

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB686

Hearing Date: Wednesday March 27, 2019
Committee On: Judiciary
Introducer: Lathrop
One Liner: Change provisions relating to correctional system emergencies

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Brandt, Chambers, DeBoer, Lathrop, Morfeld, Pansing Brooks, Wayne
Nay:		
Absent:		
Present Not Voting:	1	Senator Slama

Oral Testimony:

Proponents:

Senator Steve Lathrop
Kellee Kucera Moreno
Doug Koebernick

Representing:

Introducer
self
Inspector General of Corrections

Opponents:

Scott Frakes

Representing:

Nebraska Department of Correctional Services

Neutral:

Danielle Conrad

Representing:

ACLU of Nebraska

Summary of purpose and/or changes:

LB 686 adds new thresholds for declaration of a prison overcrowding emergencies with thresholds of 140% (between July 1, and Dec 31, 2020), 135% (between Jan 1 and June 30, 2021), 130% (between July 1, and Dec 31, 2021) and 125% (Jan 1, 2022). The bill amends inmate population to include DCS inmates in county correction facilities. Should the inmate population exceed the thresholds, the bill requires the Governor to take immediate action to reduce the population. LB 686 also adds language to the current required actions of the Parole Board to parole certain offenders during a declared emergency until the populations is below the thresholds.

Section 1 Definitions (section 83-961) Strikes definition of operational capacity (subsection 6) Amends population definition to include inmates assigned to county correctional facilities

Section 2 Amends section 83-962 regarding overcrowding emergency in the correctional system. Adds new subsections to create new thresholds for overcrowding emergencies before Jan 1, 2021 (135%), July 1, 2021 (130%), Jan 1, 2022 (125%). Adds language to require the Governor to take immediate action in overcrowding emergency to reduce prison population. Adds language in Board of Parole's granting of parole during emergency to meet new thresholds and requires Director of Correctional Services to certify to the Board when inmate population falls below thresholds.

Section 3 Repeals original sections

Explanation of amendments:

Committee AM1737 strikes the original provisions of LB686 combines portions of seven corrections related bills. The seven bills include LB91 addressing deferred judgement and probation, LB233 regarding cell phones or other devices in correctional facilities, LB240 about mental competency to stand trial, LB 262 addressing the long-term restrictive housing work group, LB684and LB90 changing post release supervision for Class IV felonies, and LB739 modifying restrictive housing provisions. The details of each bill are provided in the section by section portion below.

Section by section of AM1737

Section 1 Harmonizes provisions of LB233 (section 3 of AM1737) with the criminal code.

Section 2 Sections 2 and 6 contain changes to post-release supervision originally contained in LB90 and LB684. Section 2 would eliminate the required term of post-release supervision on Class IV felonies. Section 6 would amend Sec. 29-2268 to allow a judge to sentence a person to a period of incarceration up to the length of their original term of post-release supervision, rather than the length of their remaining term of post-release supervision.

Section 3 This section is new language that rewrites the provisions of LB233 and places it in the criminal code. As contained in the amendment, the language prohibits a person from bringing an electronic communication device into a correctional facility or providing it to an inmate. A violation of this provisions is a Class I misdemeanor. Definitions of facility and electronic communication devices are provided.

The amendment also provides exceptions for attorneys, the Public Counsel's office, law enforcement, and first responders

Section 4 Contains an amended version of LB240, which would amend Sec. 29-1823 to clarify and expand the options available to a judge when a criminal defendant is determined to be mentally incompetent to stand trial. Under existing law, a judge can order the defendant to be committed to a state hospital for the mentally ill or some other facility owned or operated by the state.

The amendment would require the defendant to be committed to the state Department of Health and Human Services, but would allow the treatment to be provided by a contract facility or provider identified by the department. Treatment at a contract facility or provider would not be allowed if the judge determines there is a risk to public safety.

Section 5 See sections 7 to 13 below.

Section 6 See section 2 above.

Sections 5 and 7 through 13 include provisions originally contained in LB91. These sections would authorize a court to defer judgment in criminal cases and place a defendant on probation before entering judgment on a finding of guilt.

Section 7 would provide the process and eligibility requirements for entering a deferred judgment. A person would not be eligible for a deferred judgment if they have a previous felony conviction, if they have received two or more deferred judgments, if they have received a deferred judgment in the past five years, or if they are not eligible for probation.

