

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1334

Introduced by Cavanaugh, J., 9.

Read first time January 17, 2024

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend sections
- 2 29-2262.06 and 29-2267, Reissue Revised Statutes of Nebraska; to
- 3 change provisions relating to the revocation of probation and waiver
- 4 of probation fees; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2262.06, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 29-2262.06 (1) Except as otherwise provided in this section,
4 whenever a district court or county court sentences an adult offender to
5 probation, the court shall require the probationer to pay a one-time
6 administrative enrollment fee and thereafter a monthly probation
7 programming fee.

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

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

27 (a) Adult probationers placed on either probation or intensive
28 supervision probation and participants in non-probation-based programs or
29 services shall pay a one-time administrative enrollment fee of thirty
30 dollars. The fee shall be paid in a lump sum upon the beginning of
31 probation supervision or participation in a non-probation-based program

1 or service;

2 (b) Adult probationers placed on probation shall pay a monthly
3 probation programming fee of twenty-five dollars, not later than the
4 tenth day of each month, for the duration of probation; and

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

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

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

26 (6) If the court determines that the default in payment described in
27 subsection (5) of this section was not attributable to a deliberate
28 refusal to obey the order of the court or to failure on the probationer's
29 part to make a good faith effort to obtain the funds required for
30 payment, the court may enter an order allowing the probationer additional
31 time for payment, reducing the amount of each installment, or revoking

1 the fees or the unpaid portion in whole or in part.

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

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

9 (9) The court shall waive payment of the fees described in
10 subdivisions (2)(m) and (o) of section 29-2262 in whole or in part if the
11 offender has been previously found to be indigent in the case for which
12 he or she is placed on probation or if after a hearing a determination is
13 made that such payment would constitute an undue hardship on the offender
14 due to limited income, employment or school status, or physical or mental
15 handicap. Such waiver shall be in effect only during the period of time
16 that the probationer or participant in a non-probation-based program or
17 service is unable to pay his or her monthly probation programming fee.

18 (10) (9) Any adult probationer received for supervision pursuant to
19 section 29-2637 or the Interstate Compact for Adult Offender Supervision
20 shall be assessed both a one-time administrative enrollment fee and
21 monthly probation programming fees during the period of time the
22 probationer is actively supervised by Nebraska probation authorities.

23 (11) (10) The probationer or participant in a non-probation-based
24 program or service shall pay the fees described in this section to the
25 clerk of the court. The clerk of the court shall remit all fees so
26 collected to the State Treasurer for credit to the Probation Program Cash
27 Fund.

28 Sec. 2. Section 29-2267, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 29-2267 (1) Whenever a motion or information to revoke probation is
31 filed, the probationer shall be entitled to a prompt consideration of

1 such charge by the sentencing court. The court shall not revoke probation
2 or increase the probation requirements imposed on the probationer, except
3 after a hearing upon proper notice where the violation of probation is
4 established by clear and convincing evidence.

5 (2) The probationer shall have the right to receive, prior to the
6 hearing, a copy of the information or written notice of the grounds on
7 which the information is based. The probationer shall have the right to
8 hear and controvert the evidence against him or her, to offer evidence in
9 his or her defense, and to be represented by counsel.

10 (3) For a probationer convicted of a felony, revocation proceedings
11 may only be instituted in response to a substance abuse or noncriminal
12 violation if the probationer has served ninety days of cumulative
13 custodial sanctions during the current probation term.

14 (4) When a motion or information to revoke probation is filed, the
15 probation term may be extended at the joint request of the probationer
16 and prosecutor until final resolution of the motion or information to
17 revoke probation or until the expiration of the statutorily defined
18 maximum period of probation for the offense for which the probationer has
19 been placed on probation. A court shall accept such request to extend a
20 term of probation so long as the probationer is represented by counsel or
21 the court finds, in open court, that the probationer makes the request
22 freely, voluntarily, knowingly, and intelligently.

23 Sec. 3. Original sections 29-2262.06 and 29-2267, Reissue Revised
24 Statutes of Nebraska, are repealed.