

E AND R AMENDMENTS TO LB 670

Introduced by Larson, 40, Chairperson Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

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

5 29-2262.06 (1) Except as otherwise provided in this
6 section, whenever a district court or county court sentences
7 an adult offender to probation, the court shall require the
8 probationer to pay a one-time administrative enrollment fee and
9 thereafter a monthly probation programming fee. A juvenile court
10 in the disposition of a juvenile who is placed upon probation may
11 also order, as a condition of probation, the juvenile to be a
12 participant in non-probation-based programs or services, and the
13 court shall order payment of fees as provided in this section.

14 (2) Participants in non-probation-based programs or
15 services in which probation personnel or probation resources
16 are utilized pursuant to an interlocal agreement authorized by
17 subdivision (16) of section 29-2252 and in which all or a portion
18 of the costs of such probation personnel or such probation
19 resources are covered by funds provided pursuant to section
20 29-2262.07 shall pay the one-time administrative enrollment fee
21 described in subdivision (3)(a) of this section and the monthly
22 probation programming fee described in subdivision (3)(c) of
23 this section. In addition, the provisions of subsections (4),

1 (7), and (10) of this section applicable to probationers apply
2 to participants in non-probation-based programs or services.
3 Any participant in a non-probation-based program or service who
4 defaults on the payment of any such fees may, at the discretion
5 of the court, be subject to removal from such non-probation-based
6 program or service. This subdivision does not preclude a court or
7 other governmental entity from charging additional local fees for
8 participation in such non-probation-based programs and services or
9 other similar non-probation-based programs and services.

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

12 (a) Adult probationers placed on either probation or
13 intensive supervision probation and adult and juvenile participants
14 in non-probation-based programs or services shall pay a one-time
15 administrative enrollment fee of thirty dollars. The fee shall be
16 paid in a lump sum upon the beginning of probation supervision or
17 participation in a non-probation-based program or service;

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

22 (c) Adult probationers placed on intensive
23 supervision probation and adult and juvenile participants in
24 non-probation-based programs or services shall pay a monthly
25 probation programming fee of thirty-five dollars, not later than
26 the tenth day of each month, for the duration of probation or
27 participation in a non-probation-based program or service.

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

9 (5) If a probationer defaults in the payment of monthly
10 probation programming fees or any installment thereof, the court
11 may revoke his or her probation for nonpayment, except that
12 probation shall not be revoked nor shall the offender be imprisoned
13 for such nonpayment if the probationer is financially unable to
14 make the payment, if he or she so states to the court in writing
15 under oath, and if the court so finds after a hearing.

16 (6) If the court determines that the default in payment
17 described in subsection (5) of this section was not attributable to
18 a deliberate refusal to obey the order of the court or to failure
19 on the probationer's part to make a good faith effort to obtain the
20 funds required for payment, the court may enter an order allowing
21 the probationer additional time for payment, reducing the amount
22 of each installment, or revoking the fees or the unpaid portion in
23 whole or in part.

24 (7) No probationer or participant in a
25 non-probation-based program or service shall be required to pay
26 more than one monthly probation programming fee per month. This
27 subsection does not preclude local fees as provided in subsection

1 (2) of this section.

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

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

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

16 Sec. 2. Section 43-286, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 43-286 (1) When any juvenile is adjudicated to be a
19 juvenile described in subdivision (1), (2), or (4) of section
20 43-247:

21 (a) The court may continue the dispositional portion of
22 the hearing, from time to time upon such terms and conditions
23 as the court may prescribe, including an order of restitution of
24 medical expenses incurred or any property stolen or damaged or an
25 order requiring the juvenile to participate in community service
26 programs, if such order is in the interest of the juvenile's
27 reformation or rehabilitation, and, subject to the further order of

1 the court, may:

2 (i) Place the juvenile on probation subject to the
3 supervision of a probation officer, and under any conditions deemed
4 by the court to insure that the juvenile will lead a law-abiding
5 life or deemed by the court to be reasonably related to the
6 rehabilitation of the juvenile, including, but not limited to, the
7 following:

8 (A) To obtain employment, attend school, or pursue a
9 prescribed secular course of study or vocational training and
10 to obey the rules where such education or training is provided,
11 including obtaining satisfactory grades or progress;

12 (B) To remain within the jurisdiction of the juvenile
13 court, report to the court or probation officer as directed, notify
14 the court or the probation officer of any change in the juvenile's
15 address or juvenile's employment or school program, permit the
16 probation officer or a law enforcement officer to visit the home,
17 school, or place of employment, submit to any searches requested by
18 a law enforcement or probation officer, submit to day reporting,
19 and agree to waive extradition if found in another jurisdiction;

20 (C) To participate in, follow all rules of, and
21 successfully complete any drug court program or problem solving
22 court program, including sanctions imposed;

23 (D) To refrain from the use of alcohol or drugs and
24 submit to testing to determine the presence of alcohol or drugs;

25 (E) To participate in any evaluations, offender
26 assessment screens, and rehabilitative treatment;

27 (F) To perform community service under the direction of

1 his or her probation officer;

2 (G) To be placed on house arrest or curfew monitored by
3 tracker or electronic surveillance device or system and to pay the
4 cost of such device or system if the juvenile has the financial
5 ability to pay;

6 (H) To pay for all costs imposed by the court if the
7 juvenile has the financial ability to pay;

8 (I) To comply with any sanctions imposed by the court
9 which are to take effect upon the violation of a condition of
10 probation by the juvenile; and

11 (J) To pay restitution for any property stolen or damaged
12 or for any medical expenses incurred if the juvenile has the
13 financial ability to pay;

14 (ii) Permit the juvenile to remain in his or her own home
15 or be placed in a suitable family home, subject to the supervision
16 of the probation officer with any conditions deemed appropriate by
17 the court as allowed in subdivision (1)(a)(i) of this section; or

18 (iii) Cause the juvenile to be placed in a suitable
19 family home or institution, subject to the supervision of the
20 probation officer with any conditions deemed appropriate by the
21 court as allowed in subdivision (1)(a)(i) of this section. If the
22 court has committed the juvenile to the care and custody of the
23 Department of Health and Human Services, the department shall pay
24 the costs of the suitable family home or institution which are not
25 otherwise paid by the juvenile's parents.

