

NSA Legislative Update

By: Cutshall & Nowka

The Nebraska Legislature adjourned sine die on May 26, Day 87 of what normally is a 90 day session. The Nebraska Legislature had a full agenda this session passing a \$7.1 billion two-year budget that included making tough budget decisions to cover a \$985.5 million projected shortfall and passing legislation that reformed the CIR, created an additional funding stream for roads, and redistricted executive, legislative and judicial districts. Cutshall & Nowka tracked over 60 bills for the Nebraska Sheriffs' Association (NSA). Below is a summary of legislation that we identified as of particular interest to the association, which can be accessed on the Nebraska Legislature's website at www.nebraskalegislature.gov.

PASSED LEGISLATION DURING 2011 SESSION

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

Legislative Bill 19 expands the Uniformed Controlled Substances Act to ban synthetic cannabinoids (i.e., K2 or Spice). Under the bill, specifically provided for synthetic cannabinoids would be Schedule I controlled substances and the penalties for possession, manufacturing or distribution of a synthetic cannabinoid is the same as the possession, manufacturing or distribution of marijuana. The NSA supported the bill. LB 19 was passed by the Legislature with the emergency clause, signed by the Governor on February 22 and took effect immediately.

LB 20 (McCoy) Regulate the sale of methamphetamine precursors

Legislative Bill 20 upgrades the current localized handwritten logs for purchases of methamphetamine precursor chemicals and implements a statewide electronic tracking system for such purchases. Under the bill, retailers will receive an immediate web-based "stop sale" notification when a person is attempting to purchase illegal amounts of pseudoephedrine. LB 668 introduced by Senator Mike Flood was amended into LB 20 and would provide an increased penalty for acquiring pseudoephedrine or phenylpropanolamine in excess of the 24 hour limits provides a new penalty for and acquiring pseudoephedrine or phenylpropanolamine in excess of the 30 day limit. Both are a Class IV misdemeanor for the first offense and a Class III misdemeanor for each subsequent offense. The NSA supported LB 20 and LB 668. LB 20 was passed by the Legislature, signed by the Governor, and takes effect on January 1, 2012.

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

Legislative Bill 61 redefines and increases the penalties for unlawful intrusion. Under the bill, intruding on an individual would be: 1) viewing another while they are undressing; or 2) recording a person undressing either by video, photographic, digital, or other electronic means. LB 61 also increases the penalties to a Class I misdemeanor for viewing a person undressing; Class IV felony if recording the undressing; Class III felony for distributing the recording; and if the defendant is 19 years or older and the victim is under 18, the defendant must register as a sex offender. LB 61 has a 3-year statute of

limitations. LB 61 was passed by the Legislature, signed by the Governor and takes effect on August 27, 2011.

LB 62 (Heidemann) Change budget revision and salary approval provisions for counties

Legislative Bill 62 amends the budget-making duties of county boards by prohibiting a county board from eliminating an office or unduly hindering a county officer in the conduct of his or her statutory duties. A county officer may challenge the county board's decision, but the officer will have the burden of proving that the elimination or hindrance by clear and convincing evidence. The NSA opposed LB 62. The bill was passed by the Legislature, signed by the Governor and takes effect on August 27, 2011.

LB 67 (Fischer) Clarify required use and enforcement provisions regarding seat belts and other occupant protection systems

Legislative Bill 67 clarifies that a violation of the use of child safety seats for children up to age 6 is a primary offense. The NSA supported LB 67. The bill was passed by the Legislature, signed by the Governor and takes effect on August 27, 2011.

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

Legislative Bill 226 makes assaulting a public safety officer a Class I misdemeanor if a defendant strikes a public safety officer with bodily fluids. Such an assault is a Class IIIA felony if the person committing the assault knows he or she has a human immunodeficiency virus, hepatitis B, or hepatitis C and the bodily fluid touches the eyes, mouth or skin of the public safety officer. Public safety officer includes the following individuals who are engaged in the performance of their official duties at the time of the offense: a peace officer; a probation officer; an employee of a county, city, or village jail; an employee of the Department of Correctional Services; an employee of the secure youth confinement facility operated by the Department of Correctional Services, if the person committing the offense is committed to such facility; an employee of the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney; or an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act. The NSA supported LB 226. The bill was passed by the Legislature, signed by the Governor and takes effect on August 27, 2011.

