

AMENDMENTS TO LB145

Introduced by Judiciary.

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

3           Section 1. Section 29-2206, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           29-2206 (1)(a) ~~(1)~~ In all cases in which courts or magistrates have  
6 now or may hereafter have the power to punish offenses, either in whole  
7 or in part, by requiring the offender to pay fines or costs, or both,  
8 such courts or magistrates may make it a part of the sentence that the  
9 party stand committed and be imprisoned in the jail of the proper county  
10 until the fines or costs are paid or secured to be paid or the offender  
11 is otherwise discharged according to law if the court or magistrate  
12 determines that the offender has the financial ability to pay such fines  
13 or costs. The court or magistrate may make such determination at the  
14 sentencing hearing or at a separate hearing prior to sentencing. A  
15 separate hearing shall not be required. In making such determination, the  
16 court or magistrate may consider the information or evidence adduced in  
17 an earlier proceeding pursuant to section 29-3902, 29-3903, 29-3906, or  
18 29-3916. At any such hearing, the offender shall have the opportunity to  
19 present information as to his or her income, assets, debts, or other  
20 matters affecting his or her financial ability to pay. Following such  
21 hearing and prior to imposing sentence, the court or magistrate shall  
22 determine the offender's financial ability to pay the fines or costs,  
23 including his or her financial ability to pay in installments under  
24 subsection (2) of this section.

25           (b) If the court or magistrate determines that the offender is  
26 financially able to pay the fines or costs and the offender refuses to  
27 pay, the court or magistrate may:

1        (i) Make it a part of the sentence that the offender stand committed  
2 and be imprisoned in the jail of the proper county until the fines or  
3 costs are paid or secured to be paid or the offender is otherwise  
4 discharged according to law; or

5        (ii) Order the offender, in lieu of paying such fines or costs, to  
6 complete community service for a specified number of hours pursuant to  
7 sections 29-2277 to 29-2279.

8        (c) If the court or magistrate determines that the offender is  
9 financially unable to pay the fines or costs, the court or magistrate:

10        (i) Shall either:

11        (A) Impose a sentence without such fines or costs; or

12        (B) Enter an order pursuant to subdivision (1)(d) of this section  
13 discharging the offender of such fines or costs; and

14        (ii) May order, as a term of the offender's sentence or as a  
15 condition of probation, that he or she complete community service for a  
16 specified number of hours pursuant to sections 29-2277 to 29-2279.

17        (d) An order discharging the offender of any fines or costs shall be  
18 set forth in or accompanied by a judgment entry. Such order shall operate  
19 as a complete release of such fines or costs.

20        (2) If Notwithstanding subsection (1) of this section, when any  
21 offender demonstrates to the court or magistrate determines, pursuant to  
22 subsection (1) of this section, that an offender he or she is financially  
23 unable to pay such fines or costs in one lump sum but is financially  
24 capable of paying in installments, the court or magistrate shall make  
25 arrangements suitable to the court or magistrate and to the offender by  
26 which the offender may pay in installments. The court or magistrate shall  
27 enter an order specifying the terms of such arrangements and the dates on  
28 which payments are to be made. When the judgment of conviction provides  
29 for the suspension or revocation of a motor vehicle operator's license  
30 and the court authorizes the payment of fines or costs by installments,  
31 the revocation or suspension shall be effective as of the date of

1 judgment.

2 (3) As an alternative to a lump-sum payment or as an alternative or  
3 in conjunction with installment payments, the court or magistrate may  
4 deduct fines or costs from a bond posted by the offender to the extent  
5 that such bond is not otherwise encumbered by a valid lien, levy,  
6 execution, or assignment to counsel of record or the person who posted  
7 the bond.

8 Sec. 2. Section 29-2206.01, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 29-2206.01 Installments provided for in section 29-2206 shall be  
11 paid pursuant to the order entered by the court or magistrate. Any person  
12 who fails to comply with the terms of such order shall be liable for  
13 punishment for contempt, unless such person ~~he~~ has the leave of the court  
14 or magistrate in regard to such noncompliance or such person requests a  
15 hearing pursuant to section 29-2412 and establishes at such hearing that  
16 he or she is financially unable to pay.

