

Revised to include agency response

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2023-24		FY 2024-25	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	\$2,605,968		\$2,083,457	
CASH FUNDS	\$20,000			
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$2,625,968		\$2,083,457	

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 50 proposes modifications concerning problem-solving courts, set-asides, and restitution. The bill redefines certain legal terms and includes legislative intent to appropriate funds. The bill seeks to launch pilot programs related to courts, probation, and parole, and dissolves the Committee on Justice Reinvestment Oversight, delegating specific responsibilities to courts, the Probation Administrator, the Board of Parole, the Division of Parole Supervision, and the State Court Administrator.

AM 1796 strikes the original provisions and amends provisions as follows:

In section 4: Subdivision (11)(a) states that the amendment stipulates that a domestic record, either in its original form or a certified copy, must satisfy the conditions outlined in the aforementioned section. This compliance needs to be validated through a certification from the record's custodian or another person qualified for this role.

Subdivision (11)(b) further stipulates that prior to a trial or hearing, the party intending to present the record must provide the opposing party with sufficient written notice about the intention to use the record. This provision also mandates that the record and its certification are made accessible for examination, thereby ensuring the adverse party has a fair chance to question the authenticity or reliability of the records.

In subdivision (12), in a civil case, an original or a copy of a foreign record needs to meet the conditions laid out in subdivision (11)(a) of this section. Notably, the amendment modifies the requirement for certification: it must be signed in a way that, if falsely made, would expose the signatory to criminal penalties in the country where the certification was signed. The proponent is also obligated to comply with the notification requirements set forth in subdivision (11)(b) of section 4.

In subdivision (13), a record produced by an electronic process or system, which generates an accurate result, needs to be accompanied by a certification from a qualified person. This certification must comply with the requirements of subdivision (11)(a) or (12) of this section. The party introducing the record must also fulfill the notification requirements as described in subdivision (11)(b) of section 4; Or

(14) Data retrieved from an electronic device, storage medium, or file can be admissible, provided it has been authenticated through a process of digital identification. This must be verified by a certification from a qualified person, in accordance with the stipulations of subdivision (11)(a) or (12) of this section. Similarly, the proponent of this data must meet the notice prerequisites set forth in subdivision (11)(b) of section 4.

Section 5 adds that in order for a previous conviction to be utilized for penalty enhancement under subsection (5) or (6) the prior conviction must have taken place no more than ten years before the commission of the current offense.

In Section 6, subdivision (1)(c), If the felony committed does not inherently involve sexual contact, sexual penetration, threats or actual infliction of serious bodily injury or death upon another individual, causing the death of another person, or illegal possession of a firearm, the required minimum sentence should be three years. However, the maximum sentence should not exceed the greater of two figures: the maximum term specified for that particular felony, or twenty years.

Section 7, subdivision (6), adds to the current subdivision that sets the requirement that all data supplied to the Nebraska Commission on Law Enforcement and Criminal Justice—meant for law enforcement agencies' access via the state's criminal justice information system—must be given in a format that allows for easy accessibility through the systems.

In Section 8, subdivision (7) is added and mandates that for any offender sentenced to probation, the court is required to issue an order that provides the offender's name, probation officer, and the conditions of their probation to the Nebraska Commission on Law Enforcement and Criminal Justice. This commission, in turn, is obligated to make this information accessible to law enforcement agencies via the state's criminal justice information service.

In Section 14 of AM 1796, Section 29-2315.02 is revised to state that, in cases where the court determines a defendant to be indigent, the trial court should initially contact the public defender, provided such a role exists in the county, to verify if they can accept the appointment to argue the case against the prosecuting attorney. Should the public defender refuse the appointment due to a conflict of interest, the court is required to appoint another attorney. Any lawyer appointed under these circumstances, who is not the public defender, must submit an application for fees and expenses to the appointing court. These fees and expenses should account for all reasonable costs necessary for competent representation of the defendant and to argue the case against the prosecuting attorney. The court should fix a fee not exceeding two hundred dollars, which will be paid from the county treasury in full as determined by the court. If the court does not deem a defendant indigent, and neither appoints the public defender nor another attorney, the defendant is allowed to be represented by an attorney of their choosing.

