

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1007

Introduced by Hansen, M., 26.

Read first time January 15, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal procedure; to amend section
2 29-1822, Revised Statutes Cumulative Supplement, 2018, and section
3 29-1823, Revised Statutes Supplement, 2019; to change provisions
4 relating to competency to stand trial and competency to be
5 sentenced; to provide a duty for the Revisor of Statutes; to
6 harmonize provisions; and to repeal the original sections.

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

1 Section 1. Section 29-1823, Revised Statutes Supplement, 2019, is
2 amended to read:

3 29-1823 (1) If at any time prior to or during trial it appears that
4 the defendant has become mentally incompetent to stand trial, such
5 disability may be called to the attention of the district or county court
6 by the county attorney or city attorney, by the defendant, or by any
7 person for the defendant. The judge of the district or county court of
8 the county where the defendant is to be tried shall have the authority to
9 determine whether or not the defendant is competent to stand trial. The
10 judge may also cause such medical, psychiatric, or psychological
11 examination of the defendant to be made as he or she deems warranted and
12 hold such hearing as he or she deems necessary. The cost of the
13 examination, when ordered by the court, shall be the expense of the
14 county in which the crime is charged. The judge may allow any physician,
15 psychiatrist, or psychologist a reasonable fee for his or her services,
16 which amount, when determined by the judge, shall be certified to the
17 county board which shall cause payment to be made. Should the judge
18 determine after a hearing that the defendant is mentally incompetent to
19 stand trial, the judge shall proceed as follows:

20 (a) If the defendant is charged with a Class IV felony or
21 misdemeanor, including a violation of a city or village ordinance, the
22 judge shall dismiss the charges. Following dismissal, the state shall
23 either (i) commence the applicable civil commitment proceeding that would
24 be required to commit any other person for an indefinite period of time
25 or (ii) release the defendant; or

26 (b) If the defendant is charged with a felony other than a Class IV
27 felony and the judge also determines, after such hearing, and that there
28 is a substantial probability that the defendant will become competent
29 within the reasonably foreseeable future, the judge shall order the
30 defendant to be committed to the Department of Health and Human Services
31 to provide appropriate treatment to restore competency. This may include

1 commitment to a state hospital for the mentally ill, another appropriate
2 state-owned or state-operated facility, or a contract facility or
3 provider pursuant to an alternative treatment plan proposed by the
4 department and approved by the court under subsection (2) of this section
5 until such time as the disability may be removed.

6 (2)(a) If the department determines that treatment by a contract
7 facility or provider is appropriate, the department shall file a report
8 outlining its determination and such alternative treatment plan with the
9 court. Within twenty-one days after the filing of such report, the court
10 shall hold a hearing to determine whether such treatment is appropriate.
11 The court may approve or deny such alternative treatment plan.

12 (b) A defendant shall not be eligible for treatment by a contract
13 facility or provider under this subsection if the judge determines that
14 the public's safety would be at risk.

15 (3) If a defendant is ordered to treatment under subdivision (1)(b)
16 of this section, within ~~within~~ six months after the commencement of the
17 treatment ordered by the district or county court, and every six months
18 thereafter until either the disability is removed or other disposition of
19 the defendant has been made, the court shall hold a hearing to determine
20 (a) whether the defendant is competent to stand trial or (b) whether or
21 not there is a substantial probability that the defendant will become
22 competent within the reasonably foreseeable future.

23 (4) If a defendant is ordered to treatment under subdivision (1)(b)
24 of this section and it is determined that there is not a substantial
25 probability that the defendant will become competent within the
26 reasonably foreseeable future, then the state shall either (a) commence
27 the applicable civil commitment proceeding that would be required to
28 commit any other person for an indefinite period of time or (b) release
29 the defendant. If during the period of time between the six-month review
30 hearings set forth in subsection (3) of this section it is the opinion of
31 the department that the defendant is competent to stand trial, the

1 department shall file a report outlining its opinion with the court and
2 within twenty-one days after such report being filed the court shall hold
3 a hearing to determine whether or not the defendant is competent to stand
4 trial. The state shall pay the cost of maintenance and care of the
5 defendant during the period of time ordered by the court for treatment to
6 remove the disability.

7 (5) In determining whether there is a substantial probability that a
8 defendant will become competent in the reasonably foreseeable future, the
9 court shall take into consideration the likely length of any sentence
10 that would be imposed upon the defendant. The department may establish a
11 network of contract facilities and providers to provide competency
12 restoration treatment pursuant to alternative treatment plans under this
13 section. The department may create criteria for participation in such
14 network and establish training in competency restoration treatment for
15 participating contract facilities and providers.

