

ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023
COMMITTEE STATEMENT
LB50

Hearing Date: Wednesday February 01, 2023
Committee On: Judiciary
Introducer: Wayne
One Liner: Change criminal justice provisions including set-asides, restitution, and parole; 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:	4	Senators Blood, DeBoer, McKinney, Wayne
Nay:	2	Senators DeKay, Holdcroft
Absent:		
Present Not Voting:	1	Senator Ibach

Testimony:

Proponents:

Senator Justin Wayne
Don Kleine
Bob Denton

Mike Guinan
Amber Wood
Jasmine Harris
Maggie Ballard
Spike Eickholt

Representing:

District 13
Nebraska County Attorney's Association
Deputy of Administrator Administrative Office of the
Courts and Probation
Attorney General's Office
Self
RISE
Heartland Family Service
American Civil Liberties Union of Nebraska /
Nebraska Criminal Defense Attorney Association

Opponents:

Timothy C. Melcher

Representing:

Nebraskans Unafraid

Neutral:

Representing:

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

LB50 contains some of the provisions from LB920 (2022).

LB920 (2022) contained 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 were included in the NCJRWG Final Report ("the

Report”). LB50 does not include any changes to criminal sentencing, changes to the Rural Health Systems and Professional Incentive Act, geriatric parole eligibility, or an ongoing task force to continue the work of the NCJRWG.

Section 1 would amend § 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 3 would amend § 29-2263 to require a notice of the process to set aside a conviction at sentencing and upon satisfactory completion of probation.

Section 5 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 6 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 7 would amend § 29-2281 to provide that that partial payments made by defendants be applied to restitution before fines and costs.

Section 8 would amend § 50-434 to sunset the Legislature’s Committee on Justice Reinvestment Oversight on September 30, 2023.

Section 9 would amend § 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 10 would amend § 83-1,111 and Section 11 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 12 would amend § 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 13 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:

AM1436 replaces the original bill, but includes the original provisions of LB50.

Section 1 of AM1436 is Section 1 of LB50.

Section 2 is Section 2 of LB50.

Section 17 is Section 3 of LB50.

Section 19 is Section 5 of LB50.

Section 20 is Section 6 of LB50.

Section 21 is Section 7 of LB50.

Section 27 is Section 8 of LB50.

Section 37 is Section 9 of LB50.

Sections 40 and 41 are Sections 10 and 11 of LB50.

Section 42 is Section 12 of LB50.

Section 45 is Section 13 of LB50.

This amendment also contains provisions from LB18, LB27, LB59, LB76, LB137, LB162, and LB352.

Section 4 would amend § 28-416 to add provisions from LB137 and LB352. The provision from LB137 would create an enhanced penalty for controlled substance offenses if use of the substance results in death or serious bodily injury. This section also contains an amended version of Section 7 of LB352. This amended provision would create a misdemeanor offense for possession of less than 1/10th of a gram of a controlled substance other than fentanyl.

Section 5 is Section 8 of LB352 and creates 2nd and 3rd degree burglary.

Section 6 is an amended version of Section 9 of LB352. The habitual theft enhancement remains for the third offense, but the prior convictions are limited to the previous five years.

Section 7 is an amended version of LB162. This creates a new Class I misdemeanor for tampering with an electronic monitoring device.

Sections 10 and 11 are an amended version of LB18. These provisions would allow a motion for new trial if a witness exercised a constitutional privilege and refused to testify in the defendant's trial but later testified in the witness's own defense.

Sections 12, 13, and 17 contain provisions that would allow the sentencing court to place a defendant on post-release supervision after serving 85% of their sentence.

Section 14 is an amended version of Section 15 of LB352. This section would create a habitual criminal enhancement of a three year mandatory minimum for a felony that does not involve sex, violence, or firearms.

Sections 15, 16, and 26 contain the provisions of LB76. These provisions would provide access to certain probation and parole supervision information to law enforcement.

Sections 22 and 23 are LB27, as amended by AM174. These provisions clarify the process for appointment of the public defender or other appointed counsel when an indigent defendant files an appeal.

Section 24 contains LB59. This section would toll the statute of limitations for a post-conviction action while an appeal to the Supreme Court is pending.

Section 25 is Section 21 of LB352. This section would prohibit pretrial diversion guidelines from categorically excluding Class IV felonies if the person does not have a previous felony conviction or felony diversion completion.

Sections 28 and 29 are LB314, as amended by AM68. These provisions would require suicide prevention materials to be provided to firearm purchasers.

Sections 30-36 are Sections 24-30 of LB352 and would enhance the Rural Health Systems and Professional Incentive Act to increase student loan financial aid to people committed to serving the community supervision population.

Section 38 is an amended version of Section 32 of LB352. Under this section, an offender would be eligible for parole consideration two years before mandatory discharge on a maximum sentence up to 12 years, three years before mandatory discharge on a maximum sentence up to 16 years, four years before mandatory discharge on a maximum sentence up to 20 years, and five years before mandatory discharge on a maximum sentence of more than 20 years.

Section 39 is an amended version of Section 35 of LB352. This section would create geriatric parole eligibility for certain offenders over age 75 that have served 15 years of their sentence. Offenders serving a sentence for a Class I or IA felony or a life sentence would be excluded. The amended version would also exclude sex offenses.

Justin Wayne, Chairperson