

BENCH CARD: Imposition of Fines and Fees

The Court shall assess the defendant's financial ability to pay when setting the amount of any fine.¹ The Court may determine a defendant's financial ability to pay at the sentencing hearing or at a separate hearing.² To make the determination of financial ability, the Court should provide a defendant with a meaningful opportunity to explain their inability to pay.³

In determining whether to impose a fine and the amount, the Court shall consider and inquire about:

1. the defendant's monthly financial resources and income, including but not limited to:

- the amount of money earned through work/employment;
- amount received per month from government assistance programs;
- cash in the defendant's possession;
- money in the defendant's bank accounts;
- value of the defendant's property or real estate;
- value of the defendant's vehicles; and/or
- any other income identified by defendant.

2. the number and age of dependents;

3. the defendant's monthly financial obligations, including but not limited to:

- cost of the defendant's mortgage or rent not covered by housing subsidies;
- cost of the defendant's electricity, gas, and water not covered by energy assistance benefits;
- cost of the defendant's food without Supplemental Nutrition Assistance Program (SNAP) benefits or food assistance;
- cost of automobile loan payments and the balance of the loan;
- cost of court-ordered child support; and
- cost of clothing and living expenses (i.e. phone bills, car insurance, gasoline, transportation costs including car insurance and gasoline, laundry, student loans, payday loans, medical bills, and credit card bills)

4. the defendant's efforts and ability to find and engage in paid work or community service, including any limitations due to disability and/or caretaking responsibility;

5. the goals of deterrence, retribution, and rehabilitation; and

6. any other factor or evidence that the Court deems appropriate.

Tools for Determining Ability to Pay

While not required by NEB. REV. STAT. §29-2206, courts seeking additional guidance when making a determination on a defendant's ability to pay, may consider the federal poverty guidelines.⁴

Persons in family/household	Poverty guideline
1	\$13,590
2	\$18,310
3	\$23,030
4	\$27,750
5	\$32,470
6	\$37,190
7	\$41,910
8	\$46,630
For families/households with more than 8 persons, add \$4,720 for each additional person.	

¹NEB. REV. STAT. §29-2206.

²*Id.*

³*Bearden v. Georgia*, 461 U.S. 660, 673, 103 S. Ct. 2064, 2073, 76 L. Ed. 2d 221 (1983).

⁴U.S. Department of Health and Human Services (HHS) Poverty Guidelines for 2022, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines> (last visited December 19, 2022)(the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2)).

BENCH CARD: Imposition of Fines and Fees

If the Court determines a defendant is unable to pay a fine or fee, the Court shall either:

- discharge the fine or cost;⁵
- allow the defendant to pay in installments;⁶ or
- allow the defendant to perform community service to earn credit toward the discharge of a fine;⁷

If the Court determines a defendant is able to pay the fine or fee, the Court may still:

- order the defendant complete community service for a specified number of hours in lieu of the Court committing and imprisoning the defendant in jail; or
- deduct costs or fines from a bond posted by the defendant to the extent that such bond is not otherwise encumbered by a valid lien, levy, execution, or assignment to counsel of record or the person who posted the bond.

⁵ NEB. REV. STAT. §29-2206(1)(c)(i)(A).

⁶ NEB. REV. STAT. §29-2206(2).

⁷ NEB. REV. STAT. §29-2206(1)(c)(ii); see NEB. REV. STAT. §§ 29-2277 - 29-2279. The length of a community service sentence shall be as follows:

- (1) Pursuant to section 29-2206, 29-2208, or 29-2412, for an infraction, not less than four nor more than twenty hours;
- (2) For a violation of a city ordinance that is an infraction and not pursuant to section 29-2206, 29-2208, or 29-2412, not less than four hours;
- (3) For a Class IV or Class V misdemeanor, not less than four nor more than eighty hours;
- (4) For a Class III or Class IIIA misdemeanor, not less than eight nor more than one hundred fifty hours;
- (5) For a Class I or Class II misdemeanor, not less than twenty nor more than four hundred hours;
- (6) For a Class IIIA or Class IV felony, not less than two hundred nor more than three thousand hours; and
- (7) For a Class III felony, not less than four hundred nor more than six thousand hours. NEB. REV. STAT. §29-2279.



BENCH CARD: Imposition of Bail

STEP 1:

Is the bailable defendant “charged with one or more Class IIIA, IV, or VI misdemeanors or violations of city or county ordinances”¹? If yes, go through STEPS 2 and 3. If not, go through STEP 4 and 5.

STEP 2:

Do all of the following elements apply to the case at hand?:

- (1) “the defendant has failed to appear previously in [this] case or any other case in the previous six months;²”
- (2) the Court cannot “reasonably assure the appearance of the defendant” or the defendant “could jeopardize the safety and maintenance of evidence or the safety of the defendant, victims, witnesses, or other persons;³” and
- (3) “the defendant was arrested pursuant to a warrant.”⁴

STEP 2A:

If #1-3 apply to the defendant, the Court is unable to release the defendant “from custody pending judgment on their personal recognizance or under other conditions of release, other than payment of a bond.”⁵ Go to STEP 5 to determine amount of payment of a bond.

STEP 2B:

If #1-3 do not apply to the defendant or only some of the factors apply, go to STEP 3.

