

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1223**

Introduced by Hansen, M., 26; Cavanaugh, J., 9.

Read first time January 20, 2022

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Department of Health and Human  
2 Services; to amend section 83-338, Reissue Revised Statutes of  
3 Nebraska, and section 29-1823, Revised Statutes Cumulative  
4 Supplement, 2020; to require the Department of Health and Human  
5 Services to reimburse counties for lodging certain defendants and  
6 provide duties for the department; to change priorities for  
7 admission to state hospitals; to harmonize provisions; and to repeal  
8 the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-1823, Revised Statutes Cumulative Supplement,  
2 2020, 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)(a) If a judge orders a defendant to be committed to the  
8 Department of Health and Human Services to receive treatment to restore  
9 competency and such defendant remains lodged in the county jail, the  
10 department shall reimburse the county for lodging the defendant.

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

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

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

26 Sec. 2. Section 83-338, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 83-338 (1) If at any time it becomes necessary, for lack of  
29 capacity or other cause, to establish priorities for the admission of  
30 patients into the state hospitals for the mentally ill, the following  
31 priorities for admission shall be limited to recognized: (a) (1) Patients

1 whose care in the state hospital is necessary in order to protect the  
2 public health and safety; (b) defendants who are determined by a court to  
3 be incompetent to stand trial and who remain lodged in the county jail;  
4 (c) ~~(2)~~ patients committed by a mental health board under the Nebraska  
5 Mental Health Commitment Act or the Sex Offender Commitment Act or by a  
6 district court; (d) ~~(3)~~ patients who are most likely to be benefited by  
7 treatment in the state hospitals, regardless of whether such patients are  
8 committed by a mental health board or whether such patients seek  
9 voluntary admission to one of the state hospitals; and (e) ~~(4)~~ when cases  
10 are equally meritorious, in all other respects, patients who are  
11 indigent.

12 (2) State hospitals for the mentally ill shall provide the following  
13 minimum number of beds:

14 (a) Thirty beds for patients entering the facility pursuant to  
15 subdivision (1)(a) of this section;

16 (b) Thirty beds for patients entering the facility pursuant to  
17 subdivision (1)(b) of this section;

18 (c) Ninety beds for patients entering the facility pursuant to  
19 subdivision (1)(c) of this section;

20 (d) Thirty beds for patients entering the facility pursuant to  
21 subdivision (1)(d) of this section; and

22 (e) Twenty beds for patients entering the facility pursuant to  
23 subdivision (1)(e) of this section.

24 (3) On or before November 1, 2022, and on or before each November 1  
25 thereafter, the Department of Health and Human Services shall provide an  
26 annual report to the Appropriations Committee of the Legislature and the  
27 Judiciary Committee of the Legislature on the compliance by the  
28 department with subsections (1) and (2) of this section. The committees  
29 shall hold a joint hearing for the purpose of receiving such report, and  
30 the Director of Behavioral Health of the Division of Behavioral Health  
31 and the chief executive officer of the department shall testify at such

1 hearing.

2       Sec. 3.   Original section 83-338, Reissue Revised Statutes of  
3 Nebraska, and section 29-1823, Revised Statutes Cumulative Supplement,  
4 2020, are repealed.