

**STAFF MEETING/LEGISLATIVE RETREAT MINUTES  
LANCASTER COUNTY BOARD OF COMMISSIONERS  
THURSDAY, SEPTEMBER 5, 2019  
COUNTY-CITY BUILDING  
ROOM 113 - BILL LUXFORD STUDIO  
8:30 A.M.**

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

Others Present: Kerry Eagan, Chief Administrative Officer; Ann Ames, Deputy Chief Administrative Officer; Dan Nolte, County Clerk; Troy Hawk, Clerk of the District Court; Brad Johnson, Corrections Administrator; Michelle Schindler, Youth Services Center (YSC) Director; Jim Davidsaver, Emergency Management Director; Brennan Miller and Joe Kohout, Kissel, Kohout, E&S Associates LLC (Legislative Consultants); Scott Gaines, Chief Administrative Deputy, Assessor/Register of Deeds; Kim Etherton, Community Corrections Director; Sara Hoyle, Human Services Administrator; Jeff Curry, Chief Probation Officer, Adult Probation; Pat Condon, County Attorney; Scott Etherton, Mental Health Crisis Center Director; Karen Wobig, County Extension Educator; Kerin Peterson, Facilities and Properties Director; Joe Nigro, Public Defender; Pam Dingman, County Engineer; Todd Duncan, Chief Deputy Sheriff; Sara Sump, Administrative Services Officer, Sheriff's Office; Dustin Antonello, Lincoln Independent Business Association (LIBA); Patricia Lopez, City-County Health Department Interim Director; Rachel Garver, County Treasurer; and Leslie Brestel, County Clerk's Office

*Advance public notice of the Board of Commissioners Staff Meeting was posted on the County-City Building bulletin board and the Lancaster County, Nebraska web site and provided to the media on September 4, 2019.*

The Chair noted the location of the Open Meetings Act and opened the meeting at 8:30 a.m.

**AGENDA ITEM**

**1) APPROVAL OF STAFF MEETING MINUTES FOR AUGUST 29, 2019**

Held until later in the meeting.

**2) OPENING COMMENTS AND REVIEW OF 2019 LEGISLATIVE SESSION** – Roma Amundson, Lancaster County Board Chair; and Kerry P. Eagan, Chief Administrative Officer

Eagan reviewed the 2019 Legislative Session (see agenda packet).

**3) CRIMINAL JUSTICE ISSUES**

Eagan distributed a list of County Board Legislative Issues (Exhibit A).

Kohout stated the four big issues of the 2019 legislative session were property tax relief, the budget, Medicaid expansion, and business incentives. The only big issue to be completed was the budget. The Legislature will continue to work on the uncompleted issues.

Regarding LB335 (Authorize a 24/7 sobriety program permit for operating a motor vehicle as a condition of bail), there are concerns about the \$80,000 in programming implementation costs and testing measures. Kohout said hopefully the bill could be part of a package for Driving Under the Influence (DUI) court changes.

When asked about DUI courts, Nigro said there is one DUI court in Nebraska and it works similarly to drug courts and is envisioned for higher-risk offenders. A way to fund the court would need to be identified. Condon added there needs to be a way to apply the program statewide as the rural areas could find implementation difficult. K Etherton said in other states the program is administered through the Sheriff's department.

Flowerday said the 24/7 Sobriety program will be one of the County's top priorities this year.

Kohout stated there are concerns on LB686 (Change provisions relating to Class IV felonies, post-release supervision, competency to stand trial, restrictive housing, and the long-term restrictive housing work group, create a criminal offense relating to electronic communication devices in correctional facilities, change possession of a deadly weapon by a prohibited person provisions, and provide for deferred judgments by courts) regarding provisions where a court can revoke a Post Release Supervision (PRS) status and sentence the individual to a facility up to the original sentence time.

Curry added currently if a person is on PRS and gets a new law charge, the individual can only be sentenced to the remainder of the sentence. Under the new law (effective September 1, 2019) if an individual on PRS gets a new law violation, they can be resentenced up to the original sentence. He added Felony IV convictions have a discretionary PRS, so there is hope of seeing less Felony IV convicted individuals on PRS.

Regarding LB240 (Change procedures for determining competency to stand trial), Schorr said the State is working to reduce the wait time for admission to the Regional Center. Nigro added by Nebraska law if a person is deemed incompetent for trial that person must be restored to competency before their trial can continue. Charge classifications and other places for the restoration of competency are being explored. Johnson felt the jail is not a place for competency restorations. Schorr added the developmentally-disabled community is being impacted by the long wait times. S Etherton stated the Regional Center is looking at how to improve their procedures.

Schindler asked where custody-released individuals live if they are waiting for a bed at the Regional Center. Nigro answered they live in the community. If people already living in the community can be restored to competency elsewhere, then beds should open up sooner at the Regional Center.

