

MEMORANDUM

To: Nebraska Law Enforcement and County Attorneys
From: Office of the Nebraska Attorney General, Criminal Bureau
Date: July 21, 2016
Re: 2016 Criminal Justice Bills from the Nebraska Unicameral

The Nebraska Unicameral adjourned its Second Session of the 104th Legislature sine die on April 20, 2016. During this 60-day session, Nebraska lawmakers passed 214 bills into law.

The enacted bills that will affect Nebraska's criminal code and procedure are listed below, followed by a discussion of their impact. Unless otherwise noted, these bills are operative as of July 21, 2016.

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SUMMARIES

LB710: Changes provisions relating to hazing

Neb. Rev. Stat. § 28-311.06, Hazing, defined; penalty.

LB710 adds a new activity which constitutes hazing. Under the statute, hazing now also includes acts of sexual penetration, exposure of the genitals of the body done with intent to affront or alarm any person, and lewd fondling or caressing of the body of another person. LB710 also makes it unlawful to coerce a person to engage in any of the activities which constitute hazing under Neb. Rev. Stat. § 28-311.06(1).

LB710 also eliminates the requirement that the organization be one which is operating under the sanction of a postsecondary educational institution, thereby extending the crime of hazing beyond just persons who are students at a postsecondary educational institution. Now, any person who commits any of the listed activities for the purpose of initiation into, admission into, affiliation with, or continued membership with any organization may be charged and convicted of hazing. This may include high school students, adults, postgraduate students, etc. LB710 retains the provision that authorizes the court to fine the organization itself whose members commit the offense of hazing, but limits this to only those organizations which operate under the sanction of a postsecondary educational institution.

LB716: Provide and eliminate provisions regarding pedestrians and bicyclists

Neb. Rev. Stat. § 60-6, 153, Pedestrians' right-of-way in crosswalk; traffic control devices.

LB716 provides protections for pedestrians crossing an intersection of two highways at which there is a path designed for bicycles and pedestrians which is controlled by a traffic control signal. In such situations, and when the pedestrian lawfully enters the path crossing the highway, the pedestrian has the right-of-way with respect to both vehicles and bicycles.

Neb. Rev. Stat. § 60-6, 154, Crossing at other than crosswalks; yield right-of-way.

LB716 grants pedestrians the right-of-way with respect to vehicles and bicycles at paths which cross a highway and are designated for bicycles and pedestrians.

Neb. Rev. Stat. § 60-6, 317, Bicycles on roadways and bicycle paths; general rules; regulation by local authority.

LB716 adds a couple new provisions in regards to bicyclists. It first adds a provision which makes it unlawful for a bicyclist to suddenly leave a curb or other place of safety and ride into the path of a vehicle which is so close that it is physically impossible for the driver to stop before striking the bicyclist. It also adds a provision which provides that bicyclists have all the same rights

and duties as pedestrians when riding on a sidewalk or across a roadway or shoulder in a crosswalk. The only difference is that bicyclists must yield the right-of-way to pedestrians.

LB786: Change requirements for completion of death certificates and cremation permits

Neb. Rev. Stat. § 71-605, Death certificate; cause of death; sudden infant death syndrome; how treated; cremation, disinterment, or transit permits; how executed; filing; requirements.

LB786 changes the requirements for death certificates and cremation permits by requiring that both be completed and signed electronically. It is no longer an option for county attorneys to complete and sign death certificates or cremation permits in his or her own handwriting, as both must be submitted electronically.

LB807: Allow counties of all sizes to waive quarterly reports by county attorneys

Neb. Rev. Stat. § 23-1201, County attorney; duties; services performed at request of Attorney General; additional compensation; reports.

LB807 eliminates the condition that only county boards in counties with a population of less than 200,000 may waive the duty of their respective county attorney to make a quarterly report which shows the final dispositions of all criminal cases the previous quarter, criminal cases pending on the last day of the previous quarter, and criminal cases appealed during the past quarter. Now, county boards from counties of all sizes may waive the duty of their respective county attorney to make such a report.

LB816: Change and eliminate provisions relating to state institution patients' records

Neb. Rev. Stat. § 83-109, Patients and residents; admission to state institutions; records; to whom accessible; transfers; investigations; appeals.

LB816 gives law enforcement and county attorneys access to the patient and resident records of institutions under the jurisdiction of the Department of Health and Human Services when a crime has occurred on the premises of an institution.

LB843: Provide immunity from prosecution for prostitution and change forensic medical examination provisions

Neb. Rev. Stat. § 28-801, Prostitution; penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties.

LB843 protects human trafficking victims from prosecution for prostitution. Under LB843, if a law enforcement officer determines that a person suspected of or charged with prostitution is only engaging in those acts as a direct result of being a trafficking victim, then that person is

immune from prosecution for prostitution. Such a determination may be made after a reasonable detention for investigative purposes.

Neb. Rev. Stat. § 81-2010.03, Sexual assaults; forensic medical examination; payment; forensic DNA testing; requirements.

LB843 creates a cash fund called the Sexual Assault Payment Program Cash Fund, administered by the Crime Commission. This Cash Fund is to provide payment for out of pocket costs or expenses charged to a victim of sexual assault in connection with a forensic medical examination, effective *July 1, 2017*. By amendment to Neb. Rev. Stat. § 81-2010.03 and repeal of Neb. Rev. Stat. §§ 13-607 and 13-608, such expense is no longer the responsibility of the State Patrol or the primary investigating local law enforcement agency. For more specific details on the Fund, see Section 2 of LB843. Additionally, LB843 provides for an administrator of the program within the Attorney General's office responsible for distribution of forensic medical examination kits to health care providers and oversight of forensic medical examination training throughout the state.

LB894: Change provisions relating to juveniles

Neb. Rev. Stat. § 43-245, Terms, defined.

LB894 defines “alternative to detention,” removes the definition and term “nonsecure detention,” and redefines “staff secure juvenile facility” for purposes of the Juvenile Code.

Neb. Rev. Stat. § 43-247, Juvenile court; jurisdiction.

