

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 282**

Introduced by Hansen, M., 26; Cavanaugh, 6.

Read first time January 15, 2019

Committee:

1 A BILL FOR AN ACT relating to bail; to amend section 29-901, Revised  
2 Statutes Cumulative Supplement, 2018; to change provisions relating  
3 to granting of bail in cases involving certain misdemeanors or  
4 violations of city or county ordinances; to require appointment of  
5 counsel; to harmonize provisions; and to repeal the original  
6 section.

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

1 Section 1. Section 29-901, Revised Statutes Cumulative Supplement,  
2 2018, is amended to read:

3 29-901 (1) Except as provided in subsection (2) of this section, any  
4 Any 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 of the following offenses, except when the  
12 victim is an intimate partner as defined in section 28-323:

13 (i) A class IIIA, IV, or V misdemeanor; or

14 (ii) A violation of a city or county ordinance.

15 (b) Any bailable defendant described in this subsection shall be  
16 ordered released from custody pending judgment on his or her personal  
17 recognizance unless:

18 (i) The defendant has previously failed to appear in the instant  
19 case; and

20 (ii) The judge determines in the exercise of his or her discretion  
21 that such a release will not reasonably assure the appearance of the  
22 defendant as required or that such a release could jeopardize the safety  
23 and maintenance of evidence or the safety of victims, witnesses, or other  
24 persons in the community.

25 (3) The court shall consider all methods of bond and conditions of  
26 release to avoid pretrial incarceration. If the judge determines that the  
27 defendant shall not be released on his or her personal recognizance, the  
28 judge shall consider the defendant's financial ability to pay a bond and  
29 shall impose the least onerous of the following conditions that will  
30 reasonably assure the defendant's appearance or that will eliminate or  
31 minimize the risk of harm to others or the public at large:

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

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

5 (c) Require, at the option of any bailable defendant, either of the  
6 following:

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

26 (ii) The execution of a bail bond with such surety or sureties as  
27 shall seem proper to the judge or, in lieu of such surety or sureties, at  
28 the option of such person, a cash deposit of such sum so fixed,  
29 conditioned for his or her appearance before the proper court, to answer  
30 the offense with which he or she may be charged and to appear at such  
31 times thereafter as may be ordered by the proper court. The cash deposit

1 shall be returned to the defendant upon the performance of all  
2 appearances.

3 (4) If the court requires the defendant to execute an appearance or  
4 bail bond, the court shall appoint counsel for the defendant if the court  
5 finds the defendant to be indigent.

6 (5) (2) If the amount of bail is deemed insufficient by the court  
7 before which the offense is pending, the court may order an increase of  
8 such bail and the defendant shall provide the additional undertaking,  
9 written or cash, to secure his or her release. All recognizances in  
10 criminal cases shall be in writing and be continuous from term to term  
11 until final judgment of the court in such cases and shall also extend,  
12 when the court has suspended execution of sentence for a limited time, as  
13 provided in section 29-2202, or, when the court has suspended execution  
14 of sentence to enable the defendant to apply for a writ of error to the  
15 Supreme Court or Court of Appeals, as provided in section 29-2301, until  
16 the period of suspension has expired. When two or more indictments or  
17 informations are returned against the same person at the same term of  
18 court, the recognizance given may be made to include all offenses charged  
19 therein. Each surety on such recognizance shall be required to justify  
20 under oath in a sum twice the amount of such recognizance and give the  
21 description of real estate owned by him or her of a value above  
22 encumbrance equal to the amount of such justification and shall name all  
23 other cases pending in which he or she is a surety. No one shall be  
24 accepted as surety on recognizance aggregating a sum in excess of his or  
25 her equity in the real estate, but such recognizance shall not constitute  
26 a lien on the real estate described therein until judgment is entered  
27 thereon against such surety.

28 (6) (3) In order to assure compliance with the conditions of release  
29 referred to in subsection (3) (1) of this section, the court may order a  
30 defendant to be supervised by a person, an organization, or a pretrial  
31 services program approved by the county board. A court shall waive any

1 fees or costs associated with the conditions of release or supervision if  
2 the court finds the defendant is unable to pay for such costs.  
3 Eligibility for release or supervision by such pretrial release program  
4 shall under no circumstances be conditioned upon the defendant's ability  
5 to pay. While under supervision of an approved entity, and in addition to  
6 the conditions of release referred to in subsection (3) ~~(1)~~ of this  
7 section, the court may impose the following conditions:

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

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

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

14 (d) Mental health or substance abuse treatment for the defendant,  
15 including residential treatment, if the defendant consents or agrees to  
16 the treatment;

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

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

20 (g) Electronic or global-positioning monitoring of the defendant;  
21 and

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

24 (7) ~~(4)~~ The incriminating results of any drug or alcohol test or any  
25 information learned by a representative of an organization or program  
26 shall not be admissible in any proceeding, except for a proceeding  
27 relating to revocation or amendment of conditions of bond release.

28 Sec. 2. Original section 29-901, Revised Statutes Cumulative  
29 Supplement, 2018, is repealed.