



Ninety-Ninth Legislature - First Session - 2005  
**Introducer's Statement of Intent**  
**LB 206**

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**Chairperson:** Patrick J. Bourne  
**Committee:** Judiciary  
**Date of Hearing:** January 19, 2005

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

The Nebraska Mental Health Commitment Act provides for treatment due to a mental illness but does not address treatment for mental retardation. The purpose of this bill is to provide a civil process for court ordered custody and treatment for persons with developmental disabilities when they pose a threat of harm to others.

This is a civil process before the District Court that protects the subject's civil rights and is focused on appropriate treatment for the subject. A subject is defined as a person who is named in a petition filed under the Developmental Disabilities Court-Ordered Custody Act. A threat of harm to others is limited to conduct that would usually constitute a crime (i.e., sexual assault).

Currently, an individual with cognitive developmental disabilities or his or her guardian may refuse services, even if the individual is dangerous to others. The district court would be granted authority in this bill to order services based on evaluations of the individual by an independent mental health professional and a plan submitted by the Department of Health and Human Services.

County attorneys or the Attorney General will have a civil process to protect society when criminal proceedings are not possible. For example, an individual is charged with a felony, but is found not competent to stand trial because of mental retardation. It is anticipated that it would be used only in about six cases this year.

This bill provides due process protections for individuals who are the subject of a petition. The person would have a right to be represented by counsel, to a full and fair hearing before the court and to annual hearings. Other protections include, but are not limited to; right to testify, subpoena witnesses and confront and cross-examine witnesses and have an expert witness of the person's own choosing evaluate them and provide recommendations.

The burden of proof is on the state to show by clear and convincing evidence that the individual is a person in need of court ordered custody and treatment.

This bill contains an emergency clause

**Principal Introducer:**

\_\_\_\_\_ **Senator Dennis Byars**