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

Legislative Bill 284 increases the minimum distance required for picketing funerals from 300 feet to 500 feet. The NSA supported LB 284. The bill was passed by the Legislature, signed by the Governor and takes effect on August 27, 2011.

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

Legislative Bill 390 as originally introduced eliminated the Jail Standards Board and replaced the standards with a manual of recommended guidelines published by the Crime Commission. The NSA opposed eliminating the Jail Standards Board. The Judiciary Committee amendment that replaced the bill removed the provisions that eliminated the Jail Standards Board in addition to doing the following:

eliminates the Community Corrections Council and replaces it with a Community Corrections Division of the Crime Commission; authorizes the executive director of the Crime Commission to appoint and remove the director of the training center and the Office of Violence Prevention; requires the probation administrator to collaborate with the new Community Corrections Division and the Office of Parole Administration in developing rules governing the participation of parolees in community corrections programs operated by probation; limits the ability of the Police Standards Advisory Council to delegate powers and duties to the director of the Nebraska Law Enforcement Training Center and to supervise the director; removes the duty to review, analyze, produce and update a report of all homicide cases in the state; clarifies the structure and operation of the Community Trust; and provides that nationally certified correctional facilities are not subject to the supervision of the Jail Standards Board. LB 390 was passed by the Legislature with the emergency clause, signed by the Governor on May 26 and took effect immediately.

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

Legislative Bill 463 requires school districts and county attorney to revise juvenile truancy and excessive absenteeism policies. This includes excessive absenteeism policies having provisions indicating how the county attorney will handle cases in which excessive absences are because of serious illnesses. The bill also authorizes the council to administer pilot projects related to truancy initiatives that would share information regarding at-risk youth and will provide a grant program for Court Appointed Special Advocates. Finally, LB 463 amends the procedure for sealing juvenile records, more specifically allowing law enforcement to access for purposes of employment. The NSA supported the provision that allowed for access to juvenile records for employment purposes. LB 463 was passed by the Legislature with the emergency clause and signed by the Governor on May 11. The provisions that addressed at-risk youth and truancy took effect immediately and all other provisions take effect September 27, 2011.

LB 479 (Lathrop) Authorize a minor to give consent to evidence collection and examination and treatment in cases of sexual assault

LB 479 permits an 18 year old victim of sexual or domestic assault to be examined and treated by a physician without the consent or notification of a parent or guardian. The bill was passed by the Legislature, signed by the Governor and takes effect on August 27, 2011.

LB 512 (Christensen) Change provisions relating to mental health determinations regarding the possession and purchase of handguns

Legislative Bill 512 was introduced at the request of the Nebraska State Patrol and makes changes to an individual's disqualification or qualification from purchasing, transferring or possessing a firearm under 18 U.S.C. 922 (d)(4) and (g)(4). LB 512 allows for the submission of mental health board committals and involuntary committals to the federal National Instant Criminal Background Check System (NICS). This is accomplished by removing the five year retention timeframe so that mental health information can be shared with NICS and providing a process for an individual to have a mental health disqualifier removed so that they can purchase a firearm. LB 512 was amended to also include: 1) language that permits peace officers or other duly authorized law enforcement officers when contracted by a school to provide

school security or school event control services to possess a firearm; and 2) LB 138 introduced by Senator Scott Lautenbaugh that would waive the waiting period for new residents possessing a valid concealed handgun permit from another state that is recognized by Nebraska. The NSA supported LB 512. The bill was passed by the Legislature, signed by the Governor and takes effect on August 27, 2011.

LB 641 (Cornett) Require law enforcement officers to report liquor law violations to the Nebraska Liquor Control Commission

Legislative Bill 641 requires law enforcement to report Liquor Control Act violations to the Liquor Control Commission: a) within 30 days after determining that such violation has occurred; b) within 30 days after the conclusion of an ongoing police investigation; or c) within 30 days after the verdict in a prosecution related to an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize the prosecution, whichever is later. The bill was passed by the Legislature, signed by the Governor and takes effect on August 27, 2011.

