

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 936

Introduced by Flood, 19.

Read first time January 14, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to juvenile dispositions; to amend sections
2 29-2262.06 and 43-286, Reissue Revised Statutes of
3 Nebraska; to authorize juvenile court-ordered conditions;
4 to harmonize provisions; and to repeal the original
5 sections.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2262.06, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 29-2262.06 (1) Except as otherwise provided in this
4 section, whenever a district court or county court sentences
5 an adult offender to probation, the court shall require the
6 probationer to pay a one-time administrative enrollment fee and
7 thereafter a monthly probation programming fee. A juvenile court
8 in the disposition of a juvenile who is placed upon probation
9 may also order, as a condition of probation, the juvenile to be
10 a participant in non-probation-based programs or services and the
11 court shall order payment of applicable fees as provided in this
12 section.

13 (2) Participants in non-probation-based programs or
14 services in which probation personnel or probation resources
15 are utilized pursuant to an interlocal agreement authorized by
16 subdivision (16) of section 29-2252 and in which all or a portion
17 of the costs of such probation personnel or such probation
18 resources are covered by funds provided pursuant to section
19 29-2262.07 shall pay the one-time administrative enrollment fee
20 described in subdivision (3)(a) of this section and the monthly
21 probation programming fee described in subdivision (3)(c) of
22 this section. In addition, the provisions of subsections (4),
23 (7), and (10) of this section applicable to probationers apply
24 to participants in non-probation-based programs or services.
25 Any participant in a non-probation-based program or service who

1 defaults on the payment of any such fees may, at the discretion
2 of the court, be subject to removal from such non-probation-based
3 program or service. This subdivision does not preclude a court or
4 other governmental entity from charging additional local fees for
5 participation in such non-probation-based programs and services or
6 other similar non-probation-based programs and services.

7 (3) The court shall establish the administrative
8 enrollment fee and monthly probation programming fees as follows:

9 (a) Adult probationers placed on either probation
10 or intensive supervision probation and participants in
11 non-probation-based programs or services shall pay a one-time
12 administrative enrollment fee of thirty dollars. The fee shall be
13 paid in a lump sum upon the beginning of probation supervision or
14 participation in a non-probation-based program or service;

15 (b) Adult probationers placed on probation shall pay a
16 monthly probation programming fee of twenty-five dollars, not later
17 than the tenth day of each month, for the duration of probation;
18 and

19 (c) Adult probationers placed on intensive supervision
20 probation and participants in non-probation-based programs or
21 services shall pay a monthly probation programming fee of
22 thirty-five dollars, not later than the tenth day of each
23 month, for the duration of probation or participation in a
24 non-probation-based program or service.

25 (4) The court shall waive payment of the monthly

1 probation programming fees in whole or in part if after a hearing
2 a determination is made that such payment would constitute an
3 undue hardship on the offender due to limited income, employment or
4 school status, or physical or mental handicap. Such waiver shall be
5 in effect only during the period of time that the probationer or
6 participant in a non-probation-based program or service is unable
7 to pay his or her monthly probation programming fee.

8 (5) If a probationer defaults in the payment of monthly
9 probation programming fees or any installment thereof, the court
10 may revoke his or her probation for nonpayment, except that
11 probation shall not be revoked nor shall the offender be imprisoned
12 for such nonpayment if the probationer is financially unable to
13 make the payment, if he or she so states to the court in writing
14 under oath, and if the court so finds after a hearing.

15 (6) If the court determines that the default in payment
16 described in subsection (5) of this section was not attributable to
17 a deliberate refusal to obey the order of the court or to failure
18 on the probationer's part to make a good faith effort to obtain the
19 funds required for payment, the court may enter an order allowing
20 the probationer additional time for payment, reducing the amount
21 of each installment, or revoking the fees or the unpaid portion in
22 whole or in part.

23 (7) No probationer or participant in a
24 non-probation-based program or service shall be required to pay
25 more than one monthly probation programming fee per month. This

1 subsection does not preclude local fees as provided in subsection
2 (2) of this section.

3 (8) The imposition of monthly probation programming fees
4 in this section shall be considered separate and apart from the
5 fees described in subdivisions (2)(m) and (o) of section 29-2262.

