



**Ninety-Ninth Legislature - First Session - 2005**  
**Committee Statement**  
**LB 535**

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**Hearing Date:** March 3, 2005

**Committee On:** Judiciary

**Introducer(s):** (Synowiecki)

**Title:** Change provisions relating to assault in the third degree and domestic assault in the third degree

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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 John Synowiecki  
Marty Conboy

Mark Delman  
Susan Michalski  
Joan Skogstrom  
Matt Kahler

**Representing:**

Introducer  
Omaha City Prosecutor  
Domestic Violence Coordination Council  
Sarpy County Attorney’s Office  
Domestic Violence Council  
Domestic Violence Coordination Council  
Douglas County Attorney

**Opponents:**

Joe Nigro

**Representing:**

Lancaster County Public Defender’s Office

**Neutral:**

**Representing:**

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

LB 535 proposes several changes to the criminal offenses of third degree assault and third degree domestic assault.

An enhanced penalty of a class IV felony is provided for third degree assault if the defendant has a previous conviction for third degree assault within the previous twelve years,

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and removes the requirement that the offense be against the same victim before a second conviction for domestic assault can be enhanced. Currently, third degree assault is penalized as a Class I misdemeanor.

LB 535 also redefines the elements of third degree domestic assault to harmonize it with the language found in the third degree assault statute. Third degree domestic assault is currently defined as intentionally or knowingly causing bodily injury to one's intimate partner or placing, by physical menace, one's intimate partner in fear of imminent bodily injury. LB 535 amends this language so that it mimics the current definition third degree assault. Recklessly is added as an allowable mental state, and the entire prong of the offense regarding placing one in fear of imminent harm by physical menace is stricken and replaced with the language used in the third degree assault statute, "Threatens his or her intimate partner in a menacing manner."

Lastly, LB 535 requires a court to indicate the reasons in the court record prior to dismissing charges of domestic assault on its own motion or at the request of the prosecution, and prohibits a court from dismissing a domestic assault charge for the sole reason that a civil compromise or settlement has been reached.

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

The committee amendment makes the following changes to LB 535:

- Strikes section 1 of the bill which enhanced the penalty for third degree assault from a class 1 misdemeanor to a class IV felony for a second offense within twelve years.
- Strikes the addition of recklessly as a culpable mental state for the crime of domestic assault in the second or third degree.
- Strikes the proposed change to the elements of third degree domestic assault and adds "or verbal" to the existing elements for the crime so that verbal threats can be prosecuted under the statute.
- Strikes the change to allow sentence enhancement for a second conviction of domestic assault against any victim rather than only for repeat assaults against the same victim.
- Strikes the provision prohibiting a court from dismissing a charge of domestic assault because the parties have reached a civil compromise or settlement.

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**Senator Patrick J. Bourne, Chairperson**