LB894 amends § 43-247 to draw a distinction between juveniles who are 11 years of age or older and those who are under the age of 11. With this change, the Juvenile Court will retain jurisdiction over all juveniles; however, its jurisdiction over juveniles younger than 11 years of age will be more limited. Beginning July 1, 2017 subsections (1), (2), (3)(b), and (4) will only grant the Juvenile court jurisdiction over juveniles who are 11 years of age or older. For juveniles under the age of 11, the jurisdiction currently granted by those subsections will only be authorized through subsection (3)(a). These changes will ultimately affect a juvenile's right to counsel, the Court's adjudication, and certain placement considerations depending on the juvenile's age. Again, these changes do not take effect until July 1, 2017.

Neb. Rev. Stat. § 43-248, Temporary custody of juvenile without warrant; when.

LB894 again draws the distinction between juveniles who are 11 years of age or older and those under the age of 11. This distinction does not influence law enforcement's ability to take juveniles into temporary custody. The rules in this area remain the same, but the purpose for drawing this distinction is to modify the rules regarding where juveniles who have been taken into temporary custody may be placed. This distinction will not be recognized until July 1, 2017.

Neb. Rev. Stat. § 43-248.01, Juvenile in custody; right to call or consult an attorney.

LB894 gives law enforcement personnel and other government officials an additional procedural requirement when they take a juvenile into custody. It requires that law enforcement personnel or other government officials inform juveniles in their custody, using developmentally appropriate language, of their right to call or consult an attorney. They shall do so without unnecessary delay. This is in addition to the current requirement that these juveniles be permitted to call or consult an attorney without delay.

Neb. Rev. Stat. § 43-250, Temporary custody; disposition; custody requirements.

LB894 updates Neb. Rev. Stat. § 43-250 to include new language which clarifies where a juvenile should be placed when taken into temporary custody. First, § 43-250(1)(c) is modified to say that when a juvenile has been taken into temporary custody under Neb. Rev. Stat. § 43-248(1), (4), or (5), then the juvenile can only be placed in *detention or an alternative to detention* as defined by Neb. Rev. Stat. § 43-245. It is also important to note that beginning on July 1, 2017, changes to § 43-248(1) will take effect and impact this subsection. After that date, only juveniles who have violated a state law or ordinance and *are 11 years of age or older* will fall under this subsection.

The other significant change is in § 43-250(2), which adds § 43-248(8) to the list of statutes that trigger this subsection. The practical implications of this change is that beginning on July 1, 2017, juveniles who are taken into temporary custody because officers believe they have committed a misdemeanor, felony, or traffic offense and are *under the age of 11* must be delivered to the Department of Health and Human Services rather than placed in detention. This also applies to juveniles who are *under the age of 11* and have been taken into temporary custody because they are uncontrolled by their parent, guardian, or custodian by reason of being wayward or habitually disobedient, because they deport themselves and put themselves or others in serious danger, or because they are habitually truant from home or school.

Finally, LB894 modifies § 43-250(6) by adding the sentence, “Any alternative to detention shall cause the least restriction of the juvenile’s freedom of movement consistent with the best interest of the juvenile and the safety of the community.”

Neb. Rev. Stat. § 43-251.01, Juveniles; placements and commitments; restrictions.

LB894 modifies the rules regarding placements and commitments of juveniles for evaluations or as temporary or final dispositions. LB894 expands the types of juvenile offenders who may not be placed in a juvenile detention facility unless the facility complies with certain regulations. This list now includes all of § 43-247(3), not just § 43-247(3)(b).

LB894 also goes on to expand the list of juvenile offenders who may not be placed out of their homes as a dispositional order of the court. This list now includes all juvenile offenders who are 11 years of age or older, and who fall within the provisions of subdivisions (1), (2), (3)(b), or (4) of § 43-247. Practically, the law now states that juvenile offenders 11 years of age or older may not be placed out of their homes as a dispositional order of the court unless all other options have been exhausted and keeping them in the home would create significant risk of harm to the juvenile or the community.

Neb. Rev. Stat. § 43-253, Temporary custody; investigation; release; when.

LB894 gives probations officers the option to place a juvenile in an alternative to detention contingent on the results of the standardized juvenile detention screening instrument. Before, they only had the option to place juveniles in secure or nonsecure detention. Now, their options are detention or an alternative to detention.

LB894 also makes it unlawful to place a juvenile, who has been taken into temporary custody under § 43-250(1)(c), into an alternative to detention which infringes upon the juvenile's liberty interest for longer than 24 hours without a hearing. LB894 also requires that the juvenile be represented by counsel at the hearing, and that § 43-272(1) shall govern whether counsel shall be provided at the expense of the county. LB894 further provides that a juvenile placed in an alternative to detention may waive this hearing through counsel. Juveniles placed in detention may not waive this hearing.

Neb. Rev. Stat. § 43-255, Detention or placement; release required; exceptions.

LB894 modifies the statute regarding when a juvenile is required to be released from detention or placement. This requirement now extends to juveniles who have been placed in an alternative to detention which infringes upon the child's liberty interest.

Neb. Rev. Stat. § 43-256, Continued placement or detention; probable cause hearing; release requirements; exceptions.

LB894 modifies the statute which requires the court to hold a probable cause hearing when requested by the juvenile, his or her parent, guardian, or attorney. Now, juveniles who have been ordered to be continually placed in an alternative to detention infringing upon the juvenile's liberty interest have the right to request a probable cause hearing.

Neb. Rev. Stat. § 43-260.01, Detention; factors.

LB894 now provides that if the results of the standardized juvenile detention screening instrument indicate that detention is not required, then the juvenile shall be released without restriction or shall be released to an alternative to detention.

Neb. Rev. Stat. § 43-272, Right to counsel; appointment; payment; guardian ad litem; appointment; when; duties; standards.

LB894 modifies the provisions relating to right to counsel for juveniles. Now, juveniles shall be automatically appointed counsel if the juvenile is 11 years of age or older (generally) and the petition is filed in a county with at least 150,000 inhabitants or more, unless counsel is or can be retained. The only time that a juvenile who is 11 years of age or older is not automatically appointed counsel is when the petition alleging jurisdiction is brought under § 43-247(3)(a). Juveniles in counties with a population of less than 150,000 still have a right to have counsel appointed for them, but it is not automatic. Juveniles under the age of 11 and in counties with a population of 150,000 or more have no right to counsel.

LB894 also requires that the Supreme Court establish guidelines which will set forth standards for all attorneys who practice in juvenile court.

LB894, Sec. 14, County guardian ad litem division.

