

The Nebraska Administrative Office of the Courts

GUIDELINES FOR IMPLEMENTING BILINGUAL BAIL/BOND DOCUMENTS

INTRODUCTION

From 1999 to 2003, the *Minority and Justice Task Force* was charged by the Nebraska Supreme Court to undertake a study of racial and ethnic bias and discrimination in Nebraska's justice system. The recently completed two-year study establishes the existence of various structural and systemic barriers to full and complete access to the justice system for racial and ethnic minorities residing in Nebraska. The major recommendation of the *Final Report* was to establish a standing committee to implement the Task Force Recommendations. The mission of the *Minority and Justice Implementation Committee* is to ensure greater equity and fairness in the courts for racial and ethnic minorities by eliminating barriers to full and equal access to justice in Nebraska.

A separate working group of the Minority and Justice Implementation Committee was formed to specifically investigate Nebraska's bond system. In its investigation the working group identified an important access issue. More specifically, there is a concern that in smaller counties, where judges and interpreters are not available on a daily basis, non-English speaking misdemeanor defendants are sometimes detained until arraignment without being advised of available scheduled bonds. This results in unequal access to scheduled bonds. The problem is exacerbated if non-English speaking defendants are encouraged to plead guilty for "time served," which affects defendants' criminal histories and, thus, may affect future sentencing decisions.

In an effort to ensure equal access to bonds, the working group has developed a translated packet of information to be shared with defendants. The packet includes the following documents in a bilingual format (English and Spanish):¹

- i. *Notice of Rights of An In Custody Defendant*;
- ii. *Notice of Right to Post Bond*; and
- iii. *Affidavit in Support of Personal Recognizance Bond*.

These forms are intended to serve an informative purpose; non-English-speaking defendants may or may not be familiar with the United States' justice system and its processes. Moreover, if non-English-speaking detainees are advised of the bond schedule and can post bond or contact someone to post bond for them, this procedure has the potential to relieve jail overcrowding. If defendants are not able to post bond they can use the *Affidavit in Support of Personal Recognizance Bond* to request a personal recognizance bond. Finally, implementation of these procedures is expected to reduce the proportion of racial minorities who believe that they are treated differently in regards to bonds and pretrial detention.

These forms were reviewed by a sample of nine county court judges in August of 2004 and by federal and state court certified interpreters for accuracy. In November, 2004 the Minority and Justice Implementation Committee made a formal request to the Nebraska Supreme

¹ See Appendix I.

Court to approve the use of the translated *Notice of Rights of An In Custody Defendant*; *Notice of Right to Post Bond*; and *Affidavit in Support of Personal Recognizance Bond*. The Nebraska Supreme Court has approved for publication the use of these forms, which are available on the Court's website at: www.court.nol.org/rules/forms.

The following is intended to provide a guide for the use and implementation of these forms among all counties across the State.

I. THE ACCUSED'S RIGHTS TO BAIL

All persons shall be bailable by sufficient sureties, except for treason, sexual offenses involving penetration by force or against the will of the victim, and murder, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Neb.Rev.St. Constitution Article I, § 9.

Throughout state history bail has been provided for and favored. *State v. Seaton*, 170 Neb. 687, 103 N.W.2d 833 (1960).

The use of the term "bail" without limitation or qualification would seem to imply a bail as understood at common law before adoption of the U.S. Constitution, and the court may admit to bail after sentence and pending appeal. *Ford v. State*, 42 Neb. 418, 60 N.W. 960 (1894).

Excessive bail is not whether the amount of bail required is high but rather if the bail demanded per se unreasonable and disproportionate to crime charged in indictment. *In re Scott*, 38 Neb. 502, 56 N.W. 1009 (1893).

II. BOND SCHEDULES AND THEIR APPLICATION

When any person shall be taken into custody and charged with any misdemeanor, the sheriff or the jailer may admit such person to bail in an amount not in excess of that prescribed by the bond schedule furnished by the judges of that court, conditioned for his or her appearance in this court to answer the offense charged. **In unusual cases, the sheriff or jailer may consult a judge of this court about the bond; a judge's verbal order setting such person's bond shall supersede the bond schedule.**

County Court General Rule 16 (emphasis supplied.)

