

Nebraska Looking To Recoup \$54,400 Spent On Execution Drugs

BY GRANT SCHULTE
Associated Press

LINCOLN, Neb. — Nebraska officials are looking for ways to recover the \$54,400 that was spent on foreign-made lethal injection drugs which haven't been delivered, but a spokesman for Gov. Pete Ricketts said Friday that it's not clear whether they'll succeed. Ricketts spokesman Taylor Gage said the governor has directed Nebraska's corrections department to review its purchase agreement with Harris Pharma, a one-man company based in India. Ricketts announced last week that the state would stop trying to obtain the drugs until after a statewide vote on capital punishment next November. State officials have struggled to import them because the U.S. Food and Drug Administration said they can't do so legally.

"It is unclear what recourse the state has, if any, to recover the funds at this time," Gage said. Lawmakers abolished capital punishment in May over Ricketts' veto, but a statewide petition drive partially financed by the governor gathered enough signatures to suspend that decision and put the issue on the ballot. Chris Harris, who runs Harris Pharma, sold drugs to the state in 2010, but the manufacturer later accused him of misrepresenting how he intended to use them. Legal challenges prevented the state from using that batch before it expired. Harris did not immediately respond to an email Friday morning. An attempt to ship the newest batch of drugs in August via FedEx was thwarted because the transport company said it lacked necessary paperwork for international shipping. Nebraska prison of-

icials also tried but failed in October to buy one of the required drugs, pancuronium bromide, from a Mississippi-based pharmaceutical company. The order was canceled a day later, after the company said the product wasn't available. Dawn-Renee Smith, a Nebraska Department of Correctional Services spokeswoman, said the agency planned to review its purchase agreement for the drugs at Ricketts' request. Nebraska hasn't executed an inmate since 1997, when it used the electric chair, and has never carried one out with lethal injection drugs. The state lacks two of the three drugs required in its execution protocol. Nebraska currently has 10 men on death row. Some lawmakers said they doubt the state will get its money back. "When you do business with people who don't have good reputations,

you shouldn't expect to be refunded," Sen. Bob Krist of Omaha said Friday. Krist, who voted to repeal the death penalty, said he was pleased Ricketts decided not to pursue the execution drugs until after the election. Sen. Heath Mello of Omaha, chairman of the budget-writing Appropriations Committee, said during a hearing last month that he was concerned state officials were able to send a check to Harris without having a way to recoup the money. Mello, who supported the death penalty repeal, said he was looking into the state's policies to try to prevent similar losses in the future. Ricketts has said his administration is also working with Nebraska Attorney General Doug Peterson and correctional services director Scott Frakes to look at changing the state's lethal injection protocol.

Ineffective Trial Lawyer Gives Nebraska Man New Shot At Case

BY MARGERY A. BECK
Associated Press

OMAHA, Neb. — A Nebraska man who pleaded guilty to sexual assault is getting another chance at his case after the state Supreme Court determined Friday that his trial lawyer was ineffective for not objecting to remarks from a prosecutor at his sentencing hearing. The court reversed the second-degree sexual assault conviction and 18- to 20-year prison sentence of a 45-year-old Omaha man who had pleaded guilty to the charge in 2009. The plea was part of a deal he made with prosecutors to avoid a first-degree child sexual assault charge after police said he had sexually abused his young daughter for years. The Associated Press is not naming the man to protect his daughter's identity. The man sought post-conviction relief, typically filed by inmates who have exhausted all other appeals. Such motions often claim a lawyer did not provide an effective defense. They

rarely succeed, because prisoners must show that their constitutional rights were violated to such an extreme that it renders their convictions void. The man argued in his motion that a Douglas County prosecutor agreed to "stand silent" and make no recommendation for prison time during sentencing. But at the hearing, a different prosecutor endorsed a presentence investigation report that called for "a substantial period of incarceration." The high court agreed that the prosecutor violated the plea agreement, and that the failure of the man's attorney to object prejudiced his defense. The trial attorney testified on appeal that he did not object at the time because he didn't think the prosecutor's support of the presentencing report breached the plea agreement. He also believed his client's only recourse if he objected was to withdraw his plea — opening the possibility of him being charged and convicted of the more serious count. He was not aware, he said, that he could have insisted on a

different sentencing judge. State attorneys argued that trial lawyer's silence was a reasonable trial strategy, but the high court found "this is not one of those rare cases in which not objecting to the state's material breach was a sound strategic choice." "We realize that even seasoned criminal attorneys, like (the man's) trial counsel, are not walking repositories of the entire body of the criminal law," Justice William Connolly wrote for the court. "But trial strategy based on a misunderstanding of the law is not reasonable." The high court ordered the man be given the choice to either withdraw his guilty plea or have a different judge sentence him. His appeal lawyer, Jason Troia of Omaha, said Friday he had not had a chance to discuss the ruling with his client and did not know which option they would pick. Douglas County Attorney Don Klein did not immediately return a message seeking comment.