LB894 authorizes county boards to create a county guardian ad litem division to carry out § 43-272.01. County boards are not required to form such divisions, but may do so if they choose. If they do choose to do so, then Sec. 14 of LB894 provides certain requirements and regulations which are explained in detail. The key requirement is that the county board shall appoint a director for the division, and the director may not accept fees for representing a child in a case in which the director is already acting as the child's court-appointed guardian ad litem.

Neb. Rev. Stat. § 43-272.01, Guardian ad litem; appointment; powers and duties; consultation; payment of costs; compensation.

LB894 modifies the provisions regarding court-appointed guardian ad litem. In counties which have created a guardian ad litem division under Sec. 14 of LB894, the court of that county shall appoint a guardian ad litem from the division when a child is removed from his or her surroundings. They may only appoint a guardian ad litem outside the division if a conflict of interest exists or the court determines that an appointment outside of the division would be more appropriate to serve the child's best interest.

Neb. Rev. Stat. § 43-273, Appointed counsel and guardians ad litem; fees; allowance.

LB894 only requires guardians ad litem who have been appointed outside of the guardian ad litem division to apply to the court for fees.

LB894, Sec. 16, Juvenile waiver of right to counsel.

LB894 allows for a juvenile to waive the right to counsel in any court proceeding, but establishes certain guidelines and prerequisites to such waiver. It also provides that a juveniles

parent, guardian, or custodian may not waive the juvenile's right to counsel, and provides certain situations in which the juvenile may not waive the right to counsel.

Neb. Rev. Stat. § 43-279, Juvenile violator or juvenile in need of special supervision; rights of parties; proceedings.

LB894 requires that the waiver of the right to counsel satisfy Sec. 16 of LB894 when the juvenile makes an affirmative waiver of rights at the adjudication portion of hearings.

LB894, Sec. 24, Room confinement of a juvenile in a juvenile facility.

LB894 creates new provisions regarding placement of a juvenile in room confinement within a juvenile facility. There are several new provisions which shall apply, including a requirement that room confinement lasting longer than one hour be documented, a requirement that physical or mental health clinical evaluations be considered in any decision to continue room confinement, a requirement that the juvenile facility submit quarterly reports to the Legislature regarding room confinements, and a requirement that the Inspector General of Nebraska Child Welfare review all data and prepare a yearly report regarding room confinements for juveniles in juvenile facilities. See Sec. 24 of LB894 for more specific details regarding these new requirements.

Neb. Rev. Stat. § 83-4, 125, Detention and staff secure juvenile facilities, defined.

LB894 defines "juvenile facility" and "room confinement" for purposes of Neb. Rev. Stat. §§ 83-4,124 to 83-4, 134 and Sec. 24 of LB894. A juvenile facility is a residential child-caring agency (as defined by § 71-1926), a juvenile detention facility, a staff secure juvenile facility (as defined by § 83-4, 125), a facility operated by the Department of Correctional Services that houses youth under the age of majority, or a youth rehabilitation and treatment center. Room confinement is the involuntary restriction of a juvenile to a cell, room, or other area, alone, including a juvenile's own room, except during normal sleeping hours.

Neb. Rev. Stat. §§§ 83-4, 126, Jail Standards Board; powers and duties; enumerated; 83-4, 132, Detention and staff secure juvenile facility; inspection; failure to meet minimum standards; corrective action; 83-4, 134, Detention and staff secure juvenile facility; standards applicable; when; violation of standards; effect.

LB894 extends the provisions of Neb. Rev. Stats. §§ 83-4,126, 83-4,132, and 83-4,134 to also apply for purposes of Sec. 24 of LB894.

LB906: Adopt the Law Enforcement Education Act authorizing tuition waivers

LB906, Sec. 1-4, Law Enforcement Education Act.

LB906 creates provisions establishing and governing tuition waivers for law enforcement officers at state universities, state colleges, and community colleges. Law enforcement officers are now entitled to a 30% reduction in resident tuition charges after federal financial aid grants, state scholarships, and state financial aid grants which an officer is eligible to receive. Such a waiver is contingent on the officer's satisfactory performance with his or her law enforcement agency, meeting all admission requirements of the educational institution, and pursuit of studies leading to a degree that relates to a career in law enforcement. These waivers only apply to state universities, state colleges, and community colleges. LB906 also defines all relevant terms for purposes of this Act. For more details on the specifics of this Act, please refer to LB906.

LB919: Change provisions relating to problem solving courts

Neb. Rev. Stat. § 24-1301, Legislative findings.

LB919 revises legislative findings in regards to drug use and problem solving courts. It first expands the original language from "drug use and other offenses" to "substance use disorders and mental illness" and notes that these things only lead to increased crime in Nebraska when left untreated. It also expands the terms "problem solving courts" to include drug, veterans, mental health, driving under the influence, reentry, and other problem solving courts.

Neb. Rev. Stat. § 24-1302, Supreme Court; rules; legislative intent.

LB919 expands the list of problem solving courts which are subject to rules promulgated by the Supreme Court. These courts originally only included drug problem solving courts, but now includes veterans, mental health, driving under the influence, reentry, and other problem solving courts.

LB934: Provide a penalty for exploiting senior adults, provide for appointment, powers, and duties of guardian ad litem, and change provisions of the Public Guardianship Act

Neb. Rev. Stat. § 28-358, Exploitation, defined.

LB934 redefines exploitation for purposes of the Adult Protective Services Act by expanding it to include more conduct which constitutes exploitation. Now, exploitation includes *wrongful or unauthorized taking, withholding, appropriation, conversion, control, or use of money, funds, securities, assets*, or any other property of a vulnerable adult *or senior adult*. Also, the means element of exploitation is expanded to include intimidation, force or threat of force, isolation, or by the breach of a fiduciary duty.

LB934, Sec. 5, Isolation, defined.

LB934 defines isolation for purposes of the Adult Protective Services Act. See Sec. 5 of LB934 for the full definition of isolation.

LB934, Sec. 6, Senior adult, defined.

LB934 defines senior adult for purposes of the Adult Protective Services Act to mean any person 65 years of age or older.

Neb. Rev. Stat. § 28-371, Vulnerable adult, defined.

LB934 expands the definition of vulnerable adult to include a person 18 years of age or older for whom a conservator has been appointed.