26 Under ~~subdivision (1)(a)~~ subdivisions (1)(a)(ii) and
27 (1)(a)(iii) of this section, upon a determination by the court that

1 there are no parental, private, or other public funds available for
2 the care, custody, and maintenance of a juvenile, the court may
3 order a reasonable sum for the care, custody, and maintenance of
4 the juvenile to be paid out of a fund which shall be appropriated
5 annually by the county where the petition is filed until a suitable
6 provision may be made for the juvenile without such payment; or

7 (b) The court may commit such juvenile to the Office
8 of Juvenile Services, but a juvenile under the age of twelve
9 years shall not be placed at the Youth Rehabilitation and
10 Treatment Center-Geneva or the Youth Rehabilitation and Treatment
11 Center-Kearney unless he or she has violated the terms of probation
12 or has committed an additional offense and the court finds that the
13 interests of the juvenile and the welfare of the community demand
14 his or her commitment. This minimum age provision shall not apply
15 if the act in question is murder or manslaughter.

16 (2) When any juvenile is found by the court to be a
17 juvenile described in subdivision (3)(b) of section 43-247, the
18 court may enter such order as it is empowered to enter under
19 subdivision (1)(a) of this section or enter an order committing or
20 placing the juvenile to the care and custody of the Department of
21 Health and Human Services.

22 (3) Beginning July 15, 1998, when any juvenile is
23 adjudicated to be a juvenile described in subdivision (1), (2),
24 (3)(b), or (4) of section 43-247 because of a nonviolent act or
25 acts and the juvenile has not previously been adjudicated to be
26 such a juvenile because of a violent act or acts, the court may,
27 with the agreement of the victim, order the juvenile to attend

1 juvenile offender and victim mediation with a mediator or at an
2 approved center selected from the roster made available pursuant to
3 section 25-2908.

4 (4) (a) When a juvenile is placed on probation or under
5 the supervision of the court and it is alleged that the juvenile is
6 again a juvenile described in subdivision (1), (2), (3) (b), or (4)
7 of section 43-247, a petition may be filed and the same procedure
8 followed and rights given at a hearing on the original petition. If
9 an adjudication is made that the allegations of the petition are
10 true, the court may make any disposition authorized by this section
11 for such adjudications.

12 (b) When a juvenile is placed on probation or under
13 the supervision of the court for conduct under subdivision (1),
14 (2), (3) (b), or (4) of section 43-247 and it is alleged that the
15 juvenile has violated a term of probation or supervision or that
16 the juvenile has violated an order of the court, a motion to revoke
17 probation or supervision or to change the disposition may be filed
18 and proceedings held as follows:

19 (i) The motion shall set forth specific factual
20 allegations of the alleged violations and a copy of such motion
21 shall be served on all persons required to be served by sections
22 43-262 to 43-267;

23 (ii) The juvenile shall be entitled to a hearing before
24 the court to determine the validity of the allegations. At such
25 hearing the juvenile shall be entitled to those rights relating
26 to counsel provided by section 43-272 and those rights relating
27 to detention provided by sections 43-254 to 43-256. The juvenile

1 shall also be entitled to speak and present documents, witnesses,
2 or other evidence on his or her own behalf. He or she may confront
3 persons who have given adverse information concerning the alleged
4 violations, may cross-examine such persons, and may show that he
5 or she did not violate the conditions of his or her probation or,
6 if he or she did, that mitigating circumstances suggest that the
7 violation does not warrant revocation. The revocation hearing shall
8 be held within a reasonable time after the juvenile is taken into
9 custody;

10 (iii) The hearing shall be conducted in an informal
11 manner and shall be flexible enough to consider evidence, including
12 letters, affidavits, and other material, that would not be
13 admissible in an adversarial criminal trial;

14 (iv) The juvenile shall be given a preliminary hearing
15 in all cases when the juvenile is confined, detained, or otherwise
16 significantly deprived of his or her liberty as a result of his or
17 her alleged violation of probation. Such preliminary hearing shall
18 be held before an impartial person other than his or her probation
19 officer or any person directly involved with the case. If, as a
20 result of such preliminary hearing, probable cause is found to
21 exist, the juvenile shall be entitled to a hearing before the court
22 in accordance with this subsection;

23 (v) If the juvenile is found by the court to have
24 violated the terms of his or her probation, the court may modify
25 the terms and conditions of the probation order, extend the period
26 of probation, or enter any order of disposition that could have
27 been made at the time the original order of probation was entered;

1 and

2 (vi) In cases when the court revokes probation, it shall
3 enter a written statement as to the evidence relied on and the
4 reasons for revocation.

5 Sec. 3. Original sections 29-2262.06 and 43-286, Reissue
6 Revised Statutes of Nebraska, are repealed.