

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 110**

Introduced by McDonnell, 5.

Read first time January 06, 2023

Committee:

1 A BILL FOR AN ACT relating to criminal procedure; to amend section  
2 29-901, Revised Statutes Cumulative Supplement, 2022; to change  
3 provisions relating to bail; to provide for a pilot project relating  
4 to pretrial risk assessment services; to provide duties for the  
5 State Court Administrator; to state intent regarding appropriations;  
6 and to repeal the original section.

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

1 Section 1. Section 29-901, Revised Statutes Cumulative Supplement,  
2 2022, is 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 or programs selected approved by the county board. The  
8 county board shall make any such selection with the professional advice  
9 and counsel of the county sheriff. A court shall waive any fees or costs  
10 associated with the conditions of release or supervision if the court  
11 finds the defendant is unable to pay for such costs. Eligibility for  
12 release or supervision by such pretrial release program shall under no  
13 circumstances be conditioned upon the defendant's ability to pay. While  
14 under supervision of an approved entity, and in addition to the  
15 conditions of release referred to in subsection (3) of this section, the  
16 court may impose the following conditions:

17 (a) Periodic ~~telephone~~ contact by the defendant with the  
18 organization or pretrial services program via telephone or another form  
19 of electronic communication;

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

22 (c) Periodic visits to the defendant's home by the organization or  
23 pretrial services program. The court may require the defendant to waive  
24 his or her Fourth Amendment rights for purposes of such visits;

25 (d) Mental health or substance abuse treatment for the defendant,  
26 including residential treatment, if the defendant consents or agrees to  
27 the treatment;

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

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

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

1 (h) Participation in a 24/7 sobriety program under the 24/7 Sobriety  
2 Program Act; ~~and~~

3 (i) Requirements related to employment;

4 (j) A curfew; or

5 (k) ~~(i)~~ Any other supervision techniques deemed appropriate shown by  
6 research to assure increase court appearance and public safety and ensure  
7 program success rates for defendants released on bond.

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

12 Sec. 2. (1) The State Court Administrator shall select two counties  
13 to develop and implement a three-year pilot program for pretrial risk  
14 assessment and services, using the conditions of release as set forth in  
15 subsection (6) of section 29-901. The participating counties, in  
16 conjunction with the Nebraska Center for Justice Research at the  
17 University of Nebraska at Omaha, shall provide for the implementation of  
18 a pretrial risk assessment tool and costs associated with the  
19 implementation of conditions of release. The pilot program shall include:

20 (a) Participation of district and county courts;

21 (b) Participation of the county sheriff;

22 (c) Use of an evidence-informed, validated risk assessment tool to  
23 inform decisions regarding bonds and conditions of release to avoid  
24 pretrial incarceration;

25 (d) In cases in which a victim is an intimate partner of a defendant  
26 as defined in section 28-323, mandatory use of a risk assessment tool  
27 specifically validated to assess risk or lethality in domestic abuse  
28 situations;

29 (e) Implementation in at least one county with a population of five  
30 hundred thousand inhabitants or more and one county with a population of  
31 fewer than five hundred thousand inhabitants; and

1           (f) Electronic or global-positioning monitoring of the defendant.

2           (2) The State Court Administrator shall reimburse participating  
3 counties one hundred fifty dollars per day for each defendant diverted  
4 from pretrial incarceration.

5           Sec. 3.     Original section 29-901, Revised Statutes Cumulative  
6 Supplement, 2022, is repealed.