Section 8 would create a responsibility for the State Court Administrator to create a statewide database of deferred judgments.

Section 9 would require the court to consider certain factors when considering whether to enter a deferred judgment.

Section 10 would mandate a minimum term of deferred judgment of one year for a misdemeanor and two years for a felony. A court would be authorized to extend, discharge, or modify the terms of deferred judgment probation in the

same way as existing terms of probation.

Section 14 This section contains portions of LB739 that provides a definition of vulnerable population, and establishes that after October 1, 2019 no member of a vulnerable population shall be placed in restrictive housing. Vulnerable inmates may be placed in segregation pending classification. These provisions do not prohibit NDCS from establishing secure mental health housing for those with serious mental illness, developmental disabilities, or traumatic brain injuries.

Vulnerable population includes inmates under the age of 18, who are pregnant, or suffer from serious mental illness, developmental disabilities, or traumatic brain injury.

Section 15 This section contains provisions of LB 262 that proposed changes to the Nebraska Department of Correctional Services long-term restrictive housing work group. Language is added requiring the Director of NDCS to meet with the work group and share the contents of the required annual report on restrictive housing prior to the release of the report. The amendment also modifies the make-up of the work group by adding a member of the Judiciary Committee as a non- voting, ex officio member.

The provisions in AM1737 also modify the number and appointment of members by having the Executive Board of the Legislative Council appoint six members (current provisions have the Governor appoint four members) including one previously incarcerated, and additional members who are mental health professionals, advocates for inmates, employment experience in a restrictive housing unit, or engaged in correctional system issues. The work group terminates Dec 31, 2021.

Section 16 Revisor instructions to place sections 7-12 in Chapter 29 art. 22.

Section 17 Repeals original sections.

Public Hearing Testimony on Bills Contained in AM 1737 -

LB 91 Testimony -

Proponents:

Senator Justin Wayne, Introducer

Joe Nigro, Lancaster County Public Defender

Opponents:

Jeff Lux, Nebraska County Attorneys Association

Neutral: None

LB 233 Testimony -

Proponents:

Senator Justin Wayne, Introducer

James Davis, Ombudsman's Office

Jerall Moreland, Ombudsman's Office

Doug Koebernick, Inspector General for Corrections

Opponents:

Scott Frakes, Nebraska Department of Correctional Services

Neutral:

Spike Eickholt, Nebraska Criminal Defense Attorneys Association

Tim Hruza, Nebraska State Bar Association

LB 240 Testimony -

Proponents:

Senator Matt Hansen, Introducer
Brad Johnson, Lancaster County Corrections
Kim Etherton, Lancaster County
Abbi Romshek, Nebraska Criminal Defense Attorneys Association
Sean Flowerday, Lancaster County Board of Commissioners
Spike Eickholt, ACLU of Nebraska
Joe Nigro, Lancaster County Public Defender & Nebraska State Bar Association

Opponents: None

Neutral:

James Smith, Nebraska County Attorneys Association

LB 262 Testimony -

Proponents:

Senator Wendy DeBoer, Introducer
Doug Koebernick, Inspector General of Corrections
Amy Miller, ACLU of Nebraska

Opponents:

Scott Frakes, Nebraska Department of Correctional Services

Neutral: None

LB 684 Testimony -

Proponents:

Senator Steve Lathrop, Introducer
Spike Eickholt, Nebraska Criminal Defense Attorneys Association
Jeff Lux, Nebraska County Attorneys Association

Opponents: None

Neutral:

Deb Minardi, Administrative Office of the Courts & Probation

LB 739 Testimony -

Proponents:

Senator Tony Vargas, Introducer
James Davis, Ombudsman's Office
Kellee Kucera-Moreno, self
Morgann Freeman, self
Amy Miller, ACLU of Nebraska
Paul Feilmann, self
Tom Miller, self
Brad Meurrens, Disability Rights of Nebraska
Tyler Wilson, self

Opponents:

Scott Frakes, Nebraska Department of Correctional Services

Michael Chipman, Fraternal Order of Police #88

Carla Jorgens, Fraternal Order of Police #88

Neutral: None

Steve Lathrop, Chairperson