LB 1199 SUMMARY

LB 1199 (Bourne) Change provisions relating to sex offenders.

LB 1199 provides crimes and penalties regarding sexual assault of a child, provides civil commitment for sex offenders, provides for community supervision of sex offenders, changes provisions of the Sex Offender Registration Act, adopts the Sexual Predator Residency Restriction Act and establishes a working group to study sex offender treatment and management services.

CRIMES AND PENALTIES:

A person commits sexual assault of a child in the first degree if he or she subjects another person under 12 years old to sexual penetration and the actor is at least 19 years of age or older. Sexual assault of a child in the first degree is a Class IB felony with a mandatory minimum sentence of 15 years in prison for first offense. Any person who is found guilty of sexual assault of a child in the first degree under this section of law and who has prior convictions of sexual assault shall be guilty of a Class IB felony with a mandatory minimum sentence of 25 years in prison.

Sexual assault of a child is in the second degree if the actor causes serious personal injury to the victim. Sexual assault of a child in second degree is a Class II felony for the first offense. Any person found guilty of this offense and who has prior convictions of sexual assault shall be guilty of a Class IC felony and shall be sentenced to a mandatory minimum term of 25 years in prison.

Sexual assault of a child is in the third degree if the actor does not cause serious personal injury to the victim and is a Class IIIA felony for the first offense. Any person who is guilty of this offense and has prior sexual assault convictions shall be guilty of a Class IC felony.

Time limitations for prosecution or punishment will not apply to these sexual assault crimes.

CIVIL COMMITMENT:

LB 1199 provides a process for emergency protective custody of dangerous sex offenders. Such persons shall be admitted to an appropriate and available medical facility unless they have a prior sex offense conviction. If such persons have a prior sex offense conviction, they shall be admitted to a jail or Department of Corrections unless a medical or psychiatric emergency exists.

LB 1199 adopts the Sex Offender Commitment Act. The purpose of this act is to provide for the court-ordered treatment of sex offenders who completed their sentences, but continue to pose a threat of harm to others. It is the public policy of this state that dangerous sex offenders be encouraged to obtain voluntary treatment. This act provides for the civil

commitment of dangerous sex offenders. The procedures such as filing of petition, mental health board hearings, treatment orders, commitments, execution of warrant and rules of evidence mirror the current Mental Health Commitment Act. The language, Sex Offender Commitment Act, is incorporated into the current mental health commitment statutes.

At least 90 days prior to the release of a sex offender, the agency with jurisdiction over such individual shall notify the Attorney General, Nebraska State Patrol, prosecuting county attorney and the county attorney in which an individual is incarcerated, supervised or committed. Also, the Board of Parole shall notify these same parties within 5 days after scheduling a parole hearing. Further, a county attorney shall, no later than 45 days after receiving notice of the pending release of a sex offender, notify the Attorney General whether he/she intends to initiate civil commitment proceedings against such individual upon their release.

LB 1199 creates a separate legal standard for sex offenders. This standard defines dangerous sex offender as a person:

- who suffers from a mental illness which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of one or more sex offenses and who is substantially unable to control his/her criminal behavior or
- with a personality disorder which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of two or more sex offenses and who is substantially unable to control his/her criminal behavior.

This bill requires the Department of Corrections to order evaluations for offenders convicted of first degree sexual assault, repeat offenders, child predators who refuse treatment and offenders who have violated the Sex Offender Registration Act. This evaluation shall be ordered at least 180 days before the release of the individual. Upon completion of this evaluation, this department shall send written notice to the Attorney General, county attorney of the county where the offender is incarcerated and the prosecuting county attorney. An affidavit of the mental health professional shall be included in the notice.

COMMUNITY SUPERVISION:

LB 1199 provides for lifetime community supervision of sex offenders. Upon completion of his/her term of incarceration or release from civil commitment, the following classes of sex offenders will be supervised in the community by the Office of Parole Administration (Office) for the remainder of his/her life:

- Repeat sex offenders,
- offenders convicted of sexual assault of a child in the first degree or
- offenders convicted of penetration of a victim 12 years or more through the use of force or threat of serious violence or victim under the age of 12 years of age.

