



**Ninety-Ninth Legislature - Second Session - 2006**  
**Committee Statement**  
**LB 1199**

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**Hearing Date:** February 16, 2006

**Committee On:** Judiciary

**Introducer(s):** (Bourne, Aguilar, Combs, Connealy, Erdman, Flood, Foley, Friend, Howard, Dw. Pedersen, Stuthman, Synowiecki, at the request of the Governor)

**Title:** Change provisions relating to sexual assault of a child, sex offenders, and rename the Nebraska Mental Health Commitment Act

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**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - X Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

|   |                     |   |
|---|---------------------|---|
| 7 | Yes                 | Senators Aguilar, Bourne, Combs, Flood, Foley, Friend, Pedersen |
|   | No                  |   |
|   | Present, not voting |   |
| 1 | Absent              | Senator Chambers  |

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**Proponents:**

Senator Pat Bourne  
 Don Kleine  
 Mike Nolan  
  
 Bryan Tuma  
 James McKenzie  
 Chris Peterson  
 Steve Gabriel  
 Tim Gilligan  
 Brian Kitt  
 Chase Arduser  
 Tara Muir  
  
 Mary Paine  
 Virgil Horne  
 William McLarty  
 Rob Butler

**Representing:**

Introducer  
 Attorney General  
 City of Norfolk  
 League of Nebraska Municipalities  
 Nebraska State Patrol  
 Nebraska Department of Correctional Services  
 Health and Human Services System  
 Nebraska County Attorneys Association  
 City of Gretna  
 Self  
 Self  
 Nebraska Domestic Violence Sexual Assault  
 Coalition  
 Self  
 Lincoln Public Schools  
 City of South Sioux City  
 self

**Opponents:**

Tim Butz  
 Eric Evans  
 J Rock Johnson

**Representing:**

ACLU Nebraska  
 Nebraska Advocacy Services Inc.  
 self

**Neutral:**

Chris Ritsch  
 Kristin Houser  
 Marge Schlitt

**Representing:**

Self  
 Self  
 self

**Summary of purpose and/or changes:**

Legislative Bill 1199 revises a number of statutory sections relating to sex crimes, sex offenders and civil commitment. The bill makes changes in 5 areas relating to sex offenders: criminal offenses & penalties, civil commitment, community supervision, the Sex Offender Registration Act and residency restrictions. The changes made in each of these areas are summarized below.

**Crimes and Penalties**

LB 1199 amends the existing criminal offense of sexual assault of a child, which is defined as sexual contact with a child 14 or under by an adult over 19 and is penalized as a class IIIA felony (0-5 years) for the first offense and a class IC felony for any subsequent offense(5-50 years). The bill replaces this offense with three separate offenses of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> degree sexual assault of a child. This approach mirrors that taken with the existing sexual assault statutes for adults. The new offenses are defined as follows:

- 1<sup>st</sup> Degree Sexual Assault of a Child - Sexual penetration of a child 12 or under by an adult 19 or older. This crime is penalized as a class IB felony for the first offense with a 25 year mandatory minimum (25-50 years). A second conviction for this crime is a class IA felony with a sentence life imprisonment.
- 2<sup>nd</sup> Degree Sexual Assault of a Child – Sexual contact with a child 14 or under by an adult over 19 which results in serious injury (physical or psychological) to the victim. The penalty for a first offense is a class II felony (0-50 years), while a second offense is a class IC felony with a 25 year mandatory minimum (25-50).
- 3<sup>rd</sup> Degree Sexual Assault of a Child – Sexual contact with a child 14 or under by an adult over 19. The penalty for a first offense is a class IIIa felony (0-5), and a second or subsequent offense is a class IC felony (5-50). Third degree sexual assault of a child has the same elements and penalties as the existing offense sexual assault of a child;

LB 1199 also enhances the penalty for a second conviction for failing to comply with the registration requirements of the Sex Offender Registration Act, increasing the penalty from a

class IV (0-5) to a class III felony (1-20) for felony sex offenders and from a class I misdemeanor (0-1) to a class IV felony (0-5) for misdemeanor offenders;

### **Civil Commitment**

LB 1199 makes three changes to civil commitment as it relates to sex offenders. First, a separate legal standard is created for the commitment of sex offenders under the Mental Health Commitment Act. The standard requires the person to have a mental illness or personality disorder which makes the person likely to commit future acts of sexual violence and unable to control his or her conduct. This standard will allow the civil commitment of dangerous sex offenders who do not meet the traditional mentally ill and dangerous civil commitment standard.

