

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1155

Introduced by Cavanaugh, J., 9.

Read first time January 19, 2022

Committee:

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-901, Revised Statutes Supplement, 2021; to require implementation
- 3 of a pilot program for pretrial release; to state intent regarding
- 4 appropriations; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-901, Revised Statutes Supplement, 2021, is
2 amended to read:

3 29-901 (1) Except as provided in subsection (2) of this section, any
4 bailable defendant shall be ordered released from custody pending
5 judgment on his or her personal recognizance unless the judge determines
6 in the exercise of his or her discretion that such a release will not
7 reasonably assure the appearance of the defendant as required or that
8 such a release could jeopardize the safety and maintenance of evidence or
9 the safety of victims, witnesses, or other persons in the community.

10 (2)(a) This subsection applies to any bailable defendant who is
11 charged with one or more Class IIIA, IV, or V misdemeanors or violations
12 of city or county ordinances, except when:

13 (i) The victim is an intimate partner as defined in section 28-323;
14 or

15 (ii) The defendant is charged with one or more violations of section
16 60-6,196 or 60-6,197 or city or village ordinances enacted in conformance
17 with section 60-6,196 or 60-6,197.

18 (b) Any bailable defendant described in this subsection shall be
19 ordered released from custody pending judgment on his or her personal
20 recognizance or under other conditions of release, other than payment of
21 a bond, unless:

22 (i) The defendant has previously failed to appear in the instant
23 case or any other case in the previous six months;

24 (ii) The judge determines in the exercise of his or her discretion
25 that such a release will not reasonably assure the appearance of the
26 defendant as required or that such a release could jeopardize the safety
27 and maintenance of evidence or the safety of the defendant, victims,
28 witnesses, or other persons; and

29 (iii) The defendant was arrested pursuant to a warrant.

30 (3) The court shall consider all methods of bond and conditions of
31 release to avoid pretrial incarceration. If the judge determines that the

1 defendant shall not be released on his or her personal recognizance, the
2 judge shall consider the defendant's financial ability to pay a bond and
3 shall impose the least onerous of the following conditions that will
4 reasonably assure the defendant's appearance or that will eliminate or
5 minimize the risk of harm to others or the public at large:

6 (a) Place the defendant in the custody of a designated person or
7 organization agreeing to supervise the defendant;

8 (b) Place restrictions on the travel, association, or place of abode
9 of the defendant during the period of such release; or

10 (c) Require, at the option of any bailable defendant, either of the
11 following:

12 (i) The execution of an appearance bond in a specified amount and
13 the deposit with the clerk of the court in cash of a sum not to exceed
14 ten percent of the amount of the bond, ninety percent of such deposit to
15 be returned to the defendant upon the performance of the appearance or
16 appearances and ten percent to be retained by the clerk as appearance
17 bond costs, except that when no charge is subsequently filed against the
18 defendant or if the charge or charges which are filed are dropped before
19 the appearance of the defendant which the bond was to assure, the entire
20 deposit shall be returned to the defendant. If the bond is subsequently
21 reduced by the court after the original bond has been posted, no
22 additional appearance bond costs shall be retained by the clerk. The
23 difference in the appearance bond costs between the original bond and the
24 reduced bond shall be returned to the defendant. In no event shall the
25 deposit be less than twenty-five dollars. Whenever jurisdiction is
26 transferred from a court requiring an appearance bond under this
27 subdivision to another state court, the transferring court shall transfer
28 the ninety percent of the deposit remaining after the appearance bond
29 costs have been retained. No further costs shall be levied or collected
30 by the court acquiring jurisdiction; or

31 (ii) The execution of a bail bond with such surety or sureties as

1 shall seem proper to the judge or, in lieu of such surety or sureties, at
2 the option of such person, a cash deposit of such sum so fixed,
3 conditioned for his or her appearance before the proper court, to answer
4 the offense with which he or she may be charged and to appear at such
5 times thereafter as may be ordered by the proper court. The cash deposit
6 shall be returned to the defendant upon the performance of all
7 appearances.