Neb. Rev. Stat. § 28-374, Alleged abuse, neglect, or exploitation; department; duties.

LB934 modifies the language of Neb. Rev. Stat. § 28-374 to specify that the department is only required to investigate cases of alleged abuse, neglect, or exploitation *of a vulnerable adult*. Thus, this statute does not require the department to investigate similar cases involving senior adults.

Neb. Rev. Stat. § 28-386, Knowing and intentional abuse, neglect, or exploitation of a vulnerable adult; penalty.

LB934 expands the offense of abuse, neglect, or exploitation of a vulnerable adult. This statute now applies to senior adults, as well as vulnerable adults. *This has created a new offense: knowing and intentional abuse, neglect, or exploitation of a senior adult.*

Neb. Rev. Stat. § 29-110, Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.

LB934 creates a statute of limitations for the offenses of knowing and intentional abuse, neglect, or exploitation of a vulnerable adult or senior adult. The statute of limitations for these offenses is six years after the offense has been committed. This amendment applies to offenses committed prior to April 19, 2016 for which the statute of limitation has not expired and to offenses committed on or after April 19, 2016.

Neb. Rev. Stat. § 29-4003, Applicability of act.

LB934 expands the list of offenses which makes a person subject to the Sex Offender Registration Act. Now, if a person pleads guilty to, pleads nolo contendere to, or has been found guilty of sexual abuse of a senior adult, the Sex Offender Registration Act shall apply to them.

Neb. Rev. Stat. § 29-4103, Terms, defined.

LB934 modifies the definition of “other specified offense” for purposes of the DNA Identification Information Act to include the offense of knowing and intentional sexual abuse of a senior adult.

Neb. Rev. Stat. § 83-174.02, Dangerous sex offender; evaluation; Department of Correctional Services; duties; notice.

LB934 expands the list of offenses which, upon conviction, requires a person to be evaluated by a mental health professional to determine whether or not the person is a dangerous sex offender. This list now includes sexual assault of a senior adult.

LB934, Sec. 34, Effective date.

LB934 became operative on April 19, 2016.

LB1000: Require policies relating to body-worn cameras and eyewitness suspect identifications and change provisions relating to grand juries

LB1000, Sec. 1-3, Body-worn cameras; policies.

LB1000 creates new provisions regarding body-worn camera policies in law enforcement agencies. Section 1 of LB1000 defines “body-worn camera,” “commission,” “law enforcement agency,” and “peace officer” for purposes of Sections 1-3 of LB1000. Section 2 provides that any law enforcement agency which uses body-worn cameras as of July 21, 2016 is required to develop and adopt a written body-worn camera policy by January 1, 2017. The Nebraska Commission on Law Enforcement and Criminal Justice will develop and distribute a model policy by December 1, 2016, and if a law enforcement agency which is required to adopt a policy does not do so by the deadline, then they will be deemed to have adopted this model policy by default. Section 3 provides specific details as to what these policies shall include. Please refer to Sec. 3 of LB1000 for these specific details.

LB1000, Sec. 4, Eyewitness suspect identifications; policies.

LB1000 creates new provisions regarding policies on eyewitness suspect identifications. The Nebraska State Patrol, every county sheriff, every city or village police department, and any other law enforcement agency in Nebraska which conducts eyewitness suspect identifications is required to adopt a written policy on eyewitness suspect identifications by January 1, 2017. This policy is required to include standards which describe the administration of a lineup, procedures governing the instructions given by a peace officer to an eyewitness, and procedures for documentation of the eyewitness’s level of certainty of an identification. The Nebraska Commission on Law Enforcement and Criminal Justice will develop and distribute a model policy,

and if a law enforcement agency does not adopt a policy by the deadline, then they will be deemed to have adopted the Commission's model policy by default

Neb. Rev. Stat. § 29-1401, Grand jury; when called; death while being apprehended or in custody; procedures.

LB1000 creates new provisions and procedures which guide the process following the death of a person who died while being apprehended by or while in the custody of a law enforcement officer or detention personnel. When someone dies in custody or in the process of being apprehended, the matter will be treated as an open, ongoing matter until all evidence, reports, and other relevant material have been assembled and transferred to the county attorney or a member of his her staff. The county attorney or a member of his or her staff will be the prosecuting attorney in such a case, and shall select three peace officers (trained to investigate homicides) to carry out the investigation. Two of the peace officers selected must be from agencies other than the agency under which the death occurred. If it is determined that the death of the person was from natural causes, then the prosecuting attorney may present such findings to a grand jury and is not required to select an investigation team.

Neb. Rev. Stat. § 29-1404, Foreman; oath or affirmation; form.

LB1000 changes the language of Neb. Rev. Stat. § 29-1404 to be gender-neutral and provides an oath that the foreperson is required to take in the case that the grand jury is impaneled pursuant to Neb. Rev. Stat. § 29-1401(4).

Neb. Rev. Stat. § 29-1406, Judge; charge to jury; instruction as to powers and duties.

LB1000 places new requirements on the court and the grand jury in cases involving the death of a person who died while being apprehended by or while in the custody of a law enforcement officer or detention personnel. The court must inform the grand jury of their duty to inquire into offenses against the criminal laws of the State of Nebraska in such cases. The grand jury is required, when they return a no true bill, to create a report providing an explanation of their findings and any recommendations they deem to be appropriate. This report shall be made available for public review, along with the grand jury transcript.

Neb. Rev. Stat. § 29-1407.01, Grand jury proceedings; reporter; duties; transcript; statements; availability.

LB1000 creates an exception to the general rule that grand jury transcripts are not to be made available to the public. Now, they must be made available to the public when a grand jury returns a no true bill in an investigation involving the death of a person who died while being apprehended by or while in the custody of a law enforcement officer or detention personnel. The transcript shall include any exhibits of the grand jury proceedings, but shall not include the names of grand jurors or the content of their deliberations.

Neb. Rev. Stat. § 29-1420, Report; made public; when; transfer of evidence.

LB1000 creates an exception to the general rule that grand jury reports are not to be made available to the public. Now, they must be made available to the public in the case that the grand jury returns a no true bill regarding a case involving the death of a person who died while being apprehended by or while in the custody of a law enforcement officer or detention personnel.

