

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1010**

Introduced by Hansen, 26.

Read first time January 16, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal procedure; to amend section  
2 71-942, Reissue Revised Statutes of Nebraska, and section 29-1823,  
3 Revised Statutes Supplement, 2017; to change provisions relating to  
4 competency to stand trial; to define terms; to harmonize provisions;  
5 and to repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1823, Revised Statutes Supplement, 2017, is  
2 amended to read:

3 29-1823 (1) This section applies to all counties except those  
4 containing a city of the primary class.

5 (2) (1) If at any time prior to trial it appears that the defendant  
6 accused has become mentally incompetent to stand trial, such disability  
7 may be called to the attention of the district or county court by the  
8 county attorney or city attorney, by the defendant accused, or by any  
9 person for the defendant accused. The judge of the district or county  
10 court of the county where the defendant accused is to be tried shall have  
11 the authority to determine whether or not the defendant accused is  
12 competent to stand trial. The judge may also cause such medical,  
13 psychiatric, or psychological examination of the defendant accused to be  
14 made as he or she deems warranted and hold such hearing as he or she  
15 deems necessary. The cost of the examination, when ordered by the court,  
16 shall be the expense of the county in which the crime is charged. The  
17 judge may allow any physician, psychiatrist, or psychologist a reasonable  
18 fee for his or her services, which amount, when determined by the judge,  
19 shall be certified to the county board which shall cause payment to be  
20 made. Should the judge determine after a hearing that the defendant  
21 accused is mentally incompetent to stand trial and that there is a  
22 substantial probability that the defendant accused will become competent  
23 within the foreseeable future, the judge shall order the defendant  
24 accused to be committed to a state hospital for the mentally ill or some  
25 other appropriate state-owned or state-operated facility for appropriate  
26 treatment until such time as the disability may be removed.

27 (3) (2) Within six months after the commencement of the treatment  
28 ordered by the district or county court, and every six months thereafter  
29 until either the disability is removed or other disposition of the  
30 defendant accused has been made, the court shall hold a hearing to  
31 determine (a) whether the defendant accused is competent to stand trial

1 or (b) whether or not there is a substantial probability that the  
2 defendant accused will become competent within the foreseeable future.

3 (4) ~~(3)~~ If it is determined that there is not a substantial  
4 probability that the defendant accused will become competent within the  
5 foreseeable future, then the state shall either (a) commence the  
6 applicable civil commitment proceeding that would be required to commit  
7 any other person for an indefinite period of time or (b) release the  
8 defendant accused. If during the period of time between the six-month  
9 review hearings set forth in subsection (3) ~~(2)~~ of this section it is the  
10 opinion of the Department of Health and Human Services that the defendant  
11 accused is competent to stand trial, the department shall file a report  
12 outlining its opinion with the court, and within twenty-one days after  
13 such report being filed, the court shall hold a hearing to determine  
14 whether or not the defendant accused is competent to stand trial.

15 (5) The state shall pay the cost of maintenance and care of the  
16 defendant accused during the period of time ordered by the court for  
17 treatment to remove the disability.

18 Sec. 2. (1) This section applies to any county containing a city of  
19 the primary class.

20 (2) If at any time prior to trial it appears that the defendant has  
21 become mentally incompetent to stand trial, such disability may be called  
22 to the attention of the district or county court by the county attorney  
23 or city attorney, by the defendant, or by any person for the defendant.  
24 The judge of the district or county court of the county where the  
25 defendant is to be tried shall have the authority to determine whether or  
26 not the defendant is competent to stand trial. The judge may also cause  
27 such medical, psychiatric, or psychological examination of the defendant  
28 to be made as he or she deems warranted and hold such hearing as he or  
29 she deems necessary. The cost of the examination, when ordered by the  
30 court, shall be the expense of the county in which the crime is charged.  
31 The judge may allow any physician, psychiatrist, or psychologist a

1 reasonable fee for his or her services, which amount, when determined by  
2 the judge, shall be certified to the county board which shall cause  
3 payment to be made. Should the judge determine after a hearing that the  
4 defendant is mentally incompetent to stand trial and that there is a  
5 substantial probability that the defendant will become competent within  
6 the foreseeable future, the judge shall order the defendant to be  
7 committed to the least restrictive treatment alternative until such time  
8 as the disability may be removed.

