

ONE HUNDRED FOURTH LEGISLATURE - SECOND SESSION - 2016
COMMITTEE STATEMENT (CORRECTED)
LB1094

Hearing Date: Thursday February 04, 2016
Committee On: Judiciary
Introducer: Judiciary
One Liner: Change provisions relating to evidence, sentencing, certain criminal penalties, criminal mischief, assault, theft, forgery, and probation

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

Vote Results:
Aye: 7 Senators Coash, Ebke, Krist, Morfeld, Pansing Brooks, Seiler, Williams
Nay:
Absent:
Present Not Voting: 1 Senator Chambers

Verbal Testimony:

Proponents: DIANE AMDOR SCOTT FRAKES SPIKE EICKHOLT	Representing: INTRODUCING ON BEHALF OF THE JUDICIARY COMMITTEE DEPARTMENT OF CORRECTIONS NCDA
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Opponents:	Representing:
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Neutral:	Representing:
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Summary of purpose and/or changes:

Section 1 would amend 27-1101 to clarify that the Rules of Evidence generally do not apply to hearings regarding the imposition of custodial sanctions.

Section 2 would amend 28-105 by adding language to subsection (7) to eliminate the possibility of overlapping periods of parole and post-release supervision.

Section 3 would amend 28-115 to clarify the penalty enhancement for offenses against a pregnant woman and to increase the penalty for certain offenses. The enhancement currently provides that certain offenses against a pregnant person are a Class IV felony. LB1094 would increase the penalty to a Class 3A felony.

Section 4 would amend 28-116 to explicitly state that the changes in this bill do not apply to an offense committed before the effective date of this bill, for the statutes that are listed in this section.

Section 5 would amend 28-204 to increase the penalty for accessory to a felony in certain cases. As amended, the penalty would be a Class IIA felony instead of a Class III felony for an accessory to a Class ID felony or higher.

Before LB605, accessory to a Class ID felony or higher (a Class I, IA, IB, IC or ID felony) was a Class III felony punishable by 1 to 20 years imprisonment. After LB605, accessory to a Class ID felony or higher is still a Class III

felony, but is now punishable by 0 to 4 years imprisonment and up to 2 years post-release supervision. After LB1094, the penalty for accessory to a Class ID felony or higher would be a Class IIA felony, punishable by 0 to 20 years imprisonment.

Section 6 would amend 28-394 to increase the penalty for motor vehicle homicide of an unborn child under subsection (3)(a) from a Class 4 felony to a Class 3A felony.

Section 7 would amend 28-514 to clarify that the penalty for theft by mistake when the value is \$5000 or more is a Class IV felony. The penalty before LB605 was (and still is) a Class IV felony.

Section 8 would amend 28-605 to distinguish possession of a "written instrument" forgery device from a similar offense, and would update outdated language.

Section 9 would amend 28-626 to distinguish possession of a "financial transaction" forgery device from a similar offense.

Section 10 would amend 28-1354 to update internal references to reflect changes to section 28-605 and 28-626, and changes made by the model business corporation act.

Section 11 would amend 29-2204.02 to address the possibility of concurrent sentences to parole and post-release supervision, and would clarify that good time should not apply to post-release supervision.

Section 12 would amend 29-2252 to update internal references.

Section 13 would amend 29-2252.01 to align certain Probation Administration reporting requirements with the fiscal year, by changing "December 31 and June 30" to "January 15 and July 15".

Section 14 would amend 29-2256 to update internal references and outdated language.

Section 15 would amend 29-2258 to update internal references.

Section 16 would amend 29-2260 to address the possibility of overlapping periods of parole and post-release supervision.

Section 17 would amend 29-2262 to restore the possibility of jail time as a condition of probation for felonies, on a limited basis (90 days, same as misdemeanors).

Section 18 would amend 29-2263 to update internal references.

Section 19 would amend 29-2266 to update definitions and strike language that would move to new sections 20 through 22.

This section would define the terms "absconding" and "custodial sanction", and explicitly state that the term "noncriminal violation" does not include absconding supervision. This section would also allow revocation of probation proceedings without serving 90 days of jail sanctions if the probationer absconds from the jurisdiction.

