

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 369

Introduced by Lathrop, 12.

Read first time January 18, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to probation and parole; to amend sections
2 29-2257 and 29-2262.06, Reissue Revised Statutes of
3 Nebraska, and sections 29-2252, 29-2255, 29-2262.07, and
4 83-1,102, Revised Statutes Cumulative Supplement, 2012;
5 to provide duties for the probation administrator and the
6 Parole Administrator; to harmonize provisions; to
7 eliminate obsolete provisions; and to repeal the original
8 sections.

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

1 Section 1. Section 29-2252, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 29-2252 The administrator shall:

4 (1) Supervise and administer the office;

5 (2) Establish and maintain policies, standards, and
6 procedures for the system, with the concurrence of the Supreme Court;

7 (3) Prescribe and furnish such forms for records and
8 reports for the system as shall be deemed necessary for uniformity,
9 efficiency, and statistical accuracy;

10 (4) Establish minimum qualifications for employment as a
11 probation officer in this state and establish and maintain such
12 additional qualifications as he or she deems appropriate for
13 appointment to the system. Qualifications for probation officers
14 shall be established in accordance with subsection (4) of section
15 29-2253. An ex-offender released from a penal complex or a county
16 jail may be appointed to a position of deputy probation or parole
17 officer. Such ex-offender shall maintain a record free of arrests,
18 except for minor traffic violations, for one year immediately
19 preceding his or her appointment;

20 (5) Establish and maintain advanced periodic inservice
21 training requirements for the system;

22 (6) Cooperate with all agencies, public or private, which
23 are concerned with treatment or welfare of persons on probation;

24 (7) Organize and conduct training programs for probation
25 officers;

1 (8) Collect, develop, and maintain statistical
2 information concerning probationers, probation practices, and the
3 operation of the system;

4 (9) Interpret the probation program to the public with a
5 view toward developing a broad base of public support;

6 (10) Conduct research for the purpose of evaluating and
7 improving the effectiveness of the system;

8 (11) Adopt and promulgate such rules and regulations as
9 may be necessary or proper for the operation of the office or system;

10 (12) Transmit a report during each even-numbered year to
11 the Supreme Court on the operation of the office for the preceding
12 two calendar years which shall include a historical analysis of
13 probation officer workload, including participation in non-probation-
14 based programs and services. The report shall be transmitted by the
15 Supreme Court to the Governor and the Clerk of the Legislature. The
16 report submitted to the Clerk of the Legislature shall be submitted
17 electronically;

18 (13) Administer the payment by the state of all salaries,
19 travel, and actual and necessary expenses incident to the conduct and
20 maintenance of the office;

21 (14) Use the funds provided under section 29-2262.07 to
22 augment operational or personnel costs associated with the
23 development, implementation, and evaluation of enhanced probation-
24 based programs and non-probation-based programs and services in which
25 probation personnel or probation resources are utilized pursuant to

1 an interlocal agreement authorized by subdivision ~~(16)~~(17) of this
2 section and to purchase services to provide such programs aimed at
3 enhancing adult probationer or non-probation-based program
4 participant supervision in the community and treatment needs of
5 probationers and non-probation-based program participants. Enhanced
6 probation-based programs include, but are not limited to, specialized
7 units of supervision, related equipment purchases and training, and
8 programs that address a probationer's vocational, educational, mental
9 health, behavioral health, or substance abuse treatment needs;

10 (15) Ensure that all expenditures under section
11 29-2262.07 for services that address a probationer's mental health,
12 behavioral health, or substance abuse treatment needs be for services
13 provided by service providers that are licensed pursuant to the
14 Uniform Credentialing Act and audited by the Division of Behavioral
15 Health of the Department of Health and Human Services or by a
16 regional behavioral health authority, accredited by a national
17 accrediting entity with respect to the services being provided, and
18 have provided an annual independent financial audit to the
19 administrator;

20 (16) Ensure that any risk or needs assessment instrument
21 utilized by the system be periodically validated;

22 ~~(16)~~(17) Have the authority to enter into interlocal
23 agreements in which probation resources or probation personnel may be
24 utilized in conjunction with or as part of non-probation-based
25 programs and services. Any such interlocal agreement shall comply

1 with section 29-2255;

2 ~~(17)~~(18) Collaborate with the Community Corrections
3 Division of the Nebraska Commission on Law Enforcement and Criminal
4 Justice and the Office of Parole Administration to develop rules
5 governing the participation of parolees in community corrections
6 programs operated by the Office of Probation Administration; and

7 ~~(18)~~(19) Exercise all powers and perform all duties
8 necessary and proper to carry out his or her responsibilities.

9 Each member of the Legislature shall receive an
10 electronic copy of the report required by subdivision (12) of this
11 section by making a request for it to the administrator.

12 Sec. 2. Section 29-2255, Revised Statutes Cumulative
13 Supplement, 2012, is amended to read:

14 29-2255 Any interlocal agreement authorized by
15 subdivision ~~(16)~~(17) of section 29-2252 shall require the political
16 subdivision party to the agreement to provide sufficient resources to
17 cover all costs associated with the participation of probation
18 personnel or use of probation resources other than costs covered by
19 funds provided pursuant to section 29-2262.07 or substance abuse
20 treatment costs covered by funds appropriated for such purpose.

