



Ninety-Ninth Legislature - First Session - 2005
Introducer's Statement of Intent
LB 538

Chairperson: Patrick J. Bourne
Committee: Judiciary
Date of Hearing: February 16, 2005

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

During the 2003 Legislative Session, Legislative Bill 46 was passed. Key components of LB 46 included strategies to reduce reliance on incarceration and encourage the use of sentencing alternatives through probation and parole. Central to LB 46 was creation of the Community Corrections Council (Council) to oversee and ensure that a continuum of community corrections is developed for use by probationers and parolees. Probation and parole fee collection was implemented to support enhanced probation and parole programming and services.

Since the formation of the Council, in accordance with the Council's duties under the Community Corrections Act, issues focusing on offender supervision in the community have been addressed. Such subject areas included drug treatment of offenders, the incorporation of problem solving courts in community corrections, and enhancing probation and parole services. Legislative Bill 538 is designed to make the statutory changes needed to properly deal with these matters.

LB 538 makes the following statutory changes:

- A Council member would be added from the Health and Human Services System in order to make a formal link between the criminal justice system, or Council, and the state agency responsible for substance abuse treatment.
- Language would be included within the Community Corrections Act to clarify administrative processes of the Council within the Crime Commission and to ensure that "community corrections" includes specialized problem-solving courts.
- Probation and Parole Administrations would be required to ensure the risk and needs assessment instruments utilized are validated to make recommendations regarding the proper placement of offenders.
- Administrative and supervision fee collection from participants in problem-solving courts, including drug courts, would be incorporated.

- A duty of the Council would be added to study substance abuse treatment for offenders, provide recommendations as a result of such study, and to evaluate the implementation of actions taken pursuant to the recommendations.
- An intensive drug treatment component to the Work Ethic Camp would be incorporated and language clarified regarding eligibility of Work Ethic Camp participants.
- The crime of “assault of an officer” would be changed to include probation officers and youth rehabilitation and treatment center employees under the Office of Juvenile Services.
- The Nebraska Supreme Court would be permitted to direct probation officers to participate in drug court programs.

Legislative Bill 538 also would amend civil forfeiture provisions to make certain the procedure is a civil procedure—able to be utilized by local law enforcement—and to assure funds be utilized for drug treatment.

In 1999 the Nebraska Supreme Court held in *State v. Franco*, 257 Neb. 15, 594 N.W.2d 633 (1999) that an action filed pursuant to Nebraska’s civil forfeiture law, section 28-431, was in actuality a criminal proceeding. As such, the constitutional prohibition against double jeopardy bars the State from bringing a forfeiture action against a person who is, or who may be, charged in a concurrent criminal case arising from the same circumstances.

Nebraska’s law enforcement are unable to use Nebraska’s civil forfeiture statute because of the *Franco* decision, and are required to pursue the Federal civil forfeiture process instead.

Accordingly, LB 538 would accommodate law enforcement’s concerns. The Court in *Franco* referred to the standard of proof “beyond a reasonable doubt” as indicative of the Legislature’s intent that the civil forfeiture law should actually be a criminal proceeding. LB 538 amends the civil forfeiture statute by only requiring the State to prove by a preponderance of the evidence that the assets seized were involved in a violation of the Controlled Substances Act.

LB 538 provides that at least fifty percent of the County Drug Law Enforcement and Education Fund (Fund) be used for substance abuse treatment. Civil forfeiture dollars make up each county Fund.

Principal Introducer:

Senator Kermit A. Brashear