The current statutory language for responding to probation violations for misdemeanor probationers (stricken from subsections (2) through (6)) would move to section 20. The current statutory language for responding to probation violations for felony probationers (stricken from subsections (7) through (11)) would move to section 21. The current statutory language for imposing custodial sanctions (partially stricken from subsections (7) through (11)) would move to section 22.

Section 20 would create a new section to clarify the process for responding to probation violations. This section includes

current statutory language from 29-2266, stating the process for responding to probation violations for misdemeanor probationers, with minimal substantive changes.

Section 21 would create a new section to clarify the process for responding to probation violations. This section includes current statutory language from 29-2266, stating the process for responding to probation violations for felony probationers, with minimal substantive changes.

Section 22 would create a new section to clarify the process for imposition of custodial sanctions. This section includes some of the current statutory language from 29-2266 regarding the procedures to be used in custodial sanctions hearings.

Section 23 would amend 29-2267 to clarify the process for probation revocation hearings. This section would clarify that for a probationer convicted of a felony, revocation proceedings may only be instituted in response to a substance abuse or noncriminal violation if the probationer has already served ninety days of cumulative custodial sanctions during the current probation term.

Section 24 would amend 29-2268 to update internal references.

Section 25 would amend 29-2269 to update internal references.

Section 26 would amend 29-2308 to update internal references.

Section 27 would amend 47-401 to clarify that house arrest and work release may be used for probationers serving sanctions, when appropriate.

Section 28 would amend 47-502 to clarify that jail good time credits should apply to individuals serving custodial sanctions in the same manner as they apply to other individuals sentenced to a city or county jail.

Section 29 would amend 60-6,197.03 to increase the penalty for DUI 4th offense aggravated by adding a minimum sentence of one year imprisonment. This is consistent with all other DUI offenses, which require a period of jail time when probation is not ordered.

Prior to LB605, this offense was a Class III felony, punishable by a minimum of one year imprisonment. Following LB605, this offense is currently a class IIA felony (0 to 20 years imprisonment). As amended by LB1094, the penalty would still be a Class IIA felony, but the minimum sentence would be one year imprisonment instead of 0 years imprisonment.

Section 30 would amend 71-2482 to clarify that the penalty for a violation of 71-2478 (Legend drug not a controlled substance; written, oral, or electronic prescription; information required; controlled substance; requirements; prohibited acts.) is a Class III misdemeanor.

This statute was not affected by LB605 - the old legend drug statute (28-1437) was repealed by LB37. The new legend drug statute (71-2478) does not provide a penalty classification.

Section 31 would amend 83-187 to ensure that gate pay for individuals on post-release supervision is the same as gate pay for parolees.

Section 32 would amend 83-1,100.02 to move the deadline for parole officer training from July 1, 2016 to January 1, 2017.

Section 33 would amend 83-1,119 to add a new definition of "absconding parole supervision" and clarify that a technical violation does not include absconding parole supervision. This section would also allow parole custodial sanctions to be shorter than 30 days, to be consistent with probation custodial sanctions.

Section 34 would amend 83-1,122 to allow parole custodial sanctions to be imposed in increments shorter than 30 days, to be consistent with probation custodial sanctions.

Section 35 would amend 83-1,135.02 by inserting a new subsection to clarify the intent of the Legislature that the changes made to certain sections of this bill shall apply to all committed offenders under sentence, on parole, or on probation on the effective date of this act and to all persons sentenced on and after such date.

Section 36 would repeal the sections amended by this act.

Explanation of amendments:

AM2337 is a white copy amendment to LB1094. Five sections of AM2337 were not included in the green copy of LB1094 - see sections 3, 35, 36, 37, and 40 of AM2337. One section of LB1094 was not included in AM2337 - see section 26 of LB1094.

AM2337 would make the following changes:

Section 1 would amend 27-1101 to clarify that the Rules of Evidence generally do not apply to hearings regarding the imposition of custodial sanctions. No substantive change from the green copy.

Section 2 would amend 28-105 by adding language to subsection (7) to eliminate the possibility of overlapping periods of parole and post-release supervision. No substantive change from the green copy.

Section 3 is a new section that would amend 28-116 to eliminate the possibility of overlapping periods of parole and post-release supervision for individuals convicted of a misdemeanor in addition to a Class 3, 3A or 4 felony.