AM 1796 further updates Section 16 with the addition of subdivision (4)(e). This provision states that the relevant date is when the Supreme Court of the United States either denies a writ of certiorari or affirms a conviction that has been appealed from the Nebraska Supreme Court. This subdivision is only applicable if the prisoner, within thirty days of petitioning the Supreme Court of the United States for a writ of certiorari, files a notice in the district court of conviction declaring that such a petition has been filed. AM 1796 in Section 17, introduces the creation of the Nebraska Sentencing Reform Task Force. This group's mission is to identify and propose modifications to Nebraska's criminal justice laws, policies, and practices to enhance public safety and optimize the allocation of Nebraska's criminal justice resources.

The task force will be composed of the following members:

- (a) The Governor or the Governor's designee
- (b) The Attorney General or the Attorney General's designee
- (c) Three members from the Judiciary Committee of the Legislature, appointed by the Executive Board of the Legislative Council
- (d) Two representatives of law enforcement appointed by the Governor
- (e) Two county attorneys appointed by the Governor

The task force is obligated to submit its initial report to the Legislature by November 15, 2023, and a second report no later than November 15, 2024. These reports should be delivered electronically to the Clerk of the Legislature. Administrative and staff support for the task force will be provided by executive branch staff as directed by the Governor, or by staff from the Judiciary Committee of the Legislature as directed by the Chair of the Judiciary Committee. The task force will cease to exist on December 31, 2024.

Section 21, subdivision (10) is added. States that any juvenile court order that enforces electronic monitoring on a juvenile must also clarify whether data from the electronic monitoring device should be immediately accessible to a law enforcement agency upon request. In cases where a juvenile is under the supervision of a probation officer, details such as the juvenile's name, the name of their probation officer, and any probation terms included in an open-to-inspection juvenile court order, must be provided to the Nebraska Commission on Law Enforcement and Criminal Justice. This Commission is then obliged to ensure that such information is accessible to law enforcement agencies via the state's criminal justice information service.

AM 1796 modifies Section 23, subdivision (1)(b), to stipulate that all firearm dealers, licensed in accordance with 18 U.S.C. 923, must distribute information on suicide prevention to all firearm purchasers. This information should comprise evidence-based material adhering to best practices in suicide prevention, and should include resources such as the 988 Suicide and Crisis Lifeline or similar. The Nebraska State Patrol is tasked with maintaining and publishing a list of suitable materials that can be used to comply with this mandate.

AM 1796 introduces new provisions in Section 4 regarding financial assistance for mental health students and practitioners:

(a) Doctoral-level or master's-level mental health students are eligible for full coverage of their student loans if they commit to practicing psychiatry, psychology, or mental health practice:

- (i) For at least five years in a region designated as a health profession shortage area, and
- (ii) If their practice primarily focuses on treating individuals from the community supervision population.

(b) Psychiatrists are eligible for full coverage of their educational debts through the medical resident incentive program, given they commit to:

- (i) Practicing psychiatry for a minimum of five years in a region designated as a health profession shortage area, and
- (ii) Primarily treating individuals from the community supervision population.
- (iii) Psychiatrists, psychologists, and mental health practitioners are eligible for full coverage of their educational debts through loan repayments under this act, provided that they commit to:
- (iv) Practicing their specialty for at least five years in a region designated as a health profession shortage area, and
- (v) Primarily treating individuals from the community supervision population.

In the context of this section, the "community supervision population" refers to individuals on probation, post-release supervision, and pretrial release.

AM 1796 amends Section 83-1,110, Section 1 to redefine parole eligibility for committed offenders. The eligibility for parole is now based on the earliest of the following conditions:

(a) When the offender has served half of the minimum term of his or her sentence, as outlined in sections 83-1,107 and 83-1,108; or
(b) Depending on the maximum term of the committed offender's sentence:

- (i) If the term is twelve years or less, parole eligibility begins two years prior to the offender's mandatory discharge date;
- (ii) If the term is sixteen years or less, parole eligibility begins three years prior to the offender's mandatory discharge date;
- (iii) If the term is twenty years or less, parole eligibility begins four years prior to the offender's mandatory discharge date;
- (iv) If the term is more than twenty years, parole eligibility begins five years prior to the offender's mandatory discharge date.

