

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 528

Introduced by Baker, 44; Burling, 33; Cunningham, 40; Erdman, 47;
Foley, 29; Kremer, 34; Mines, 18; Mossey, 3;
Quandahl, 31; Smith, 48; Tyson, 19; Vrtiska, 1;
at the request of the Governor

Read first time January 17, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend section
2 29-3001, Reissue Revised Statutes of Nebraska, and
3 sections 29-2101 and 29-2103, Revised Statutes
4 Supplement, 2002; to change provisions relating to
5 postconviction proceedings; to harmonize provisions; and
6 to repeal the original sections.

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

1 Section 1. Section 29-2101, Revised Statutes Supplement,
2 2002, is amended to read:

3 29-2101. A new trial, after a verdict of conviction, may
4 be granted, on the application of the defendant, for any of the
5 following grounds affecting materially his or her substantial
6 rights: (1) Irregularity in the proceedings of the court, of the
7 prosecuting attorney, or of the witnesses for the state or in any
8 order of the court or abuse of discretion by which the defendant
9 was prevented from having a fair trial; (2) misconduct of the jury,
10 of the prosecuting attorney, or of the witnesses for the state; (3)
11 accident or surprise which ordinary prudence could not have guarded
12 against; (4) the verdict is not sustained by sufficient evidence or
13 is contrary to law; (5) newly discovered evidence material ~~for~~ to
14 the issue of the ~~defendant~~ defendant's innocence which he or she
15 could not with reasonable diligence have discovered and produced at
16 the trial; (6) newly discovered exculpatory DNA or similar forensic
17 testing evidence obtained under the DNA Testing Act; or (7) error
18 of law occurring at the trial.

19 Sec. 2. Section 29-2103, Revised Statutes Supplement,
20 2002, is amended to read:

21 29-2103. (1) A motion for new trial shall be made by
22 written application and may be filed either during or after the
23 term of the court at which the verdict was rendered.

24 (2) A motion for a new trial shall state the grounds
25 under section 29-2101 which are the basis for the motion and shall
26 be supported by evidence as provided in section 29-2102.

27 (3) A motion for new trial based on the grounds set forth
28 in subdivision (1), (2), (3), (4), or (7) of section 29-2101 shall

1 be filed within ten days after the verdict was rendered unless such
2 filing is unavoidably prevented, and the grounds for such motion
3 may be stated by directly incorporating the appropriate language of
4 section 29-2101 without further particularity.

5 (4) A motion for new trial based on the grounds set forth
6 in subdivision (5) of section 29-2101 shall be filed within a
7 reasonable time after the discovery of the new evidence and cannot
8 be filed more than three years after the date of the verdict ninety
9 days after the discovery of the new evidence.

10 (5) A motion for new trial based on the grounds set forth
11 in subdivision (6) of section 29-2101 shall be filed within ninety
12 days after a final order is issued under section 29-4123 or within
13 ninety days after the hearing if no final order is entered,
14 whichever occurs first.

15 Sec. 3. Section 29-3001, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 29-3001. A prisoner in custody under sentence and
18 claiming a right to be released on the ground that there was such a
19 denial or infringement of the rights of the prisoner as to render
20 the judgment void or voidable under the Constitution of ~~this state~~
21 Nebraska or the Constitution of the United States, may file a
22 verified motion ~~at any time~~ within two years after the sentencing
23 date or the issuance of the appellate mandate resolving any direct
24 appeal of that judgment. Such motion shall be filed in the court
25 which imposed such sentence, stating the grounds relied upon, and
26 asking the court to vacate or set aside the sentence. A prisoner
27 may file only one petition pursuant to this section which alleges
28 all grounds upon which relief may be granted. No court shall have

1 jurisdiction to entertain a second or subsequent petition for
2 postconviction relief. Such petition shall not be heard by the
3 court regardless of whether it is based on the same or different
4 grounds as the first petition filed pursuant to this section.

5 Unless the motion and the files and records of the case
6 show to the satisfaction of the court that the prisoner is entitled
7 to no relief, the court shall cause notice thereof to be served on
8 the county attorney, grant a prompt hearing thereon, determine the
9 issues, and make findings of fact and conclusions of law with
10 respect thereto. If the court finds that there was such a denial
11 or infringement of the rights of the prisoner as to render the
12 judgment void or voidable under the Constitution of ~~this state~~
13 Nebraska or the Constitution of the United States, the court shall
14 vacate and set aside the judgment and shall discharge the prisoner
15 or resentence him or grant a new trial as may appear appropriate.
16 Proceedings under the provisions of sections 29-3001 to 29-3004
17 shall be civil in nature. Costs shall be taxed as in habeas corpus
18 cases.

19 A court may entertain and determine such motion without
20 requiring the production of the prisoner, whether or not a hearing
21 is held. Testimony of the prisoner or other witnesses may be
22 offered by deposition. The court need not entertain a second
23 motion or successive motions for similar relief on behalf of the
24 same prisoner.

25 Sec. 4. Original section 29-3001, Reissue Revised
26 Statutes of Nebraska, and sections 29-2101 and 29-2103, Revised
27 Statutes Supplement, 2002, are repealed.