

AMENDMENTS TO LB496

(Amendments to Standing Committee amendments, AM1054)

Introduced by Cavanaugh, J., 9.

1           1. Strike section 7 and insert the following new sections:

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

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

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

24           (3) A court may entertain and determine such motion without  
25 requiring the production of the prisoner, whether or not a hearing is  
26 held. Testimony of the prisoner or other witnesses may be offered by

1 deposition. The court need not entertain a second motion or successive  
2 motions for similar relief on behalf of the same prisoner.

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

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

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

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

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

20 (e) The date on which the Supreme Court of the United States denies  
21 a writ of certiorari or affirms a conviction appealed from the Nebraska  
22 Supreme Court August 27, 2011. This subdivision only applies if, within  
23 thirty days after petitioning the Supreme Court of the United States for  
24 a writ of certiorari, the prisoner files a notice in the district court  
25 of conviction stating that the prisoner has filed such petition.

26 Sec. 8. Sections 2, 3, 4, 5, 6, 7, and 10 of this act become  
27 operative on January 1, 2022. The other sections of this act become  
28 operative on their effective date.

29 Sec. 9. Original section 29-3001, Reissue Revised Statutes of  
30 Nebraska, is repealed.

31 2. On page 5, line 21, strike "act" and insert "section"; and in

1 line 30, after "cause" insert "pursuant to section 29-506 or 29-1607".