LB1009: Prohibit transactions involving lookalike substances, provide and change seizure and forfeiture authority, and prohibit conduct as deceptive trade practices

Neb. Rev. Stat. § 28-401, Terms, defined.

LB1009 defines “lookalike substance” for purposes of the Uniform Controlled Substances Act.

LB1009, Sec. 4, Sale of lookalike substances; penalty.

LB1009 makes it a criminal offense to offer, display, market, advertise for sale, or sell a lookalike substance. Such a violation occurs when a person knowingly offers, displays, markets, advertises for sale, or sells a lookalike substance and the packaging containing such substance bears a label or marking which: is false, misleading, or incomplete; does not specifically identify all chemicals or chemical compounds contained on or in the substance or product inside the packaging; or does not specifically identify the name and place of business of the manufacturer, packer, or distributor of the product or substance contained inside the packaging. This does not apply to lookalike substances intended solely for investigational use by experts and which complies with the law. A violation of this statute is a Class IV felony.

Neb. Rev. Stat. § 28-431, Seized without warrant; subject to forfeitures; disposition; manner; when; accepted as evidence; court costs and expenses.

LB1009 authorizes an officer of the Division of Drug Control or any peace officer to seize all lookalike substances with or without a warrant.

Neb. Rev. Stat. § 87-301, Terms, defined.

LB1009 defines substance for purposes of the Uniform Deceptive Trade Practices Act as any lookalike substance as defined in Neb. Rev. Stat. § 28-401.

Neb. Rev. Stat. § 87-302, Deceptive trade practices; enumerated.

LB1009 expands the list of conduct which constitute deceptive trade practices. This list now includes the manufacture, production, importation, distribution, promotion, display for sale, offer for sale, attempt to sell, or sale of a lookalike substance. LB1009 also specifies that each individually packaged product that violates this statute is considered to be a separate and distinct

offense of the Uniform Deceptive Trade Practices Act. Violations of this statute shall also be treated as separate and distinct violations from any other offenses arising out of acts alleged to have been committed while the person was in violation of this statute.

LB1009, Sec. 12, Effective date.

LB1009 became operative on March 21, 2016.

LB1010: Change provisions relating to juvenile court petitions

Neb. Rev. Stat. § 43-261, Juvenile court petition; contents; filing.

LB1010 changes the provisions relating to juvenile court petitions. Now, the county attorney must sign a juvenile court petition, and the petition itself must also set for the facts giving rise to the petition. There is no longer a requirement that the petition set forth the facts verified by affidavit, and it is also sufficient that the petition be based upon information and belief.

LB1094: Change provision relating to evidence, sentencing, certain criminal penalties, theft, forgery, probation, and parole

Neb. Rev. Stat. § 27-1101, Applicability of rules; courts; proceedings generally; rules inapplicable; grand jury, miscellaneous proceedings; rules applicable in part.

LB1094 expands the list of situations in which the Nebraska Evidence Rules (other than those with respect to privileges) do not apply. This exception now applies to proceedings for imposing custodial sanctions.

Neb. Rev. Stat. § 28-105, Felonies; classification of penalties; sentences; where served; eligibility for probation; post-release supervision; applicability of changes to penalties.

LB1094 also clarified the provisions regarding persons eligible for a sentence of post-release supervision. Now, any person who is sentenced to imprisonment for a Class III, IIIA, or IV felony committed *on or after* August 30, 2015 cannot be subject to post-release supervision if that person is also sentenced concurrently or consecutively to imprisonment for a Class III, IIIA, or IV felony committed *prior* to August 30, 2015. In other words, with this amendment to § 28-105, persons who are sentenced to imprisonment for a Class III, IIIA, or IV felony can only be subject to post-release supervision if the felony was committed on or after August 30, 2015 and if they are not also sentenced concurrently or consecutively for a Class III, IIIA, or IV felony committed prior to August 30, 2015, or a Class I, IA, IB, IC, ID, II, or IIA felony.

Neb. Rev. Stat. § 28-106, Misdemeanors; classification of penalties; sentences; where served.

LB1094 has changed § 28-106(2) to require that a determinate sentence be imposed for any misdemeanor if the sentence is to be served concurrently or consecutively with a determinate sentence for a Class III, IIIA, or IV felony.

Neb. Rev. Stat. § 28-115, Criminal offense against a pregnant woman; enhanced penalty.

LB1094 slightly changes the provisions for enhancing sentences of criminal offenses punishable as Class I misdemeanors which have been committed against a pregnant woman. If a person commits a criminal offense punishable as a Class I misdemeanor against a pregnant woman, then the penalty is enhanced to a Class IIIA felony instead of a Class IV felony.

Neb. Rev. Stat. § 28-204, Accessory to felony, defined; penalties.

LB1094 heightens the penalty classification for accessory to felony under § 28-204(2)(a). Accessory to felony is now a Class IIA felony if the actor knows of the conduct of the other, the conduct of the other constitutes a Class I, IA, IB, IC, or ID felony, and the actor violates § 28-204(1)(a), (1)(b), or (1)(c). It was previously a Class III felony.

Neb. Rev. Stat. § 28-394, Motor vehicle homicide of an unborn child; penalty.

LB1094 heightens the penalty classification for motor vehicle homicide of an unborn child under § 28-394(3)(a). If the proximate cause of the death of an unborn child is the reckless or willfully reckless operation of a motor vehicle, then motor vehicle homicide of an unborn child is a Class IIIA felony. In other words, if the actor violates § 60-6,213 or § 60-6,214 and in the course of violating one of those statutes, proximately causes the death of an unborn child, then the actor may be charged with motor vehicle homicide of an unborn child as a Class IIIA felony. It was previously a Class IV felony.

Neb. Rev. Stat. §§ 28-605, 28-626, Criminal possession of forgery devices and a forgery device; penalty.

LB1094 creates new terms for forgery devices under § 28-605 and § 28-626. A forgery device under § 28-605 is now called a “written instrument forgery device,” and a forgery device under § 28-626 is now called a “financial transaction forgery device.”

Neb. Rev. Stat. § 28-1354, Terms, defined.

