

LEGISLATIVE BILL 485
 Passed over the Governor's veto
 June 12, 1997.

Introduced by Hudkins, 21; Crosby, 29; Lynch, 13; Schrock, 38; Stuhr, 24;
 Vrtiska, 1

AN ACT relating to criminal procedure; to amend section 29-1823, Reissue Revised Statutes of Nebraska; to change provisions relating to examination and maintenance costs of individuals determined to be mentally incompetent; to repeal the original section; and to declare an emergency.

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

Section 1. Section 29-1823, Reissue Revised Statutes of Nebraska, is amended to read:

29-1823. (1) If at any time prior to trial it appears that the accused has become mentally incompetent to stand trial, such disability may be called to the attention of the district court by the county attorney, by the accused, or by any person for the accused. The judge of the district court of the county wherein where the accused is to be tried shall have the authority to determine whether or not the accused is competent to stand trial. The district judge may also cause such medical, psychiatric, or psychological examination of the accused to be made as he or she deems warranted and hold such hearing as he or she deems necessary. The cost of the examination, when ordered by the court, shall be the expense of the county in which the crime is charged. The district judge may allow any physician, psychiatrist, or psychologist a reasonable fee for his or her services, which amount, when determined by the district judge, shall be certified to the county board which shall cause payment to be made. Should he the district judge determine after a hearing that the accused is mentally incompetent to stand trial and that there is a substantial probability that the accused will become competent within the foreseeable future, the district judge he shall order the accused to be committed to a state hospital for the mentally ill or some other appropriate state-owned or state-operated facility for appropriate treatment until such time as the disability may be removed.

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

(3) If it is determined that there is not a substantial probability that the accused will become competent within the foreseeable future, then the state shall either (a) commence the applicable civil commitment proceeding that would be required to commit any other person for an indefinite period of time or (b) release the accused. If during the period of time between the six-month review hearings set forth in subsection (2) of this section it is the opinion of the Department of Health and Human Services that the accused is competent to stand trial, the department shall file a report outlining its opinion with the court, and within twenty-one days after such report being filed, the court shall hold a hearing to determine whether or not the accused is competent to stand trial. The state shall pay the cost of maintenance and care of the accused during the period of time ordered by the court for treatment to remove the disability. The cost of such an examination, when ordered by the court, shall be the expense of the county wherein the crime is charged. The district judge may allow any physician, psychiatrist or psychologist a reasonable fee for his services which amount, when determined by the district judge, shall be certified to the county board who shall cause payment to be made.

Sec. 2. Original section 29-1823, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 3. Since an emergency exists, this act takes effect when passed and approved according to law.