

## LEGISLATIVE BILL 100

Approved by the Governor April 14, 2011

Introduced by Coash, 27; Fulton, 29; Gloor, 35; McCoy, 39; McGill, 26; Pirsch, 4.

FOR AN ACT relating to criminal procedure; to amend section 29-2203, Reissue Revised Statutes of Nebraska; to provide for the criminal responsibility of intoxicated persons as prescribed; to change provisions relating to the defense of not responsible by reason of insanity; and to repeal the original section.

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

Section 1. A person who is intoxicated is criminally responsible for his or her conduct. Intoxication is not a defense to any criminal offense and shall not be taken into consideration in determining the existence of a mental state that is an element of the criminal offense unless the defendant proves, by clear and convincing evidence, that he or she did not (1) know that it was an intoxicating substance when he or she ingested, inhaled, injected, or absorbed the substance causing the intoxication or (2) ingest, inhale, inject, or absorb the intoxicating substance voluntarily.

Sec. 2. Section 29-2203, Reissue Revised Statutes of Nebraska, is amended to read:

29-2203 (1) Any person prosecuted for an offense may plead that he or she is not responsible by reason of insanity at the time of the offense and in such case the burden shall be upon the defendant to prove the defense of not responsible by reason of insanity by a preponderance of the evidence. No evidence offered by the defendant for the purpose of establishing his or her insanity shall be admitted in the trial of the case unless notice of intention to rely upon the insanity defense is given to the county attorney and filed with the court not later than sixty days before trial.

(2) Upon the filing of the notice the court, on motion of the state, may order the defendant to be examined at a time and place designated in the order, by one or more qualified experts, appointed by the court, to inquire into the sanity or insanity of the defendant at the time of the commission of the alleged offense. The court may order that the examination be conducted at one of the regional centers or at any appropriate facility. The presence of counsel at the examination shall be within the discretion of the court. The results of such examination shall be sent to the court and to the prosecuting attorney. In misdemeanor or felony cases, the defendant may request the court to order the prosecuting attorney to permit the defendant to inspect and copy the results of such examination pursuant to the procedures set forth in sections 29-1912 to 29-1921. In the interest of justice and good cause shown the court may waive the requirements provided in this section.

(3) If the trier of fact acquits the defendant on the grounds of insanity, the verdict shall reflect whether the trier acquits him or her on that ground alone or on other grounds as well. When the defendant is acquitted solely on the ground of insanity, the court shall have exclusive jurisdiction over the defendant for disposition consistent with the terms of this section and sections 29-3701 to 29-3704.

(4) For purposes of this section, insanity does not include any temporary condition that was proximately caused by the voluntary ingestion, inhalation, injection, or absorption of intoxicating liquor, any drug or other mentally debilitating substance, or any combination thereof.

Sec. 3. Original section 29-2203, Reissue Revised Statutes of Nebraska, is repealed.