6 (9) Any adult probationer received for supervision
7 pursuant to section 29-2637 or the Interstate Compact for
8 Adult Offender Supervision shall be assessed both a one-time
9 administrative enrollment fee and monthly probation programming
10 fees during the period of time the probationer is actively
11 supervised by Nebraska probation authorities.

12 (10) The probationer or participant in a
13 non-probation-based program or service shall pay the fees described
14 in this section to the clerk of the court. The clerk of the court
15 shall remit all fees so collected to the State Treasurer for credit
16 to the Probation Program Cash Fund.

17 Sec. 2. Section 43-286, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 43-286 (1) When any juvenile is adjudicated to be a
20 juvenile described in subdivision (1), (2), or (4) of section
21 43-247:

22 (a) The juvenile court may continue the dispositional
23 portion of the hearing, from time to time upon such terms and
24 conditions as the juvenile court may prescribe, including an order
25 of restitution of medical expenses incurred or any property stolen

1 or damaged or an order requiring the juvenile to participate in
2 community service programs, if such order is in the interest of
3 the juvenile's reformation or rehabilitation, and, subject to the
4 further order of the juvenile court, may:

5 (i) Place the juvenile on probation subject to the
6 supervision of a probation officer and under any conditions deemed
7 by the juvenile court to insure that the juvenile will lead a
8 law-abiding life or deemed by the juvenile court to be reasonably
9 related to the rehabilitation of the juvenile, including, but not
10 limited to, the following:

11 (A) To obtain employment, attend school, or pursue a
12 prescribed secular course of study or vocational training and
13 to obey the rules where such education or training is provided,
14 including obtaining satisfactory grades or progress;

15 (B) To attend or reside in an institution or facility
16 established for the instruction, recreation, detention, or
17 residence of juveniles;

18 (C) To remain within the jurisdiction of the juvenile
19 court, report to the juvenile court or probation officer as
20 directed, notify the juvenile court or the probation officer of any
21 change in the juvenile's address or juvenile's employment or school
22 program, permit the probation officer or a law enforcement officer
23 to visit the home, school, or place of employment, submit to any
24 searches requested by a law enforcement or probation officer, and
25 agree to waive extradition if found in another jurisdiction;

1 (D) To participate in, follow all rules of, and
2 successfully complete any problem solving court program, including
3 sanctions imposed by any problem solving court;

4 (E) To refrain from the use of alcohol or drugs and
5 submit to testing to determine the presence of alcohol or drugs;

6 (F) To participate in any evaluations, offender
7 assessment screens, and rehabilitative treatment;

8 (G) To perform community service under the direction of
9 his or her probation officer;

10 (H) To be placed on house arrest or curfew monitored by
11 tracker or electronic surveillance device or system and to pay the
12 cost of such device or system if the juvenile has the financial
13 ability to pay;

14 (I) To pay for all costs imposed by the juvenile court if
15 the juvenile has the financial ability to pay;

16 (J) To comply with any sanctions imposed by the juvenile
17 court which are to take effect upon the violation of a condition of
18 probation by the juvenile; and

19 (K) To pay restitution for any property stolen or damaged
20 or for any medical expenses incurred if the juvenile has the
21 financial ability to pay;

22 (ii) Permit the juvenile to remain in his or her own home
23 or be placed in a suitable family home, subject to the supervision
24 of the probation officer with any conditions deemed appropriate
25 by the juvenile court as allowed in subdivision (1)(a)(i) of this

1 section; or

2 (iii) Cause the juvenile to be placed in a suitable
3 family home or institution, subject to the supervision of the
4 probation officer with any conditions deemed appropriate by the
5 juvenile court as allowed in subdivision (1)(a)(i) of this section.

6 If the juvenile court has committed the juvenile to the care
7 and custody of the Department of Health and Human Services, the
8 department shall pay the costs of the suitable family home or
9 institution which are not otherwise paid by the juvenile's parents.

10 Under ~~subdivision (1)(a)~~ subdivisions (1)(a)(ii) and
11 (1)(a)(iii) of this section, upon a determination by the juvenile
12 court that there are no parental, private, or other public funds
13 available for the care, custody, and maintenance of a juvenile, the
14 juvenile court may order a reasonable sum for the care, custody,
15 and maintenance of the juvenile to be paid out of a fund which
16 shall be appropriated annually by the county where the petition
17 is filed until a suitable provision may be made for the juvenile
18 without such payment; or

19 (b) The juvenile court may commit such juvenile to the
20 Office of Juvenile Services, but a juvenile under the age of
21 twelve years shall not be placed at the Youth Rehabilitation and
22 Treatment Center-Geneva or the Youth Rehabilitation and Treatment
23 Center-Kearney unless he or she has violated the terms of probation
24 or has committed an additional offense and the juvenile court finds
25 that the interests of the juvenile and the welfare of the community

1 demand his or her commitment. This minimum age provision shall not
2 apply if the act in question is murder or manslaughter.

