

## LEGISLATIVE BILL 245

Approved by the Governor April 29, 2015

Introduced by Pansing Brooks, 28; Riepe, 12; Chambers, 11.

A BILL FOR AN ACT relating to criminal procedure; to amend sections 29-2102, 29-2103, and 29-4120, Reissue Revised Statutes of Nebraska; to change provisions relating to motions for new trial and DNA testing of biological material; and to repeal the original sections.

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

Section 1. Section 29-2102, Reissue Revised Statutes of Nebraska, is amended to read:

29-2102 (1) The grounds set forth in subdivisions (2), (3), and (6) of section 29-2101 shall be supported by affidavits showing the truth of such grounds, and the grounds may be controverted by affidavits. The ground set forth in subdivision (5) of section 29-2101 shall be supported by evidence of the truth of the ground in the form of affidavits, depositions, or oral testimony.

(2) If the motion for new trial and supporting documents fail to set forth sufficient facts, the court may, on its own motion, dismiss the motion without a hearing. If the motion for new trial and supporting documents set forth facts which, if true, would materially affect the substantial rights of the defendant, the court shall cause notice of the motion to be served on the prosecuting attorney, grant a hearing on the motion, and determine the issues and make findings of fact and conclusions of law with respect thereto.

(3) In considering a motion for new trial based on the grounds set forth in subdivision (5) of section 29-2101, if the court finds that there is evidence materially affecting the substantial rights of the defendant which he or she could not with reasonable diligence have discovered and produced at trial, the court may, upon the motion of any party and following a hearing, vacate and set aside the judgment and release the person from custody or grant a new trial as appropriate.

Sec. 2. Section 29-2103, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(3) A motion for new trial based on the grounds set forth in subdivision (1), (2), (3), (4), or (7) of section 29-2101 shall be filed within ten days after the verdict was rendered unless such filing is unavoidably prevented, and the grounds for such motion may be stated by directly incorporating the appropriate language of section 29-2101 without further particularity.

(4) A motion for new trial based on the grounds set forth in subdivision (5) of section 29-2101 shall be filed within a reasonable time after the discovery of the new evidence and cannot be filed more than five ~~three~~ years after the date of the verdict, unless the motion and supporting documents show the new evidence could not with reasonable diligence have been discovered and produced at trial and such evidence is so substantial that a different result may have occurred.

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

Sec. 3. Section 29-4120, Reissue Revised Statutes of Nebraska, is amended to read:

29-4120 (1) Notwithstanding any other provision of law, a person in custody pursuant to the judgment of a court may, at any time after conviction, file a motion, with or without supporting affidavits, in the court that entered the judgment requesting forensic DNA testing of any biological material that:

(a) Is related to the investigation or prosecution that resulted in such judgment;

(b) Is in the actual or constructive possession or control of the state or is in the possession or control of others under circumstances likely to safeguard the integrity of the biological material's original physical composition; and

(c) Was not previously subjected to DNA testing or can be subjected to retesting with more current DNA techniques that provide a reasonable likelihood of more accurate and probative results.

(2) Notice of such motion shall be served by the person in custody upon the county attorney of the county in which the prosecution was held.

(3) Upon receiving notice of a motion filed pursuant to subsection (1) of this section, the county attorney shall take such steps as are necessary to ensure that any remaining biological material that was secured by the state or a political subdivision in connection with the case is preserved pending the

completion of proceedings under the DNA Testing Act.

(4) The county attorney shall prepare an inventory of all evidence that was secured by the state or a political subdivision in connection with the case and shall submit a copy of the inventory to the person or the person's counsel and to the court. If evidence is intentionally destroyed after notice of a motion filed pursuant to this section, the court shall impose appropriate sanctions, including criminal contempt.

(5) Upon consideration of affidavits or after a hearing, the court shall order DNA testing pursuant to a motion filed under subsection (1) of this section upon a determination that (a)(i) the biological material was not previously subjected to DNA testing or (ii) the biological material was tested previously, but current technology could provide a reasonable likelihood of more accurate and probative results, (b) such testing was effectively not available at the time of trial, that the biological material has been retained under circumstances likely to safeguard the integrity of its original physical composition, and (c) that such testing may produce noncumulative, exculpatory evidence relevant to the claim that the person was wrongfully convicted or sentenced.

(6) All forensic DNA tests shall be performed by a laboratory which is accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center.

Sec. 4. Original sections 29-2102, 29-2103, and 29-4120, Reissue Revised Statutes of Nebraska, are repealed.