

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 137
Final Reading

Introduced by Lautenbaugh, 18; Pirsch, 4.

Read first time January 07, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend section 29-3001,
2 Reissue Revised Statutes of Nebraska; to change
3 provisions relating to postconviction relief; and to
4 repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-3001, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-3001 (1) A prisoner in custody under sentence and
4 claiming a right to be released on the ground that there was such a
5 denial or infringement of the rights of the prisoner as to render the
6 judgment void or voidable under the Constitution of this state or the
7 Constitution of the United States, may file a verified motion, ~~at any~~
8 ~~time~~ in the court which imposed such sentence, stating the grounds
9 relied upon, and asking the court to vacate or set aside the
10 sentence.

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

24 (3) A court may entertain and determine such motion
25 without requiring the production of the prisoner, whether or not a

1 hearing is held. Testimony of the prisoner or other witnesses may be
2 offered by deposition. The court need not entertain a second motion
3 or successive motions for similar relief on behalf of the same
4 prisoner.

5 (4) A one-year period of limitation shall apply to the
6 filing of a verified motion for postconviction relief. The one-year
7 limitation period shall run from the later of:

8 (a) The date the judgment of conviction became final by
9 the conclusion of a direct appeal or the expiration of the time for
10 filing a direct appeal;

11 (b) The date on which the factual predicate of the
12 constitutional claim or claims alleged could have been discovered
13 through the exercise of due diligence;

14 (c) The date on which an impediment created by state
15 action, in violation of the Constitution of the United States or the
16 Constitution of Nebraska or any law of this state, is removed, if the
17 prisoner was prevented from filing a verified motion by such state
18 action;

19 (d) The date on which a constitutional claim asserted was
20 initially recognized by the Supreme Court of the United States or the
21 Nebraska Supreme Court, if the newly recognized right has been made
22 applicable retroactively to cases on postconviction collateral
23 review; or

24 (e) The effective date of this act.

25 Sec. 2. Original section 29-3001, Reissue Revised

1 Statutes of Nebraska, is repealed.