

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIRST LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 1046**

Introduced by Lautenbaugh, 18.

Read first time January 21, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend sections  
2 29-1207 and 29-1208, Reissue Revised Statutes of  
3 Nebraska; to change provisions relating to speedy trial  
4 and indefinite continuances; to harmonize provisions; and  
5 to repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 29-1207, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           29-1207 (1) Every person indicted or informed against for  
4 any offense shall be brought to trial within six months, and such  
5 time shall be computed as provided in this section.

6           (2) Such six-month period shall commence to run from the  
7 date the indictment is returned or the information filed, unless  
8 the offense is a misdemeanor offense involving intimate partners,  
9 as that term is defined in section 28-323, in which case the  
10 six-month period shall commence from the date the defendant is  
11 arrested on a complaint filed as part of a warrant for arrest.

12           (3) If a defendant is to be tried again following a  
13 mistrial, an order for a new trial, or an appeal or collateral  
14 attack, such period shall commence to run from the date of the  
15 mistrial, order granting a new trial, or the mandate on remand.

16           (4) The following periods shall be excluded in computing  
17 the time for trial:

18           (a) The period of delay resulting from other proceedings  
19 concerning the defendant, including, but not limited to, an  
20 examination and hearing on competency and the period during which  
21 he or she is incompetent to stand trial; the time from filing until  
22 final disposition of pretrial motions of the defendant, including  
23 motions to suppress evidence, motions to quash the indictment or  
24 information, demurrers and pleas in abatement, and motions for a  
25 change of venue; and the time consumed in the trial of other

1 charges against the defendant;

2 (b) The period of delay resulting from a continuance  
3 granted at the request or with the consent of the defendant or his  
4 or her counsel. A defendant without counsel shall not be deemed to  
5 have consented to a continuance unless he or she has been advised  
6 by the court of his or her right to a speedy trial and the effect  
7 of his or her consent. A defendant who has sought and obtained  
8 a continuance which is indefinite has an affirmative duty to end  
9 the continuance by giving notice of request for trial, or, the  
10 court can end the continuance by setting a trial date. When the  
11 court ends an indefinite continuance by setting a trial date, the  
12 excludable period resulting from the indefinite continuance ends on  
13 the date for which trial commences. A defendant is deemed to have  
14 waived his or her right to speedy trial when the period of delay  
15 resulting from a continuance granted at the request or with the  
16 consent of the defendant or his or her counsel extends the trial  
17 date beyond the statutory six-month period;

18 (c) The period of delay resulting from a continuance  
19 granted at the request of the prosecuting attorney, if:

20 (i) The continuance is granted because of the  
21 unavailability of evidence material to the state's case, when the  
22 prosecuting attorney has exercised due diligence to obtain such  
23 evidence and there are reasonable grounds to believe that such  
24 evidence will be available at the later date; or

25 (ii) The continuance is granted to allow the prosecuting

1 attorney additional time to prepare the state's case and additional  
2 time is justified because of the exceptional circumstances of the  
3 case;

4 (d) The period of delay resulting from the absence or  
5 unavailability of the defendant;

6 (e) A reasonable period of delay when the defendant is  
7 joined for trial with a codefendant as to whom the time for trial  
8 has not run and there is good cause for not granting a severance.  
9 In all other cases, the defendant shall be granted a severance so  
10 that he or she may be tried within the time limits applicable to  
11 him or her; and

12 (f) Other periods of delay not specifically enumerated in  
13 this section, but only if the court finds that they are for good  
14 cause.

15 Sec. 2. Section 29-1208, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 29-1208 If a defendant is not brought to trial before the  
18 running of the time for trial as provided for in section 29-1207,  
19 as extended by excluded periods, he or she shall be entitled to  
20 his or her absolute discharge from the offense charged and for any  
21 other offense required by law to be joined with that offense.

22 Sec. 3. Original sections 29-1207 and 29-1208, Reissue  
23 Revised Statutes of Nebraska, are repealed.