

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 100

Final Reading

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

Read first time January 06, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend section 29-2203,
2 Reissue Revised Statutes of Nebraska; to provide for the
3 criminal responsibility of intoxicated persons as
4 prescribed; to change provisions relating to the defense
5 of not responsible by reason of insanity; and to repeal
6 the original section.
7 Be it enacted by the people of the State of Nebraska,

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

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

12 29-2203 (1) Any person prosecuted for an offense may
13 plead that he or she is not responsible by reason of insanity at the
14 time of the offense and in such case the burden shall be upon the
15 defendant to prove the defense of not responsible by reason of
16 insanity by a preponderance of the evidence. No evidence offered by
17 the defendant for the purpose of establishing his or her insanity
18 shall be admitted in the trial of the case unless notice of intention
19 to rely upon the insanity defense is given to the county attorney and
20 filed with the court not later than sixty days before trial.

21 (2) Upon the filing of the notice the court, on motion of
22 the state, may order the defendant to be examined at a time and place
23 designated in the order, by one or more qualified experts, appointed
24 by the court, to inquire into the sanity or insanity of the defendant
25 at the time of the commission of the alleged offense. The court may

1 order that the examination be conducted at one of the regional
2 centers or at any appropriate facility. The presence of counsel at
3 the examination shall be within the discretion of the court. The
4 results of such examination shall be sent to the court and to the
5 prosecuting attorney. In misdemeanor or felony cases, the defendant
6 may request the court to order the prosecuting attorney to permit the
7 defendant to inspect and copy the results of such examination
8 pursuant to the procedures set forth in sections 29-1912 to 29-1921.
9 In the interest of justice and good cause shown the court may waive
10 the requirements provided in this section.

11 (3) If the trier of fact acquits the defendant on the
12 grounds of insanity, the verdict shall reflect whether the trier
13 acquits him or her on that ground alone or on other grounds as well.
14 When the defendant is acquitted solely on the ground of insanity, the
15 court shall have exclusive jurisdiction over the defendant for
16 disposition consistent with the terms of this section and sections
17 29-3701 to 29-3704.

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

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