Second, LB 1199 requires an agency with jurisdiction over a sex offender to provide a 90-day notice prior to the individual's release to the Attorney General, the county attorney in the county where the person will be released and the county attorney in the county of prosecution. A county attorney is also required to notify the attorney general within 45 days of receiving notice of a sex offenders release indicating whether or not he or she intends to civilly commit the offender.

Third, the bill mandates that civil commitment evaluations be conducted prior to the completion of a criminal sentence for violent offenders, repeat offenders and child predators who refuse treatment;

### **Community Supervision**

LB 1199 provides for lifetime supervision after release from prison or civil commitment for repeat sex offenders and first time offenders convicted of rape of a child under twelve years of age or forcible rape of a person over twelve years of age. Supervision shall be provided by the office of parole administration. Each individual subject to supervision shall be evaluated by office of parole administration and have conditions of supervision imposed which are the least restrictive conditions that are compatible with public safety. Conditions which can be imposed include the use of electronic monitoring; Failure to comply with the conditions of supervision is punishable as a class IV felony.

### **Sex Offender Registration Act**

LB 1199 makes the following changes to the provisions of the Sex Offender Registration Act:

- Expands the list of offenses that would require registration under the act to include the crimes of debauching a minor and the new offense created by the bill;
- Clarifies the obligations sex offenders have under the act to report changes in their address, name, employment change or if they are attending an institution of higher

education. The bill also clarifies the obligations of homeless offenders relating to address notification.

- Expands the public notice provisions of the act to allow all level 3 offenders to be disclosed and not only those likely to be encountered.
- Enhances the penalty for a second conviction for failing to apply with the act.

### **Residency Restrictions**

LB 1199 authorizes municipalities to enact ordinances imposing residency restrictions on level 3 sex offenders who have committed crimes against children and limits such restrictions to no more than 500 feet from a school or licensed day care center. Exemptions for correctional institutions, treatment facilities, and other facilities where sex offenders would reside while receiving treatment are also included.

### **Explanation of amendments, if any:**

The committee amendment makes the following changes to LB 1199 as introduced:

- **Reduces Mandatory Minimum penalty for 1<sup>st</sup> degree Sexual Assault of a child** - The mandatory minimum penalty for the newly created offense of first degree sexual assault of a child from 25 to 15 years for the first offense and from life imprisonment to 25 years for a second or subsequent offense.
- **Creates the Sex Offender Commitment Act.** The bill creates this new act provides for the civil commitment of dangerous sex offenders and mirrors the procedures and protections currently provided in the Mental Health Commitment Act. The sections of the bill which added a sex offender commitment standard to the Mental Health Commitment Act are removed so that there will now be separate but parallel commitment processes for sex offenders and mentally ill and dangerous persons.
- **Technical and Clarifying Changes** – The amendment makes a number of technical and clarifying changes to the bill, including the following:

Residency Restrictions – Clarifies definitions of school and adds a definition of sex offender. Adds language making it clear that non-conforming local residency restrictions are void;

Community Supervision – Amends Section 100 of the bill relating to appeals of the conditions of community supervision to provide a direct appeal to the District Court rather than an administrative hearing. Adds language clarifying that Parole Administration shall conduct an annual review of individuals subject to community supervision;

- **Incorporates the provisions of LB 1205 as amended by the judiciary committee.** Legislative Bill 1205 directs the Director of Regulation and Licensure within the Department of Health and Human Services to establish a working group to study and recommend improvements in the area of sex offender treatment and management. The working group shall include representatives from the following entities to be appointed by the governor:

- Legislature;
- Health and human services system ;
- Court system;
- Department of Correctional Services;
- Parole Board;
- Private sex offender treatment providers;
- Victim advocates;
- A licensed psychologist;
- A licensed drug and alcohol counselor;
- A recovering sex offender; and
- Any other interested parties (non-voting capacity).

The working group is directed to study sex offender treatment and management in Nebraska with the goal of recommending legislative and executive actions necessary to improve the system on a statewide level. The recommendations of the 2001 sex offender task force report are to be used as a guideline when examining and making recommendations on the following issues:

- Credentialing of sex offender treatment and assessment professionals;
- Mandated sex offender treatment standards; and
- Increased training opportunities for sex offender treatment professionals;

The working group shall provide a report of its findings to the Governor and the Legislature prior to December 1, 2006, and is scheduled to sunset on that date.

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**Senator Patrick J. Bourne, Chairperson**