Spearfish Volunteer Fire Department Votes Not To Dissolve

SPEARFISH (AP) — The Spearfish Volunteer Fire Department has reversed an earlier decision to dissolve. The department voted 46-4 this week to rescind its dissolution after announcing in September that it would dissolve by late January, the *Black Hills Pioneer* reported. The vote follows a meeting of a task force set up to discuss the future of fire protection in Spearfish. The 10-person task force recommended a city department with three full-time paid positions and a volunteer staff. Adam Ziegler, a volunteer firefighter and training officer who served on the

task force, said seeing a transition plan in place and knowing that there is going to be extra help and budget assistance offered hope. "There's a light at the end of the tunnel for the people that are volunteering, whereas at the point of voting to dissolve there was no light at the end of the tunnel," Ziegler said. The city's nonprofit all-volunteer fire department cited a lack of support and low morale when it said in September that it would dissolve after 134 years of service to the Black Hills community of about 11,000 people. The department covers about 185 square miles of

territory and has 37 volunteers, far short of a full roster of 63. Officials have said there is a lack of firefighters willing to take on leadership roles because of the time commitment required, and that disagreements over how best to fund the department degraded relations with the city. The City Council in October authorized Mayor Dana Boke to set up the task force to chart a course forward, and the group presented its recommendations this week. "I am extremely pleased that the volunteer organization will not only preserve their 100-year history but will also partner with the

city as we move into a new model of fire protection," Boke said. "This is a significant step in the process, and the volunteers' support of the task force recommendation is key." Spearfish is one of the last cities of its size in the state to have an all-volunteer fire department, he said. The task force said in its report that its recommendation is in line with what similar South Dakota cities are doing and with accepted industry practices. The City Council must approve the new setup. That could happen as early as January, according to City Administrator Joe Neeb.

1,300 Graves To Be Decorated With Wreaths In Maxwell

MAXWELL, Neb. (AP) — Organizers say more than 1,300 graves at the Fort McPherson National Cemetery in Maxwell will be decorated with wreaths to honor veterans. The graves will be decorated Saturday during an annual wreath-laying ceremony which will take place around the country, the *North Platte Telegraph* reported. After the ceremony, volunteers will lay the wreaths. Larry Steinbrink, post quartermaster of Veterans of Foreign Wars 1504,

says the cemetery has participated in the Wreaths Across America program for the last seven years. Steinbrink has organized the local effort for the last four years and says the number of graves that have been decorated has increased, and that the project helps recognize veterans and their loved ones. The local Veterans of Foreign Wars take wreath donations throughout the year, but the final push for wreaths begins in November. He says that dona-

tions have come from across the state, Florida, New Mexico and Texas. "It shows that there's a lot more community awareness," Steinbrink said. The cemetery's director, Mark Polen, says the wreath ceremony is an important reminder of veterans' sacrifices. "It keeps in our minds during what is typically a very festive time of the year that we have the ability to celebrate no matter our beliefs because of all those Veterans who gave the last full measure of devotion to our country," Polen said.

Child Killed In Interstate Minivan Crash

RAPID CITY (AP) — Authorities say a child was killed Friday morning when a minivan crashed on Interstate 90 in Rapid City. The South Dakota Highway Patrol says an adult driver and four children were in the van about 9:45 a.m. Friday when it was involved in the one-vehicle crash. The patrol did not release the name of the child pending notification of family members. The medical conditions of the driver and other passengers were not known. The accident remains under investigation.