Lifetime community supervision applies to any of these individuals, on or after the effective date of this act.

The agency or political subdivision which has custody of such individuals shall notify the Office at least 60 days prior to release. Such individuals shall undergo a risk assessment and evaluation by the Office. Conditions of community supervision imposed by the Office are provided.

Individuals that violate one or more of the conditions of community supervision shall undergo a review by the Office. The Office may revise or impose additional conditions, request prosecution by Attorney General or county attorney or recommend civil commitment. Criminal penalties are provided.

LB 1199 provides duties for parole officers. Also, this bill provides notification and supervision duties for the Office. Such individuals are entitled to an appeal whenever there is a determination or revision of conditions of community supervision. An appeal process is provided. In addition, notification requirements to such individuals are provided for the sentencing court.

Prior to the release of a person serving a sentence an offense requiring lifetime community supervision, the Department of Corrections, Department of Health and Human Services, or city or county correctional or jail facility shall provide written notice that he/she shall be subject to lifetime community supervision by the Office. This notice shall inform the person that he/she is subject to a lifetime community supervision, consequences of violations of conditions and right to challenge the determination of the conditions. Also, these agencies or county/city jails must require the defendant to read and sign a form stating they understand these conditions and retain a copy of the written notification.

SEX OFFENDER REGISTRATION ACT:

LB 1199 expands the list of offenses that require registration under this act. Specifically, the offenses of sexual assault of a child in second or third degree, sexual assault of a child in the first degree and debauching a minor are included. Also, any person who enters the state and is required to register as a sex offender under the laws of another state, territory, commonwealth or other U.S. jurisdiction must register in this state.

LB 1199 clarifies the reporting requirements of sex offenders under this act. Within 5 working days, persons under this act must notify, in writing, the sheriff of any changes in address, employment, vocation, school of attendance, temporary domicile, and name change.

LB 1199 provides additional requirements for courts and the Department of Corrections relating to informing the defendant that fingerprints and a photograph will be obtained by any registering entity in order to comply with the registration requirements.

Public notice provisions are expanded to allow disclosure of information of sex offenders under community supervision to the Office of Parole Administration. Also, information of

sex offenders working at or attending a postsecondary educational institution must be disclosed to law enforcement or campus police.

This bill increases the penalty for second convictions for failing to comply this act. Also, persons who have violated this act and have been committed to the Department of Corrections are required to attend treatment and counseling programs.

SEXUAL PREDATOR RESIDENCY RESTRICTION ACT:

This bill allows a political subdivision to enact an ordinance, resolution, or other legal restriction prescribing where sex offenders may reside only if the restrictions are limited to sexual predators and extend no more than 500 feet from a school or child care facility. Exemptions for correctional institutions, treatment facilities and dates of establishing a residence are provided. Ordinances, resolutions or other legal restrictions are void if they do not meet the requirements of this act.

SEX OFENDER WORKING GROUP:

The Director of Regulation and Licensure shall establish a working group to study sex offender treatment and management services and recommend improvements. This working group shall include a member of the Legislature appointed by the Executive Board of the Legislative Council. The Governor shall appoint a representative from HHS, Corrections, Probation System, Board of Parole, law enforcement, courts, private providers of this treatment, and victim advocates. Also, the Governor shall appoint a licensed psychologist, licensed alcohol and drug counselor and sex offender participating in a treatment program. Other interested persons may be appointed in a nonvoting capacity as needed.

This working group shall study sex offender treatment and management on the state level to determine future legislative and executive actions. These actions shall be based on the recommendations of the 2001 Governor's Working Group on the Management and Treatment of Sex Offenders report involving credentialing of professionals providing this treatment, mandated treatment standards and increased training opportunities for these professionals.

The Director of Regulation and Licensure, in consulting with this working group, shall submit a report of this study to the Legislature and Governor by December 1, 2006. This working group terminates on December 1, 2006.

LB 1199 becomes effective July 14, 2006.