

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1097

Introduced by DeKay, 40; Brewer, 43; McDonnell, 5.

Read first time January 09, 2024

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-1823, Revised Statutes Cumulative Supplement, 2022; to change a
- 3 requirement relating to reimbursement by the Department of Health
- 4 and Human Services for mentally incompetent defendants; and to
- 5 repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1823, Revised Statutes Cumulative Supplement,
2 2022, is 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 and that there is a substantial probability that the
20 defendant will become competent within the reasonably foreseeable future,
21 the judge shall order the defendant to be committed to the Department of
22 Health and Human Services to provide appropriate treatment to restore
23 competency. This may include commitment to a state hospital for the
24 mentally ill, another appropriate state-owned or state-operated facility,
25 or a contract facility or provider pursuant to an alternative treatment
26 plan proposed by the department and approved by the court under
27 subsection (2) of this section until such time as the disability may be
28 removed.

29 (2)(a) If the department determines that treatment by a contract
30 facility or provider is appropriate, the department shall file a report
31 outlining its determination and such alternative treatment plan with the

1 court. Within twenty-one days after the filing of such report, the court
2 shall hold a hearing to determine whether such treatment is appropriate.
3 The court may approve or deny such alternative treatment plan.

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

7 (3) Within sixty days after entry of the order committing the
8 defendant to the department, and every sixty days thereafter until either
9 the disability is removed or other disposition of the defendant has been
10 made, the court shall hold a hearing to determine (a) whether the
11 defendant is competent to stand trial or (b) whether or not there is a
12 substantial probability that the defendant will become competent within
13 the reasonably foreseeable future.

14 (4) If it is determined that there is not a substantial probability
15 that the defendant will become competent within the reasonably
16 foreseeable future, then the state shall either (a) commence the
17 applicable civil commitment proceeding that would be required to commit
18 any other person for an indefinite period of time or (b) release the
19 defendant. If during the period of time between the sixty-day review
20 hearings set forth in subsection (3) of this section it is the opinion of
21 the department that the defendant is competent to stand trial, the
22 department shall file a report outlining its opinion with the court and
23 within seven days after such report being filed the court shall hold a
24 hearing to determine whether or not the defendant is competent to stand
25 trial. The state shall pay the cost of maintenance and care of the
26 defendant during the period of time ordered by the court for treatment to
27 remove the disability.

28 (5) The defendant, by and through counsel, may move to be discharged
29 from the offenses charged in the complaint or information for the reason
30 that there is not a substantial probability that the defendant will
31 become competent within the reasonably foreseeable future.

1 (6) In determining whether there is a substantial probability that a
2 defendant will become competent in the reasonably foreseeable future, the
3 court shall take into consideration the likely length of any sentence
4 that would be imposed upon the defendant. If the court discharges the
5 defendant, the court shall state whether such discharge is with or
6 without prejudice.

7 (7) ~~(7)(a)~~ If a judge orders a defendant in custody to be committed
8 to the Department of Health and Human Services to receive treatment to
9 restore competency, ~~and~~ such defendant shall remain ~~remains~~ lodged in the
10 county jail until the department can admit the defendant or find
11 alternative treatment. After the first thirty days that the defendant
12 remains in the county jail after the commitment, the department shall
13 reimburse the county for lodging the defendant at the rate of one hundred
14 dollars per day for each day, or portion thereof, after the first thirty
15 days that the defendant is lodged in the county jail after commitment.

16 ~~(b) Costs of lodging the defendant shall include the daily rate of~~
17 ~~lodging the defendant, food, medical services, transportation, and any~~
18 ~~other necessary costs incurred by the county to lodge the defendant.~~

19 ~~(c) The daily rate of lodging the defendant shall be one hundred~~
20 ~~dollars per day for each day or portion thereof after the first thirty~~
21 ~~days that the defendant is lodged in the county jail after a~~
22 ~~determination by a judge that the defendant is required to be restored to~~
23 ~~competency. On July 1, 2023, and each July 1 thereafter, the department~~
24 ~~shall adjust the amount to be reimbursed to the county jails by an amount~~
25 ~~equal to the percentage increase, if any, in the Consumer Price Index for~~
26 ~~All Urban Consumers, as published by the United States Department of~~
27 ~~Labor, Bureau of Labor Statistics, for the twelve months ending on June~~
28 ~~30 of such year.~~

29 ~~(d) For purposes of this section, medical services has the same~~
30 ~~meaning as provided in subsection (2) of section 47-701.~~

31 Sec. 2. Original section 29-1823, Revised Statutes Cumulative

1 Supplement, 2022, is repealed.