21 Sec. 3. Section 29-2257, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 29-2257 The Nebraska Probation System is established
24 which shall consist of the probation administrator, chief probation
25 officers, probation officers, and support staff. The system shall be

1 responsible for juvenile intake services, for presentence and other
2 probation investigations, for the direct supervision of persons
3 placed on probation, and for non-probation-based programs and
4 services authorized by an interlocal agreement pursuant to
5 subdivision ~~(16)~~(17) of section 29-2252. The system shall be
6 sufficient in size to assure that no probation officer carries a
7 caseload larger than is compatible with adequate probation
8 investigation or supervision. Probation officers shall be compensated
9 with salaries substantially equal to other state employees who have
10 similar responsibilities.

11 This provision for salary equalization shall apply only
12 to probation officers and support staff and shall not apply to chief
13 probation officers, the probation administrator, the chief deputy
14 administrator, the deputy probation administrator, or any other
15 similarly established management positions.

16 Sec. 4. Section 29-2262.06, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 29-2262.06 (1) Except as otherwise provided in this
19 section, whenever a district court or county court sentences an adult
20 offender to probation, the court shall require the probationer to pay
21 a one-time administrative enrollment fee and thereafter a monthly
22 probation programming fee.

23 (2) Participants in non-probation-based programs or
24 services in which probation personnel or probation resources are
25 utilized pursuant to an interlocal agreement authorized by

1 subdivision ~~(16)~~(17) of section 29-2252 and in which all or a
2 portion of the costs of such probation personnel or such probation
3 resources are covered by funds provided pursuant to section
4 29-2262.07 shall pay the one-time administrative enrollment fee
5 described in subdivision (3)(a) of this section and the monthly
6 probation programming fee described in subdivision (3)(c) of this
7 section. In addition, the provisions of subsections (4), (7), and
8 (10) of this section applicable to probationers apply to participants
9 in non-probation-based programs or services. Any participant in a
10 non-probation-based program or service who defaults on the payment of
11 any such fees may, at the discretion of the court, be subject to
12 removal from such non-probation-based program or service. This
13 subdivision does not preclude a court or other governmental entity
14 from charging additional local fees for participation in such non-
15 probation-based programs and services or other similar non-probation-
16 based programs and services.

17 (3) The court shall establish the administrative
18 enrollment fee and monthly probation programming fees as follows:

19 (a) Adult probationers placed on either probation or
20 intensive supervision probation and participants in non-probation-
21 based programs or services shall pay a one-time administrative
22 enrollment fee of thirty dollars. The fee shall be paid in a lump sum
23 upon the beginning of probation supervision or participation in a
24 non-probation-based program or service;

25 (b) Adult probationers placed on probation shall pay a

1 monthly probation programming fee of twenty-five dollars, not later
2 than the tenth day of each month, for the duration of probation; and

3 (c) Adult probationers placed on intensive supervision
4 probation and participants in non-probation-based programs or
5 services shall pay a monthly probation programming fee of thirty-five
6 dollars, not later than the tenth day of each month, for the duration
7 of probation or participation in a non-probation-based program or
8 service.

9 (4) The court shall waive payment of the monthly
10 probation programming fees in whole or in part if after a hearing a
11 determination is made that such payment would constitute an undue
12 hardship on the offender due to limited income, employment or school
13 status, or physical or mental handicap. Such waiver shall be in
14 effect only during the period of time that the probationer or
15 participant in a non-probation-based program or service is unable to
16 pay his or her monthly probation programming fee.

17 (5) If a probationer defaults in the payment of monthly
18 probation programming fees or any installment thereof, the court may
19 revoke his or her probation for nonpayment, except that probation
20 shall not be revoked nor shall the offender be imprisoned for such
21 nonpayment if the probationer is financially unable to make the
22 payment, if he or she so states to the court in writing under oath,
23 and if the court so finds after a hearing.

24 (6) If the court determines that the default in payment
25 described in subsection (5) of this section was not attributable to a

1 deliberate refusal to obey the order of the court or to failure on
2 the probationer's part to make a good faith effort to obtain the
3 funds required for payment, the court may enter an order allowing the
4 probationer additional time for payment, reducing the amount of each
5 installment, or revoking the fees or the unpaid portion in whole or
6 in part.

7 (7) No probationer or participant in a non-probation-
8 based program or service shall be required to pay more than one
9 monthly probation programming fee per month. This subsection does not
10 preclude local fees as provided in subsection (2) of this section.

11 (8) The imposition of monthly probation programming fees
12 in this section shall be considered separate and apart from the fees
13 described in subdivisions (2)(m) and (o) of section 29-2262.

