

**ONE HUNDRED FOURTH LEGISLATURE - FIRST SESSION - 2015**  
**COMMITTEE STATEMENT**  
**LB605**

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**Hearing Date:** Friday February 20, 2015  
**Committee On:** Judiciary  
**Introducer:** Mello  
**One Liner:** Change classification of penalties, punishments, probation and parole provisions, and provisions relating to criminal records and restitution and provide for a special legislative committee

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**  
**Aye:** 6 Senators Coash, Ebke, Krist, Pansing Brooks, Seiler, Williams  
**Nay:**  
**Absent:** 2 Senators Chambers, Morfeld  
**Present Not Voting:**

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**Verbal Testimony:**

**Proponents:**

SEN. HEATH MELLO  
DIRECTOR SCOTT FRAKES  
JOHN KRECJI  
TOMMIE WILSON  
MARC PELKA

JIM VOKAL  
ALAN PETERSON  
FRANCES KAYE  
MARK DAVIS  
JOE NIGRO  
GERARD PICOLO

**Representing:**

INTRODUCER  
NEBRASKA CORRECTIONAL SERVICES  
REENTRY ALLIANCE OF NEBRASKA  
OTOC/MCC ROUND TABLE  
COUNCIL FOR STATE GOVERNMENTS JUSTICE CENTER  
PLATTE INSTITUTE FOR ECONOMIC RESEARCH  
ACLU NEBRASKA  
SELF  
SOBER HOUSES OF NEBRASKA  
LANCASTER COUNTY PUBLIC DEFENDER  
NEBRASKA CRIMINAL DEFENSE ATTORNEY'S ASSOCIATION

**Opponents:**

**Representing:**

**Neutral:**

ELLEN FABIAN BROKOFSKY  
JOE KELLY

**Representing:**

ADMIMNISTRATION OFFICE OF PROBATIONS  
NE COUNTY ATTORNEY'S ASSOCIATION

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

LB605 would implement several of the recommendations made by the Council on State Governments and the Justice Reinvestment Initiative working group.

Sections 1 through Section 5; Section 23 through Section 34; Section 43; Section 44; Section 45; Section 47; Section 48; and Section 64 through Section 67 would amend certain Nebraska statutes to adjust the penalties for property offenses to account for inflation. An offense involving less than \$500 would be a Class II misdemeanor; \$500-\$1,499 would be a Class I misdemeanor; \$1,500-\$4,999 would be a Class IV felony; and \$5,000 or more would be a Class III

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felony.

Section 6 and Section 7 would amend 28-105 and 28-106 to require misdemeanor sentences of imprisonment, except those served concurrently or consecutively with a felony sentence, to be served in jail rather than prison.

Section 51 and Section 71 would amend 29-2204 and 83-1,105.01 to revise sentencing procedures for Class IV felonies to expand the use of probation for low-level offenses.

Section 74 through Section 76 would prioritize probation resources for felony probationers at the highest risk to reoffend.

Section 54, Section 55, and Section 74 would create options for responding to probation violations, including jail time, in increments of three- or thirty-day custodial sanctions.

Section 75 would expand access to Specialized Substance Abuse Supervision (SSAS), by directing the Office of Probation Administration to establish criteria for placement on SSAS that do not include the offense of conviction.

Several sections would sort offenses more consistently across felony classes according to whether they involve violence.

Section 6 creates a new "Class IIA" felony classification, and revises the penalties for Class IV, IIIA, and III felonies to create periods of post-release supervision.

Section 8 through Section 22; Section 35 through Section 42; Section 46; Section 49; Section 50; and Section 59 change many offenses from Class IIIA to IIA felonies, and from Class IV to Class IIIA felonies.

Section 51 and Section 71 would provide structured periods of incarceration and post-release supervision for all people sentenced to prison for class III, IIIA, and IV felonies.

Section 73 would direct the Board of Parole to adopt rules and regulations to ensure a nine-month period of parole supervision for individuals convicted of Class I(A-D), II, and IIA felonies.

Section 56 and Section 69 would amend sections 29-2281 and 83-183.01 regarding the collection of victim restitution from inmates. Section 56 would instruct the court to consider future deposits to an inmate trust account as part of the defendant's anticipated earning ability. Section 69 would direct the Department of Corrections to collect restitution from inmate wage funds.

Several sections would make changes to the administration of parole supervision.

