

LEGISLATIVE BILL 284

Approved by the Governor March 9, 1975

Introduced by Judiciary Committee, Luedtke, 28, Chmn.;
Barnett, 26; Chambers, 11; DeCamp, 40;
Anderson, 37; Nichol, 48

AN ACT to amend section 29-506, Reissue Revised Statutes of Nebraska, 1943, and sections 29-901 and 29-901.03, Revised Statutes Supplement, 1974, relating to criminal procedure; to clarify appearance and bail bond procedures on bind-overs to district court; to provide for disposition of appearance bond deposits; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 29-506, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-506. If upon the whole examination, it shall appear that no offense has been committed or that there is no probable cause for holding the accused to answer for the offense, he shall be discharged; but if it shall appear that an offense has been committed and there is probable cause to believe that the person charged has committed the offense, the accused shall be committed to the jail of the county in which the same is to be tried, there to remain until he is discharged by due course of law; Provided, if the offense be bailable, the accused may be released pursuant to Chapter 29, article 9, such release to be conditioned on his appearance before the district court as ordered. he may be ordered released upon entering into a recognizance in such sum as may be fixed by the magistrate with one or more good and sufficient sureties to be approved by him, conditioned that the accused appear forthwith before the district court, if then in session, and if not in session, then on the first day of the next jury term thereof and not depart the court without leave. No recognizance requiring the accused to appear at the next term of the court shall be rendered invalid by the fact that the court is in session. When a defendant has executed an appearance bond and made a deposit with the court pursuant to section 29-901, and such appearance bond is continued in force for the defendant's appearance in district court, the appearance bond costs shall be retained by the examining court, and the appearance bond and the balance of the deposit shall be transmitted to

the district court.

Sec. 2. That section 29-901, Revised Statutes Supplement, 1974, be amended to read as follows:

29-901. Any bailable defendant shall be ordered released from custody pending judgment, on his personal recognizance, unless the judge determines in the exercise of his discretion that such a release will not reasonably assure the appearance of the defendant as required. When such determination is made, the judge shall either in lieu of or in addition to such a release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the defendant in the custody of a designated person or organization agreeing to supervise him;

(2) Place restrictions on the travel, association, or place of abode of the defendant during the period of such release;

(3) Require, at the option of any bailable defendant, either of the following:

(a) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash ~~or other qualified security~~ of a sum not to exceed ten per cent of the amount of the bond, ninety per cent of such deposit to be returned to the defendant upon the performance of the appearance or appearances, and ten per cent to be retained by the clerk as ~~bail~~ appearance bond costs. In no event shall the deposit be less than twenty-five dollars; or

(b) The execution of a bail bond with such surety or sureties as to such judge shall seem proper or, in lieu of such surety or sureties, at the option of such person, a cash deposit of such sum so fixed, conditioned for his appearance before the proper court, to answer the offense wherewith he may be charged, and to appear at such times thereafter as may be ordered by the proper court. If the amount of bail is deemed insufficient by the court before whom the offense is pending, the court may order an increase of such bail and the defendant must provide the additional undertaking, written or cash, to secure his release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of

sentence for a limited time, as provided in section 29-2202, or when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court, as provided in section 29-2301, until the period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him of a value above encumbrance equal to the amount of such justification, and shall name all other cases pending in which he is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his equity in his real estate, but such recognizance shall not constitute a lien on the real estate described therein until judgment is entered thereon against such surety; or

(4) Impose any other condition deemed reasonably necessary to assure appearances as required, including a condition requiring that the defendant return to custody after specified hours.

Sec. 3. That section 29-901.03, Revised Statutes Supplement, 1974, be amended to read as follows:

29-901.03. When a defendant first appears before a judge pursuant to section 29-901, he shall be advised of his right to obtain review of the conditions of release imposed if he is unable to fulfill such conditions and remains in custody for more than twenty-four hours thereafter. Any defendant who shall remain in custody for more than twenty-four hours after a judge other than a district court judge imposes bail or any other condition of release, as a result of his inability to fulfill such condition or conditions, may request a review by the judge who imposed the conditions and, upon such request, the defendant shall be brought before the judge at the first regular court day. ~~shall be brought forthwith before the judge who imposed the condition or conditions and informed of his right to have such conditions reviewed.~~ If the defendant indicates ~~that he desires such a review and~~ is indigent and unable to retain legal counsel, the judge shall appoint an attorney to represent the defendant for the purpose of such review. Unless the conditions of release are amended and the defendant is thereupon released, the judge shall set forth in writing the reasons for requiring such condition or conditions. Any defendant who shall be ordered released by a judge other than a district court judge on a condition which requires that

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he return to custody after specified hours shall, upon application, be entitled to a review by the judge who imposed the condition in the same manner as a defendant who remains in full-time custody. In the event that the judge who imposed the condition or conditions of release is not available, any other judge in the district or of the same court may review such conditions.

Sec. 4. That original section 29-506, Reissue Revised Statutes of Nebraska, 1943, and sections 29-901 and 29-901.03, Revised Statutes Supplement, 1974, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.