14 (9) Any adult probationer received for supervision
15 pursuant to ~~section 29-2637~~ or the Interstate Compact for Adult
16 Offender Supervision shall be assessed both a one-time administrative
17 enrollment fee and monthly probation programming fees during the
18 period of time the probationer is actively supervised by Nebraska
19 probation authorities.

20 (10) The probationer or participant in a non-probation-
21 based program or service shall pay the fees described in this section
22 to the clerk of the court. The clerk of the court shall remit all
23 fees so collected to the State Treasurer for credit to the Probation
24 Program Cash Fund.

25 Sec. 5. Section 29-2262.07, Revised Statutes Cumulative

1 Supplement, 2012, is amended to read:

2 29-2262.07 The Probation Program Cash Fund is created.
3 All funds collected pursuant to section 29-2262.06 shall be remitted
4 to the State Treasurer for credit to the fund. Except as otherwise
5 directed by the Supreme Court during the period from November 21,
6 2009, until June 30, 2013, the fund shall be utilized by the
7 administrator for the purposes stated in subdivisions (14) and ~~(17)~~
8 (18) of section 29-2252., ~~except that the State Treasurer shall, on~~
9 ~~or before June 30, 2011, on such date as directed by the budget~~
10 ~~administrator of the budget division of the Department of~~
11 ~~Administrative Services, transfer the amount set forth in Laws 2009,~~
12 ~~LB1, One Hundred First Legislature, First Special Session. Any money~~
13 in the fund available for investment shall be invested by the state
14 investment officer pursuant to the Nebraska Capital Expansion Act and
15 the Nebraska State Funds Investment Act.

16 On July 15, 2010, the State Treasurer shall transfer
17 three hundred fifty thousand dollars from the Probation Program Cash
18 Fund to the Violence Prevention Cash Fund. The Office of Violence
19 Prevention shall distribute such funds as soon as practicable after
20 July 15, 2010, to organizations or governmental entities that have
21 submitted violence prevention plans and that best meet the intent of
22 reducing street and gang violence and reducing homicides and injuries
23 caused by firearms.

24 Sec. 6. Section 83-1,102, Revised Statutes Cumulative
25 Supplement, 2012, is amended to read:

1 83-1,102 The Parole Administrator shall:

2 (1) Supervise and administer the Office of Parole
3 Administration;

4 (2) Establish and maintain policies, standards, and
5 procedures for the field parole service and the community supervision
6 of sex offenders pursuant to section 83-174.03;

7 (3) Divide the state into parole districts and appoint
8 district parole officers, deputy parole officers, if required, and
9 such other employees as may be required to carry out adequate parole
10 supervision of all parolees, adequate probation supervision of
11 probationers as ordered by district judges, prescribe their powers
12 and duties, and obtain office quarters for staff in each district as
13 may be necessary;

14 (4) Cooperate with the Board of Parole, the courts, the
15 Community Corrections Division of the Nebraska Commission on Law
16 Enforcement and Criminal Justice, and all other agencies, public and
17 private, which are concerned with the treatment or welfare of persons
18 on parole;

19 (5) Provide the Board of Parole and district judges with
20 any record of a parolee or probationer which it may require;

21 (6) Make recommendations to the Board of Parole or
22 district judge in cases of violation of the conditions of parole or
23 probation, issue warrants for the arrest of parole or probation
24 violators when so instructed by the board or district judge, notify
25 the Director of Correctional Services of determinations made by the

1 board, and upon instruction of the board, issue certificates of
2 parole and of parole revocation to the facilities and certificates of
3 discharge from parole to parolees;

4 (7) Organize and conduct training programs for the
5 district parole officers and other employees;

6 (8) Use the funds provided under section 83-1,107.02 to
7 augment operational or personnel costs associated with the
8 development, implementation, and evaluation of enhanced parole-based
9 programs and purchase services to provide such programs aimed at
10 enhancing adult parolee supervision in the community and treatment
11 needs of parolees. Such enhanced parole-based programs include, but
12 are not limited to, specialized units of supervision, related
13 equipment purchases and training, and programs that address a
14 parolee's vocational, educational, mental health, behavioral, or
15 substance abuse treatment needs;

16 (9) Ensure that all expenditures under section 29-2262.07
17 for services that address a probationer's mental health, behavioral
18 health, or substance abuse treatment needs be for services provided
19 by service providers that are licensed pursuant to the Uniform
20 Credentialing Act and audited by the Division of Behavioral Health of
21 the Department of Health and Human Services or by a regional
22 behavioral health authority, accredited by a national accrediting
23 entity with respect to the services being provided, and have provided
24 an annual independent financial audit to the administrator;

25 ~~(9)~~—(10) Ensure that any risk or needs assessment

1 instrument utilized by the system be periodically validated; and
2 ~~(10)~~(11) Exercise all powers and perform all duties
3 necessary and proper in carrying out his or her responsibilities.

4 Sec. 7. Original sections 29-2257 and 29-2262.06, Reissue
5 Revised Statutes of Nebraska, and sections 29-2252, 29-2255,
6 29-2262.07, and 83-1,102, Revised Statutes Cumulative Supplement,
7 2012, are repealed.