Section 70 and Section 72 would amend section 83-1,100 and provide new language, to require the parole administration to assess each parolee's risk of reoffending and treatment needs using an actuarial tool, and adopt evidence-based practices in parole supervision to impact criminal thinking and behavior.

Section 78 would amend 83-1,122 to authorize the Board of Parole to impose 30-day sanctions in a correctional facility, and Section 77 would amend 83-1,119 to create a process for these sanctions.

Several sections incorporate the "Sustainability Options" recommended by the Council of State Governments report. Section 62 would provide new language, to establish an oversight committee to measure and assess policy impacts of the justice reinvestment policy framework on an ongoing basis.

Section 61 and Section 68 would amend 47-624 and 83-182.01 to require the Office of Probation Administration and the Department of Correctional Services to evaluate the quality of prison- and community-based programs and use results to improve outcomes.

Section 53 and Section 69 would amend 29-2252.01 and 83-183.01 to track and report restitution collections within the Probation Administration and the Department of Corrections in order to establish a baseline against which future collections may be measured.

Section 63 would create a sentencing information database to help judges appreciate variations in sentencing practices within their districts and others across the state.

Section 58 would amend 29-3523 to enable access to State Patrol criminal history data for research purposes.

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**Explanation of amendments:**

AM1010 to LB605 would strike the original sections and replace them with the following:

Section 1 would amend 9-262 to change the penalty for violations of the Nebraska Bingo Act to account for inflation.

Section 2 would amend 9-352 to change the penalty for violations of the Nebraska Pickle Card Lottery Act to account for inflation.

Section 3 would amend 9-434 to change the penalty for violations of the Nebraska Lottery and Raffle Act to account for inflation.

Section 4 would amend 9-652 to change the penalty for violations of the Nebraska County and City Lottery Act to account for inflation.

Section 5 would amend 23-135.01 to change the penalty for filing a false claim to account for inflation.

Section 6 would amend 28-105 to create a new Class IIA felony classification, and to change the penalties for Class III, Class IIIA, and Class IV felonies. This section would also require that all sentences of imprisonment of less than one year shall be served in the county jail.

Section 7 would amend 28-106 to require sentences of imprisonment in misdemeanor cases to be served in the county jail.

Section 8 would amend 28-201 to change the penalty for attempt to include the new Class IIA felony classification.

Section 9 would amend 28-204 to change the penalty for accessory to a felony to include the new Class IIA felony classification.

Section 10 would amend 28-305 to change the penalty for manslaughter from a Class III to a Class IIA felony.

Section 11 would amend 28-309 to change the penalty for assault in the second degree from a Class III to a Class IIA felony.

Section 12 would amend 28-301.01 to change the penalty for strangulation from a Class IV to a Class IIIA felony, generally, and to change the penalty for strangulation in certain cases from a Class III to a Class IIA felony.

Section 13 would amend 28-311 to change the penalty for a second or subsequent offense of criminal child enticement from a Class III to a Class IIA felony.

Section 14 would amend 28-311.04 to change the penalty for a second or subsequent offense of stalking from a Class IV to a Class IIIA felony.

Section 15 would amend 28-320 to change the penalty for sexual assault in the second degree from a Class III to a

Class IIA felony.

Section 16 would amend 28-322.02 to change the penalty for sexual abuse of an inmate or parolee in the first degree from a Class III to a Class IIA felony.

Section 17 would amend 28-322.03 to change the penalty for sexual abuse of an inmate or parolee in the second degree from a Class IV to a Class IIIA felony.

Section 18 would amend 28-322.04 to change the penalty for sexual abuse of a protected individual in the first degree from a Class III to a Class IIA felony.

Section 19 would amend 28-323 to change the penalty for a second or subsequent offense of domestic assault in the first degree from a Class IV to a Class IIIA felony.

Section 20 would amend 28-393 to change the penalty for manslaughter of an unborn child from a Class III to a Class IIA felony.

Section 21 would amend 28-397 to change the penalty for assault of an unborn child in the first degree from a Class III to a Class IIA felony.

Section 22 would amend 28-504 to change the penalty for arson to account for inflation.

Section 23 would amend 28-507 to change the penalty for burglary from a Class III to a Class IIA felony.

Section 24 would amend 28-514 to change the penalty for possession of stolen property to account for inflation.

Section 25 would amend 28-518 to change the penalties for theft to account for inflation.

Section 26 would amend the penalties for criminal mischief to account for inflation.