Section 4 would amend 28-115 to clarify the penalty enhancement for offenses against a pregnant woman and to increase the penalty for certain offenses. The enhancement currently provides that certain offenses against a pregnant person are a Class IV felony. LB1094 would increase the penalty to a Class 3A felony. No substantive change from the green copy.

Section 5 would amend 28-116 to explicitly state that the changes in this bill do not apply to an offense committed before the effective date of this bill, for the statutes that are listed in this section.

The Committee amendment would not include sections 28-105 and 28-514 in this section, because the bill does not change the penalties provided in those statutes. The amendment would correct a reference in the green copy to "25-115", which should have read "28-115". The amendment would also make non-substantive changes for clarification.

Section 6 would amend 28-204 to increase the penalty for accessory to a felony in certain cases. As amended, the penalty would be a Class IIA felony instead of a Class III felony for an accessory to a Class ID felony or higher. No substantive change from the green copy.

Before LB605, accessory to a Class ID felony or higher (a Class I, IA, IB, IC or ID felony) was a Class III felony punishable by 1 to 20 years imprisonment. After LB605, accessory to a Class ID felony or higher is still a Class III felony, but is now punishable by 0 to 4 years imprisonment and up to 2 years post-release supervision. After LB1094, the penalty for accessory to a Class ID felony or higher would be a Class IIA felony, punishable by 0 to 20 years imprisonment.

Section 7 would amend 28-394 to increase the penalty for motor vehicle homicide of an unborn child under subsection (3)(a) from a Class 4 felony to a Class 3A felony. No substantive change from the green copy.

Section 8 would amend 28-514 to clarify that the penalty for theft by mistake when the value is \$5000 or more is a Class

IV felony. The penalty before LB605 was (and still is) a Class IV felony. No substantive change from the green copy.

Section 9 would amend 28-605 to distinguish possession of a "written instrument" forgery device from a similar offense, and would update outdated language. No substantive change from the green copy.

Section 10 would amend 28-626 to distinguish possession of a "financial transaction" forgery device from a similar offense. No substantive change from the green copy.

Section 11 would amend 28-1354 to update internal references to reflect changes to section 28-605 and 28-626, and changes made by the model business corporation act. No substantive change from the green copy.

Section 12 would amend 29-2204.02 to clarify the existing language and provide new subsections to eliminate the possibility of overlapping periods of parole and post-release supervision. The amendment makes no change to the provision from the green copy of the bill that clarifies that good time should not apply to post-release supervision.

Section 13 would amend 29-2252 to update internal references. No substantive change from the green copy.

Section 14 would amend 29-2252.01 to align certain Probation Administration reporting requirements with the fiscal year, by changing "December 31 and June 30" to "January 15 and July 15". No substantive change from the green copy.

Section 15 would amend 29-2256 to update internal references and outdated language. No substantive change from the green copy.

Section 16 would amend 29-2258 to update internal references. No substantive change from the green copy.

Section 17 would amend 29-2260 to strike unnecessary language in subsection (5). This language duplicates language in 29-2204.02.

Section 18 would amend 29-2262 to restore the possibility of jail time as a condition of probation for felonies, on a limited basis (90 days, same as misdemeanors).

Section 19 would amend 29-2263 to update internal references. No substantive change from the green copy.

Section 20 would amend 29-2266 to update definitions and strike language that would move to new sections 20 through 22. The amendment updates internal references and adds a reference to probation officers in subsection (3).

There is no substantive change to the provisions from the green copy, which would define the terms "absconding" and "custodial sanction", and explicitly state that the term "noncriminal violation" does not include absconding supervision. This section would also allow revocation of probation proceedings without serving 90 days of jail sanctions if the probationer absconds from the jurisdiction.

The current statutory language for responding to probation violations for misdemeanor probationers (stricken from subsections (2) through (6)) would move to section 21. The current statutory language for responding to probation violations for felony probationers (stricken from subsections (7) through (11)) would move to section 22. The current statutory language for imposing custodial sanctions (partially stricken from subsections (7) through (11)) would move to section 23.

