

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 565

Introduced by Schmitt, 41

Read first time January 19, 1999

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend sections
2 29-3601 to 29-3604, Reissue Revised Statutes of Nebraska;
3 to provide for a driver's safety training program as
4 pretrial diversion; to harmonize provisions; and to
5 repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section. 1. Section 29-3601, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-3601. The Legislature finds that pretrial diversion
4 offers persons charged with criminal offenses and minor traffic
5 violations an alternative to traditional criminal justice or
6 juvenile justice proceedings in that: (1) It permits participation
7 by the accused only on a voluntary basis; (2) the accused has
8 access to counsel prior to a decision to participate; (3) it occurs
9 prior to an adjudication but after arrest and a decision has been
10 made by the prosecutor that the offense will support criminal
11 charges; and (4) it results in dismissal of charges, or its
12 equivalent, if the individual successfully completes the diversion
13 process.

14 Sec. 2. Section 29-3602, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 29-3602. The county attorney of any county may establish
17 a pretrial diversion program with the concurrence of the county
18 board. Such program shall be established pursuant to section
19 29-3603 and sections 5 to 10 of this act.

20 Sec. 3. Section 29-3603, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 29-3603. A pretrial diversion plan for criminal offenses
23 shall include, but not be limited to:

24 (1) Formal eligibility guidelines established following
25 consultation with criminal justice officials and program
26 representatives. The guidelines shall be written and made
27 available and routinely disseminated to all interested parties;

28 (2) A maximum time limit for any defendant's

1 participation in a diversion program, beyond which no defendant
2 shall be required or permitted to participate. Such maximum term
3 shall be long enough to effect sufficient change in participants to
4 deter them from criminal activity, but not so long as to prejudice
5 the prosecution or defense of the case should the participant be
6 returned to the ordinary course of prosecution;

7 (3) The opportunity for eligible defendants to review,
8 with their counsel present, a copy of general diversion program
9 requirements including average program duration and possible
10 outcome, prior to making the decision to enter a diversion program;

11 (4) Dismissal of the diverted case upon completion of the
12 program;

13 (5) A provision that participants shall be able to
14 withdraw at any time before the program is completed and be
15 remanded to the court process without prejudice to them during the
16 ordinary course of prosecution;

17 (6) Enrollment shall not be conditioned on a plea of
18 guilty; and

19 (7) Defendants who are denied enrollment in a diversion
20 program shall be afforded an administrative review of the decision
21 and written reasons for denial.

22 Sec. 4. Section 29-3604, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 29-3604. No person charged with a violation of section
25 60-6,196 or 60-6,197 shall be eligible for pretrial diversion under
26 a program established pursuant to sections 29-3601 to 29-3603 and
27 sections 5 to 10 of this act.

28 Sec. 5. For purposes of sections 6 to 10 of this act:

1 (1) Minor traffic violation includes any moving traffic
2 violation except an offense requiring the assessment of more than
3 two points pursuant to section 60-4,182, a violation of section
4 60-6,186, a violation of a city or village speed limit ordinance,
5 an offense for which the penalty includes a mandatory jail
6 sentence, and an offense for which the penalty includes the
7 revocation of a person's operator's license; and

8 (2) Department means the Department of Motor Vehicles
9 State Office of Highway Safety.

10 Sec. 6. A pretrial diversion plan for a minor traffic
11 violation shall include, but not be limited to:

12 (1) Formal eligibility guidelines established following
13 consultation with criminal justice officials, program
14 representatives, and the department. The guidelines shall be
15 written and made available and routinely disseminated to all
16 interested parties;

17 (2) A maximum time limit for any defendant's
18 participation in a driver's safety training program, beyond which
19 no defendant shall be required or permitted to participate. Such
20 maximum term shall be long enough to effect sufficient change in
21 participants to deter them from criminal activity, but not so long
22 as to prejudice the prosecution or defense of the case should the
23 participant be returned to the ordinary course of prosecution;

24 (3) The opportunity for eligible defendants to review,
25 with their counsel present, a copy of general diversion program
26 requirements including average driver's safety training program
27 duration and possible outcome, prior to making the decision to
28 enter a diversion program;

1 (4) Dismissal of the diverted case upon completion of the
2 driver's safety training program;

3 (5) A provision that participants shall be able to
4 withdraw at any time before the diversion program is completed and
5 be remanded to the court process without prejudice to them during
6 the ordinary course of prosecution;

7 (6) Enrollment shall not be conditioned on a plea of
8 guilty; and

9 (7) Defendants who are denied enrollment in a diversion
10 program shall be afforded an administrative review of the decision
11 and written reasons for denial.

12 Sec. 7. (1) A driver's safety training program as
13 authorized in section 6 of this act, shall:

14 (a) Provide a curriculum of driver's safety training, as
15 approved by the department, which is designed to educate persons
16 committing minor traffic violations and to deter future violations;

17 (b) Require payment of a fee approved by the department
18 which includes:

19 (i) The reasonable and appropriate cost of the
20 presentation and administration of the program; and

21 (ii) A one-dollar fee to be paid by each person attending
22 the program. The one-dollar fee shall be remitted by the program
23 administrator to the State Treasurer for credit to the Department
24 of Motor Vehicles Cash Fund; and

25 (c) Be administered by an organization or a governmental
26 entity primarily dedicated to public safety.

27 (2) The program administrator of each driver's safety
28 training program shall keep a record of attendance and shall be

1 responsible for determining eligibility. A report of attendance at
2 all driver's safety training programs in the state shall be filed
3 with the department each month. All records of attendance shall be
4 exchanged by program administrators under rules and regulations
5 adopted and promulgated by the department to assure that no
6 individual takes the approved course more than once within any
7 three-year period in any jurisdiction; and

8 (3) The department shall approve the curriculum and costs
9 of each program and shall adopt and promulgate rules and
10 regulations governing such programs including guidelines for cost,
11 minimum instruction period, curriculum, and instructor
12 certification.

13 Sec. 8. Any person or organization desiring to offer a
14 driver's safety training program shall first obtain a license from
15 the department, to be renewed annually. The license fee shall be
16 fifty dollars, with a fifty-dollar annual renewal fee. The license
17 fees and renewal fees shall be remitted by the department to the
18 State Treasurer for credit to the Department of Motor Vehicles Cash
19 Fund. Any applicant who is not approved may appeal pursuant to the
20 Administrative Procedure Act.

21 Sec. 9. Any driver operating a commercial motor vehicle
22 for which a citation has been issued or a charge has been filed
23 shall not participate in a program under this section if the
24 violation would count toward disqualification under section
25 60-4,168.

26 Sec. 10. Sections 5 to 10 of this act shall not apply to
27 programs of pretrial diversion for more serious offenses.

28 Sec. 11. This act becomes operative on January 1, 2000.

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1 Sec. 12. Original sections 29-3601 to 29-3604, Reissue
2 Revised Statutes of Nebraska, are repealed.