Schindler said there should be a provision about the cost for those living in a group home. S Etherton added some individuals would already have Medicaid and disability to help with those costs.

Nigro stated 40% of the individuals at the Regional Center that are restored to competency are charged with misdemeanors or Felony IVs. If those cases could be handled differently, it would significantly reduce the number of beds being used at the Regional Center, resulting in less initial wait time.

Flowerday asked what percentage of the population to be restored to competency is developmentally disabled. K Etherton said 40% of the individuals in Mental Health Diversion fit the description of developmentally disabled. Nigro stated most of the individuals with developmental disabilities will be found incompetent and not restorable, which results in the case being dismissed. He estimated it takes three months for a person to be found incompetent.

Schorr asked how the County could begin a Developmentally Disabled Diversion program. K Etherton said it requires removing those cases from the system and getting those individuals into a program. She added finding the resources for such a program is difficult.

Flowerday stated he would like to meet with Nigro, Condon and Johnson to review and streamline internal processes on how individuals are identified as developmentally disabled.

Kohout reviewed LR187 (Interim study to determine the feasibility and fiscal impact of hiring outside consultants to perform an efficiency review of state agencies) (see agenda packet, page 4, Item 6). There will be a meeting on September 9 at 12:30 p.m. with Senator Geist and representatives from law enforcement, Region V, the Lincoln Mayor's Office, and the County Board to discuss concerns and facts. K Etherton said the lack of being able to share information between agencies is driven by state statute. The goal is to make sure there is continuity of care throughout the criminal justice system and agencies.

S Etherton stated at the Mental Health Crisis Center (MHCC), if an individual is committed on an outpatient basis, the individual can sign a release for information to be shared between law enforcement and partnering agencies.

Eagan reviewed LR245 (Interim study to examine advance planning for mental health care, which is distinct from advance planning for end-of-life care) which is where individuals who are taking medication for a mental health condition can sign a pre-directive authorizing they be given their medication even if they are in a state where they would not be able to make that decision on their own. He felt it is an essential part for the Stepping Up Initiative. Kohout added the Bar Association had concerns that stopped the bill.

Flowerday said he is supportive of LR245.

Regarding LR144 (Interim study to examine the effectiveness of cash bail and cash bonds for misdemeanors and city and village ordinance violations) and LR206 (Interim study to examine options for the elimination of cash bail, appearance bonds, and related provisions, and examine risk assessment tools for pretrial release, post-conviction custody, and supervision status determinations), Flowerday said the Judiciary Committee will be looking at cash bail reform. Douglas County voted to endorse LB646 (Eliminate cash bail bonds, appearance bonds, and related provisions). New Jersey has had a 44% drop in incarceration with cash bail reform. The County will be testifying at the hearing on September 13.

When asked how cash bond reform could work, Condon said there would be no cash bonds for misdemeanors. The County Attorney's Association is concerned with DUIs and domestic violence cases and wants to have a condition for those charges and with individuals who have failed to appear on that case before. All of the aspects of the program need to be reviewed. The New Jersey

program has asked for \$250,000,000 for the program.

Eagan felt pre-trial services need to be enhanced if there will be no cash bail. He read a quote from Washington DC Judge Truman Morrison (Exhibit B). Condon said Washington DC is a federal jurisdiction so there are pre-trial services available.

Nigro stated the areas that use pre-trial release and limited cash bonds show dramatic success rates. Cash bonds show disparity for those of color and economic means in jails and there should be a different way to screen both for pre-trial release and supervision for eligible offenses.

Kohout said the purpose of the interim study hearing is for the senators to have similar conversations to today's, including the potential ramification on a correctional facility and policy considerations. Senator Lathrup is not looking to eliminate cash bonds but to reform cash bonds.

Flowerday said Douglas County is looking at the individual's likeliness to reoffend and to abscond. He added he likes the idea of offering a choice between cash bail or have the opportunity to sign up for other programs.

Schindler said the Juvenile system reformed their cash bonds. She and Hoyle have done cases with the County Attorney's Office and the Public Defender's Office. Hoyle added when looking at risk assessments many are not validated for immigrant and refugee populations.

**MOTION:** Flowerday moved that the County endorse the concept of cash bail reform to explore ways to lower incarcerated jail population, and work with the State to develop legislation to find a more equitable approach on how cash bonds are conducted.

Eagan stated he would add authorizing Schorr and Johnson to testify at the September 13 hearing.

Flowerday amended his motion to include authorizing Schorr and Johnson to testify at the hearing.

Vest seconded the amended motion.

**ROLL CALL:** Schorr, Amundson, Vest, Flowerday and Yoakum voted yes. Motion carried 5-0.

## **BREAK**

The meeting was recessed at 10:00 a.m. and reconvened at 10:15 a.m.

