

LEGISLATIVE BILL 220

Approved by the Governor April 7, 1990

Introduced by Pirsch, 10

AN ACT relating to criminal procedure; to amend sections 29-2259, 29-2262, and 29-2269, Reissue Revised Statutes of Nebraska, 1943; to state intent; to provide for an intensive supervision probation program; to provide powers and duties for the Supreme Court and the Probation Administrator; to provide that the costs of drug testing and electronic surveillance equipment be paid by the state as prescribed; to create a fund; to change provisions relating to conditions of probation; to harmonize provisions; and to repeal the original sections.

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

Section 1. The Legislature finds and declares that intensive supervision probation programs are an effective and desirable alternative to imprisonment. It is the Legislature's intent to encourage the establishment of programs for the intensive supervision of selected probationers. It is further the intent of the Legislature that such programs be formulated to protect the safety and welfare of the public in the community where the programs are operating and throughout the State of Nebraska.

Sec. 2. Selected offenders in intensive supervision probation programs shall receive the highest level of supervision that is provided to probationers. Such programs may include, but shall not be limited to, highly restricted activities, daily contact between the offender and the probation officer, monitored curfew, home visitation, employment visitation and monitoring, drug and alcohol screening, treatment referrals and monitoring, and restitution and community service. Selected offenders monitored by an electronic device or system shall be required to pay the cost of such a device or system if the offender has the financial ability. It is the intent of the Legislature that such programs shall minimize any risk to the public.

Sec. 3. The Supreme Court shall establish and enforce the standards and criteria for the administration of the intensive supervision probation

programs.

Sec. 4. On December 31 and June 30 of each fiscal year, the administrator shall provide a report to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst which shall include, but not be limited to:

(1) The total number of felony cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(2) The total number of misdemeanor cases supervised by the office in the previous six months for both regular and intensive supervision probation;

(3) The felony caseload per officer for both regular and intensive supervision probation on the last day of the reporting period; and

(4) The misdemeanor caseload per officer for both regular and intensive supervision probation on the last day of the reporting period.

Sec. 5. That section 29-2259, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2259. (1) The salaries, actual and necessary expenses, and expenses incident to the conduct and maintenance of the office shall be paid by the state. Actual and necessary expenses shall be paid as provided in sections 81-1174 to 81-1177. ~~for state employees-~~

(2) The salaries and actual and necessary travel expenses of the service shall be paid by the state. Actual and necessary expenses shall be paid as provided in sections 81-1174 to 81-1177.

(3) Except as provided in section 29-2262 and section 2 of this act, the costs of drug testing and equipment incident to the electronic surveillance of individuals on probation shall be paid by the state. for state employees-

~~(3)~~ (4) The expenses incident to the conduct and maintenance of the principal office within each probation district shall in the first instance be paid by the county in which it is located, but such county shall be reimbursed for such expenses by all other counties within the probation district to the extent and in the proportions determined by the Supreme Court based upon population, number of investigations, and probation cases handled or upon such other basis as the Supreme Court deems fair and equitable.

~~(4)~~ (5) Each county shall provide office space and necessary facilities for probation officers performing their official duties and shall bear the

costs incident to maintenance of such offices other than salaries and travel expenses.

(5) (6) The probation administrator shall prepare a budget and request for appropriations for the office and shall submit such request to the Supreme Court and with its approval to the appropriate authority in accordance with law.

Sec. 6. There is hereby created the Probation Supervision Cash Fund. All funds collected pursuant to subdivisions (2)(n) and (2)(p) of section 29-2262 shall be remitted to the State Treasurer for credit to the fund. The fund shall be used to supplement any state funds necessary to support the costs of supervision of individuals on intensive supervision probation. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 7. (1) Whenever the court considers the sentence for an offender convicted of any crime for which a term of imprisonment of six months or more is possible and mandatory minimum imprisonment is not specifically required, the court may withhold the sentence of imprisonment and sentence the offender to intensive supervision probation. The decision whether to sentence an offender to intensive supervision probation shall be guided by the criteria for withholding a sentence of imprisonment as set forth in subsection (2) of this section and subsections (2) and (3) of section 29-2260.

(2) Intensive supervision probation shall be governed by the laws governing probation except as required by specific provisions of this section and sections 1 to 4 of this act.

Sec. 8. That section 29-2262, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2262. (1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life.

(2) The court, as a condition of its sentence, may require the offender:

(a) To refrain from unlawful conduct;

(b) To be confined periodically in the county jail or to return to custody after specified hours, but not to exceed (i) for misdemeanors, the lesser of ninety days or the maximum jail term provided by law for the offense and (ii) for felonies, one hundred eighty days;

(c) To meet his or her family

responsibilities;

(d) To devote himself or herself to a specific employment or occupation;

(e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for such purpose;

(f) To pursue a prescribed secular course of study or vocational training;

(g) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;

(h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(i) To have in his or her possession no firearm or other dangerous weapon unless granted written permission;

(j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment;

(k) To report as directed to the court or a probation officer and to permit the officer to visit his or her home;

(l) To pay a fine in one or more payments as ordered;

(m) To work, in lieu of or in addition to any fine, on public streets, parks, or other public property for a period not exceeding twenty working days. Such work shall be under the supervision of the probation officer or a law enforcement officer in the jurisdiction in which the work is performed;

(n) To pay for ~~blood, urine, or breath alcohol~~ test tests to determine the presence of drugs or alcohol, psychological evaluations, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;

(o) To perform community service as defined in section 29-2277; ~~or~~

(p) To be monitored by an electronic surveillance device or system and to pay the cost of such device or system if the offender has the financial ability; or

(q) To satisfy any other conditions reasonably related to the rehabilitation of the offender.

(3) In all cases in which the offender is guilty of assault or battery and the victim is the offender's spouse, a condition of probation shall be

mandatory counseling as provided by the Protection from Domestic Abuse Act.

(4) In all cases in which the offender is guilty of violating section 28-416, a condition of probation shall be mandatory treatment and counseling as provided by subsection (9) of section 28-416.

Sec. 9. That section 29-2269, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2269. Sections 29-2246 to 29-2268 and sections 1 to 4, 6, and 7 of this act shall be known and may be cited as the Nebraska Probation Administration Act.

Sec. 10. That original sections 29-2259, 29-2262, and 29-2269, Reissue Revised Statutes of Nebraska, 1943, are repealed.