17 Sec. 3. Section 29-2277, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 29-2277 As used in sections 29-2277 to 29-2279, unless the context  
20 otherwise requires:

21 (1) Agency means ~~shall mean~~ any public or governmental unit,  
22 institution, division, or agency or any private nonprofit organization  
23 which provides services intended to enhance the social welfare or general  
24 well-being of the community, which agrees to accept community service  
25 from offenders and to supervise and report the progress of such community  
26 service to the court or its representative; ~~and~~

27 (2) Community correctional facility or program has the same meaning  
28 as in section 47-621; and

29 (3) (2) Community service means ~~shall mean~~ uncompensated labor for  
30 an agency to be performed by an offender when the offender is not working  
31 or attending school.

1           Sec. 4. Section 29-2278, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3           29-2278 An offender may be sentenced to community service (1) as an  
4 alternative to a fine, incarceration, or supervised probation, or in lieu  
5 of incarceration if he or she fails to pay a fine as ordered, except when  
6 the violation of a misdemeanor or felony requires mandatory incarceration  
7 or imposition of a fine, (2) as a condition of probation, or (3) in  
8 addition to any other sanction. The court or magistrate shall establish  
9 the terms and conditions of community service including, but not limited  
10 to, a reasonable time limit for completion. The performance or completion  
11 of a sentence of community service or an order to complete community  
12 service may be supervised or confirmed by a community correctional  
13 facility or program or another similar entity, as ordered by the court or  
14 magistrate. If an offender fails to perform community service as ordered  
15 by the court or magistrate, he or she may be arrested and after a hearing  
16 may be resentenced on the original charge, have probation revoked, or be  
17 found in contempt of court. No person convicted of an offense involving  
18 serious bodily injury or sexual assault shall be eligible for community  
19 service.

20           Sec. 5. Section 29-2279, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22           29-2279 The length of a community service sentence shall be as  
23 follows:

24           (1) Pursuant to section 29-2206, 29-2412, or section 8 of this act,  
25 for an infraction, not less than four nor more than twenty hours;

26           (2) For a violation of a city ordinance that is an infraction and  
27 not pursuant to section 29-2206, 29-2412, or section 8 of this act, not  
28 less than four hours;

29           (3) (1) For a Class IV or Class V misdemeanor, not less than four  
30 nor more than eighty hours;

31           (4) (2) For a Class III or Class IIIA misdemeanor, not less than

1 eight nor more than one hundred fifty hours;

2 ~~(5) (3)~~ For a Class I or Class II misdemeanor, not less than twenty  
3 nor more than four hundred hours;

4 ~~(6) (4)~~ For a Class IIIA or Class IV felony, not less than two  
5 hundred nor more than three thousand hours; and

6 ~~(7) (5)~~ For a Class III felony, not less than four hundred nor more  
7 than six thousand hours.

8 Sec. 6. Section 29-2404, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 29-2404 In all cases of misdemeanor in which courts or magistrates  
11 shall have power to fine any offender, and shall render judgment for such  
12 fine, it shall be lawful to issue executions for the same, with the costs  
13 taxed against the offender, to be levied on the goods and chattels of any  
14 such offender, and, for want of the same, upon the body of the offender,  
15 who shall, following a determination that the offender has the financial  
16 ability to pay such fine pursuant to section 29-2412, thereupon be  
17 committed to the jail of the proper county until the fine and costs be  
18 paid, or secured to be paid, or the offender be otherwise discharged  
19 according to law.

20 Sec. 7. Section 29-2412, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 29-2412 (1) Beginning July 1, 2018:

23 (a) Any person arrested and brought into custody on a warrant for  
24 failure to pay fines or costs, for failure to appear before a court or  
25 magistrate on the due date of such fines or costs, or for failure to  
26 comply with the terms of an order pursuant to sections 29-2206 and  
27 29-2206.01, shall be entitled to a hearing on the first regularly  
28 scheduled court date following the date of arrest. The purpose of such  
29 hearing shall be to determine the person's financial ability to pay such  
30 fines or costs. At the hearing, the person shall have the opportunity to  
31 present information as to his or her income, assets, debts, or other

1 matters affecting his or her financial ability to pay. Following the  
2 hearing, the court or magistrate shall determine the person's ability to  
3 pay the fines or costs, including his or her financial ability to pay by  
4 installment payments as described in section 29-2206;

5 (b) If the court or magistrate determines that the person is  
6 financially able to pay the fines or costs and the person refuses to pay,  
7 the court or magistrate may:

8 (i) Order the person to be confined in the jail of the proper county  
9 until the fines or costs are paid or secured to be paid or the person is  
10 otherwise discharged pursuant to subsection (4) of this section; or

11 (ii) Enter an order pursuant to subdivision (1)(d) of this section  
12 discharging the person of such fines or costs and order the person to  
13 complete community service for a specified number of hours pursuant to  
14 sections 29-2277 to 29-2279;

