

ONE HUNDRED SEVENTH LEGISLATURE - SECOND SESSION - 2022
COMMITTEE STATEMENT
LB920

Hearing Date: Wednesday January 26, 2022

Committee On: Judiciary

Introducer: Lathrop

One Liner: 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

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye: 6 Senators Brandt, DeBoer, Lathrop, McKinney, Morfeld, Pansing Brooks

Nay: 2 Senators Geist, Slama

Absent:

Present Not Voting:

Oral Testimony:

Proponents:

Senator Steve Lathrop

Tom Riley

Joe Nigro

Greg Holloway

Annette Dubas

Kenneth Ackerman

Judy King

Carol Dennison

Carmen Bunde

Teela Mickles

Jasmine Harris

Riley Colwell

Fran Kaye

Shakur Abdullah

Spike Eickholt

Opponents:

Aaron Hanson

Donald Kleine

Joe Kelly

Representing:

Introducer

Nebraska Criminal Defense Attorneys Association

Nebraska Criminal Defense Attorneys Association &
Lancaster County Public Defender

Nebraska Veterans Council

Nebraska Association of Behavioral Health Organizations

Self

Self

League of Women Voters

Self

Compassion in Action

RISE

Nebraska Criminal Defense Attorneys Association

Racial Justice Policy Committee of Reentry Alliance of
Nebraska

Community Justice Center

ACLU of Nebraska & Nebraska Criminal Defense Attorneys
Association

Representing:

Omaha Police Department & Omaha Police Officers
Association

Nebraska County Attorneys & Douglas County

Nebraska Attorney General

John Bolduc
Elaine Menzel

Nebraska State Patrol
Nebraska Association of County Officials

Neutral:

Timothy Lopez
Molly Robustelli

Representing:

Self
Crime & Justice Institute

Summary of purpose and/or changes:

LB920 contains the policy options identified through the Nebraska Criminal Justice Reinvestment Working Group ("NCJRWG") process as responsive to the results of the data analysis conducted by the Crime and Justice Institute ("CJI"). The analysis and responsive policy options are included in the NCJRWG Final Report ("the Report").

Section 1 would amend Sec. 24-1302 to provide additional statutory requirements for problem solving courts. The new language would require problem solving courts to meet national best practices and would expand potential eligibility for individuals at various stages of the criminal justice process. The new language would also include the legislative intent to fund at least one problem solving court in every judicial district and require the State Court Administrator to prepare an annual report about the impact of problem solving courts and the barriers to properly serving each judicial district.

Section 2 would create a pilot project to use judicial branch space and technology to access behavioral health telehealth resources for court-involved individuals.

Section 4 and Section 6 would create an exception to Class IC and Class ID mandatory minimums for possession with intent to deliver a controlled substance. Section 6 would add the exception in a new section and Section 4 would amend Sec. 28-105 to add a reference to the new exception.

Section 7 would amend Sec. 28-416 to create a misdemeanor level offense for less than a half gram of a controlled substance.

Section 8 would amend Sec. 28-507 to create second and third degree burglary. Second degree burglary would involve breaking and entering into an occupied building other than a dwelling and would be punishable as a Class III felony. Third degree burglary would involve breaking into an unoccupied building other than a dwelling and would be a Class IIIA felony.

Section 9 would amend Sec. 28-518 to provide that previous theft convictions used to enhance a second or third offense to a felony must have occurred no more than ten years prior to the current offense.

Section 12 would amend Sec. 29-2204 to prohibit flat and nearly-flat sentences. For the listed sex crimes, the minimum sentence could be no more than 70% of the maximum sentence. For other crimes, the minimum could be no more than 50% of the maximum.

Section 12, 13, and 14 would require courts to find specific aggravating factors before imposing a consecutive sentence. The aggravating factors listed in Section 14 are the offenses occurred on different days, the offenses involved the use of force or threat of serious bodily harm against separate victims, the offense involved a sexual assault, or one of the offenses was especially heinous, atrocious, cruel, or manifested exceptional depravity.

Section 15 would amend Sec. 29-2221 to limit the habitual criminal enhancement. Under the change, the two prior convictions must be a sex offense or a violent offense.

