



**Guidelines for determining mental competency
from Chief Justice Norman Krivosha's concurring
opinion in State of Nebraska v. Gautney, 1980.**

“While the test for determining mental competency to stand trial...may be difficult to apply, other cases have discussed a number of factors which are of aid to a court in arriving at an appropriate conclusion. The factors which have been considered in determining competency include the following:

- (1) That the defendant has sufficient mental capacity to appreciate his presence in relation to time, place, and things;
- (2) That his elementary mental processes are such that he understands that he is in a court of law charged with a criminal offense;
- (3) That he realizes there is a judge on the bench;
- (4) That he understands that there is a prosecutor present who will try to convict him of a criminal charge;
- (5) That he has a lawyer who will undertake to defend him against the charge;
- (6) That he knows that he will be expected to tell his lawyer all he knows or remembers about the events involved in the alleged crime;
- (7) That he understands that there will be a jury present to pass upon evidence in determining his guilt or innocence;
- (8) That he has sufficient memory to relate answers to questions posed to him;
- (9) That he has established rapport with his lawyer;
- (10) That he can follow the testimony reasonably well;
- (11) That he has the ability to meet stresses without his rationality or judgment breaking down;
- (12) That he has at least minimal contact with reality;
- (13) That he has the minimum intelligence necessary to grasp the events taking place;
- (14) That he can confer coherently with some appreciation of proceedings;
- (15) That he can both give and receive advice from his attorneys;
- (16) That he can divulge facts without paranoid distress;
- (17) That he can decide upon a plea;
- (18) That he can testify, if necessary;
- (19) That he can make simple decisions;
- (20) That he has a desire for justice rather than undeserved punishment.