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

Legislative Bill 667 makes extensive revisions to statutes related to driving under the influence (DUI). Some of the provisions within LB 667 include the following:

- Criminalizes the transportation of a child by an intoxicated individual;
- Makes motor vehicle homicide a distinct crime from DUI;
- Changes penalties regarding boating under the influence and makes other changes to the State Boat Act;
- Increases the 12-year look-back limitation to 15 years in the DUI enhancement statutes;
- Create a new offense of motor vehicle homicide of an unborn child;
- Creates an enhanced penalties and mandatory minimum sentences for procuring when it proximately causes serious bodily injury or death;
- Revises administrative license revocation (ALR) process to:
 - Allow officers to electronically submit sworn reports to DMV
 - Provide for a 15 day temporary license
 - After first DUI offense, provides that there is no suspension of driving privileges if the offender waives a ALR hearing and applies for ignition interlock device, and subsequent DUI offenses also have reduced suspensions of driving privileges if the offender waives a ALR hearing
 - Makes ignition interlock devices mandatory for first and second DUI offenses
 - Creates penalties for tampering with an ignition interlock device if it is required under ALR

The NSA supported LB 667. The bill was passed by the Legislature, signed by the Governor and takes effect on January 1, 2012.

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

Legislative Bill 669 as originally introduced changed the process for sealing juvenile records. These provisions were removed and amended with the provisions of LB 451 introduced by Senator Ashford. As amended, LB 669 increases the flexibility of the courts to administer justice by:

- Expanding the Supreme Court’s options for funding sources to compensate court interpreters;
- Providing for clerks and staff of the district and county courts to assist each other with court services;
- Creating a Judicial Hearing Officer to assist separate juvenile courts and county courts sitting as juvenile courts;
- Providing greater flexibility for scheduling the administrative offices of the courts;
- Allowing divorce decrees to be entered without a hearing under certain circumstances;
- Eliminating the requirement that divisions of the county court be located outside the county seat and that certain cases be filed with the county clerk in the county seat;
- Authorizing a court to order that a juvenile be placed directly with the Nebraska Department of Health and Human Services to obtain a pre-adjudication evaluation(LB 339 introduced by Senator Ashford);
- Clarifying the responsibility of the county and the state for covering costs incurred during a juvenile’s detention period prior to adjudication;
- Allowing the electronic filing of complaints and information in criminal cases (LB 296 introduced by Senator Coash);
- Requiring that agreements between the district courts and county clerks be signed and stipulated to by the state court administrator, the county board and the clerk of the district court after obtaining input from the clerk of the county court, a district court judge, a county court judge, and the county attorney;
- Providing various deadlines for the filing of a jury demand in civil cases depending on the role of the litigant doing the filing (LB 349 introduced by Senator Lautenbaugh);
- Clarifying the authority of for delivery of service by a commercial courier or “designated delivery service” (LB 476 introduced by Senator Lautenbaugh).

LB 669 was passed by the Legislature with the emergency clause, signed by the Governor on May 26 and took effect immediately.

ACTIVE LEGISLATION FOR 2012 SESSION

LB 48 (Janssen) Adopt the Illegal Immigration Enforcement Act

Legislative Bill 48 creates the Illegal Immigration Enforcement Act that prohibits the state, county, city or other political subdivision from limiting or restricting the enforcement of federal immigration law to less than the full extent permitted by federal law. LB 48 also requires law enforcement to check the immigration status of a person who has been lawfully stopped, detained, or arrested when reasonable suspicion exists that the person is unlawfully present in the United States. LB 48 is held in the Judiciary Committee.

LB 66 (Cornett) Change provisions relating to DNA collection

Legislative Bill 66 requires probation officers to take DNA samples from those convicted of a felony or a specific misdemeanor who are placed on probation. Those individuals who are not placed on probation and only receive a fine are required to have their DNA collected at a county detention facility or institution, except in Douglas County where a probation officer will be responsible for collecting the DNA sample. The defendant pays the cost associated with taking the DNA sample. If the court should waive the cost of taking the DNA sample for any reason, LB 66 provides that the county detention facility or institution will not be financially responsible for the cost of the sample. LB 66 was introduced at the request of the NSA and is on General File.

LB 182 (Hansen) Change provisions relating to the issuance of one license plate

Legislative Bill 182 would exempt farm trucks and commercial motor vehicles from having two license plates. The NSA opposed this bill. LB 182 is held in the Transportation and Telecommunications Committee.