Section 16 would amend Sec. 29-2263 to require a notice of the process to set aside a conviction at sentencing and upon satisfactory completion of probation.

Section 18 would create a pilot project to hire assistant probation officers. Assistant probation officers have limited powers but can provide additional support and supervision for probationers.

Section 19 would create a pilot project for a probationer incentive program. The program would allow a single probation district to develop policies and guidelines provide tangible rewards for probationers that successful on probation.

Section 20 would amend Sec. 29-2281 to provide that that partial payments made by defendants be applied to restitution before fines and costs.

Section 21 would amend Sec. 29-3603 to prohibit pretrial diversion guidelines from categorically excluding Class IV felonies if the person has not been previously been convicted of a felony or completed felony diversion.

Section 22 would amend Sec. 47-706 to require NDCS to record the number of notifications to DHHS of exiting inmates eligible for suspended Medicaid. This section would also require DHHS to record the number of Medicaid suspensions ended for exiting inmates.

Section 23 is a new section that would create the Justice Reinvestment Oversight Task Force to continue the work of the NCJRWG.

Section 24 would amend Sec. 50-434 to sunset the Legislature's Committee on Justice Reinvestment Oversight on September 30, 2022.

Sections 25, 26, 27, 28, 29, 30, 31 would amend the Rural Health Systems and Professional Incentive Act to include psychiatrists. Section 27 would amend Sec. 71-5663 to increase financial assistance to the full amount of student loans for people that devote the majority of their practice to serving the community supervision population.

Section 32 would amend Sec. 83-1,100.02 to further align Nebraska's parole supervision processes with best practices. Specifically, the new language would add responsivity factors to the existing requirement to assess a parolee's risk factors and individual needs.

Section 33 would amend Sec. 83-1,110 to provide that a committed offender would be parole eligible after serving half of the minimum term, but no less than two years before the offender's mandatory discharge date for sentences over five years. This new requirement would not apply to an offender serving a mandatory minimum until the offender has served all mandatory minimum terms.

Section 34 would amend Sec. 83-1,111 and Section 35 is a new section that would create a streamlined parole process. Section 35 would define "qualified offender" as person serving an indeterminate sentence for a felony offense that does not involve sex or violence. Qualified offenders would be allowed to enter into a contract with the Board of Parole two years before their eligibility date. If the offender completes the required evaluations and programming, does not commit a Class I disciplinary offense, and otherwise complies with the terms of the contract, the Board of Parole would parole the offender on a date certain without further hearing.

Section 36 is a new section that would create a geriatric parole option. A committed offender would not be eligible for geriatric parole consideration if they are serving a sentence for a Class I or Class IA felony or serving a life sentence. An eligible offender could be considered for geriatric parole if they are over seventy years of age and have served at least ten years of their sentence.

Section 37 would amend Sec. 83-1,114 to clarify the factors the Board of Parole must consider when making a

determination on whether to release an offender on parole.

Section 38 would create a pilot project for establishing a technical violation residential housing program. The program would provide a structured residential environment to provide counseling and services for parolees that have committed technical violations.

Explanation of amendments:

AM2286 replaces the original bill.

The amended version of Section 1 adds additional detail to the information required in the annual report.

The amended version of Section 2 removes the appropriations intent language.

The amended version of Section 7 excludes fentanyl and synthetic fentanyl from the misdemeanor level offense for possession of a controlled substance.

The amended version of Section 18 would allow probation to choose the probation district for the assistant probation officer pilot project. The amended version would also provide additional detail to the information required in the annual report.

The amended version of Section 23 would assign the Crime Commission to provide staff support to the Justice Reinvestment Oversight Task Force.

Section 33 would be amended to correct a drafting error and replace a reference to "maximum" with "total minimum."

Section 36 is amended to increase requirements for geriatric parole eligibility up to age seventy-five and serving at least fifteen years of a sentence.

The amended version of Section 38 would remove appropriations intent language and remove a requirement that the Director of the Department of Correctional Services to designate a facility for Parole's housing program.

Steve Lathrop, Chairperson