STEP 3:

Do any of the following elements apply to the case at hand?:

- (1) “The victim is an intimate partner”⁶ of the defendant; or
- (2) The defendant is charged with one or more violations related to driving under the influence of alcohol or drug under NEB. REV. STAT. §60-6,196 or §60-6,197 or city or village ordinances enacted in conformance with the same.⁷

STEP 3A:

If #1 or #2 apply, the Court is unable to order the defendant’s release from custody pending judgment on his or her personal recognizance or under other conditions but may order payment of a bond,⁸ go to STEP 5.

STEP 3B:

If neither #1 or #2 apply, go to STEP 4.

STEP 4:

The court shall order the defendant be released “from custody pending judgment on their personal recognizance unless” either of the following apply:
(1) “The judge determines in the exercise of [their] discretion that such a release will not reasonably assure the appearance of the defendant as required”; or
(2) “That such a release could jeopardize the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community.”

“The court shall consider all methods of bond and conditions of release to avoid pretrial incarceration.”
NEB. REV. STAT. § 29-901(3).

¹ NEB. REV. STAT. §29-901(2)(a).

² NEB. REV. STAT. §29-901(2)(b)(i).

³ NEB. REV. STAT. §29-901(2)(b)(ii).

⁴ NEB. REV. STAT. §29-901(2)(b)(iii).

⁵ NEB. REV. STAT. §29-901(2)(b).

⁶ NEB. REV. STAT. § 28-323(8) (“intimate partner means a spouse; a former spouse; persons who have a child in common whether or not they have been married or lived together at any time; and persons who are or were involved in a dating relationship. . . dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.”)

⁷ NEB. REV. STAT. §29-901(2)(a).

⁸ NEB. REV. STAT. §29-901(2)(a).

⁹ NEB. REV. STAT. §29-901(1).

BENCH CARD: Imposition of Bail

STEP 5:

If the Court determines that the defendant shall not be released on their personal recognizance or other bond conditions, but is able to order payment of a bond, the Court shall:

(1) “consider the defendant’s financial ability to pay a bond” (to determine financial ability to pay go to STEP 6); and

(2) “Impose the least onerous of the following conditions that will reasonably assure the defendant’s appearance or that will eliminate or minimize the risk of harm to others or the public at large”:

- a. “Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant”;
- b. “Place restrictions on the travel, association, or place of abode of the defendant during the period of release”; or
- c. Require, at the option of the defendant, either of the following:

- i. “The execution of an appearance bond in a specified amount and the deposit with the clerk of the court” in a sum not to exceed 10% of the amount of the bond; or
- ii. “The execution of a bail bond with such surety or sureties” as the Court deems proper; or
- iii. A cash deposit of the sum on the condition of their appearance before the proper court, to answer to the offense they are charged to, and to appear at such times as may be ordered by the proper court.¹⁰

The Court may also take into account the following:

- The nature and circumstances of the offense charged, including any information to indicate that the defendant might engage in additional criminal activity or pose a threat to themselves;
- The defendant’s family ties;
- The defendant’s employment;
- The length of the defendant’s residence in the community;
- The defendant’s record of criminal convictions, and
- The defendant’s record of appearances at court proceedings; or of flight to avoid prosecution or of failure to appear at court proceedings.¹¹

¹⁰ NEB. REV. STAT. §29-901(3).

¹¹ NEB. REV. STAT. §29-901.01.

¹² NEB. REV. STAT. §29-901.02.

STEP 6:

In determining the defendant’s ability to pay, the Court shall consider and inquire about:

- (1) the defendant’s monthly financial resources and income, including but not limited to:
 - a. the amount of money earned through work/employment;
 - b. amount received per month from government assistance programs; and
 - c. cash in the defendant’s possession;
 - d. money in the defendant’s bank accounts;
 - e. value of the defendant’s property or real estate;
 - f. value of the defendant’s vehicles; and/or
 - g. any other income identified by the defendant.
- (2) the number and age of dependents;
- (3) the defendant’s monthly financial obligations, including but not limited to:
 - a. cost of the defendant’s mortgage or rent not covered by housing subsidies;
 - b. cost of the defendant’s electricity, gas, and water not covered by energy assistance benefits;
 - c. cost of the defendant’s food without Supplemental Nutrition Assistance Program (SNAP) benefits or food assistance;
 - d. cost of automobile loan payments and the balance of the loan;
 - e. cost of court-ordered child support; and
 - f. cost of clothing and living expenses (i.e. phone bills, transportation costs including car insurance and gasoline, laundry, student loans, payday loans, medical bills, and credit card bills)
- (4) the defendant’s efforts and ability to find and engage in paid work or community service, including any limitations due to disability and caretaking responsibilities;
- (5) the goals of deterrence, retribution, and rehabilitation; and
- (6) any other factor or evidence that the Court deems appropriate.

STEP 7 (FINAL STEP):

A judge who authorizes the release of a defendant shall issue a written order with the following:

- (1) a statement of the condition(s) imposed, if any;
- (2) “inform the defendant of the penalties for violating any of the conditions of such release” and
- (3) “advise the defendant that a warrant for their arrest shall be issued immediately upon such violation.”¹²