3 (2) When any juvenile is found by the juvenile court to
4 be a juvenile described in subdivision (3)(b) of section 43-247,
5 the juvenile court may enter such order as it is empowered to enter
6 under subdivision (1)(a) of this section or may enter an order
7 committing or placing the juvenile to the care and custody of the
8 Department of Health and Human Services.

9 (3) Beginning July 15, 1998, when any juvenile is
10 adjudicated to be a juvenile described in subdivision (1), (2),
11 (3)(b), or (4) of section 43-247 because of a nonviolent act or
12 acts and the juvenile has not previously been adjudicated to be
13 such a juvenile because of a violent act or acts, the juvenile
14 court may, with the agreement of the victim, order the juvenile to
15 attend juvenile offender and victim mediation with a mediator or at
16 an approved center selected from the roster made available pursuant
17 to section 25-2908.

18 (4)(a) When a juvenile is placed on probation or under
19 the supervision of the juvenile court and it is alleged that
20 the juvenile is again a juvenile described in subdivision (1),
21 (2), (3)(b), or (4) of section 43-247, a petition may be filed
22 and the same procedure followed and rights given at a hearing
23 on the original petition. If an adjudication is made that the
24 allegations of the petition are true, the juvenile court may make
25 any disposition authorized by this section for such adjudications.

1 (b) When a juvenile is placed on probation or under the
2 supervision of the juvenile court for conduct under subdivision
3 (1), (2), (3)(b), or (4) of section 43-247 and it is alleged that
4 the juvenile has violated a term of probation or supervision or
5 that the juvenile has violated an order of the juvenile court,
6 a motion to revoke probation or supervision or to change the
7 disposition may be filed and proceedings held as follows:

8 (i) The motion shall set forth specific factual
9 allegations of the alleged violations and a copy of such motion
10 shall be served on all persons required to be served by sections
11 43-262 to 43-267;

12 (ii) The juvenile shall be entitled to a hearing before
13 the juvenile court to determine the validity of the allegations.
14 At such hearing the juvenile shall be entitled to those rights
15 relating to counsel provided by section 43-272 and those rights
16 relating to detention provided by sections 43-254 to 43-256. The
17 juvenile shall also be entitled to speak and present documents,
18 witnesses, or other evidence on his or her own behalf. He or she
19 may confront persons who have given adverse information concerning
20 the alleged violations, may cross-examine such persons, and may
21 show that he or she did not violate the conditions of his or her
22 probation or, if he or she did, that mitigating circumstances
23 suggest that the violation does not warrant revocation. The
24 revocation hearing shall be held within a reasonable time after the
25 juvenile is taken into custody;

1 (iii) The hearing shall be conducted in an informal
2 manner and shall be flexible enough to consider evidence, including
3 letters, affidavits, and other material, that would not be
4 admissible in an adversarial criminal trial;

5 (iv) The juvenile shall be given a preliminary hearing
6 in all cases when the juvenile is confined, detained, or otherwise
7 significantly deprived of his or her liberty as a result of his
8 or her alleged violation of probation. Such preliminary hearing
9 shall be held before an impartial person other than his or her
10 probation officer or any person directly involved with the case.
11 If, as a result of such preliminary hearing, probable cause is
12 found to exist, the juvenile shall be entitled to a hearing before
13 the juvenile court in accordance with this subsection;

14 (v) If the juvenile is found by the juvenile court to
15 have violated the terms of his or her probation, the juvenile court
16 may modify the terms and conditions of the probation order, extend
17 the period of probation, or enter any order of disposition that
18 could have been made at the time the original order of probation
19 was entered; and

20 (vi) In cases when the juvenile court revokes probation,
21 it shall enter a written statement as to the evidence relied on and
22 the reasons for revocation.

23 Sec. 3. Original sections 29-2262.06 and 43-286, Reissue
24 Revised Statutes of Nebraska, are repealed.