## **RETURNING TO ITEM 1**

**MOTION:** Yoakum moved and Vest seconded approval of the August 29, 2019 Staff Meeting minutes. Schorr, Amundson, Vest, Flowerday and Yoakum voted yes. Motion carried 5-0.

## **CRIMINAL JUSTICE ISSUES (CONTINUED)**

Schorr said the Board will meet with the Senators at a later date to discuss the issues from today's meeting.

Eagan reviewed automatic expungement of criminal records (see agenda packet, page 5, item 9). Nigro said the Public Defender's Office does not represent individuals on this topic.

Duncan stressed the need to be cautious with expungement as background checks are run for firearm permits and the ability to maintain and apply convictions to such requests is important. Johnson added he worries about not knowing criminal histories when he is hiring correctional officers.

Flowerday reviewed house arrest for work release and child support (see agenda packet, page 5, Item 10) as it relates to lowering the jail population. He wondered if there was something the County could do, such as a half-way house, so jail beds are not being taken by individuals who are not considered a public safety threat. The language for nonpayment of child support is a contempt of court charge, which does not allow for house arrest.

Condon said one of the ideas behind crime and punishment is punishment. He added part of the problem of child support non-payments is the individuals are not going to work. Johnson stated he felt if a person is not paying child support then that individual should go to jail and not have the opportunity to go to work. There are currently 50 individuals on work release at the jail. Nigro added the District Court judges do not use house arrest often.

K Etherton reminded the Board that, in general, individuals on house arrest pay a house arrest fee, so there could continue to be an issue with child support not being paid due to those funds going towards house arrest fees. There are measures in place for Community Corrections to ensure individuals are going to work.

Condon reviewed the topic of the State paying the County for individuals in the jail who are there due to revocations from Post Release Supervision (PRS). Additionally, the State should pay for juvenile transportation costs when a juvenile is on probation and absconds (see agenda packet, page 6, Item 11).

Kohout said LR149 (Interim study to examine the burden of unfunded mandates on county budgets) has been scheduled for hearing on October 18. Schorr stated she will bring this to the Nebraska Association of County Officials (NACO) Legislative event in early October.

Regarding the Expansion of Set Aside and Sealing criteria (see agenda packet, page 6, Item 11), Condon said there is an increase in the denial of firearm applications. Duncan reviewed the application process for a handgun permit.

Condon stated he will testify on LR144 (see agenda packet, page 6, Item 11).

Additionally, Nigro spoke on his interest in LB652 (Change a penalty for controlled substance possession as prescribed) which would allow for possession of residue to be charged as a misdemeanor stating this offense is a significant percentage of the Public Defender's Office's caseload. Condon was not supportive of the bill.

Nigro was supportive of LB500 (Prohibit participation in pretrial diversion programs for certain driving under the influence and driver's license offenses), which allows for first offense DUIs to participate in pre-trial diversion. K Etherton noted the Lincoln City Attorney's Office testified in opposition and said

if the bill passed that the City would not be participating in that diversion program. Condon added Sarpy County has a diversion program for first offenders with a .08 Blood Alcohol Content (BAC) level.

Nigro also discussed funding for the expansion of problem-solving courts and his hopes for a mental health court pilot program in Lancaster and Douglas Counties.

K Etherton asked about data that shows using problem-solving courts for mental health courts works. Nigro said, based on a presentation he had seen, drug and DUI courts were the most successful followed by mental health courts and then juvenile courts.

Condon felt that mental health courts require a large amount of funding and that would be a stumbling block for the State.

Duncan expressed his concern to maintain balance in criminal justice conversations and to keep the reduction in crime and public safety in the forefront of those conversations.

#### **4) BREAK**

Item moved forward on agenda.

#### **5) INFRASTRUCTURE ISSUES**

Kohout reviewed LB267 (Provide a duty for the county board relating to deficient bridges and authorize a tax levy), in which the counties could levy a tax for structurally deficient and scour critical bridges. The bill provides consideration for a declaration of emergency by the County Board or declaration of national emergency by the President. Under this bill and current law, Lancaster County could levy up to \$2,000,000 without a vote of the people and anything above \$2,000,000 would need to go to a vote of the people.

Dingman asked if there were ways to change some of the parameters of the Transportation Innovation Act (TIA) to allow for greater funding opportunities. Kohout said those provisions are held at the Transportation and Telecommunications Committee and since LB267 came out of the Government Committee, a separate bill would need to be introduced.

Dingman proposed adding "Changes to the Nebraska Transportation and Innovation Act for County Bridges" as a County priority.

Kohout stated there will be a hearing on September 20 for LR167 (Interim study to review the current model of collecting taxes to build and repair roads).

There was no discussion on LB237 (Change provisions relating to sales and use tax collection fees and authorize use of certain fees for revenue enforcement).

