

## LEGISLATIVE BILL 213

Approved by the Governor May 28, 1981

Introduced by Pirsch, 10; Hoagland, 6; Hefner, 19;  
Cullan, 49

AN ACT to amend sections 29-2005 and 29-2203, Reissue Revised Statutes of Nebraska, 1943, relating to criminal procedure; to change certain notice provisions as prescribed; to change the number of peremptory challenges as prescribed; to change procedures for the commitment and release of certain defendants; to extend jurisdiction in certain cases of previous commitments; to provide duties; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 29-2005, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2005. Every person arraigned for any crime punishable with death, or imprisonment for life, shall be admitted on his or her trial to a peremptory challenge of twelve jurors, and no more; every person arraigned for any offense that may be punishable by imprisonment for a term exceeding eighteen months and less than life, shall be admitted to a peremptory challenge of six jurors; and in all other criminal trials, the defendant shall be allowed a peremptory challenge of three jurors. The attorney prosecuting on behalf of the state shall be admitted to a peremptory challenge of ~~ten~~ twelve jurors in all cases ~~where~~ when the offense is punishable with death or imprisonment for life, six jurors ~~where~~ when the offense is punishable by imprisonment for a term exceeding eighteen months and less than life, and three jurors in all other cases; Provided, that in all cases where alternate jurors are called, as provided in section 29-2004, then in that case both the defendant and the attorney prosecuting for the state shall each be allowed one added peremptory challenge to each alternate juror.

Sec. 2. That section 29-2203, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2203. Any person prosecuted for an offense may plead that he or she is not guilty responsible by reason of insanity ~~or mental derangement~~ at the time of

the offense. No evidence offered by the defendant for the purpose of establishing his or her insanity or mental derangement shall be admitted in the trial of the case unless notice thereof shall have been of intention to rely upon the insanity defense is given by the defendant as provided in this section to the county attorney and filed with the court not later than sixty days before trial.

At the time of defendant's arraignment, or not later than ten days before trial, defendant shall notify the county attorney of his intention to rely upon the defense of insanity or mental derangement as one of his defenses and file such notice. Upon the filing of the notice the court, on motion of the state, may order and good cause shown, may cause the defendant to be examined at a time and place designated in the order, by one or more disinterested, qualified experts, not exceeding three, appointed by the court, at a time and place designated in the order, to inquire into the sanity or insanity of the defendant at the time of the commission of the alleged offense, or offenses. 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 examinations examination shall be sent to the court and to the prosecuting attorney. filed with the court and copies given to the state and to the defendant. 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.

When the defense is insanity of the defendant, the jury must be instructed, if it acquits him on that ground, to state the fact in its verdict. If the defendant is found not guilty by reason of insanity, the court shall forthwith (1) commit defendant to the care and custody of the Director of Medical Services for a period not to exceed thirty days, and (2) certify the verdict to the mental health board of the county and order that board to determine whether the person so acquitted is a mentally ill dangerous person and a fit subject for custody and treatment in a hospital. The certificate and order shall be considered by the mental health board as a petition for admission as provided in section 83-1025. 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 3 to 6 of this act.

Sec. 3. (1) Following receipt of a verdict of acquittal on grounds of insanity, the court shall forthwith conduct a hearing to determine whether there is probable cause to believe the person is dangerous to himself, herself, or others by reason of mental illness or defect, or will be so dangerous in the foreseeable future, as demonstrated by an overt act or threat. If the court finds probable cause, the court shall determine whether and under what conditions of confinement the acquitted person should be committed to a regional center or other appropriate facility for a period not to exceed ninety days for an evaluation of the person's mental condition and for the preparation of a treatment plan pursuant to subsection (4) of this section. When the court commits the person for evaluation, the court shall specify all conditions of the person's confinement during the evaluation including, but not limited to, all circumstances under which the person may leave a locked facility at the place of confinement. The order of commitment specifying the conditions of confinement shall include a finding by the court that any freedom of movement accorded the person outside a locked facility is consistent with the safety of the public.

(2) The superintendent of the regional center or the director of the facility to which the person has been committed for evaluation shall be responsible for supervising the evaluation and the preparation of an individualized treatment plan.

(3) The evaluation shall include a determination of whether the person is dangerous to himself, herself, or others by reason of mental illness or defect, or will be so dangerous in the foreseeable future, as demonstrated by an overt act or threat.

