

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 240**

Introduced by Hansen, M., 26.

Read first time January 14, 2019

Committee:

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-1823, Revised Statutes Cumulative Supplement, 2018; to change
- 3 provisions relating to competency to stand trial; to harmonize
- 4 provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1823, Revised Statutes Cumulative Supplement,  
2 2018, is amended to read:

3 29-1823 (1) If at any time prior to trial it appears that the  
4 defendant accused 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 accused, or by  
7 any person for the defendant accused. The judge of the district or county  
8 court of the county where the defendant accused is to be tried shall have  
9 the authority to determine whether or not the defendant accused is  
10 competent to stand trial. The judge may also cause such medical,  
11 psychiatric, or psychological examination of the defendant accused to be  
12 made as he or she deems warranted and hold such hearing as he or she  
13 deems necessary. The cost of the examination, when ordered by the court,  
14 shall be the expense of the county in which the crime is charged. The  
15 judge may allow any physician, psychiatrist, or psychologist a reasonable  
16 fee for his or her services, which amount, when determined by the judge,  
17 shall be certified to the county board which shall cause payment to be  
18 made. Should the judge determine after a hearing that the defendant  
19 accused is mentally incompetent to stand trial and that there is a  
20 substantial probability that the defendant accused will become competent  
21 within the foreseeable future, the judge shall order the defendant  
22 accused to be committed to the Department of Health and Human Services to  
23 provide appropriate treatment to restore competency, which may include  
24 commitment to a state hospital for the mentally ill; another or some  
25 other appropriate state-owned or state-operated facility; a private  
26 facility; a facility, other than a jail, operated by a political  
27 subdivision; or on an outpatient basis at any such facility for  
28 appropriate treatment until such time as the disability may be removed.  
29 If the department determines that treatment outside of a state hospital  
30 for the mentally ill is appropriate, the department shall file a report  
31 outlining its determination with the court. The court may approve or deny

1 the alternative treatment plan.

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

6 (3) (2) Within six months after the commencement of the treatment  
7 ordered by the district or county court, and every six months thereafter  
8 until either the disability is removed or other disposition of the  
9 defendant accused has been made, the court shall hold a hearing to  
10 determine (a) whether the defendant accused is competent to stand trial  
11 or (b) whether or not there is a substantial probability that the  
12 defendant accused will become competent within the foreseeable future.

13 (4) (3) If it is determined that there is not a substantial  
14 probability that the defendant accused will become competent within the  
15 foreseeable future, then the state shall either (a) commence the  
16 applicable civil commitment proceeding that would be required to commit  
17 any other person for an indefinite period of time or (b) release the  
18 defendant accused. If during the period of time between the six-month  
19 review hearings set forth in subsection (4) (2) of this section it is the  
20 opinion of the Department of Health and Human Services that the defendant  
21 accused is competent to stand trial, the department shall file a report  
22 outlining its opinion with the court, and within twenty-one days after  
23 such report being filed, the court shall hold a hearing to determine  
24 whether or not the defendant accused is competent to stand trial. The  
25 state shall pay the cost of maintenance and care of the defendant accused  
26 during the period of time ordered by the court for treatment to remove  
27 the disability.

28 Sec. 2. Original section 29-1823, Revised Statutes Cumulative  
29 Supplement, 2018, is repealed.