AM 1796 amends Section 83-1,110, Section 3 (c) outlines the conditions for parole eligibility for a committed offender, which will occur upon the earliest of the following:

- (i) When the offender has served one-half of the minimum term as detailed in sections 83-1,107 and 83-1,108; or
- (ii) Depending on the maximum term of the sentence served by the committed offender:
 - (A) If the term is twelve years or less, the offender becomes eligible for parole two years prior to the mandatory discharge date;
 - (B) If the term is sixteen years or less, the offender becomes eligible for parole three years prior to the mandatory discharge date;
 - (C) If the term is twenty years or less, the offender becomes eligible for parole four years prior to the mandatory discharge date; or
 - (D) If the term is more than twenty years, the offender becomes eligible for parole five years prior to the mandatory discharge date.

In Section 34, a committed offender may be eligible for geriatric parole if they meet the following criteria: (a) The offender is not serving a sentence for a Class I, IA, or IB felony, not serving a sentence that includes sexual contact or penetration as an element, and not serving a life sentence; (b) The offender is at least 75 years old; (c) The offender has served at least 15 years of their current sentence.

In addition to other parole opportunities, an offender might be eligible for geriatric parole. The department is required to identify those who may qualify. The Board can only grant geriatric parole after reviewing the decision guidelines outlined in the Board's rules and regulations, along with the factors set forth in section 83-1,114. The parole term for a geriatric parolee lasts for the remaining duration of the parolee's sentence, as adjusted for good conduct under the Nebraska Treatment and Corrections Act. As a mandatory condition of geriatric parole, the Board requires the parolee to use an electronic monitoring device for at least 18 months.

Revenues:

The Nebraska Commission on Public Advocacy is solely funded by \$3 Indigent Defense fee which is taxed as costs to most cases filed in Nebraska's state courts. If individuals in problem solving courts are not required to pay the Indigent Defense Fee, the Commission will lose revenue. Diversion, STOP classes, and problem-solving courts have caused fewer cases to be filed, and because fewer cases are filed in the courts the Commission's annual revenue is down approximately \$500,000 compared to FY 2008-2009. Section 13 of this bill states that the amount a defendant pays towards fines, costs and restitution are only applied to the restitution obligation until it is satisfied in full. This will cause the Commission to lose revenue it receives through the payments of the Indigent Defense Fee. The amount of revenue lost is unknown at this time.

Expenditures:

The Supreme court states that LB 50, AM 1796 would have a General Fund fiscal impact due to the following sections:

1. Section 1: Creation of Problem-Solving Courts in any judicial district.
2. Section 2: Development of Virtual Behavioral Health Services.
3. Section 11: Establishment of an Assistant Probation Officer Pilot Program.
4. Section 12: Implementation of an Adult Incentive Pilot Program.
5. Section 13: Amendments to Restitution Procedures.

There is a \$20,000 dollar Cash Fund impact for modifications to be made to JUSTICE, the Judicial Branch case management system, due to several projects listed above.

The General fund Impact due to AM1796 are \$2,205,800 in FY23-24 and \$1,871,175 in FY24-25.

The Nebraska Board of Parole and the Department of Corrections plan to launch a trial residential housing initiative for parolees with minor infringements. The housing units will be situated in one or more locations, selected by the Director of Corrections. Some costs will be incurred to adapt the selected facility's existing space and to cover staff and program expenses.

Expenditures in the response provided by the Board of Parole contain expenses related to the already operational PREP program. The Department of Corrections isn't currently involved with this program, but if this bill proposes a larger facility where Parole works in collaboration with the Department of Corrections, the financial impact is uncertain. Currently, the Board of Parole is partially funded for the PREP House program under LB 814: with reappropriated funds for FY24 and with a General Fund appropriation of \$688,461 for FY25.