LB1094 makes a couple minor changes regarding the definition of “person” under the Public Protection Act and what constitutes an offense involving fraud under the Act. Until January 1, 2017, person will mean an individual or entity, as defined by the *Business Corporation Act* (§ 21-2014), holding or capable of holding a legal, equitable, or beneficial interest in property. Beginning January 1, 2017, person will mean an individual or entity, as defined by the *Nebraska*

Model Business Corporation Act (§ 21-214), holding or capable of holding a legal, equitable, or beneficial interest in property. What this effectively means is that beginning January 1, 2017, an individual for the purposes of the Public Protection Act no longer includes the estate of an incompetent or deceased individual, it only means a natural person. This is the only real difference between the two definitions.

LB1094 also updates the language of the Public Protection Act regarding what constitutes an offense involving fraud. This update reflects the new terms for forgery devices that LB1094 created under § 28-605 and § 28-626, which was discussed above, by substituting “written instrument forgery device” and “financial transaction forgery device” for “forgery device” in the relevant provisions under § 28-1354(5)(d).

Neb. Rev. Stat. § 29-2204.02, Sentence for Class III, IIIA, or IV felony; court; duties; defendant under eighteen years of age; disposition.

LB1094 creates several new provisions regarding sentencing for Class III, IIIA, or IV felonies. First, courts must now impose a determinate sentence of imprisonment for Class III, IIIA, or IV felonies, unless one of the exceptions applies. Previously, under LB605, the statute did not specify whether courts must impose a determinate or indeterminate sentence for Class III, IIIA, or IV felonies. This lack of specificity in LB605 had led to confusion at the time of sentencing.

Second, LB1094 creates an exception to the newly created requirement for a determinate sentence of imprisonment. When a person is sentenced to a term of imprisonment for a Class III, IIIA, or IV felony committed on or after August 30, 2015, then the court shall impose an indeterminate sentence that does not include a period of post-release supervision *if* the person is also consecutively or concurrently sentenced for either a Class III, IIIA, or IV felony committed prior to August 30, 2015, *or* a Class I, IA, IB, IC, ID, II, or IIA felony.

Third, LB1094 reaffirms the changes made in § 28-106 regarding determinate sentencing of misdemeanors and creates an exception. As stated above, a determinate sentence of imprisonment shall be imposed for a misdemeanor when the sentence of imprisonment for a misdemeanor is imposed consecutively or concurrently with a determinate sentence of imprisonment for a Class III, IIIA, or IV felony committed on or after August 30, 2015. The exception to this rule applies when the person is also imprisoned for a sentence of imprisonment for either a Class III, IIIA, or IV felony committed prior to August 30, 2015 *or* a Class I, IA, IB, IC, ID, II, or IA felony. In such case, the requirement for a determinate sentence does not apply.

Fourth, LB1094 removed from the required sentencing advisement the reference to good time as it related to post-release supervision. Thus, LB1094 makes it clear that good time credit does not apply to terms of post-release supervision.

Fifth, LB1094 added a sentencing advisement specifically for situations in which a court imposes a sentence following revocation of post-release supervision.

Finally, LB1094 clarifies when a person will be released on post-release supervision in the event they have been given multiple determinate sentences. It provides that if the offender has been sentenced to multiple determinate sentences and at least one term of post-release supervision, then the offender is required to serve all determinate sentences before he/she may be released on post-release supervision.

Neb. Rev. Stat. § 29-2260, Certain juveniles; disposition; certain offenders; sentence of probation, when.

LB1094 removes subsection (5) of § 29-2260, thereby eliminating any reference to a determinate sentence from this probation statute. This change places the procedure for imposing a sentence of imprisonment solely within §§ 29-2204 and 29-2204.02

Neb. Rev. Stat. § 29-2262, Probation; conditions.

LB1094 makes several changes as they relate to conditions of probation. First, it eliminates the restriction, imposed by LB605, that courts can only require periodic confinement in the county jail (under § 29-2262(2)(b)) when the offender has been sentenced for a misdemeanor. Now, courts can impose jail time of up to 90 days as a condition of probation for any offender, regardless of whether they've been sentenced for a felony or a misdemeanor.

However, LB1094 creates two requirements that must be met before the court can impose jail time as a condition of probation. The first requirement is that periodic confinement can only be a condition of probation if the court would otherwise sentence the defendant to a term of imprisonment instead of probation. The second requirement is that the court must find on the record that jail time is a necessary condition of probation because a sentence of probation without jail time would either depreciate the seriousness of the offender's crime or promote disrespect for the law.

If jail time is imposed as a condition of probation, LB1094 requires the court to advise the defendant of the time he or she will serve in jail taking good time credit into consideration.

Neb. Rev. Stat. §§ 29-2266, Probation; violation; procedure; 29-2269, Act, how cited; LB1094, Secs. 20-22.

LB1094 takes what was previously § 29-2266(2)-(12), removes these provisions from § 29-2266, and now codifies them as Section 20, 21, or 22 of "this act," which refers to LB1094 itself. At this time, appears that these provision have not been reassigned to any section of the Revised Statutes, so you must refer to the text of LB1094 to read these provisions. LB1094 also expands on these provisions by setting forth guidelines and procedures for probation officers.

LB1094 also includes Sections 20 to 22 of LB1094 as part of the Nebraska Probation Administration Act.

Neb. Rev. Stat. § 29-2266, Probation; violation; procedure.

LB1094 defines a couple terms for purposes of the Nebraska Probation Administration Act. These terms are “absconding supervision” and “custodial sanction.” A probationer has absconded supervision when he or she has “purposely avoided supervision for a period of at least two weeks and reasonable efforts by probation officers and staff to locate the probationer in person have proven unsuccessful.” Custodial sanction means “an additional probation requirement imposed upon a probationer designed to hold the probationer accountable for a violation of a condition of probation.” LB1094 goes on to set out the two most severe custodial sanctions. The most severe custodial sanction is up to thirty days in jail, and the second most severe custodial sanction is up to three days in jail.

LB1094 also includes a provision stating that absconding supervision does not constitute a noncriminal violation under § 29-2266(4)(a).

Neb. Rev. Stat. § 29-2267, Probation; revocation; procedure.

LB1094 creates an additional prerequisite to certain revocation proceedings in the case of a probationer who has been convicted of a felony. If a probationer has been convicted of a felony, and the court seeks to institute revocation proceedings in response to either substance abuse or a noncriminal violation, then such proceedings may only be instituted if the probationer has served at least 90 days of cumulative custodial sanctions during the current probation term.