9 (3)(a) If the defendant is committed for treatment to a treatment  
10 provider other than the Department of Health and Human Services and such  
11 treatment provider determines that the defendant should be committed to a  
12 different treatment alternative, the treatment provider shall submit a  
13 report outlining its opinion to the department. If the department concurs  
14 in the treatment provider's determination, it shall file the report with  
15 the court. If the department does not concur, it shall file the report  
16 with the court and provide the court with the reason it does not concur.

17 (b) If the defendant is committed for treatment with the Department  
18 of Health and Human Services and the department determines that the  
19 defendant should be committed to a different treatment alternative, the  
20 department shall file a report outlining its opinion with the court.

21 (4) Within twenty-one days after the filing of a report under  
22 subsection (3) of this section, the court shall hold a hearing to  
23 determine whether the defendant should be placed in a different treatment  
24 alternative. If the court finds after a hearing that such change in  
25 placement is appropriate, the court may order the defendant to be  
26 committed to a different least restrictive treatment alternative until  
27 such time as the disability may be removed.

28 (5) Within six months after the commencement of the treatment  
29 ordered by the district or county court, and every six months thereafter  
30 until either the disability is removed or other disposition of the  
31 defendant has been made, the court shall hold a hearing to determine (a)

1 whether the defendant is competent to stand trial or (b) whether or not  
2 there is a substantial probability that the defendant will become  
3 competent within the foreseeable future.

4 (6) If it is determined that there is not a substantial probability  
5 that the defendant will become competent within the foreseeable future,  
6 then the state shall either (a) commence the applicable civil commitment  
7 proceeding that would be required to commit any other person for an  
8 indefinite period of time or (b) release the defendant. If during the  
9 period of time between the six-month review hearings set forth in  
10 subsection (5) of this section it is the opinion of the treatment  
11 provider that the defendant is competent to stand trial, the treatment  
12 provider shall file a report outlining its opinion with the court, and  
13 within twenty-one days after such report being filed, the court shall  
14 hold a hearing to determine whether or not the defendant is competent to  
15 stand trial.

16 (7) The state shall pay the cost of maintenance and care of the  
17 defendant during the period of time ordered by the court for treatment to  
18 remove the disability.

19 (8) A defendant shall not be eligible for outpatient treatment under  
20 this section if he or she is charged with an offense for which bail is  
21 prohibited or if the judge determines that the public's safety would be  
22 at risk.

23 (9) For purposes of this section:

24 (a) Least restrictive treatment alternative means a placement and  
25 services provided in a manner no more restrictive of a defendant's  
26 liberty and no more intrusive than necessary to provide appropriate  
27 treatment and protect society. This includes commitment for treatment at  
28 a state hospital for the mentally ill, some other appropriate state-owned  
29 or state-operated facility, or an outpatient treatment provider, if  
30 practicable; and

31 (b) Treatment provider means the Department of Health and Human

1 Services or another provider of treatment ordered pursuant to this  
2 section.

3       Sec. 3. Section 71-942, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5       71-942 The Governor may appoint an agent to demand of the executive  
6 authority of another state any person who is located in such other state,  
7 who was receiving treatment at a treatment facility or program in this  
8 state pursuant to the Nebraska Mental Health Commitment Act, the Sex  
9 Offender Commitment Act, or section 29-1823, 29-2203, or 29-3701 to  
10 29-3704, or section 2 of this act and who is absent without authorization  
11 from such treatment facility or program. The demand shall be accompanied  
12 by a certified copy of the order of commitment and a sworn statement by  
13 the administrator of the treatment facility or program stating that (1)  
14 the person is absent without authorization, (2) the administrator or  
15 program director of such treatment facility or program believes that such  
16 person is currently dangerous to himself, herself, or others, and (3) the  
17 treatment facility or program is willing to accept the person back for  
18 further treatment. This section does not prevent extradition under the  
19 Uniform Criminal Extradition Act if such act applies.

20       Sec. 4.    Original section 71-942, Reissue Revised Statutes of  
21 Nebraska, and section 29-1823, Revised Statutes Supplement, 2017, are  
22 repealed.