Farmer Sues Partnership Over Accusation

FARGO, N.D. (AP) — A Wishek area farmer is suing a South Dakota farm partnership and private investigation firm for allegedly withholding evidence in a criminal case that was eventually dismissed. KFGO-AM reports that Glenn Herr says in a federal lawsuit filed in Fargo that he was wrongly accused of stealing a \$10,000 truckload of soybeans that belonged to Cornhusker Farms of Bath, South Dakota. The complaint says Herr was charged with theft because the partnership, partner James Husby and Aberdeen, South Dakota-based Zylstra Investigations made malicious and false statements during the investigation. Herr claims that documents that would have prevented him from being prosecuted were intentionally withheld. The criminal charges were dismissed. Private Investigator Laura Zylstra declined to comment on the suit. A message left for Husby was not immediately returned.

People Arrested With Guns And Explosives

SIOUX FALLS (AP) — Two Sioux Falls residents are in custody after police say they found weapons and explosives materials in their home. The investigation began after the neighbor of the town house noticed a bullet hole in a wall between the two homes on Sunday. The person later found a .22-caliber slug in a mattress. The property manager went into the adjoining house and saw weapons. Police obtained a search warrant and found the guns and items to make explosives. They arrested a 29-year-old man and 35-year-old woman on Thursday. Officers confiscated more than 100 firearms from inside the home, some of them modified with shortened barrels. Police say they don't know why the two had the weapons and explosives.

Police Make Arrests In Double Homicide

OMAHA, Neb. (AP) — Omaha police have made three arrests in the shooting deaths of two teens and now say those deaths are not connected to a killing last month. Police arrested a 15-year-old boy Friday on a charge of first-degree murder in Wednesday's fatal shooting of 18-year-old James Star and 17-year-old Brandon Phelps. Police also arrested a 17-year-old boy on suspicion of conspiracy and of being an accessory. Both teens were taken to a juvenile holding center. The Associated Press typically does not name juveniles charged with crimes. Eighteen-year-old Warren Anderson was booked Friday into the Douglas County jail on an accessory count. Investigators say Star and Phelps were shot in a black SUV that had been at the site of a fatal Nov. 28 shooting, but that the shootings weren't related.

Atheist Display To Force Removal Of Nativity

LINCOLN, Neb. (AP) — A Nativity scene will be removed from the Nebraska Capitol in the days before Christmas because atheist groups have reserved all the available space. The *Lincoln Journal Star* reports that an Omaha-based Christian group will display the Nativity scene Friday but must remove it by Dec. 21 to make room for an atheist display. Martin Cannon, an attorney for the Thomas More Society's Omaha branch, says the atheists wouldn't share space with his group. Atheist display organizer Chris Clements says the intention wasn't to block the Nativity scene, but there wasn't space for both in the Capitol's display area. The Thomas More Society sponsored the Nativity scene for the first time last year, prompting questions about whether it violated the separation of church and state.

SD's Oldest Settlement Plans Bicentennial

FORT PIERRE (AP) — The oldest continuous European settlement in South Dakota is beginning to make plans for its bicentennial celebration in two years. The central South Dakota city of Fort Pierre was founded in 1817, 72 years before South Dakota became a state. "We think it's a pretty big deal... so we are beginning the planning," Mayor Gloria Hanson told the *Capital Journal*. The celebration is tentatively set for September 2017. Several people have already shown interest in organizing and carrying out the bash. Officials are looking for more volunteers and ideas. The September date means the celebration will tie in with the Dakota Western Heritage Festival and its focus on Fort Pierre history. That means many of the events will focus on history and tradition — a rodeo, a trail ride, Native American dancers, re-enactments and a historic driving tour. Hanson said she would like to see more events, and a wider variety. "We have talked about an arts festival, with arts and crafts and food vendors, probably in the park," she said. "We've talked about doing a 5K run, and maybe have some inflatables for kids." Other ideas discussed include concerts, a parade, a street dance and a battle of the bands.

Woman Suspected Of Torching Home

MITCHELL (AP) — A woman suspected of setting fire to her home in Mitchell is now facing charges. The *Daily Republic* reports that 37-year-old Dawn Long is accused of reckless burning, reckless driving and eluding. She could face up to 12 years in prison if convicted. Long was indicted on Dec. 4 and a warrant was issued for her arrest. She was taken into custody Monday. It wasn't clear if she had an attorney, and a home telephone listing for her couldn't be found. Authorities say a fire damaged Long's home on Oct. 8. She allegedly led officers on a chase that day which ended when she crashed her vehicle and was hospitalized with serious injuries.

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