

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 670

Introduced by Flood, 19.

Read first time January 19, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to juveniles; to amend sections 29-2262.06 and
2 43-286, Reissue Revised Statutes of Nebraska; to
3 authorize court-ordered conditions relating to
4 dispositions; to harmonize provisions; and to repeal the
5 original 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 an adult
5 offender to probation, the court shall require the probationer to pay
6 a one-time administrative enrollment fee and thereafter a monthly
7 probation programming fee. A juvenile court in the disposition of a
8 juvenile who is placed upon probation may also order, as a condition
9 of probation, the juvenile to be a participant in non-probation-based
10 programs or services, and the court shall order payment of fees as
11 provided in this section.

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

1 probation-based program or service. This subdivision does not
2 preclude a court or other governmental entity from charging
3 additional local fees for participation in such non-probation-based
4 programs and services or other similar non-probation-based programs
5 and services.

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

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

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

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

23 (4) The court shall waive payment of the monthly
24 probation programming fees in whole or in part if after a hearing a
25 determination is made that such payment would constitute an undue

1 hardship on the offender due to limited income, employment or school
2 status, or physical or mental handicap. Such waiver shall be in
3 effect only during the period of time that the probationer or
4 participant in a non-probation-based program or service is unable to
5 pay his or her monthly probation programming fee.

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

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

21 (7) No probationer or participant in a non-probation-
22 based program or service shall be required to pay more than one
23 monthly probation programming fee per month. This subsection does not
24 preclude local fees as provided in subsection (2) of this section.

25 (8) The imposition of monthly probation programming fees

1 in this section shall be considered separate and apart from the fees
2 described in subdivisions (2)(m) and (o) of section 29-2262.

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

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

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

16 43-286 (1) When any juvenile is adjudicated to be a
17 juvenile described in subdivision (1), (2), or (4) of section 43-247:

18 (a) The court may continue the dispositional portion of
19 the hearing, from time to time upon such terms and conditions as the
20 court may prescribe, including an order of restitution of medical
21 expenses incurred or any property stolen or damaged or an order
22 requiring the juvenile to participate in community service programs,
23 if such order is in the interest of the juvenile's reformation or
24 rehabilitation, and, subject to the further order of the court, may:

25 (i) Place the juvenile on probation subject to the

1 supervision of a probation officer+ and under any conditions deemed
2 by the court to insure that the juvenile will lead a law-abiding life
3 or deemed by the court to be reasonably related to the rehabilitation
4 of the juvenile, including, but not limited to, the following:

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

9 (B) To attend or reside in an institution or facility
10 established for the instruction, recreation, staff secure detention,
11 or residence of juveniles;

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

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

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

25 (F) To participate in any evaluations, offender

1 assessment screens, and rehabilitative treatment;

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

4 (H) To be placed on house arrest or curfew monitored by
5 tracker or electronic surveillance device or system and to pay the
6 cost of such device or system if the juvenile has the financial
7 ability to pay;

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

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

13 (K) To pay restitution for any property stolen or damaged
14 or for any medical expenses incurred if the juvenile has the
15 financial ability to pay;

16 (ii) Permit the juvenile to remain in his or her own home
17 or be placed in a suitable family home, subject to the supervision of
18 the probation officer with any conditions deemed appropriate by the
19 juvenile court as allowed in subdivision (1)(a)(i) of this section;

20 or

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

25 If the court has committed the juvenile to the care and custody of

1 the Department of Health and Human Services, the department shall pay
2 the costs of the suitable family home or institution which are not
3 otherwise paid by the juvenile's parents.

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

12 (b) The court may commit such juvenile to the Office of
13 Juvenile Services, but a juvenile under the age of twelve years shall
14 not be placed at the Youth Rehabilitation and Treatment Center-Geneva
15 or the Youth Rehabilitation and Treatment Center-Kearney unless he or
16 she has violated the terms of probation or has committed an
17 additional offense and the court finds that the interests of the
18 juvenile and the welfare of the community demand his or her
19 commitment. This minimum age provision shall not apply if the act in
20 question is murder or manslaughter.

21 (2) When any juvenile is found by the court to be a
22 juvenile described in subdivision (3)(b) of section 43-247, the court
23 may enter such order as it is empowered to enter under subdivision
24 (1)(a) of this section or enter an order committing or placing the
25 juvenile to the care and custody of the Department of Health and

1 Human Services.

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

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

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

1 (i) The motion shall set forth specific factual
2 allegations of the alleged violations and a copy of such motion shall
3 be served on all persons required to be served by sections 43-262 to
4 43-267;

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

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

22 (iv) The juvenile shall be given a preliminary hearing in
23 all cases when the juvenile is confined, detained, or otherwise
24 significantly deprived of his or her liberty as a result of his or
25 her alleged violation of probation. Such preliminary hearing shall be

1 held before an impartial person other than his or her probation
2 officer or any person directly involved with the case. If, as a
3 result of such preliminary hearing, probable cause is found to exist,
4 the juvenile shall be entitled to a hearing before the court in
5 accordance with this subsection;

6 (v) If the juvenile is found by the court to have
7 violated the terms of his or her probation, the court may modify the
8 terms and conditions of the probation order, extend the period of
9 probation, or enter any order of disposition that could have been
10 made at the time the original order of probation was entered; and

11 (vi) In cases when the court revokes probation, it shall
12 enter a written statement as to the evidence relied on and the
13 reasons for revocation.

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