LB 185 (Fulton) Provide for one vehicle license plate

Legislative Bill 185 would remove the two license plates requirement on all motor vehicles. The NSA opposed this bill. LB 185 is held in the Transportation and Telecommunications Committee.

LB 270 (Executive Board) Eliminate duties and positions in the Public Counsel's Office

Legislative Bill 270 repeals the expanded scope of the investigative authority of the Office of Public Counsel over any regional behavioral health authority, any community-based behavioral health services provider that contracts with a regional behavioral health authority and any county or municipal correctional or jail facility. The NSA supported this bill. LB 270 is held in the Executive Board Committee.

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

Legislative Bill 415 makes it a Class I misdemeanor to unlawfully introduce within a detention facility or unlawfully provide an inmate with an article (contraband) prohibited by law, regulation, or order of the detaining facility. LB 415 was introduced on behalf of the NSA and is on General File.

LB 447 (Fulton) Change provisions relating to vehicular pursuit

Legislative Bill 447 clarifies when law enforcement pursuit has ended for purposes of recovery by an injured party. NSA supported this bill. LB 447 is held in the Judiciary Committee.

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

Legislative Bill 545 requires any individual who is arrested, detained, taken into custody or incarcerated to pay a copay for all medical services sought. Any individual who cannot afford the copay will not be required to pay. The bill did not designate the amount of the copay. The NSA supported this bill. LB 545 is held in the Judiciary Committee.

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

Legislative Bill 658 increases the application fee for obtaining a handgun certificate from five dollars to ten dollars. LB 658 was introduced at the request of the NSA and is held in the Judiciary Committee.

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

Legislative Bill 676 requires a law enforcement officer who has taken a person into emergency protective custody and transferred the individual to a medical facility to maintain custody of that person until the medical facility determines it is safe for law enforcement to relinquish custody. The NSA opposed the bill. LB 676 is held in the Judiciary Committee.

LB 688 (Smith) Require certain law enforcement officers and firefighters to work until age fifty-five to receive full benefits and prohibit elective officers from receiving retirement benefits

Legislative Bill 688 requires law enforcement officers and firefighters who begin participation in a pension or retirement plan after January 1, 2012 to remain employed until age 55 in order receive full benefits. LB 688 also prohibits an elective official from participating or receiving any pension or retirement benefits as a result of service in an elective office that begins on or after January 1, 2012. The NSA opposed the bill. LB 688 is held in the Nebraska Retirement Systems Committee.

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

Legislative Resolution 28 encourages Nebraska law enforcement to participate in the U.S. Immigration and Customs Enforcement's Secure Communities strategy for removal of criminal aliens. The NSA supported this bill. LR 28 is held in the Judiciary Committee.

INTERIM STUDIES

The purpose of interim study resolutions is to further research specific issues in an effort to help senators and citizens better understand such issues, to resolve concerns with existing legislation, or encourage the introduction of new legislation during the following session. Interim study resolutions are referenced to a committee with subject-matter jurisdiction who then prioritize the resolutions in the order they plan address them. More than 125 interim study resolutions were introduced in the 2011 session. Below is a summary of some of the of interim study resolutions that we are watching for the NSA that are of particular interest to the association. They can be accessed on the Nebraska Legislature's website at www.nebraskalegislature.gov .

LR 228 introduced by Senator Galen Hadley (District 37) to examine the safety of staff members at the Youth Rehabilitation and Treatment Centers at Geneva and Kearney.

LR 229 introduced by Senator Galen Hadley (District 37) to examine the feasibility of requiring all law enforcement personnel to complete continuing education courses on an annual basis.

LR 252 introduced by Senator Charlie Janssen (District 15) to examine the impact of illegal immigration on the state's budget, and LR 289 (District 20) to address the undocumented immigrant population that have been initiated at both the state and local level around the country since the Judiciary Committee completed its report in December 2008.

LR 254 introduced by Senator Brad Ashford (District 20) to examine the Adam Walsh Child Protection and Safety Act of 2006 and Nebraska's Sex Offender Registration Act.

LR 275 introduced by Senator Mike Flood (District 19) to examine Nebraska's behavioral health model concerning transport service of persons who have been placed in emergency protective custody.

LR 321 introduced by Senator Pete Pirsch (District 4) to examine the experience of child victims and child witnesses with respect to their interaction with the criminal justice system.