Section 27 would amend 28-603 to change the penalties for forgery to account for inflation.

Section 28 would amend 28-604 to change the penalties for criminal possession of a forged instrument to account for inflation.

Section 29 would amend 28-611 to change the penalties for issuing a bad check to account for inflation.

Section 30 would amend 28-611.01 to change the penalties for issuing a no-account check or account for inflation.

Section 31 would amend 28-620 to change the penalties for unauthorized use of a financial transaction device to account for inflation.

Section 32 would amend 28-631 to change the penalties for committing a fraudulent insurance act to account for inflation.

Section 33 would amend 28-638 to change the penalties for criminal impersonation to account for inflation.

Section 34 would amend 28-639 to change the penalties for identity theft to account for inflation.

Section 35 would amend 28-703 to change the penalty for incest, to provide that incest with a person who is under 18 years of age is a Class IIA felony.

Section 36 would amend 28-802 change the penalties for pandering to incorporate the new Class IIA felony

classification.

Section 37 would amend 28-813.01 to change the penalty for possession of visual depiction of sexually explicit conduct from a Class III to a Class IIA felony.

Section 38 would amend 28-831 to change the penalties for labor trafficking or sex trafficking to incorporate the changes to the felony classifications.

Section 39 would amend 28-912 to change the penalty for escape with the use of force to incorporate the new Class IIA felony classification.

Section 40 would amend 28-932 to change the penalty for assault by a confined person from a Class III to a Class IIA felony.

Section 41 would amend 28-1005 to change the penalty for animal fighting from a Class IV to a Class IIIA felony.

Section 42 would amend 28-1009 to change the penalty for cruelly mistreating an animal from a Class IV to a Class IIIA felony.

Section 43 would amend 28-1102 to change the penalties for promoting gambling in the first degree to account for inflation.

Section 44 would amend 28-1103 to change the penalties for promoting gambling in the second degree to account for inflation.

Section 45 would amend 28-1104 to change the penalties for promoting gambling in the third degree to account for inflation.

Section 46 would amend 28-1222 to change the penalty for using explosives to commit a felony from a Class III to a Class IIA felony.

Section 47 would amend 28-1224 to change the penalty for using explosives to kill or injure any person from a Class III to a Class IIA felony.

Section 48 would amend 28-1344 to change the penalties for unauthorized use of a computer network to account for inflation.

Section 49 would amend 28-1345 to change the penalties for unauthorized use of a computer network resulting in damage to account for inflation.

Section 50 would amend 28-1463.05 to change the penalty for possession of visual depiction of sexually explicit conduct involving a child from a Class III to a Class IIA felony.

Section 51 would amend 29-1816 to incorporate the new Class IIA felony classification.

Section 52 would amend 29-2204 to clarify sentencing procedures for indeterminate sentences.

Section 53 would provide new language to create sentencing procedures for determinate sentences.

Section 54 would create a new section to move the language regarding 90-day evaluations conducted by the Department of Corrections out of section 29-2204 and into its own section.

Section 55 would amend 29-2246 to define terms for the purposes of the Nebraska Probation Administration Act. This

section would update the definitions of %u201Cprobation%u201D and %u201Cprobationer%u201D and would define a new term, %u201Cpost-release supervision%u201D.

Section 56 would amend 29-2252 to provide new duties for the Probation administrator.

Section 57 would amend 29-2252.01 to require the Probation administrator to provide an annual report that includes information about probationers with restitution judgments.

Section 58 would amend 29-2257 to include post-release supervision in the requirements of the Nebraska Probation System.

Section 59 would amend 29-2258 to include post-release supervision in the duties of a district probation officer.

Section 60 would amend 29-2260 to provide sentencing procedures for juveniles.

Section 61 would amend 29-2262 to change provisions relating to the use of jail time as a condition of probation.

Section 62 would amend 29-2266 to change provisions relating to the use of administrative sanctions. This section also provides new language regarding the use of custodial sanctions for probationers.

Section 63 would amend 29-2268 to change provisions regarding revocation of probation, and to provide new language regarding revocation of post-release supervision.

Section 64 would amend 29-2281 to allow a judge to consider evidence of anticipated earnings during incarceration, when determining the amount of restitution to order at sentencing.

Section 65 would amend 29-2308 to provide that an appellate court may determine that a sentence of incarceration instead of probation for a Class IV felony is excessive if the district court provided insufficient explanation of its reasoning.

Section 66 would amend 29-3523 to allow the dissemination of criminal history record information for purposes of research.