Section 21 would create a new section to clarify the process for responding to probation violations. This section includes current statutory language from 29-2266, stating the process for responding to probation violations for misdemeanor probationers.

The amendment clarifies the language of this section and eliminates unnecessary provisions, with minimal substantive changes.

Section 22 would create a new section to clarify the process for responding to probation violations. This section includes current statutory language from 29-2266, stating the process for responding to probation violations for felony probationers, with minimal substantive changes.

The amendment clarifies the language of this section and eliminates unnecessary provisions, with minimal substantive changes.

Section 23 would create a new section to clarify the process for imposition of custodial sanctions. This section includes some of the current statutory language from 29-2266 regarding the procedures to be used in custodial sanctions hearings.

The amendment clarifies the language of this section and eliminates unnecessary provisions, with minimal substantive changes.

Section 24 would amend 29-2267 to clarify the process for probation revocation hearings.

This section would clarify that for a probationer convicted of a felony, revocation proceedings may only be instituted in response to a substance abuse or noncriminal violation if the probationer has already served ninety days of cumulative custodial sanctions during the current probation term. No substantive change from the green copy.

Section 25 would amend 29-2268 to update internal references. No substantive change from the green copy.

Section 26 would amend 29-2269 to update internal references. No substantive change from the green copy.

Section 27 would amend 47-401 to clarify that house arrest and work release may be used for probationers and parolees serving custodial sanctions in county or city jail, when appropriate.

Section 28 would amend 47-502 to clarify that jail good time credits should apply to parolees and probationers serving custodial sanctions in the same manner as they apply to other individuals sentenced to a city or county jail.

Section 29 would amend 60-6,197.03 to increase the penalty for DUI 4th offense aggravated by adding a minimum sentence of one year imprisonment. This is consistent with all other DUI offenses, which require a period of jail time when probation is not ordered. No substantive change from the green copy.

Prior to LB605, this offense was a Class III felony, punishable by a minimum of one year imprisonment. Following LB605, this offense is currently a class IIA felony (0 to 20 years imprisonment). As amended by LB1094, the penalty would still be a Class IIA felony, but the minimum sentence would be one year imprisonment instead of 0 years imprisonment.

Section 30 would amend 71-2482 to clarify that the penalty for a violation of 71-2478 (Legend drug not a controlled substance; written, oral, or electronic prescription; information required; controlled substance; requirements; prohibited acts.) is a Class III misdemeanor. No substantive change from the green copy.

This statute was not affected by LB605 - the old legend drug statute (28-1437) was repealed by LB37. The new legend drug statute (71-2478) does not provide a penalty classification.

Section 31 would amend 83-187 to ensure that gate pay for individuals on post-release supervision is the same as gate pay for parolees. No substantive change from the green copy.

Section 32 would amend 83-1,100.02 to move the deadline for parole officer training from July 1, 2016 to January 1, 2017. No substantive change from the green copy.

Section 33 would amend 83-1,119 to add a new definition of "absconding parole supervision" and clarify that a technical violation does not include absconding parole supervision. This section would also allow parole custodial sanctions to be shorter than 30 days, to be consistent with probation custodial sanctions. No substantive change from the green copy.

Section 34 would amend 83-1,122 to allow parole custodial sanctions to be imposed in increments shorter than 30 days, to be consistent with probation custodial sanctions. No substantive change from the green copy.

Section 35 is a new section that would clarify that house arrest and work release may be used for parolees serving custodial sanctions within the Department of Corrections, when appropriate.

Section 36 is a new section that would amend 83-1,122.01 to clarify that the parole board does not have jurisdiction over individuals on post-release supervision. The intent of this section is to eliminate the possibility of overlapping periods on parole and post-release supervision.

Section 37 is a new section that would amend 83-1,135 to add section 35 of the bill to the Nebraska Treatment and Corrections Act.

Section 38 would amend 83-1,135.02 by inserting a new subsection to clarify the intent of the Legislature that the changes made to certain sections of this bill shall apply to all committed offenders under sentence, on parole, or on probation on the effective date of this act and to all persons sentenced on and after such date. No substantive change from the green copy.

Section 39 would repeal the sections amended by this act.

Section 40 is a new section that would provide an emergency clause.

Les Seiler, Chairperson