

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 395

Introduced by Morfeld, 46.

Read first time January 13, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to bail; to amend sections 29-901, 29-901.01,
- 2 and 29-901.05, Reissue Revised Statutes of Nebraska; to change
- 3 provisions relating to conditions and ability to pay; and to repeal
- 4 the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-901, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-901 (1) Any bailable defendant shall be ordered released from
4 custody pending judgment on his or her personal recognizance unless the
5 judge determines in the exercise of his or her discretion that such a
6 release will not reasonably assure the appearance of the defendant as
7 required or that such a release could jeopardize the safety and
8 maintenance of evidence or the safety of victims, witnesses, or other
9 persons in the community. The court shall consider all methods of bond
10 and conditions of release to avoid pretrial incarceration. If the court
11 imposes an appearance bond requiring payment of deposit, the court shall
12 appoint counsel to represent such defendant upon finding that the
13 defendant is indigent. When such determination is made, the judge shall
14 consider, as the primary factor, the defendant's financial ability to pay
15 a bond and shall impose the least onerous of the following conditions
16 that will reasonably assure the defendant's appearance or that will
17 eliminate or minimize the risk of harm to others or the public at large
18 either in lieu of or in addition to such a release impose the first of
19 the following conditions of release which will reasonably assure the
20 appearance of the person for trial or, if no single condition gives that
21 assurance, any combination of the following conditions:

22 (a) ~~(1)~~ Place the defendant in the custody of a designated person or
23 organization agreeing to supervise the defendant;

24 (b) ~~(2)~~ Place restrictions on the travel, association, or place of
25 abode of the defendant during the period of such release; or

26 (c) ~~(3)~~ Require, at the option of any bailable defendant, either of
27 the following:

28 (i) ~~(a)~~ The execution of an appearance bond in a specified amount
29 and the deposit with the clerk of the court in cash of a sum not to
30 exceed ten percent of the amount of the bond, ninety percent of such
31 deposit to be returned to the defendant upon the performance of the

1 appearance or appearances and ten percent to be retained by the clerk as
2 appearance bond costs, except that when no charge is subsequently filed
3 against the defendant or if the charge or charges which are filed are
4 dropped before the appearance of the defendant which the bond was to
5 assure, the entire deposit shall be returned to the defendant. If the
6 bond is subsequently reduced by the court after the original bond has
7 been posted, no additional appearance bond costs shall be retained by the
8 clerk. The difference in the appearance bond costs between the original
9 bond and the reduced bond shall be returned to the defendant. In no event
10 shall the deposit be less than twenty-five dollars. Whenever jurisdiction
11 is transferred from a court requiring an appearance bond under this
12 subdivision to another state court, the transferring court shall transfer
13 the ninety percent of the deposit remaining after the appearance bond
14 costs have been retained. No further costs shall be levied or collected
15 by the court acquiring jurisdiction; or

16 (ii) ~~(b)~~ The execution of a bail bond with such surety or sureties
17 as shall seem proper to the judge or, in lieu of such surety or sureties,
18 at the option of such person, a cash deposit of such sum so fixed,
19 conditioned for his or her appearance before the proper court, to answer
20 the offense with which he or she may be charged and to appear at such
21 times thereafter as may be ordered by the proper court. The cash deposit
22 shall be returned to the defendant upon the performance of all
23 appearances.

24 (2) If the amount of bail is deemed insufficient by the court before
25 which the offense is pending, the court may order an increase of such
26 bail and the defendant shall provide the additional undertaking, written
27 or cash, to secure his or her release. All recognizances in criminal
28 cases shall be in writing and be continuous from term to term until final
29 judgment of the court in such cases and shall also extend, when the court
30 has suspended execution of sentence for a limited time, as provided in
31 section 29-2202, or, when the court has suspended execution of sentence

1 to enable the defendant to apply for a writ of error to the Supreme Court
2 or Court of Appeals, as provided in section 29-2301, until the period of
3 suspension has expired. When two or more indictments or informations are
4 returned against the same person at the same term of court, the
5 recognizance given may be made to include all offenses charged therein.
6 Each surety on such recognizance shall be required to justify under oath
7 in a sum twice the amount of such recognizance and give the description
8 of real estate owned by him or her of a value above encumbrance equal to
9 the amount of such justification and shall name all other cases pending
10 in which he or she is a surety. No one shall be accepted as surety on
11 recognizance aggregating a sum in excess of his or her equity in the real
12 estate, but such recognizance shall not constitute a lien on the real
13 estate described therein until judgment is entered thereon against such
14 surety. ~~;~~

