

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1007**

Introduced by Hansen, M., 26.

Read first time January 15, 2020

Committee:

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.