15 (c) If the court or magistrate determines that the person is  
16 financially unable to pay the fines or costs, the court or magistrate:

17 (i) Shall either:

18 (A) Enter an order pursuant to subdivision (1)(d) of this section  
19 discharging the person of such fines or costs; or

20 (B) If the person is subject to an order to pay installments  
21 pursuant to section 29-2206, the court or magistrate shall either enter  
22 an order pursuant to subdivision (1)(d) of this section discharging the  
23 person of such obligation or make any necessary modifications to the  
24 order specifying the terms of the installment payments as justice may  
25 require and that will enable the person to pay the fines or costs; and

26 (ii) May order the person to complete community service for a  
27 specified number of hours pursuant to sections 29-2277 to 29-2279; and

28 (d) An order discharging the person of fines or costs shall be set  
29 forth in or accompanied by a judgment entry. Such order shall operate as  
30 a complete release of such fines or costs.

31 (2) ~~(1)~~ Whenever it is made satisfactorily to appear to the district

1 court, or to the county judge of the proper county, after all legal means  
2 have been exhausted, that any person who ~~is subject to being~~ or is  
3 confined in jail for any ~~fine~~ finer or costs of prosecution for any  
4 criminal offense has no estate with which to pay such ~~fine~~ finer or  
5 costs, it shall be the duty of such court or judge, on his or her own  
6 motion or upon the motion of the person so confined, to discharge such  
7 person from further imprisonment for such ~~fine~~ finer or costs, which  
8 discharge shall operate as a complete release of such ~~fine~~ finer or  
9 costs.

10 (3) ~~(2)~~ Nothing in this section shall authorize any person to be  
11 discharged from imprisonment before the expiration of the time for which  
12 he or she may be sentenced to be imprisoned, as part of his or her  
13 punishment, ~~or when such person shall default on a payment due pursuant~~  
14 ~~to an installment agreement arranged by the court.~~

15 (4)(a) ~~(3)~~ Any person held in custody for nonpayment of a ~~fine~~ finer  
16 or costs or for default on an installment shall be entitled to a credit  
17 on the ~~fine~~ finer, costs, or installment of one hundred fifty ninety  
18 dollars for each day so held.

19 (b) In no case shall a person held in custody for nonpayment of a  
20 ~~fine~~ finer or costs be held in such custody for more days than the  
21 maximum number to which he or she could have been sentenced if the  
22 penalty set by law includes the possibility of confinement.

23 Sec. 8. (1) A person who has been ordered to pay fines or costs and  
24 who has not been arrested or brought into custody as described in  
25 subdivision (1)(a) of section 29-2412 but who believes himself or herself  
26 to be financially unable to pay such fines or costs may request a hearing  
27 to determine such person's financial ability to pay such fines or costs.  
28 The hearing shall be scheduled on the first regularly scheduled court  
29 date following the date of the request. Pending the hearing, the person  
30 shall not be arrested or brought into custody for failure to pay such  
31 fines or costs or failure to appear before a court or magistrate on the

1 due date of such fines or costs.

2 (2) At the hearing, the person shall have the opportunity to present  
3 information as to his or her income, assets, debts, or other matters  
4 affecting his or her financial ability to pay. Following the hearing, the  
5 court or magistrate shall determine the person's financial ability to pay  
6 the fines or costs, including his or her financial ability to pay in  
7 installments as described in section 29-2206.

8 (3) If the court or magistrate determines that the person is  
9 financially able to pay the fines or costs and the person refuses to pay,  
10 the court or magistrate may:

11 (a) Deny the person's request for relief; or

12 (b) Enter an order pursuant to subsection (5) of this section  
13 discharging the person of such fines or costs and order the person to  
14 complete community service for a specified number of hours pursuant to  
15 sections 29-2277 to 29-2279.

16 (4) If the court or magistrate determines that the person is  
17 financially unable to pay the fines or costs, the court or magistrate:

18 (a) Shall either:

19 (i) Enter an order pursuant to subsection (5) of this section  
20 discharging the person of such fines or costs; or

21 (ii) If the person is subject to an order to pay installments  
22 pursuant to section 29-2206, the court or magistrate shall either enter  
23 an order pursuant to subsection (5) of this section discharging the  
24 person of such obligation or make any necessary modifications to the  
25 order specifying the terms of the installment payments as justice may  
26 require and that will enable the person to pay the fines or costs; and

27 (b) May order the person to complete community service for a  
28 specified number of hours pursuant to sections 29-2277 to 29-2279.

