

**ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011**  
**COMMITTEE STATEMENT**  
**LB100**

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**Hearing Date:** Friday January 21, 2011  
**Committee On:** Judiciary  
**Introducer:** Coash  
**One Liner:** Change provisions relating to the criminal responsibility of intoxicated persons and the insanity defense

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**  
**Aye:** 7 Senators Ashford, Coash, Harr, Larson, Lathrop, Lautenbaugh, McGill  
**Nay:**  
**Absent:**  
**Present Not Voting:** 1 Senator Council

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| <b>Proponents:</b> | <b>Representing:</b>         |
| SEN. COLBY COASH   | INTRODUCER                   |
| COREY O'BRIEN      | NE ATTORNEY GENERAL'S OFFICE |
| JEFF LUBBEN        | SELF                         |
| AMY JACOBSEN       | LANCASTER COUNTY ATTORNEY    |
| MICHELE BELCASTRO  | SELF                         |
| AL RISKOWSKI       | NEBRASKA FAMILY COUNCIL      |

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| <b>Opponents:</b> | <b>Representing:</b>                           |
| CHRIS EICKHOLT    | NEBRASKA CRIMINAL DEFENSE ATTORNEY ASSOCIATION |

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| <b>Neutral:</b> | <b>Representing:</b> |
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**Summary of purpose and/or changes:**

LB 100 would create new law and amend existing sections of the law in the following manner:

1. Would create new law to provide that intoxication is not a defense for any crime and shall not be taken into consideration to determine the existence of a mental state as required for certain criminal offenses, unless the defendant proves by "clear and convincing" evidence that (1) they did not know the substance they took was an intoxicating substance or (2) they did not voluntarily take the intoxicating substance.

2. Amends section 29-2203 (Defense of not responsible by reason of insanity) to include a definition that insanity does not include any condition that was proximately caused by the voluntary taking of a liquor, drug, or other mentally debilitating substance and that any evidence of such voluntary consumption for the purpose of proving an insanity defense is inadmissible.

The three standards most often used to meet the burden of evidentiary proof in order from lowest to highest burden of proof required:

1. Preponderance of the evidence (more convincing than the evidence offered in opposition);

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2. Clear and convincing proof (Truth of the facts asserted are highly probable); and
  3. Proof beyond a reasonable doubt (In criminal cases, evidence must by their probative force, establish guilt)
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**Explanation of amendments:**

AM 165 makes the following changes to LB 100:

- \* On page 3, line 19 after the word "any" inserts the word "temporary" and strikes beginning with the word "Any" in line 22 through line 24.
- \* The intent of the changes found on page 3, is to redefine the definition of "insanity" so that it does not include "temporary conditions" brought on by the voluntary use of drugs or intoxicating liquor.
- \* This change also removes the prohibition against the introduction of evidence pertaining to the voluntary ingestion, inhalation, injection or absorption of intoxicating liquor, drug or any debilitating substances as was originally provided on page 3, in lines 22-24.

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Brad Ashford, Chairperson