

AMENDMENTS TO LB28

Introduced by Judiciary.

1           1. Strike the original sections and insert the following new  
2 sections:

3           Section 1. Section 29-2101, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           29-2101 A new trial, after a verdict of conviction, may be granted,  
6 on the application of the defendant, for any of the following grounds  
7 affecting materially his or her substantial rights:

8           (1) Irregularity in the proceedings of the court, of the prosecuting  
9 attorney, or of the witnesses for the state or in any order of the court  
10 or abuse of discretion by which the defendant was prevented from having a  
11 fair trial;

12           (2) ~~Misconduct~~ ~~misconduct~~ of the jury, of the prosecuting attorney,  
13 or of the witnesses for the state;

14           (3) ~~Accident~~ ~~accident~~ or surprise which ordinary prudence could not  
15 have guarded against;

16           (4) ~~The~~ ~~the~~ verdict is not sustained by sufficient evidence or is  
17 contrary to law;

18           (5) ~~Newly~~ ~~newly~~ discovered evidence material for the defendant which  
19 he or she could not with reasonable diligence have discovered ~~or~~ ~~and~~  
20 produced at the trial. For purposes of this subdivision, testimony or  
21 evidence from a witness who previously had a testimonial or  
22 constitutional privilege and who, because of such privilege, refused to  
23 testify or produce evidence in a prior proceeding, shall be considered  
24 newly discovered evidence;

25           (6) ~~Newly~~ ~~newly~~ discovered exculpatory DNA or similar forensic  
26 testing evidence obtained under the DNA Testing Act; or

27           (7) ~~Error~~ ~~error~~ of law occurring at the trial.

1        The changes made to this section by this legislative bill shall  
2 apply to all persons, otherwise eligible in accordance with the  
3 provisions of this section, whether convicted prior to, on, or subsequent  
4 to the effective date of this act.

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

7        29-2103 (1) A motion for new trial shall be made by written  
8 application and may be filed either during or after the term of the court  
9 at which the verdict was rendered.

10       (2) A motion for a new trial shall state the grounds under section  
11 29-2101 which are the basis for the motion and shall be supported by  
12 evidence as provided in section 29-2102.

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

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

27       (b) The time limitation in this subsection does not apply if the  
28 motion for a new trial involves a conviction for a Class I, IA, or IB  
29 felony.

30       (5) A motion for new trial based on the grounds set forth in  
31 subdivision (6) of section 29-2101 shall be filed within ninety days

1 after a final order is issued under section 29-4123 or within ninety days  
2 after the hearing if no final order is entered, whichever occurs first.

3 (6) The changes made to this section by this legislative bill shall  
4 apply to all persons, otherwise eligible in accordance with the  
5 provisions of this section, whether convicted prior to, on, or subsequent  
6 to the effective date of this act.

7 Sec. 3. Original sections 29-2101 and 29-2103, Reissue Revised  
8 Statutes of Nebraska, are repealed.