Under Nebraska law, county court judges as well as magistrates have the power and ability to set bail upon a criminal defendant.

The judges of the district courts in their respective districts, and the magistrates mentioned in section 29-201 in their respective counties, shall jointly and severally be conservators of the peace within their respective jurisdictions, and shall have full power to enforce or cause to be enforced all laws that now exist or that shall hereafter be made for the prevention and punishment of offenses, or for the preservation and observance of the peace. Judges of the district courts shall have the same powers to require securities for the keeping of the peace and good behavior, and bail for appearance in courts to answer complaints to keep the peace, and for crimes and offenses committed in their respective districts as any of the magistrates aforesaid have in their respective counties.

Neb.Rev.St. § 29-203.

All county judges in this state shall have the same and equal powers of jurisdiction in all matters relating to the enforcement of the criminal laws of the state, except as otherwise expressly provided, and the jurisdiction of all such officers as magistrates, for the discharge of the duties and for the exercise of the powers enjoined and conferred by this code, shall extend to all crimes and offenses punishable by the laws of this state, committed within their respective jurisdictions, and for the prevention of crimes and offenses as in this code provided, throughout their respective counties.

Neb. Rev. St. § 29-201.

The term magistrate in this code, when not otherwise expressly stated, shall mean a judge of the county court or clerk magistrate.

Neb. Rev. St. § 29-103.

Under Nebraska law, sheriff's, jailers, magistrates and judges share the ability, under certain circumstances, to set a bond upon a criminal defendant. It is within this framework that the Nebraska Supreme Court encourages each county to use and adopt the use of the translated *Notice of Rights of An In Custody Defendant*; *Notice of Right to Post Bond*; and *Affidavit in Support of Personal Recognizance Bond*, forms.

III. PROCEDURE

The Nebraska Supreme Court approved for publication the use of the translated *Notice of Rights of An In Custody Defendant*; *Notice of Right to Post Bond*; and *Affidavit in Support of Personal Recognizance Bond* (hereinafter "the Forms"), forms for bondable offenses consisting of Class II, III, IIIA, IV, V and W misdemeanors. (However, these forms and procedures are not designed to be used for offenses not contained on a bond schedule established by the judge(s) of a county).

A. Adoption and Implementation of a Bond Schedule.

- i. For bondable offenses, each district shall continue to issue and adopt a bond schedule for bondable offenses;
- ii. The Bond schedule shall be made available and by order of the Presiding County Court Judge of each district, adopted and followed by each county court representative as per the meaning of *Neb.Rev.St. §§29-103, 201, 203.*

B. Implementation of the Forms.

- i. Each county, by order of the Presiding County Court Judge of each district, may issue an order calling for the adoption, use and implementation of the Forms. The jailer, sheriff, magistrate and judges of each county, may issue an order of

implementation of the Forms. A sample of said order can be found in Appendix I of this document.

- ii. Each county court judge should encourage the jailer of their county and/or counties with which they may contract for the housing and handling of their prisoners be given and be advised as to the availability of the Forms.
- iii. Each county court judge shall encourage their respective county sheriff and other law enforcement officers, including jailers, that house and/or contract to house and handle their prisoners to use the Forms.

C. Procedure for the Use of the Forms.

- i. Misdemeanor arrest and detention at the local county jail or contracting facility trigger the use of the Forms.
- ii. The arresting officer, local sheriff, jailer or warden of the housing facility, will provide to the arrestee², within two hours of having been brought to the housing facility with a copy of the Forms.³
- iii. Jailers and other law enforcement personnel are not to give any legal advice to arrestees or detainees. Jailers and other law enforcement officers are merely to provide the forms to arrestees and detainees within 2 hours of said individual coming into custody.
- iv. The arrestee shall be given a reasonable amount of time to review the forms. The arrestee's signature on the *Notice of Right to Post Bond* form constitutes an attestation that she/he read the form and understands his/her rights and the possible penalties should she/he not abide by any and all conditions set by the court for the arrestee's release.
- v. The arrestee shall be given a reasonable amount of time to review and sign the *Notice of Rights of An In Custody Defendant*.
- vi. If the arrestee is unable to post bond, pursuant to the bond schedule, the jailer, sheriff or any other law enforcement officer in charge of the housing facility, shall fax to the court or contact the court or the judicial officer on duty, with the information contained within the *Affidavit in Support of Personal*

² The term "arrestee" as used herein, refers to any individual detained, arrested or inmate of a jail, whether said individual is an English speaker or foreign language speaker.