Remaining costs for the Board of Parole due to AM1796 are \$314,388 in FY24 and \$212,282 in FY25.

Sections 12 and 13 of LB 50 AM 1436 are likely to have financial implications for the Nebraska Department of Correctional Services. These sections, however, are absent from AM 1796, meaning there would be no fiscal impact from this amendment. While LB 50 has the potential to decrease the prison population, the extent of this reduction cannot be accurately predicted at this time. DCS provided an updated response to indicate an estimated cost of \$85,780 in FY23-24 for IT costs. There is no basis to disagree with this estimate.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 50	AM: 1796	AGENCY/POLT. SUB: Nebraska Supreme Court (005)
REVIEWED BY: Joe Wilcox	DATE: 05/23/2023	PHONE: (402) 471-4178
COMMENTS: No basis to dispute the Nebraska Supreme Court estimate of Potential Fiscal Impact to the Courts and Probation from LB 50, as amended by AM 1796.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 50	AM: 1796	AGENCY/POLT. SUB: Nebraska Board of Parole (015)
REVIEWED BY: Joe Wilcox	DATE: 05/24/2023	PHONE: (402) 471-4178
COMMENTS: Do not disagree with the Nebraska Board of Parole estimate of potential fiscal impact to the Agency from LB 50, as amended by AM 1796. The Board of Parole is currently establishing a pilot residential program for parolees who commit technical violations. The agency is utilizing re-appropriations to fund the pilot in FY 2022-23. The Budget Bill, LB 814, provides \$688,461 General Funds in FY 2024-25 toward this project.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 50	AM: 1796	AGENCY/POLT. SUB: Nebraska Commission on Public Advocacy (094)
REVIEWED BY: Joe Wilcox	DATE: 05/23/2023	PHONE: (402) 471-4178
COMMENTS: No basis to dispute the Nebraska Commission on Public Advocacy estimate of potential, but Indeterminate Cash Fund Revenue impact to the Agency from LB 50, as amended by AM 1796.		

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2023

LB⁽¹⁾ 50 AM1796

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Nebraska Department of Correctional Services

Prepared by: ⁽³⁾ Lisa Stanton Date Prepared: ⁽⁴⁾ 05/23/2023 Phone: ⁽⁵⁾ (402)479-5702

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2023-24</u>		<u>FY 2024-25</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	\$85,780			
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	<u>\$85,780</u>			

Explanation of Estimate:

LB50 as amended by AM1796 changes criminal justice provisions including sentencing, set-asides, restitution, and parole; creates pilot programs; provides for geriatric parole; creates a sentencing reform task force, and terminates an oversight committee. The bill could reduce the number of persons in prison. The specific amount of impact is indeterminable.

As of December 2022, the average daily prison population (ADP) was 147% of design capacity. The FY22 per diem cost was \$28.38 for each inmate, or \$10,358.63 per year.

NDCS estimates the cost of IT programming changes required to the sentence calculation system (development, testing and implementation) to be \$85,780.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023-24</u>	<u>2024-25</u>
	<u>23-24</u>	<u>24-25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....				
Operating.....			\$85,780	
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....			<u>\$85,780</u>	

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2023

LB⁽¹⁾ 50 AM 1796

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ NE Commission on Public Advocacy

Prepared by: ⁽³⁾ Jeffery A. Pickens Date Prepared: ⁽⁴⁾ 1-11-2023 Phone: ⁽⁵⁾ 402-471-7775

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2023-24</u>		<u>FY 2024-25</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	see explanation	_____	see explanation
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	_____	_____	_____	_____

Explanation of Estimate:

The Commission on Public Advocacy is solely funded by a \$3 Indigent Defense Fee taxed as costs to most cases filed in Nebraska's state courts. If the participants in problem solving courts are not required to pay the Indigent Defense Fee, the Commission will lose revenue that it would have received if the cases had been filed in the courts in the traditional manner. The Commission has no way of knowing how many people will participate in problem solving courts that do not require payment of the Indigent Defense Fee. Case filings have declined every year since FY2008-09. Diversion, STOP classes, and problem solving courts are believed to be part of the reason why fewer cases are filed in the courts. Because fewer cases are filed in the courts, the Commission's revenue is down approximately \$500,000 compared to FY2008-09.