29 (5) An order discharging the person of fines or costs shall be set  
30 forth in or accompanied by a judgment entry. Such order shall operate as  
31 a complete release of such fines or costs.

1           Sec. 9. Section 60-4,100, Revised Statutes Cumulative Supplement,  
2 2016, is amended to read:

3           60-4,100 ~~(1) The director shall suspend the operator's license of~~  
4 ~~any resident of this state:~~

5           (1) Any resident of this state who (a) who has violated a promise to  
6 comply with the terms of a traffic citation issued by a law enforcement  
7 officer for a moving violation in any jurisdiction outside this state  
8 pursuant to the Nonresident Violator Compact of 1977 or in any  
9 jurisdiction inside this state shall be subject to having his or her  
10 operator's license revoked pursuant to this section. until satisfactory  
11 evidence of compliance with the terms of the citation has been furnished  
12 to the director; or

13           ~~(b) who has violated a promise to comply with the terms of a traffic~~  
14 ~~citation issued by a law enforcement officer for a moving violation in~~  
15 ~~any jurisdiction inside this state until satisfactory evidence of~~  
16 ~~compliance with the terms of the citation has been furnished to the~~  
17 ~~director.~~

18           (2) The court having jurisdiction over the offense for which the  
19 citation has been issued shall notify the director of a resident's  
20 violation of a promise to comply with the terms of the citation ~~only~~  
21 after thirty ~~twenty~~ working days have elapsed from the date of the  
22 failure to comply, unless within such thirty working days the resident  
23 appears before the clerk of the county court having jurisdiction over the  
24 offense to request a hearing pursuant to subsection (3) of this section  
25 to establish that such resident lacks the financial ability to pay the  
26 citation.

27           (3) A hearing requested under subsection (2) of this section shall  
28 be set before the court or magistrate on the first regularly scheduled  
29 court date following the request. At the hearing, the resident shall have  
30 the opportunity to present information as to his or her income, assets,  
31 debts, or other matters affecting his or her financial ability to pay the

1 citation. Following the hearing, the court or magistrate shall determine  
2 the resident's financial ability to pay the citation, including his or  
3 her financial ability to pay in installments.

4 (4)(a) Except as provided in subdivision (4)(c) of this section, if  
5 the court or magistrate determines under subsection (3) of this section  
6 that the resident is financially able to pay the citation and the  
7 resident refuses to pay, the court or magistrate shall either:

8 (i) Notify the director of the resident's violation of a promise to  
9 comply with the terms of the citation; or

10 (ii) Postpone the hearing for a period of no more than one month  
11 during which period the court or magistrate may order the resident to  
12 complete such hours of community service as the court or magistrate deems  
13 appropriate, subject to a total limit of twenty hours. At the end of such  
14 period, if the resident has completed such community service to the  
15 satisfaction of the court or magistrate, the court or magistrate shall  
16 enter an order pursuant to subsection (5) of this section discharging the  
17 resident of the obligation to pay such citation. If the resident has not  
18 completed such community service to the satisfaction of the court or  
19 magistrate, the court or magistrate shall notify the director of the  
20 resident's violation of a promise to comply with the terms of the  
21 citation. A hearing may only be postponed once under this subdivision.

22 (b) If the court or magistrate determines under subsection (3) of  
23 this section that the resident is financially unable to pay the citation,  
24 the court or magistrate shall either:

25 (i) Enter an order pursuant to subsection (5) of this section  
26 discharging the resident of the obligation to pay such citation;

27 (ii) Postpone the hearing for a period of no more than one month  
28 during which period the court or magistrate may order the resident to  
29 complete such hours of community service as the court or magistrate deems  
30 appropriate, subject to a total limit of twenty hours. At the end of such  
31 period, if the resident has completed such community service to the

1 satisfaction of the court or magistrate, the court or magistrate shall  
2 enter an order pursuant to subsection (5) of this section discharging the  
3 resident of the obligation to pay such citation. If the resident has not  
4 completed such community service to the satisfaction of the court or  
5 magistrate, the court or magistrate shall notify the director of the  
6 resident's violation of a promise to comply with the terms of the  
7 citation. A hearing may only be postponed once under this subdivision.