³ There are circumstances where it is impossible, unsafe or counterproductive for jail or law enforcement personnel to approach a detainee for purposes of the Forms procedure. Under those circumstances, if the Forms are provided to an arrestee after the 2 hour window, it is encouraged that law enforcement or jail personnel include a short statement explaining the reasons for not doing so.

Recognizance Bond. The sheriff or jailer may consult a judge or magistrate about the bond. A judge's or magistrate's verbal order setting such person's bond shall supersede the bond schedule for the district.⁴ **In circumstances where an interpreter is not available, the *Affidavit in Support of Personal Recognizance Bond*, shall be treated by the Court as a Motion for Bond Reduction and the information contained within the Affidavit shall be treated as a proffer by the defendant.**

- vii. In circumstances where the arrestee does not speak or read the English or Spanish language, the jailer or law enforcement officer should make all reasonable efforts to obtain an interpreter in the detainees language.⁵
- viii. Jail personnel should file the executed Forms with the clerk of the county court as soon as practicable, however, under no circumstances any later than the morning of the court's next business day.

⁴ See County Court General Rule 16.

⁵ Interpreters are available in over 150 languages via AT&T's Language Line. This service is available by calling 1-877-886-3885.

Appendix I

IN THE COUNTY COURT OF _____ COUNTY, NEBRASKA

MEMORANDUM AND COURT ORDER

TO: _____ (Sheriff, Jailer, Director of Corrections, Magistrate)

DATE: _____

RE: Implementation of translated bail/bond forms.

The Nebraska Supreme Court has approved for publication the attached bilingual (English-Spanish) forms: *Notice of Rights of An In Custody Defendant*; *Notice of Right to Post Bond*; and *Affidavit in Support of Personal Recognizance Bond*. These forms shall be used for bondable offenses consisting of Class II, III, IIIA, IV, V and W misdemeanors and according to the bond schedule set by Order of this Court. All arrestees/detainees charged with any of the misdemeanors listed above shall receive a copy of these forms according to the following procedures:

1. The bilingual Forms shall be provided upon the arrest and detention at the local county jail or contracting facility.
2. The arresting officer or corrections officer/jailer shall provide the arrestee with a copy of the Forms within two hours of having been brought to the housing facility. The two-hour timeframe may be reasonably extended for cause such as safety, intoxication, etc.
3. Upon delivery of the Forms to the arrestee, the officer delivering the Forms, shall execute the certification contained on Page 4 of the *Notice of Right to Post Bond* form and on Page 4 of the *Notice of Rights of An In Custody Defendant*.
4. The arrestee shall be given a reasonable amount of time to review the forms and shall execute the certification contained on Page 4 of the *Notice of Right to Post Bond* form. The arrestee's signature constitutes an attestation that she/he read the *Notice of Right to Post Bond* form and understands his/her rights and the possible penalties should she/he not abide by any and all conditions set by the court for the arrestee's release.
5. The arrestee shall be given a reasonable amount of time to review the *Notice of Rights of An In Custody Defendant* and shall execute the attestation on Page 4 of said document.
6. If the arrestee is unable to post bond, pursuant to the bond schedule, the corrections officer/ jailer or any other law enforcement officer in charge of the housing facility, shall fax to the court or contact the court with the information contained within the

Affidavit in Support of Personal Recognizance Bond and may consult a judge or magistrate about the bond. A judge's or magistrate's verbal order setting such person's bond shall supersede the bond schedule for the court.

7. The above information shall be disseminated to all jail personnel. In addition, the *Affidavit in Support of Personal Recognizance Bond* shall be available to detainees after the booking process and treated by jail personnel as a request for a bond review.
8. The blanks regarding the type and amount of bond in the *Notice of Right to Post Bond* shall be completed prior to giving the forms to the arrestee/detainee.
9. Jail personnel shall file the executed Forms with the clerk of the county court as soon as practicable and no later than the morning of the court's next business day.

County Court Judge