Neb. Rev. Stat. § 29-2268, Probation; post-release supervision; violation; court; determination.

LB1094 provides that custodial sanctions are now a penalty that the court may order when a probationer violates a condition of his or her probation. Such a penalty may only be imposed on a probationer convicted of a felony.

Neb. Rev. Stat. § 47-401, Sentenced to a city or county jail; permission to leave; when; sentence served at other facility; house arrest.

LB1094 provides that persons who have been sentenced to or confined in a city or county jail as the result of a custodial sanction imposed in response to a parole or probation violation may be allowed to leave the jail for one of the specified purposes or serve all or part of his or her sentence at a house of correction, community residential center, work release center, halfway house, or serve their sentence under house arrest.

LB1094 also expands the list of specified purposes to include engaging in other rehabilitative activities like attending a program or service provided at a reporting center.

Neb. Rev. Stat. § 47-502, Person sentenced to jail; sentence reduction.

LB1094 provides that persons who have been sentenced to or confined in a city or county jail as the result of a custodial sanction imposed in response to a parole or probation violation shall be given a sentence reduction for every day he or she does not commit any breach of discipline or other violation of jail regulations.

Neb. Rev. Stat. § 60-6,197.03, Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.

LB1094 changes subsection (8) of § 60-6,197.03 to provide a mandatory minimum penalty of one year imprisonment for a person convicted of driving under the influence of alcohol or drugs when such person has had three prior convictions, and as part of the current violation has a BAC of $\geq .15$ or refused to submit to a test.

Neb. Rev. Stat. § 71-2482, Drugs; violations; penalties.

LB1094 corrects an error within LB37 (2015) which repealed the legend drug offense previously found at § 28-1437 and recodified it at § 71-2478. When this change was made through LB37, the Legislature also repealed the penalty provision found at § 28-1438, but failed to create a new penalty provision in Chapter 71. Thus, from August 30, 2015 until April 19, 2016, there was no penalty for a legend drug offense. LB1094 remedies that situation by adding the legend drug offense statute to those included in the penalty provisions of § 71-2482, thereby making a legend drug offense under § 71-2478 a Class III misdemeanor.

Neb. Rev. Stat. § 83-1,119, Parolee; violation of parole; parole officer; administrative sanction; report to Board of Parole; action of board.

LB1094 defines what it means for a parolee to abscond parole supervision. This violation is committed when “a parolee has purposely avoided supervision for a period of at least two weeks and reasonable efforts by a parole officer and staff to locate the parolee in person have proven unsuccessful.” LB1094 also provides that absconding parole supervision does not amount to a technical violation under § 83-1,119(1)(e). Finally, LB1094 gives the parole board a little more discretion in imposing custodial sanctions, allowing it to impose a sanction of up to thirty days, rather than exactly thirty days.

Neb. Rev. Stat. § 83-1,122, Parolee; violation of parole; action of Board of Parole.

LB1094 gives the parole board the discretion to order a custodial sanction of up to thirty days.

LB1094, Sec.39, Parolee; leaving facility while serving custodial sanction.

LB1094 provides that a parolee serving a custodial sanction may leave the correctional facility or contract facility for one of the specified purposes.

Neb. Rev. Stat. § 83-1, 122.01, Board of Parole; jurisdiction.

LB1094 removes the Board of Parole's jurisdiction over certain offenders. The Board of Parole does not have jurisdiction over persons sentenced for a Class III, IIIA, or IV felony which was committed on or after August 30, 2015. The exception to this general rule is that the Board of Parole does have jurisdiction over such a person when that person is serving a concurrent or consecutive sentence for a Class III, IIIA, or IV felony committed prior to August 30, 2015 or a concurrent or consecutive sentence for a Class I, IA, IB, IC, ID, II, or IIA felony. The Board of Parole also does not have jurisdiction over a person sentenced for a misdemeanor and given a concurrent or consecutive sentence for a Class III, IIIA, or IV felony committed on or after August 30, 2015. The same exception applies to this rule.

Neb. Rev. Stat. § 83-1,135.02, Changes under Laws 2003, LB 46; changes under Laws 2015, LB 605; legislative intent.

LB1094 states that the Legislature intends for the changes made in this bill regarding sentencing, probation, and parole to apply to all committed offenders currently serving a sentence, on parole, or on probation on or after April 20, 2016 and to all persons sentenced on or after April 20, 2016.

LB1094, Sec. 45, Effective date.

LB1094 became operative on April 20, 2016.

LB1098: Increase legal services fees as prescribed

Neb. Rev. Stat. § 33-107.01, Legal services fee; taxed as costs; when.

LB1098 increases the legal service fees to \$6.25 for cases filed in each separate juvenile court and district court and for each appeal and original action filed in the Court of Appeals and the Supreme Court.

LB1106: Change forfeiture provisions as prescribed

Neb. Rev. Stat. § 25-21,302, Human trafficking; labor trafficking or sex trafficking; forfeiture of property; civil proceeding; confiscating authority; duties; seizure of property; proceedings; petition; Attorney General; duties; answer; hearing; disposition of proceeds.

LB1106 expands the list of offenses which permit the forfeiture of property used in the commission of these offenses. Now, any property used in the commission of a violation of the Child Pornography Prevention Act or in the commission of selling obscene literature and material to a minor, human trafficking, promoting gambling, possessing gambling records, collecting a gambling debt, or possessing a gambling device may be forfeited through a civil proceeding as provided in Neb. Rev. Stat. § 25-21,302.

LB1106 also modifies the forfeiture proceedings in Neb. Rev. Stat. § 25-21,302. The statute now requires *actual* knowledge or consent in any place where knowledge or consent was previously required, specifically in the provisions that provide that no property is subject to forfeiture which was used in the commission of an offense without the actual knowledge or consent of the owner. Finally, the burden of proof in forfeiture proceedings under this provision is now clear and convincing evidence. It was previously a preponderance of the evidence.

LB1106, Sec.2, Report of forfeiture.

LB1106 creates a new statute which requires the appropriate law enforcement agency or the prosecuting attorney to provide a written report for any money, securities, negotiable instruments, firearms, conveyances, or real estate seized pursuant to Neb. Rev. Stat. § 25-21,302 to the Auditor of Public Accounts. LB1106 also requires certain information to be included in the report. See Sec. 2 of LB1106 for specific details regarding this required information. These reports shall be made on an annual basis. The prosecuting attorney is not required to report such information unless the appropriate law enforcement agency does not report the required information. The appropriate law enforcement agency or prosecuting attorney shall also report all instances in which forfeited property was returned to its owner.