8 (4) If the court requires the defendant to execute an appearance
9 bond requiring the defendant to post money or requires the defendant to
10 execute a bail bond, the court shall appoint counsel for the defendant if
11 the court finds the defendant is financially unable to pay the amount
12 required and is indigent.

13 (5) If the amount of bail is deemed insufficient by the court before
14 which the offense is pending, the court may order an increase of such
15 bail and the defendant shall provide the additional undertaking, written
16 or cash, to secure his or her release. All recognizances in criminal
17 cases shall be in writing and be continuous from term to term until final
18 judgment of the court in such cases and shall also extend, when the court
19 has suspended execution of sentence for a limited time, as provided in
20 section 29-2202, or, when the court has suspended execution of sentence
21 to enable the defendant to apply for a writ of error to the Supreme Court
22 or Court of Appeals, as provided in section 29-2301, until the period of
23 suspension has expired. When two or more indictments or informations are
24 returned against the same person at the same term of court, the
25 recognizance given may be made to include all offenses charged therein.
26 Each surety on such recognizance shall be required to justify under oath
27 in a sum twice the amount of such recognizance and give the description
28 of real estate owned by him or her of a value above encumbrance equal to
29 the amount of such justification and shall name all other cases pending
30 in which he or she is a surety. No one shall be accepted as surety on
31 recognizance aggregating a sum in excess of his or her equity in the real

1 estate, but such recognizance shall not constitute a lien on the real
2 estate described therein until judgment is entered thereon against such
3 surety.

4 (6) In order to assure compliance with the conditions of release
5 referred to in subsection (3) of this section, the court may order a
6 defendant to be supervised by a person, an organization, or a pretrial
7 services program approved by the county board. A court shall waive any
8 fees or costs associated with the conditions of release or supervision if
9 the court finds the defendant is unable to pay for such costs.
10 Eligibility for release or supervision by such pretrial release program
11 shall under no circumstances be conditioned upon the defendant's ability
12 to pay. While under supervision of an approved entity, and in addition to
13 the conditions of release referred to in subsection (3) of this section,
14 the court may impose the following conditions:

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

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

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

21 (d) Mental health or substance abuse treatment for the defendant,
22 including residential treatment, if the defendant consents or agrees to
23 the treatment;

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

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

27 (g) Electronic or global-positioning monitoring of the defendant;

28 (h) Participation in a 24/7 sobriety program under the 24/7 Sobriety
29 Program Act; and

30 (i) Any other supervision techniques shown by research to increase
31 court appearance and public safety rates for defendants released on bond.

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

5 (8)(a) Subject to available funding as appropriated by the
6 Legislature, the State Court Administrator shall develop and implement a
7 three-year pilot program for pretrial risk assessment and services, using
8 the conditions of release as set forth in subsection (6) of this section.
9 The pilot program shall provide for the implementation of a pretrial risk
10 assessment tool and costs associated with the implementation of
11 conditions of release and shall include:

12 (i) Participation of district and county courts;

13 (ii) Use of an evidence-informed, validated risk assessment tool to
14 inform decisions regarding bonds and conditions of release to avoid
15 pretrial incarceration;

16 (iii) In cases in which a victim is an intimate partner of a
17 defendant as defined in section 28-323, mandatory use of a risk
18 assessment tool specifically validated to assess risk or lethality in
19 domestic abuse situations; and

20 (iv) Implementation in at least one county with a population of one
21 hundred thousand inhabitants or more and one county with a population of
22 fewer than one hundred thousand inhabitants.

23 (b) It is the intent of the Legislature to appropriate five hundred
24 thousand dollars each year from the General Fund for fiscal years
25 2022-23, 2023-24, and 2024-25 to the Supreme Court to carry out the
26 pretrial risk assessment and services pilot program.

27 Sec. 2. Original section 29-901, Revised Statutes Supplement, 2021,
28 is repealed.