15 (3) In order to assure compliance with the conditions of release
16 referred to in subsection (1) of this section, the court may order a
17 defendant to be supervised by an approved person or organization or a
18 pretrial services program. A court shall waive any fees or costs
19 associated with the conditions of release or supervision if the court
20 finds the defendant is unable to pay for such costs. Under no
21 circumstances should eligibility of release or supervision by such
22 pretrial release program be conditioned upon the defendant's ability to
23 pay. While under supervision of an approved entity, and in addition to
24 the conditions of release referred to in subsection (1) of this section,
25 the court may impose the following conditions:

26 (a) Periodic telephone contact by the defendant with the
27 organization or pretrial services program;

28 (b) Periodic office visits by the defendant to the organization or
29 pretrial services program;

30 (c) Periodic visits to the defendant's home by the organization or
31 pretrial services program;

1 (d) Mental health or substance abuse treatment for the defendant,
2 including residential treatment, if the defendant consents or agrees to
3 the treatment;

4 (e) Periodic alcohol or drug testing of the defendant;

5 (f) Domestic violence counseling for the defendant, if the defendant
6 consents or agrees to the counseling;

7 (g) Electronic or global-positioning monitoring of the defendant;
8 and

9 (h) Any other supervision techniques shown by research to increase
10 court appearance and public safety rates for defendants released on bond.

11 (4) The incriminating results of any drug or alcohol test or any
12 information learned by a representative of an organization or program
13 shall not be admissible in any proceeding, except for a proceeding
14 relating to revocation or amendment of conditions of bond release.

15 ~~(4) Impose any other condition deemed reasonably necessary to assure~~
16 ~~appearances as required, including a condition requiring that the~~
17 ~~defendant return to custody after specified hours.~~

18 Sec. 2. Section 29-901.01, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 29-901.01 In determining which condition or conditions of release
21 shall reasonably assure appearance and deter possible threats to the
22 safety and maintenance of evidence or the safety of victims, witnesses,
23 or other persons in the community, the judge shall, on the basis of
24 available information, consider the defendant's financial ability to pay
25 as the primary factor in setting the amount of bond. The judge may also
26 take into account the nature and circumstances of the offense charged,
27 including any information to indicate that the defendant might engage in
28 additional criminal activity or pose a threat to himself or herself, yet
29 to be collected evidence, alleged victims, potential witnesses, or
30 members of the general public, the defendant's family ties, employment,
31 ~~financial resources, character and mental condition,~~ the length of the

1 defendant's residence in the community, the defendant's record of
2 criminal convictions, and the defendant's record of appearances at court
3 proceedings or of flight to avoid prosecution or of failure to appear at
4 court proceedings.

5 Sec. 3. Section 29-901.05, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 29-901.05 (1) It shall be the duty of the judges of the county court
8 in each county to prepare and adopt, by a majority vote, a schedule of
9 bail for all misdemeanor offenses and such other offenses as the judges
10 deem necessary. It shall contain a list of such offenses and the amounts
11 of bail applicable thereto as the judges determine to be appropriate. In
12 setting the bond amounts, the primary consideration for the judges shall
13 be the defendants' financial ability to pay such amounts of bail. If the
14 schedule does not list all misdemeanor and other offenses specifically,
15 it shall contain a general clause for misdemeanors and a separate one for
16 any other offenses providing for designated amounts of bail as the judges
17 of the county determine to be appropriate for all such offenses. The
18 schedule of bail may be revised from time to time by the judges of the
19 county, and the presiding county court judge at each county seat shall
20 call not more than two meetings nor less than one meeting each year of
21 all judges of the county court in the county for the purpose of
22 establishing or revising a countywide uniform bail schedule. A copy of
23 the schedule shall be sent to the officer in charge of the county jail
24 and to the officer in charge of each city jail within the county, shall
25 be posted prominently in the courthouse, and may be posted on the web
26 site of the county or court. Such schedule shall be provided to members
27 of the public upon request.

28 (2) When bail has been set by a judge for a particular offense or
29 offender, any sheriff or other peace officer may take bail in accordance
30 with the provisions of section 29-901 and release the offender to appear
31 in accordance with the conditions of the bail bond, the notice to appear,

1 or the summons. Such officer shall give a receipt to the offender for the
2 bail so taken and within a reasonable time deposit such bail with the
3 clerk of the court having jurisdiction of the offense.

4 Sec. 4. Original sections 29-901, 29-901.01, and 29-901.05, Reissue
5 Revised Statutes of Nebraska, are repealed.