Neb. Rev. Stat. § 28-109, Terms, defined.

LB1106 defines “conveyance” for purposes of the Nebraska Criminal Code as a mode of transportation that includes a vehicle, aircraft, or watercraft.

Neb. Rev. Stat. § 28-416, Prohibited acts; violations; penalties.

LB1106 adds a new forfeiture provision for violations of Neb. Rev. Stat. § 28-416(1). If a person is convicted of 1) manufacturing, distributing, delivering, or dispensing a controlled substance, 2) possessing with intent to manufacture, distribute, deliver, or dispense a controlled substance, or 3) creating, distributing, or possessing with intent to distribute a counterfeit

controlled substance, then a sentencing court may order certain property to be forfeited as part of the sentence. In order to do so, the sentencing court must find by clear and convincing evidence adduced at a separate hearing in the same prosecution that the property was derived from, used, or intended to be used to facilitate one of these offenses. Section 11 of LB1106 provides the procedures for this hearing.

Neb. Rev. Stat. § 28-431, Seized without warrant; subject to forfeitures; disposition; manner; when; accepted as evidence; court costs and expenses.

LB1106 modifies the provisions regarding forfeiture of property seized without a warrant in drug cases. Now, if an owner of property seized by law enforcement under Neb. Rev. Stat. § 28-431 can show that he or she had no *actual* knowledge that such property was being used in these crimes, then the court must order the release of the property. This heightened mental state is also applied in cases where a person has an interest in the property proceeded against. LB1106 also requires that it be shown by clear and convincing evidence that such property was used in violation of such act in order to prevent it from being released back to the owner. Finally, Section 6 of LB1106 creates a reporting provision which mirrors that created in Sec. 2 of LB1106 above.

Neb. Rev. Stat. § 28-813.01, Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense.

LB1106 adds a new forfeiture provision for violations of Neb. Rev. Stat. § 28-813.01 which mirrors that of Neb. Rev. Stat. § 28-416 above. The only difference is that this provision applies to persons convicted of knowingly possessing child pornography.

Neb. Rev. Stat. § 28-1111, Gambling device or record; money used as a bet or stake; forfeited to state.

LB1106 adds a new forfeiture provision for violations of Neb. Rev. Stat. §§ 28-1102, 1103, 1104, 1105, 1105.01, or 1107 which mirrors that of Neb. Rev. Stat. §§ 28-416 and 28-813.01 above. There are only two differences. The first is that this provision applies to persons convicted of promoting gambling, possession of gambling records, collecting gambling debts, or possession of a gambling device. The second is that gambling devices are included in the list of property which may be seized under this section.

LB1106, Sec. 10, Forfeiture as penalty.

LB1106 adds a new forfeiture provision for violations of the Child Pornography Prevention Act which mirrors that of Neb. Rev. Stat. §§ 28-416, 28-813.01, and 28-1111 above. The only difference is that this provision applies to persons convicted of an offense under the Child Pornography Prevention Act.

LB1106, Sec. 11, Forfeiture procedures generally.

Section 11 of LB1106 serves as the overarching forfeiture statute which shall govern the procedures of forfeiture hearings and reiterates the general rules regarding forfeiture. Property may only be forfeited after three requirements are met. The first requirement is that the owner or possessor of the property has been convicted of a violation of the Child Pornography Prevention Act, or Neb. Rev. Stat. §§ 28-416(1), 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107.. This requirement does not apply if the owner or possessor of the property is (a) unknown or incapable of being determined for some legitimate reason or (b) fails to appear in court as ordered after prosecution for the underlying offense has commenced and is not apprehended within one year after the order was issued or (c) dies or is removed from the United States before charges are filed or a conviction is obtained . The second requirement is that the information charging such violation must also specifically request the forfeiture of property upon conviction. This second requirement also does not apply if the owner or possessor of the property dies or is removed from the United States before there is a conviction and the statute of limitations has not expired. The third requirement is that after conviction, there must be a separate hearing in which the court finds by clear and convincing evidence that the property has been derived from, used, or intended to be used to facilitate one of the above offenses. Subsection 4 provides the procedures for such a hearing. Please see Sec. 11(4) of LB1106 for more specific details on these procedures.

LB1106 allows for the defendant to request a pretrial probable cause hearing regarding the property subject to forfeiture. It also allows any person or entity, other than the defendant, with a legal interest in the property subject to forfeiture to file a motion to intervene. Such a person or entity can reclaim their property if they can show that they do have a legal interest in it and lacked actual knowledge that such property was derived from, used, or intended to be used in violation of one of the listed offenses. Subsection 3 provides the procedures for such a hearing. Please see Sec. 11(3) of LB1106 for more specific details on these procedures. Subsection 5 provides the procedures for ordering forfeitures. Please see Sec. 11(5) of LB1106 for more specific details on these procedures. Finally, this statute provides for forfeiture pursuant to a plea agreement.

LB1106, Sec. 12, Request for forfeiture.

LB1106 requires that the prosecutor specifically plead his or her intent to seek forfeiture of any property upon a conviction of the prescribed offenses. The information shall specify the date the property was seized, the place it was seized from, the property sought to be forfeited, and the name of the owner of the property, the person in possession of the property when it was seized, and the name of anyone else who may have an interest in the property.

LB1106, Sec. 13, Restriction on use of property.

LB1106 is an “anti-circumvention” provision which restricts all law enforcement agencies and prosecuting authorities from transferring any seized money or property to a federal agency for federal forfeiture proceedings, unless any one of three exceptions applies. The first is if the money or property exceeds \$25,000 in value. The second is if the money or property is physically seized by a federal agent employed by the federal government. The third is if the person from whom the property or money was seized from is being prosecuted by the federal government or if the facts or circumstances surrounding the money or property seized are the subject of a federal prosecution.

Please feel free to contact John Freudenberg, Chief of our Criminal Bureau, or Corey O’Brien or Kale Burdick, Assistant Attorneys General in the Criminal Prosecution Section, should you have any questions or concerns about the contents of this memo or any other criminal justice matters.

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