8 (c) If the court or magistrate determines under subsection (3) of  
9 this section that the resident is financially able to pay in installments  
10 and the resident agrees to make such payments, the court or magistrate  
11 shall make arrangements suitable to the court or magistrate and to the  
12 resident by which the resident may pay in installments. The court or  
13 magistrate shall enter an order specifying the terms of such arrangements  
14 and the dates on which payments are to be made. If the resident fails to  
15 pay an installment, the court or magistrate shall notify the director of  
16 the resident's violation of a promise to comply with the terms of the  
17 citation unless the resident requests a hearing from the clerk of the  
18 county court on or before ten working days after such installment was  
19 due. At the hearing, the resident shall show good cause for such failure,  
20 including financial inability to pay. If, following such hearing, the  
21 court or magistrate finds:

22 (i) That the resident has not demonstrated good cause for such  
23 failure, the court or magistrate shall either notify the director of the  
24 resident's violation of a promise to comply with the terms of the  
25 citation or postpone the hearing and order community service pursuant to  
26 subdivision (4)(a)(ii) of this section;

27 (ii) That the resident remains financially able to pay but has  
28 demonstrated good cause for such missed installment, the court or  
29 magistrate shall make any necessary modifications to the order specifying  
30 the terms of the installment payments; or

31 (iii) That the resident has become financially unable to pay, the

1 court or magistrate shall enter an order discharging the resident of the  
2 obligation to pay such citation pursuant to subsection (5) of this  
3 section.

4 (5) An order discharging the resident of the obligation to pay a  
5 traffic citation shall be set forth in or accompanied by a judgment  
6 entry. Such order shall operate as a complete release of such payment  
7 obligation.

8 (6) (3) Upon notice to the director that a resident has violated a  
9 promise to comply with the terms of a traffic citation as provided in  
10 this section, the director shall send not suspend such resident's license  
11 until he or she has sent written notice to such resident by regular  
12 United States mail to the resident's person's last-known mailing address  
13 or, if such address is unknown, to the last-known residence address of  
14 such resident person as shown by the records of the department Department  
15 of Motor Vehicles. Such notice shall state that such resident has twenty  
16 working days after the postmark date of the notice to  
17 show the director that the resident has complied with the terms of such  
18 traffic citation

19 ~~No suspension shall be entered by the director if the resident complies~~  
20 ~~with the terms of a citation during such twenty working days.~~

21 If the resident fails to show the director that he or she has complied  
22 with the terms of such traffic citation comply on or before twenty  
23 working days after the postmark date of the notice, the director shall  
24 summarily suspend the operator's license and issue an order. The order  
25 shall be sent by regular United States mail to the resident's person's  
26 last-known mailing address as shown by the records of the department. The  
27 suspension shall continue until the resident has furnished the director  
28 with satisfactory evidence of compliance with the terms of the citation.

29 (7) (4) The reinstatement fee required under section 60-4,100.01  
30 shall be waived if five years have passed since issuance of the license  
31 suspension order under this section.

1       (8) The performance or completion of an order to complete community  
2 service under this section may be supervised or confirmed by a community  
3 correctional facility or program or another similar entity as ordered by  
4 the court or magistrate.

5       (9) For purposes of this section:

6       (a) Agency means any public or governmental unit, institution,  
7 division, or agency or any private nonprofit organization which provides  
8 services intended to enhance the social welfare or general well-being of  
9 the community, which agrees to accept community service from residents  
10 under this section and to supervise and report the progress of such  
11 community service to the court or magistrate;

12       (b) Community correctional facility or program has the same meaning  
13 as in section 47-621; and

14       (c) Community service means uncompensated labor for an agency to be  
15 performed by a resident when the resident is not working or attending  
16 school.

17       Sec. 10. Section 60-692, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19       60-692 When any person fails within thirty working ~~ten~~ days to  
20 satisfy any judgment imposed for any traffic infraction, it shall be the  
21 duty of the clerk of the court in which such judgment is rendered within  
22 this state to transmit a copy of such judgment to the Department of Motor  
23 Vehicles as provided in section 60-4,100 , ~~immediately after the~~  
24 ~~expiration of such ten-day period, a copy of such judgment.~~

25       Sec. 11. Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, and 13 of this act  
26 become operative on July 1, 2018. The other sections of this act become  
27 operative on their effective date.

28       Sec. 12. Original section 29-2412, Reissue Revised Statutes of  
29 Nebraska, is repealed.

30       Sec. 13. Original sections 29-2206, 29-2206.01, 29-2277, 29-2278,  
31 29-2279, 29-2404, and 60-692, Reissue Revised Statutes of Nebraska, and

1 section 60-4,100, Revised Statutes Cumulative Supplement, 2016, are  
2 repealed.