Section 67 would amend 29-4011 to change the penalty for violating the Sex Offender Registration Act from a Class IV to a Class IIIA felony, or from a Class III to a Class IIIA felony.

Section 68 would amend 43-412 to strike reference to an outdated provision.

Section 69 would amend 68-1017 to change the penalties for making false statements to obtain benefits to account for inflation.

Section 70 would amend 68-1017.01 to change the penalties for unauthorized use of electronic benefit cards to account for inflation.

Section 71 would amend 71-2228 to change the penalties for making false statements to obtain food stamps to account for inflation.

Section 72 would amend 71-2229 to change the penalties for unlawful use of a food instrument to account for inflation.

Section 73 would amend 81-1415 to include Section 76 in a reference to the Nebraska Commission on Law Enforcement and Criminal Justice.

Section 74 would amend 81-1416 to include Section 76 in a reference to the Nebraska Commission on Law

Enforcement and Criminal Justice.

Section 75 would amend 81-1423 to include Section 76 in a reference to the Nebraska Commission on Law Enforcement and Criminal Justice.

Section 76 would create the County Justice Reinvestment Grant Program as a separate and distinct budgetary program within the Nebraska Commission on Law Enforcement and Criminal Justice to provide grants to counties to help offset jail costs.

Section 77 would amend 81-1802 to add a member to the Crime Victims Reparations Committee. The new member would have training and relevant work experience with victims and survivors of crime.

Section 78 would amend 81-1803 to strike an outdated provision.

Section 79 would amend 81-1813 to require the Nebraska Commission on Law Enforcement and Criminal Justice to promulgate rules and regulations for the Crime Victims Reparations Act.

Section 80 would amend 81-1823 to increase the maximum amount allowed for an award from the Victims Compensation Fund from \$10,000 to \$25,000.

Section 81 would amend 83-182.01 to change provisions regarding programs and treatment within the Department of Correctional Services.

Section 82 would amend 83-183 to require the Department of Corrections to promulgate rules and regulations regarding the collection of restitution.

Section 83 would amend 83-183.01 to change provisions regarding the collection of restitution.

Section 84 would amend 83-184 to change provisions regarding the collection of restitution.

Section 85 would create a new section regarding the collection of restitution. This section would require the Department of Corrections, in consultation with the State Court Administrator, to promulgate rules and regulations regarding the payment of restitution. This section would also require the Department to report annually to the Legislature on the collection of restitution from wage funds.

Section 86 would amend 83-1,100 to require the Office of Parole Administration to use evidence-based practices in the training for staff members.

Section 87 would create a new section regarding the use of evidence-based practices by the Office of Parole Administration.

Section 88 would create a new section requiring the Board of Parole to promulgate rules and regulations to reduce the number of committed offenders who are released from prison without any supervision. This section would also require the Board of Parole and the Department of Correctional Services to report annually to the Legislature, Governor, and Supreme Court regarding the number of committed offenders who are released from prison without any supervision.

Section 89 would amend 83-1,107 to require the Department and the Probation Administration to ensure that a post-release supervision plan is created for each committed offender who will be released from the Department to serve a term of post-release supervision as a probationer.

Section 90 would amend 83-1,119 to require the Office of Parole Administration to develop procedures governing the use of administrative and custodial sanctions for parolees.

Section 91 would amend 83-1,122 to provide a maximum limit of 60 days for custodial sanctions in response to violations of parole conditions.

Section 92 would create a new section to clarify that the Board of Parole shall not have jurisdiction over committed offenders who will be released on post-release supervision as probationers.

Section 93 would amend 83-1,135 to include certain provisions of this bill in the Nebraska Treatment and Corrections Act.

Section 94 would amend 83-1,135.02 to state that the Legislature intends specific provisions of this bill to apply prospectively, not retroactively.

Section 95 would create a new section to incorporate the provisions of LB12, which was heard by the Health and Human Services Committee.

This section would require the Department of Health and Human Services and the Department of Correctional Services to promulgate rules and regulations to ensure that enrollment in a medical assistance program is suspended, rather than terminated, when an enrolled individual becomes an inmate of a public institution.

Section 96 states that the Legislature intends specific provisions of this bill to apply prospectively, not retroactively.

Section 97 includes a severability clause.

Section 98 would repeal the sections amended by this act.

Section 99 would outright repeal outdated sections.

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Les Seiler, Chairperson