for the U.S. Attorney's Office in Nebraska.

The Crime Commission serves in a leadership role by providing expertise, technical assistance, training, financial aid, enforcement of mandatory jail standards and regulations; as well as research, evaluation, statistical services and informational resources to criminal and juvenile justice programs statewide.

POLICY AND RULE CHANGES

Oral Arguments before the Supreme Court and Court of Appeals

March 16, 2005 – The Nebraska Supreme Court adopted amendments to Neb. Ct. R. of Prac. 11 regarding scheduling, argument, and submission in specified juvenile and criminal cases.

For more information, check the judicial branch website at www.nebraskacourt.com under the Supreme Court rules link

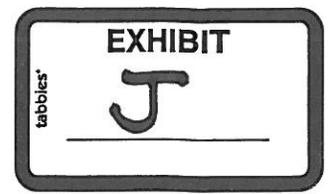
Policy on Collection of Fees in County Courts

The Nebraska Supreme Court has approved three policies for the collection of unpaid court costs. Effective July 1, 2005, the county courts will implement the following three policies which will require the claiming of fees to the county or city in an earlier and more predictable manner than the current practice. These policies are in addition to the existing policy of immediately claiming for cases where the defendant is found not guilty or the case is dismissed by either the prosecutor or the court.

1. The first policy requires submitting of claims to the county or city on unpaid non waivable costs. The policy requires submission of a claim to the county or city for any non waivable costs that remain unpaid one year after filing of a case. To illustrate, during July, 2005, JUSTICE will search the county court records and determine which cases filed during June, 2004, remain unpaid and add them to your next claim. In August, 2005, JUSTICE will search the record and determine which cases filed during July, 2004, remain unpaid and add them to the next claim. The same will be true for all future months.
2. The second policy requires the county courts to immediately claim court costs on felony bindovers and not wait until the conclusion of the case in district court. At the conclusion of the case, the clerk of the district court will collect the county court costs from the defendant and, if appropriate, remit them to the county treasurer.
3. The third policy directs that when a defendant is allowed credit for time spent in jail in lieu of payment of fines, costs and fees, the non waivable court costs shall be submitted to the county or city, as the case may be, for payment to the state general fund or Supreme Court cash funds.

Implementation of all three policies will require the cooperation of the judges, clerk magistrates, staff and county and city officials. Clerk magistrates should review and be familiar with § 29-2709, the section on uncollectible court costs. Judges and clerk magistrates are encouraged to contact your county officials and inform them of the new policies. The only cases that will be claimed each month are those pending during a one month period a year in the past. It should be stressed to the county and city officials that costs which have been claimed pursuant to this policy, will be reimbursed to the county or city when they are paid by the defendant. Specific instructions for JUSTICE will follow prior to the implementation date of July 1, 2005. See the entire text of these policies as an attachment at the end of this memorandum.

Contact Ken Wade, Associate Administrator, at 402-471-2671 or kwade@nsc.state.ne.us

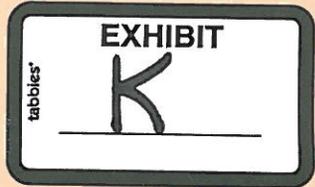


2015 NACO Legislation

- 1. Reduce unfunded and underfunded mandates to counties and transfer costs to the state.**

Programs and services enacted by the Legislature often result in increased expenditures by counties and other political subdivisions without offsetting state funding. Additionally, when budget cuts are made at the state level, responsibilities are passed down to counties without additional funding options. Counties oppose state unfunded or underfunded mandates without new state or local funding sources. Counties support returning the costs of unfunded or underfunded programs to the state. Examples of unfunded or underfunded mandates include office space for probation officers pursuant to LB561 (2013) and LB464 (2014), public defender and guardian ad litem expenses, and costs of placing state issues on election ballots. Counties support the examination of state and local partnerships to perform governmental functions and appropriate funding mechanisms for both parties
- 2. Increase marriage license, locksmith, and other fees.** Actual costs for counties to issue marriage licenses, locksmith licenses, and other permits exceed the fee authorized in statute. For example, the statutory fee for issuing a marriage license is \$15, but actual issuance costs in Lancaster County can be as high as \$55. After a marriage license has been issued, counties can charge \$5 for a certified copy of a marriage license but the state charges \$16. Likewise, the fee for a locksmith license is \$5 but the cost of a background check is usually at least double that amount. Additionally, locksmith licenses do not expire so there is no opportunity for renewal fees or ongoing monitoring of license holders. These fees and others should be increased to reflect the actual cost of issuance so that property taxpayers are not subsidizing user fees.
- 3. Eliminate termination date on records modernization and preservation fee.** LB14 (2012) created a special fund to be used exclusively for the purposes of preserving and maintaining public records in the office of the register of deeds and for modernization and technology needs relating to those records. The additional fees used to create the fund will sunset on January 1, 2018. The sunset date should be eliminated so that the funding program continues.
- 4. Expand uses of records modernization and preservation fee.** As noted above, LB14 (2012) created a special fund to be used exclusively for the purposes of preserving and maintaining public records in the office of the register of deeds and for modernization and technology needs relating to those records. Different counties have different modernization and technology needs relating to register of deeds records. Section 33-109 should be clarified so that all counties can benefit fully from the fund.
- 5. Eliminate requirement for register of deed to record individual cemetery plots.** Deeds to cemetery plots in cemeteries located in cities of the primary class, first class, second class, and villages are entitled to be recorded with the register of deeds in the county where they are located. Such deeds are exempt from documentary stamp taxes. Often the original purchaser is not buried in the plot and the filing is confusing for genealogists. These filings are unnecessary and the option to file should be eliminated.