16 Sec. 2. (1) If, at any time after conviction and prior to
17 sentencing, it appears that the defendant has become mentally incompetent
18 to be sentenced, such disability may be called to the attention of the
19 district or county court by the county attorney or city attorney, by the
20 defendant, or by any person for the defendant. The judge of the district
21 or county court of the county where the defendant is to be sentenced
22 shall have the authority to determine whether or not the defendant is
23 competent to be sentenced. The judge may also cause such medical,
24 psychiatric, or psychological examination of the defendant to be made as
25 the judge deems warranted and hold such hearing as the judge deems
26 necessary. The cost of the examination, when ordered by the court, shall
27 be the expense of the county in which the crime is charged. The judge may
28 allow any physician, psychiatrist, or psychologist a reasonable fee for
29 such person's services, which amount, when determined by the judge, shall
30 be certified to the county board which shall cause payment to be made.
31 Should the judge determine after a hearing that the defendant is mentally

1 incompetent to be sentenced, the judge shall proceed as follows:

2 (a) If the defendant is convicted of a Class IV felony or
3 misdemeanor, including a violation of a city or village ordinance, the
4 judge shall vacate the conviction and dismiss the charges. The state
5 shall then either (i) commence the applicable civil commitment proceeding
6 that would be required to commit any other person for an indefinite
7 period of time or (ii) release the defendant; or

8 (b) If the defendant is convicted of a felony other than a Class IV
9 felony and the judge also determines, after such hearing, that there is a
10 substantial probability that the defendant will become competent within
11 the reasonably foreseeable future, the judge shall order the defendant to
12 be committed to the Department of Health and Human Services to provide
13 appropriate treatment to restore competency. This may include commitment
14 to a state hospital for the mentally ill, another appropriate state-owned
15 or state-operated facility, or a contract facility or provider pursuant
16 to an alternative treatment plan proposed by the department and approved
17 by the court under subsection (2) of this section until such time as the
18 disability may be removed.

19 (2)(a) If the department determines that treatment by a contract
20 facility or provider is appropriate, the department shall file a report
21 outlining its determination and such alternative treatment plan with the
22 court. Within twenty-one days after the filing of such report, the court
23 shall hold a hearing to determine whether such treatment is appropriate.
24 The court may approve or deny such alternative treatment plan.

25 (b) A defendant shall not be eligible for treatment by a contract
26 facility or provider under this subsection if the judge determines that
27 the public's safety would be at risk.

28 (3) If a defendant is ordered to treatment under subdivision (1)(b)
29 of this section, within six months after the commencement of the
30 treatment ordered by the district or county court, and every six months
31 thereafter until either the disability is removed or other disposition of

1 the defendant has been made, the court shall hold a hearing to determine
2 (a) whether the defendant is competent to be sentenced or (b) whether or
3 not there is a substantial probability that the defendant will become
4 competent within the reasonably foreseeable future.

5 (4) If a defendant is ordered to treatment under subdivision (1)(b)
6 of this section and it is determined that there is not a substantial
7 probability that the defendant will become competent within the
8 reasonably foreseeable future, then the state shall either (a) commence
9 the applicable civil commitment proceeding that would be required to
10 commit any other person for an indefinite period of time or (b) release
11 the defendant. If during the period of time between the six-month review
12 hearings set forth in subsection (3) of this section it is the opinion of
13 the department that the defendant is competent to be sentenced, the
14 department shall file a report outlining its opinion with the court and
15 within twenty-one days after such report being filed the court shall hold
16 a hearing to determine whether or not the defendant is competent to be
17 sentenced. The state shall pay the cost of maintenance and care of the
18 defendant during the period of time ordered by the court for treatment to
19 remove the disability.

20 (5) In determining whether there is a substantial probability that a
21 defendant will become competent in the reasonably foreseeable future, the
22 court shall take into consideration the likely length of any sentence
23 that would be imposed upon the defendant.

24 Sec. 3. The Department of Health and Human Services may establish a
25 network of contract facilities and providers to provide competency
26 restoration treatment pursuant to alternative treatment plans under
27 section 29-1823 and section 2 of this act. The department may create
28 criteria for participation in such network and establish training in
29 competency restoration treatment for participating contract facilities
30 and providers.

31 Sec. 4. Section 29-1822, Revised Statutes Cumulative Supplement,

1 2018, is amended to read:

2 ~~29-1822~~ If A person who becomes mentally incompetent after the
3 ~~commission of a crime or misdemeanor shall not be tried for the offense~~
4 ~~during the continuance of the incompetency. If, after the verdict of~~
5 ~~guilty and before judgment pronounced, such person becomes mentally~~
6 ~~incompetent, then no judgment shall be given while such incompetency~~
7 ~~shall continue; and if, after judgment and before execution of the~~
8 sentence, a ~~such~~ person shall become mentally incompetent, then in case
9 the punishment be capital, the execution thereof shall be stayed until
10 the recovery of such person from the incompetency.

11 Sec. 5. The Revisor of Statutes shall assign sections 2, 3, and 4
12 of this act to Chapter 29, article 18.

13 Sec. 6. Original section 29-1822, Revised Statutes Cumulative
14 Supplement, 2018, and section 29-1823, Revised Statutes Supplement, 2019,
15 are repealed.