Regarding the restitution provision in the bill as amended, if funds a defendant pays toward fines, costs, and restitution are only applied to the restitution obligation until it is satisfied in full, the Commission may lose revenue it receives through payments of the Indigent Defense Fee. The Commission is unable to predict how much revenue it will lose, if any, if this section is enacted.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023-24</u>	<u>2024-25</u>
	<u>23-24</u>	<u>24-25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____

Capital improvements.....

TOTAL.....

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2023

LB⁽¹⁾ 50 with AM1796

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Nebraska Board of Parole

Prepared by: ⁽³⁾ Rosalyn Cotton Date Prepared: ⁽⁴⁾ 5/22/2023 Phone: ⁽⁵⁾ 402.479.5731

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2023-24</u>		<u>FY 2024-25</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	\$See below		\$See below	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

Explanation of Estimate:

- Change criminal justice provisions including offenses, sentencing, set asides, restitution, pretrial diversion, and parole; provide for benefits under the Rural Health Systems and Professional Incentive Act; create criminal justice pilot programs; terminate an oversight committee; and create a task force.
- The Division of Parole and the Department of Corrections is to establish a pilot residential housing program for parolees who commit technical violations. The housing is to be located within one or more facilities as designated by the Director of Corrections. There would be costs to convert existing space in the chosen facility and staff and programming costs. Those projected costs are not available at this time.

Note: The Expenditures in this fiscal note include the PREP program. The program is currently operational and NDCS is not involved. If this legislation envisions a larger facility in which Parole partners with NDCS the fiscal impact is unknow at this time.

Note: The Board of Parole is currently receiving a partial general fund appropriation for the PREP House program in the amount of \$688,461 under LB 814, for FY25.***

Residential Housing Program

The Board of Parole/ Division of Parole Supervisions has established a pilot residential PREP program for parolees who commit technical violations or otherwise need a reset in the community and can continue to be supervised safely in the community.

Current rent for the house= \$68,000 per year.

Estimated Utilities costs (Including electric, gas, water/sewer, internet)=\$9600.00/year

Operational costs (including household supplies, pantry staples, security system)=\$100,000/year

Clinical program contracts= \$75,000/year

Long-term one-time costs (Included in 2023-24 expenditures only):

Furniture (beds, dressers, tables, chairs, sofas): \$20,000

Training cost for seven assistant parole officers: \$84,000

*It should be noted that increased capacity will not necessarily increase costs related to staffing and clinical program contracts.

- Changed provisions regarding parole eligibility date.

An increased number of parole clients would increase staff and programming costs, but the projections of clients released are not available at this time. Estimates are below:

Cost per Parolee per Year:

The cost per parolee per year is \$3,514.78 or approximately \$10.00/day. This includes operating expenses, treatment (domestic violence groups, intensive outpatient substance abuse treatment, trauma recovery groups etc.) transitional housing stipends (up to ninety days) and miscellaneous expenses.

* If Residential Substance Abuse Treatment is needed an additional \$7,500 per client is needed for a total of \$11,014.78 per year.

Electronic Monitoring Cost are \$3.65 per day per client.

Staffing Patterns/Needs:

For every fifty moderate risk parole clients released one parole officer is needed.
 For every thirty high risk parole clients released one officer is needed.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023-24</u>	<u>2024-25</u>
	<u>23-24</u>	<u>24-25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Specialized Parole Officer	1	1	\$71,000	\$77,278
Assistant Parole Officers	7	7	\$328,324	\$344,740
Assistant Program Director	1	1	\$90,000	\$96,278
Program Director	1	1	\$123,569	\$129,847
Benefits.....			Included in above	Included in above
Operating.....			\$356,600	\$252,600
Travel.....			0	0
Capital outlay.....			0	0
Aid.....			0	0
Capital improvements.....			0	0
TOTAL.....			\$969,493	\$900,743