Dingman led discussion on the issue to authorize the County Engineer to tow vehicles in snowstorms. She felt she would rather work with the Sheriff's Office to have a process that does not involve legislation. Duncan added cities can declare snow emergencies whereas state statute does not allow

counties to do that. Even though the towing is contracted out, there is still a process the Sheriff's Office goes through to be able to authorize the tow.

Eagan reviewed the proposal to authorize a reasonable fee for the filing of a petition to vacate or abandon a county public road (see agenda packet, page 4, Item 4). Flowerday recommended waiting one more year before pursuing fee changes as the senator make up will change in 2020. Kohout suggested Sarpy, Lancaster and Douglas Counties get together to identify which fees should be raised.

## 6) OTHER LEGISLATIVE CONCERNS

Eagan reviewed special permit appeals, director evaluations in executive session, clarifying the meaning of public purpose and the enforcement of noxious weed violations (see agenda packet, pages 3 and 4, Items 1, 3, 5 and 7).

Regarding the broadening of enforcement options for special permit violations (see agenda packet, page 5, Item 8), Eagan stated the existing zoning resolution gives the Board authority for enforcement, but there is nothing in State law about financial sanctions. Kohout added there would need to be a plan for what the penalties are called and where the funds would go.

Garver reviewed the Nebraska Association of County Treasurers Legislative Committee proposals (see agenda packet, page 19).

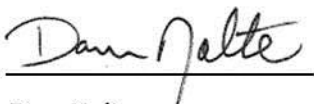
Regarding the publishing of County reports, Garver felt not only would there be an expense benefit to the counties, additionally some reports may be able to be expanded offering greater information to the public. The reports would be available on the County's website. Some reports would be available at the Nebraska Department of Revenue website. She stated having the reports available on the newspapers' websites was not discussed.

Vest said the information will be available to individuals who have access to the internet. Amundson added not all reports are available on the Lincoln Journal Star's website.

Regarding Treasurer qualifications, Garver stated NACO has a training for Treasurers, but it does not have enough details. The current optional certification needs to be made mandatory, it needs more detail and it should be completed within two years.

## 7) ADJOURNMENT

**MOTION:** Schorr moved and Yoakum seconded to adjourn at 11:37 a.m. Schorr, Vest, Flowerday, Amundson and Yoakum voted yes. Motion carried 5-0.



Dan Nolte  
Lancaster County Clerk



## CRIMINAL JUSTICE ISSUES



1. LB 335 (24/7) – subject of LR’s 189 and 235
2. LB 686 – passed during the 2019 session
  - a. LB 90 – post-release supervision of Class IV felonies: and
  - b. LB 684 – serve entire post-release period for violation of a condition of supervision
  - c. LB 240 – community treatment to restore competency to stand trial
3. LR 187 - sharing of mental health information (New Proposal #6)
4. LR 245 – advance mental health planning (LB 247, Introduced by Senator Bolz in 2019)
5. LR’s 144 & 206 – cash bail reform (LB’s 282 & 646 (Am 30) introduced in 2019)
6. Automatic expungement of criminal records (New Proposal #9)
7. House arrest for work release and child support (New Proposal #10)
8. County Attorney topics (New Proposal #11)

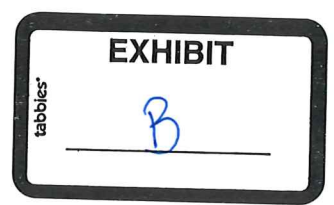
## INFRASTRUCTURE ISSUES

1. LB 267 – bridge finance under Neb. Rev. Stat. §23-120(3)(b)
2. LB 237 – passed in 2019; half of increase in Treasurer’s sales tax collection fee to road fund
3. Authorize Engineer to tow vehicles during snow storms (New Proposal #2)
4. Fee for road vacation applications (New Proposal #4)

## OTHER LEGISLATIVE CONCERNS

1. Special permit appeals (petition in error, Neb. Rev. Stat. §25-1901 (New Proposal #1)
2. Director evaluations in executive session (New Proposal #3)
3. Clarify definition of public purpose under Neb. Rev. Stat. §77-202(1)(a) (New Proposal #5)
4. Enforcement of noxious weed violations on out-lots with 0 value (New Proposal #7)
5. Broaden enforcement options for special permit violations (New Proposal #8)
6. Treasurer proposals (New Proposal #13)





BLOCK: For example, how do you, as a judge, decide who gets released without paying bail?

MORRISON: We use a risk assessment to try and gauge your likelihood of succeeding, which is whether you'll come back to court and be law-abiding until your court date. Last year, we released 94 percent of all the people that we arrested without using money. Eighty-eight percent made every single court appearance, and 86 percent were never arrested for any criminal offense of any kind. And of the very small percent of people that were arrested in D.C. that we released, less than 2 percent were rearrested for a crime of violence.