

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1022

Introduced by Seiler, 33.

Read first time January 22, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to legal procedure; to amend sections 27-801 and
2 29-3805, Reissue Revised Statutes of Nebraska, and
3 section 29-1207, Revised Statutes Cumulative Supplement,
4 2012; to change provisions relating to hearsay and
5 disposition of untried charges and trial within six
6 months; and to repeal the original sections.

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

1 Section 1. Section 27-801, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 27-801 The following definitions apply under this
4 article:

5 (1) A statement is (a) an oral or written assertion or
6 (b) nonverbal conduct of a person, if it is intended by him or her as
7 an assertion;

8 (2) A declarant is a person who makes a statement;

9 (3) Hearsay is a statement, other than one made by the
10 declarant while testifying at the trial or hearing, offered in
11 evidence to prove the truth of the matter asserted; and

12 (4) A statement is not hearsay if:

13 (a) The declarant testifies at the trial or hearing and
14 is subject to cross-examination concerning the statement, and the
15 statement ~~is~~ (i) is inconsistent with his or her testimony and was
16 given under oath subject to the penalty of perjury at a trial,
17 hearing, or other proceeding, or in a deposition, ~~or~~ (ii) is
18 consistent with his or her testimony and is offered to rebut an
19 express or implied charge against him or her of recent fabrication or
20 improper influence or motive, or (iii) identifies a person as someone
21 the declarant perceived earlier; or

22 (b) The statement is offered against a party and is (i)
23 his or her own statement, in either his or her individual or a
24 representative capacity, or (ii) a statement of which he or she has
25 manifested his or her adoption or belief in its truth, or (iii) a

1 statement by a person authorized by him or her to make a statement
2 concerning the subject, or (iv) a statement by his or her agent or
3 servant within the scope of his or her agency or employment, or (v) a
4 statement by a coconspirator of a party during the course and in
5 furtherance of the conspiracy.

6 Sec. 2. Section 29-1207, Revised Statutes Cumulative
7 Supplement, 2012, is amended to read:

8 29-1207 (1) Every person indicted or informed against for
9 any offense shall be brought to trial within six months, and such
10 time shall be computed as provided in this section.

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

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

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

23 (a) The period of delay resulting from other proceedings
24 concerning the defendant, including, but not limited to, an
25 examination and hearing on competency and the period during which he

1 or she is incompetent to stand trial; the time from filing until
2 final disposition of pretrial motions of the defendant, including
3 motions to suppress evidence, motions to quash the indictment or
4 information, demurrers and pleas in abatement, and motions for a
5 change of venue; and the time consumed in the trial of other charges
6 against the defendant;

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

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

24 (i) The continuance is granted because of the
25 unavailability of evidence material to the state's case, when the

1 prosecuting attorney has exercised due diligence to obtain such
2 evidence and there are reasonable grounds to believe that such
3 evidence will be available at the later date; or

4 (ii) The continuance is granted to allow the prosecuting
5 attorney additional time to prepare the state's case and additional
6 time is justified because of the exceptional circumstances of the
7 case;

8 (d) The period of delay resulting from the absence or
9 unavailability of the defendant, except that if the defendant is
10 willfully absent from the court for twenty-one continuous days or
11 more, the statutory six-month period shall begin again on the date
12 the defendant next appears before the court where he or she failed to
13 appear;

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

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

22 Sec. 3. Section 29-3805, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 29-3805 Within one hundred eighty days after the
25 prosecutor receives a certificate from the director pursuant to

1 section 29-3803 or 29-3804 or within such additional time as the
2 court for good cause shown in open court may grant, the untried
3 indictment, information, or complaint shall be brought to trial with
4 the prisoner or his or her counsel being present. The running of such
5 time period shall be tolled whenever and for as long as the prisoner
6 is unable to stand trial, as determined by the court having
7 jurisdiction of the matter. The parties may stipulate for a
8 continuance or a continuance may be granted on a notice to the
9 attorney of record and an opportunity for him or her to be heard. If
10 the indictment, information, or complaint is not brought to trial
11 within the time period stated in this section, including applicable
12 tolling and continuances, no court of this state shall any longer
13 have jurisdiction thereof nor shall the untried indictment,
14 information, or complaint be of any further force or effect and it
15 shall be dismissed with prejudice.

16 Sec. 4. Original sections 27-801 and 29-3805, Reissue
17 Revised Statutes of Nebraska, and section 29-1207, Revised Statutes
18 Cumulative Supplement, 2012, are repealed.