6. **Redefine terms and revise records retention statutes for court records.** Existing law requires courts to enter information in the journal but the term “journal” is not defined. This term and others should be redefined to reflect modern recordkeeping and technology and provide for statewide consistency in district courts. Other duplicative procedures, such as keeping a physical complete record and separate journal, should be eliminated due to the electronic case file.
7. **Provide definitions and update terminology for juries.** As district and county courts strive for consistency in procedures statewide, statutory changes are needed to accommodate modern court practices in the selection of jurors and related terminology. Other proposed changes would clarify procedures used to excuse nursing mothers from the jury pool and define confidential jury records.
8. **Allow county treasurers to determine whether cities collect their own special assessments.** Existing law gives municipalities the authority to collect their own special assessments for paving, sewer, and other districts. If a city chooses not collect its own special assessment, the county treasurer becomes responsible for collection and receives a 1.5 percent collection fee. County treasurers should be given authority to determine whether to collect special assessments for municipalities.
9. **Amend Mental Health Commitment Act to include a sex offender disorder as a diagnosed mental illness/funding for community-based sex offender treatment.** An effective community-based treatment program is essential to protect our communities from sex offenders. However, mental abnormalities or personality disorders which may cause a person to engage in acts of sexual violence are not recognized as a mental illness for purposes of the Mental Health Commitment Act. Consequently, funding is not available through the mental health regions for community-based sex offender treatment. Amending the Nebraska Mental Health Commitment Act to include a diagnosis for sex offender disorders would help provide the needed funding. Adult corrections reform to relieve prison overcrowding is another potential source of funding for community-based sex offender treatment. NACO should support legislation which increases funding for parole and probation sex offender treatment programs.
10. **Require voter registration form when change of address is provided by agent.** When an application for an early voting ballot with an address change is provided to a county clerk or election commissioner but the voter does not appear in person, the voter’s address is changed and an acknowledgment of change of registration and the ballot are mailed to them. Because this process allows someone other than the voter to change their address, a voter registration form should be sent with the ballot to the new address and it should be treated like any other voter who is not registered timely or properly.



Probation Revenue Update

	Billed	Received	Anticipate Receiving	Rationale
October 2013	\$139,587.00	\$56,028.00	\$0.00	For days prior to 10/1/13, violations of home detention and electronic monitor
November 2013	\$104,121.00	\$62,859.00	\$0.00	For days prior to 10/1/13, violations of home detention and electronic monitor
December 2013	\$90,942.00	\$61,479.00	\$0.00	Violations of home detention
January 2014	\$171,741.00	\$50,922.00	\$5,451.00	Violations of home detention or electronic monitor. Anticipated revenue is one where probationary status was questioned.
February 2014	\$174,322.00	\$115,989.00	\$11,070.00	Violations of home detention. Anticipated revenue is one where probationary status was questioned and the difference in rates (\$276 vs. \$304).
March 2014	\$162,465.00	\$74,313.00	\$21,532.00	Violations of home detention or electronic monitor. Youth held on adult charges. Anticipated revenue is one where probationary status was questioned, youth ordered to a YRTC, and the difference in rates (\$276 vs. \$304).
April 2014	\$189,848.00	\$96,876.00	\$27,797.00	Violations of home detention. Anticipated revenue is one where probationary status was questioned, a couple drug court stays, and the difference in rates (\$276 vs. \$304).
May 2014	\$102,144.00	\$50,094.00	\$16,163.00	Violations of home detention or electronic monitor. Anticipated revenue is one where probationary status was questioned and the difference in rates (\$276 vs. \$304).
June 2014	\$253,046.31	\$226,044.00	\$25,972.00	Anticipated revenue is one where probationary status was questioned, incorrect amounts of days were paid, and the difference in rates (\$276 vs. \$304).
July 2014	\$245,399.00	\$0.00	\$232,623.50	Invoices sent 30+ days ago
August 2014	\$211,581.50	\$0.00	\$211,581.50	Invoices sent 15+ days ago
September 2014	\$427,527.25	\$0.00	\$427,527.25	Invoices sent 2 days ago
Totals	\$2,272,724.06	\$794,604.00	\$979,717.25	

Per Diem History

- \$276 from October 2013 to February 2014
- \$304 from February 2014 to July 2014
- \$307 from July 2014 to Present

(YRTC-K and YRTC-G per diem \$347)

The anticipated revenue is primarily the difference in the per diem rates from \$276 to \$304 or \$307. The remaining amounts are things such as incorrect amount of days paid, a couple drug court stays, a couple stays where the kid was committed to an YRTC during the stay, and disputes on the youth's status of being on probation.

The larger amount difference that wasn't paid and we don't anticipate receiving is from youth that were at the facility for a violation of home detention or electronic monitor or for days prior to October 1, 2013 or transportation charges.