

LEGISLATIVE BILL 828

Approved by the Governor March 13, 1974

Introduced by Judiciary Committee, Luedtke, 26, Chmn.;
Richendifer, 16; Chambers, 11; Carpenter, 48;
Barnett, 26; Fellman, 4

AN ACT to amend sections 29-901, 29-903, and 29-909,
Revised Statutes Supplement, 1972, relating to
bail and its incidents; to provide conditions
for pretrial release of bailable defendants;
and to repeal the original sections.

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

Section 1. That section 29-901, Revised Statutes
Supplement, 1972, be amended to read as follows:

29-901. ~~When any person charged with the
commission of any bailable offense shall be confined in
jail, whether committed by warrant under the hand and
seal of any judge or by the sheriff or coroner, under any
warrant upon indictment found, it shall be lawful for any
judge of the Supreme Court, judge of the district court
within his district, or county judge within his district,
or municipal judge within his jurisdiction to admit such
person to bail by recognizing such person in such sum and
any bailable defendant shall be ordered released from
custody pending judgment, on his personal recognizance,
unless the judge determines in the exercise of his
discretion that such a release will not reasonably assure
the appearance of the defendant as required. When such
determination is made, the judge shall either in lieu of
or in addition to such a release, impose the first of the
following conditions of release which will reasonably
assure the appearance of the person for trial or, if no
single condition gives that assurance, any combination of
the following conditions:~~

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

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

(3) Require, at the option of any bailable
defendant, either of the following:

(a) The execution of an appearance bond in a
specified amount and the deposit with the clerk of the

court in cash or other qualified security of a sum not to exceed ten per cent of the amount of the bond, ninety per cent of such deposit to be returned to the defendant upon the performance of the appearance or appearances, and ten per cent to be retained by the clerk as bail bond costs. In no event shall the deposit be less than twenty-five dollars; or

(k) The execution of a bail bond with such surety or sureties as to such judge shall seem proper; or, in lieu of such surety or sureties, at the option of such person, a cash deposit of such sum so fixed, conditioned for his appearance before the proper court, to answer the offense wherewith he may be charged, and to appear at such times thereafter as may be ordered by the proper court. If the amount of bail is deemed insufficient by the court before whom the offense is pending, the court may order an increase of such bail and the defendant must provide the additional undertaking, written or cash, to secure his release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of sentence for a limited time, as provided in section 29-2202, or when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court, as provided in section 29-2301, until the period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him of a value above encumbrance equal to the amount of such justification, and shall name all other cases pending in which he is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his equity in his real estate, but such recognizance shall not constitute a lien on the real estate described therein until judgment is entered thereon against such surety; or

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

Sec. 2. In determining which condition or conditions of release shall reasonably assure appearance, the judge shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the defendant's family ties, employment,

financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearances at court proceedings or of flight to avoid prosecution or of failure to appear at court proceedings.

Sec. 3. Any judge who shall authorize the release of a defendant under section 1 of this act shall issue a written order containing a statement of the condition or conditions imposed, shall inform the defendant of the penalties for violating any of the conditions of such release, and shall advise the defendant that a warrant for his arrest shall be issued immediately upon such violation.

Sec. 4. Any defendant who shall remain in custody for more than twenty-four hours after a judge other than a district court judge imposes bail or any other condition of release, as a result of his inability to fulfill such condition or conditions, shall be brought forthwith before the judge who imposed the condition or conditions and informed of his right to have such conditions reviewed. If the defendant indicates that he desires such a review and is indigent and unable to retain legal counsel, the judge shall appoint an attorney to represent the defendant for the purpose of such review. Unless the conditions of release are amended and the defendant is thereupon released, the judge shall set forth in writing the reasons for requiring such condition or conditions. Any defendant who shall be ordered released by a judge other than a district court judge on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judge who imposed the condition in the same manner as a defendant who remains in full-time custody. In the event that the judge who imposed the condition or conditions of release is not available, any other judge in the district or of the same court may review such conditions.

Sec. 5. Any judge who shall order the release of a defendant on any condition specified in section 1 of this act may at any time amend his order to impose additional or different conditions of release, but if the imposition of different or additional conditions results in the detention of the defendant as a result of his inability to meet such conditions, the provisions of section 4 of this act shall apply.

Sec. 6. When bail has been set by a judge for a particular offense or offender, any sheriff or other peace officer may take bail in accordance with the provisions of section 1 of this act and release the

offender to appear in accordance with the conditions of the bail bond, the notice to appear, or the summons. Such officer shall give a receipt to the offender for the bail so taken and within a reasonable time deposit such bail with the clerk of the court having jurisdiction of the offense.

Sec. 7. When a bailable defendant appears at any judicial proceeding in which such defendant's bail is being considered, the judge at such proceeding shall inform the defendant of the condition or conditions imposed on his release, the penalties for violating any of the conditions of such release, and any options or alternatives available to such defendant.

Sec. 8. That section 29-903, Revised Statutes Supplement, 1972, be amended to read as follows:

29-903. In fixing the amount of bail, the judge admitting to the same shall be governed in the amount and quality of bail required by the direction of the district court in all cases where such court shall have made any order or direction in that behalf. In the event that the district court shall designate an official pretrial release agency for the district, the judge may give consideration to a report and recommendation of such agency and in the event that such agency should recommend the release of the prisoner on his own recognizance, the court may order release of such prisoner without the necessity of posting a cash deposit or requiring the usual sureties set out in section ~~29-904~~ 1 of this act.

Sec. 9. That section 29-909, Revised Statutes Supplement, 1972, be amended to read as follows:

29-909. The district courts of this state are authorized to designate an official pretrial release agency for a district, or for any county within a district, whenever the court is satisfied that such agency can render competent and effective assistance to the court in making its determination of the terms and conditions under which any court should release a prisoner from jail prior to trial. When such a pretrial release agency has been designated, the judge of any court within the district or county in which such agency has been authorized to operate may give consideration to a report and recommendation of such agency and in the event that such agency should recommend the release of the prisoner on his own recognizance, the court may order the release of the prisoner without the necessity of posting a cash deposit or the usual requiring any surety set out in section ~~29-904~~ 1 of this act. Nothing in this section shall restrict any court from releasing a

prisoner on his own recognizance, whether or not he has received a report or recommendation from a pretrial release agency, if the judge determines that such type of release would adequately serve the ends of justice.

Sec. 10. That original sections 29-901, 29-903, and 29-909, Revised Statutes Supplement, 1972, are repealed.