

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 91

Introduced by Wayne, 13.

Read first time January 10, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to provide for deferred
- 2 judgments by courts as prescribed; and to provide a duty for the
- 3 Revisor of Statutes.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1)(a) A court may, upon a finding of guilt for which a
2 judgment of conviction may be rendered, after giving the prosecutor and
3 the defendant the right to be heard, defer the adjudication of guilt and
4 the imposition of a sentence and place the defendant on probation, upon
5 conditions as the court may require under section 29-2262, and retain
6 power to pronounce judgment and impose a sentence subject to the
7 defendant's compliance with conditions of probation set by the court as a
8 condition of the deferred judgment. The defendant shall be responsible
9 for the payment of all administrative and programming fees as provided in
10 section 5 of this act upon the entry of a deferred judgment. The
11 administration, supervision, and revocation of such probation shall be
12 governed by the Nebraska Probation Administration Act and sections
13 29-2270 to 29-2273.

14 (b) Upon a showing by the prosecuting attorney that the defendant is
15 intentionally violating the conditions of probation, the court may revoke
16 the defendant's probation, pronounce judgment, and impose such new
17 sentence as would have been imposed originally for the crime for which
18 the defendant was convicted.

19 (c) Upon fulfillment of the conditions of probation and the payment
20 or waiver of all administrative and programming fees assessed under
21 section 5 of this act, the defendant shall have his or her charge
22 dismissed without entry of judgment.

23 (2) A defendant shall not be eligible for a deferred judgment if:

24 (a) The defendant previously has been convicted of a felony anywhere
25 in the United States;

26 (b) Prior to the commission of the offense, the defendant had been
27 granted a deferred judgment or substantially similar relief two or more
28 times anywhere in the United States, except for participation in a
29 pretrial diversion program established pursuant to sections 29-3601 to
30 29-3609 or a substantially similar pretrial diversion program in another
31 jurisdiction;

1 (c) Prior to the commission of the offense the defendant had been
2 granted a deferred judgment or substantially similar relief for a felony
3 anywhere in the United States within the preceding five years, measured
4 from the date of granting of the prior deferred judgment to the date of
5 commission of the offense, except for participation in a pretrial
6 diversion program established pursuant to sections 29-3601 to 29-3609 or
7 a substantially similar pretrial diversion program in another
8 jurisdiction;

9 (d) The defendant is not eligible for probation; or

10 (e) The defendant is a business entity and not a person.

11 (3) A defendant may be disqualified under subsection (2) of this
12 section for a previous conviction for a felony or previous grant of
13 deferred judgment or substantially similar relief arising from the laws
14 of this state, the United States, the District of Columbia, or any state,
15 territory, possession, or tribe, only if:

16 (a) In the case of a previous felony, such felony was classified as
17 a felony by the law under which the defendant was convicted at the time
18 of such prior conviction; and

19 (b) Such previous felony conviction, deferred judgment, or
20 substantially similar relief was the result of a case in which:

21 (i) The defendant was represented by counsel in the case or
22 knowingly and intelligently waived the right to counsel in the case; and

23 (ii) In the case of a prosecution for a crime for which the
24 defendant was entitled to a jury trial in the jurisdiction in which the
25 case was tried, either:

26 (A) The case was tried to a jury; or

27 (B) The defendant knowingly and intelligently waived the right to
28 have the case tried to a jury.

29 Sec. 2. A deferred judgment under section 1 of this act shall be
30 entered promptly by the clerk of the court into a statewide data base,
31 which shall serve as the deferred judgment docket. The deferred judgment

1 docket shall be created and maintained by the State Court Administrator.
2 The docket shall contain a permanent record of the deferred judgment,
3 including the name and date of birth of the defendant, the docket number
4 of the case, the nature of the offense, and the date of the deferred
5 judgment. Before granting deferred judgment in any case, the court shall
6 search the deferred judgment docket and consider any prior record of
7 deferred judgment against the defendant. The permanent record provided
8 for in this section shall be confidential and not a public record. The
9 permanent record shall only be made available to the defendant and his or
10 her attorney, the clerk of the court, any judge or prosecutor in this
11 state, and any committee or commission tasked by the Legislature with
12 tracking the implementation of and measuring the efficacy of the deferred
13 judgment program.

14 Sec. 3. (1) Prior to sentencing a defendant who is eligible for
15 probation, the court shall consider whether to defer judgment and place
16 the defendant on probation under section 1 of this act.

17 (2) In considering whether to defer judgment, the court first shall
18 determine if entering a deferred judgment will (a) provide the maximum
19 opportunity for the rehabilitation of the defendant and (b) protect the
20 community from further offenses by the defendant. In making this
21 determination, the court shall consider the age of the defendant, the
22 defendant's prior record of convictions and deferred judgments, the
23 defendant's employment and family circumstances, the defendant's mental
24 health and substance abuse history and treatment options available in the
25 community and the correctional system, the nature and circumstances of
26 the offense, and such other factors as are appropriate. The court may
27 order a presentence investigation pursuant to section 29-2261 for the
28 purpose of determining whether the defendant is a suitable candidate for
29 deferred judgment. When granting or denying a deferred judgment, the
30 court shall make a specific written statement of its reasons for the
31 decision and the facts supporting the decision.

1 (3) If the court decides that the defendant is not eligible for
2 deferred judgment, the court shall proceed to pronounce judgment as
3 provided by law.

4 Sec. 4. (1) The term of probation for a person on probation as a
5 result of a deferred judgment shall be as follows:

6 (a) For a felony, not less than two years nor more than five years;
7 and

8 (b) For a misdemeanor, not less than one year nor more than two
9 years.

10 (2) In determining the term of probation, the court shall consider
11 what period of time is most likely to provide the maximum opportunity for
12 the rehabilitation of the defendant, what period of time will suffice to
13 determine whether rehabilitation has been successful, and what period of
14 time will suffice to protect the community from further offenses by the
15 defendant.

16 (3) The term of probation may be extended for up to one year subject
17 to section 29-2263.

18 (4) The court may reduce the term of probation or discharge the
19 defendant from probation at any time if the court determines that the
20 purpose of probation has been fulfilled and the administrative and
21 programming fees imposed under section 5 of this act have been paid or
22 waived.

23 (5) The court may, as a condition of probation, impose on the
24 defendant any requirements permitted by section 29-2262. The court may
25 modify, eliminate, or add further conditions at any time pursuant to
26 section 29-2263.

27 Sec. 5. Upon entry of a deferred judgment pursuant to section 1 of
28 this act, the court shall order the defendant to pay all administrative
29 and programming fees authorized under section 29-2262.06, unless waived
30 under such section. The defendant shall pay the fees described in section
31 29-2262.06 to the clerk of the court. The clerk of the court shall remit

1 all fees so collected to the State Treasurer for credit to the Probation
2 Program Cash Fund.

3 Sec. 6. An entry of deferred judgment pursuant to section 1 of this
4 act is a final order as defined by section 25-1902.

5 Sec. 7. The Revisor of Statutes shall assign sections 1 to 6 of
6 this act to Chapter 29, article 22.