(4) The individualized treatment plan shall contain a statement of the nature of the specific mental and physical problems and needs of the person, a statement of the least restrictive treatment conditions necessary to achieve the purposes of the plan, a statement of the least restrictive treatment conditions consistent with the safety of the public, and a description of intermediate and long-range treatment goals and a projected timetable for their attainment.

(5) Such evaluation and treatment plan shall include the facts upon which conclusions stated therein are based and shall be received by the court at least ten days prior to the expiration of the evaluation period. Copies of the evaluation and treatment plan shall be furnished to the prosecuting attorney and to the person.

(6) If the person desires a separate evaluation, he or she may file a motion with the court requesting an evaluation by one or more qualified experts of his or her choice. Such evaluation shall be at the person's expense unless otherwise ordered by the court. Any such expert evaluating a person pursuant to this subsection shall have access to the person's records at his or her place of confinement. The court may extend the person's commitment for an additional period not to exceed sixty days, if necessary to permit completion of the separate evaluation. The evaluation shall include the facts upon which conclusions stated therein are based and shall be received by the court at least ten days prior to the expiration of the evaluation period. A copy of such evaluation shall be furnished the prosecuting attorney.

Sec. 4. Prior to the expiration of the evaluation period provided for in section 3 of this act, the court shall conduct an evidentiary hearing regarding the condition of the person, at which time a representative of the facility where he or she was evaluated may testify as to the results of the evaluation and the contents of the treatment plan. If the court determines that there is clear and convincing evidence that the person is dangerous to himself, herself, or others by reason of mental illness or defect, or will be so dangerous in the foreseeable future, as demonstrated by an overt act or threat, the court shall commit the person for treatment to one of the regional centers or other appropriate facility. The court shall specify the conditions of confinement regarding the person's freedom of movement outside locked facilities at the place of confinement, including whether or not the facility may grant the person leave into the community for any period of time, however short. The order of commitment specifying the conditions of confinement shall include a finding by the court that any freedom of movement accorded the person outside a locked facility is consistent with the safety of the public. Personnel at the facility shall obey the court-ordered conditions, and any person who fails to do so shall upon conviction be subject to the full contempt powers of the court.

Sec. 5. (1) The court which tried a person who is found not responsible by reason of insanity shall annually and may upon its own motion or upon motion of

the person or the prosecuting attorney, review the records of such person and conduct an evidentiary hearing on the status of the person.

(2) If as a result of such hearing the court finds that such person is no longer dangerous to himself, herself, or others by reason of mental illness or defect, and will not be so dangerous in the foreseeable future, the court shall order such person unconditionally released from further confinement. If the court does not so find, the court shall order such person returned to an appropriate facility under an appropriate treatment plan and conditions of confinement. The court may place the person in a less restrictive setting only if it finds that such placement is consistent with the safety of the public.

Sec. 6. At each hearing conducted pursuant to sections 3 to 5 of this act, the person shall be entitled to assistance of counsel and such additional rights as are guaranteed by the laws and Constitution of the State of Nebraska and by the United States Constitution.

Sec. 7. The court which tried and acquitted any person who, as of the effective date of this act, stands committed by an order of a mental health board pursuant to sections 83-1001 to 83-1078 in consequence of the insanity or derangement which was the ground of the acquittal, shall have jurisdiction over such person for disposition consistent with the provisions of section 29-2203 and sections 3 to 6 of this act. Within sixty days of the effective date of this act, the county attorney in the jurisdiction of the court which tried and acquitted the person shall file with the court which tried and acquitted the person and shall serve on the person a petition asserting the court's jurisdiction over the person for disposition consistent with sections 3 to 6 of this act. The court shall then conduct an evidentiary hearing on the status of the person pursuant to section 5 of this act.

Sec. 8. All pleadings, evidence admitted, orders, judgments, and memoranda of findings and conclusions made in the proceedings held pursuant to sections 3 to 6 of this act shall be made a part of the official record of the underlying criminal case. The court may direct that the medical and psychiatric records not received into evidence at such proceedings be kept confidential and not be available for public inspection.

Sec. 9. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the

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validity or constitutionality of the remaining portions thereof.

Sec. 10. That original sections 29-2005 and 29-2203, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 11. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.