

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

## **LEGISLATIVE BILL 100**

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 condition that was proximately caused by the voluntary  
20     ingestion, inhalation, injection, or absorption of intoxicating  
21     liquor, any drug or other mentally debilitating substance, or any  
22     combination thereof. Any evidence of such voluntary ingestion,  
23     inhalation, injection, or absorption for the purpose of proving the  
24     defense of not responsible by reason of insanity is inadmissible.

25                 Sec. 3. Original section 29-2203, Reissue Revised

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1 Statutes of Nebraska, is repealed.