

E AND R AMENDMENTS TO LB 496

Introduced by McKinney, 11, Chairman Enrollment and Review

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

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

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

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

25 (3) A court may entertain and determine such motion without
26 requiring the production of the prisoner, whether or not a hearing is
27 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. 2. Section 29-4102, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 29-4102 The Legislature finds that DNA data banks are an important
29 tool in criminal investigations, in the exclusion of individuals who are
30 the subject of criminal investigations or prosecutions, in deterring and
31 detecting recidivist acts, and in locating and identifying missing

1 persons and human remains. Several states have enacted laws requiring
2 persons convicted of certain crimes to provide genetic samples for DNA
3 typing tests. Moreover, it is the policy of this state to assist federal,
4 state, and local criminal justice and law enforcement agencies in the
5 identification and detection of individuals in criminal investigations
6 and in locating and identifying missing persons and human remains. It is
7 in the best interest of this state to establish a State DNA Data Base for
8 DNA records and a State DNA Sample Bank as a repository for DNA samples
9 from individuals convicted of felony offenses and other specified
10 offenses, from individuals nineteen years of age or older charged with
11 crimes of violence or burglary, and from individuals for purposes of
12 assisting in locating and identifying missing persons and human remains.

13 Sec. 3. Section 29-4103, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 29-4103 For purposes of the DNA Identification Information Act:

16 (1) Burglary means burglary with intent to commit a felony pursuant
17 to section 28-507;

18 (2) ~~(1)~~ Combined DNA Index System means the Federal Bureau of
19 Investigation's national DNA identification index system that allows the
20 storage and exchange of DNA records submitted by state and local forensic
21 DNA laboratories;

22 (3) Crime of violence means any of the following offenses when
23 charged as a felony:

24 (a) Arson in the first degree pursuant to section 28-502;

25 (b) Assault in the first degree pursuant to section 28-308;

26 (c) Assault in the second degree pursuant to section 28-309;

27 (d) Kidnapping pursuant to section 28-313;

28 (e) Manslaughter pursuant to section 28-305;

29 (f) Murder in the first degree pursuant to section 28-303;

30 (g) Murder in the second degree pursuant to section 28-304;

31 (h) Sexual assault in the first degree pursuant to section 28-319;

1 (i) Sexual assault of a child in the first degree pursuant to
2 section 28-319.01;

3 (j) Sexual assault in the second degree pursuant to section 28-320;

4 (k) Sexual assault of a child in the second or third degree pursuant
5 to section 28-320.01;

6 (l) Child enticement by means of an electronic communication device
7 pursuant to section 28-320.02;

8 (m) Sexual abuse of an inmate or parolee in the first degree
9 pursuant to section 28-322.02;

10 (n) Sexual abuse of an inmate or parolee in the second degree
11 pursuant to section 28-322.03;

12 (o) Sexual abuse of a protected individual pursuant to section
13 28-322.04;

14 (p) Robbery pursuant to section 28-324;

15 (q) Violation of the Homicide of the Unborn Child Act pursuant to
16 sections 28-388 through 28-393;

17 (r) Incest with a person who is under eighteen years of age pursuant
18 to section 28-703; or

19 (s) Any attempt or conspiracy to commit an offense listed in
20 subdivision (3)(a) through (r) of this section;

21 (4) ~~(2)~~ DNA means deoxyribonucleic acid which is located in the
22 cells and provides an individual's personal genetic blueprint. DNA
23 encodes genetic information that is the basis of human heredity and
24 forensic identification;

25 (5) ~~(3)~~ DNA record means the DNA identification information stored
26 in the State DNA Data Base or the Combined DNA Index System which is
27 derived from DNA typing test results;

28 (6) ~~(4)~~ DNA sample means a blood, tissue, or bodily fluid sample
29 provided by any person covered by the DNA Identification Information Act
30 for analysis or storage, or both;

31 (7) ~~(5)~~ DNA typing tests means the laboratory procedures which

1 evaluate the characteristics of a DNA sample which are of value in
2 establishing the identity of an individual;

3 (8) ~~(6)~~ Law enforcement agency includes a police department, a town
4 marshal, a county sheriff, and the Nebraska State Patrol;

5 (9) ~~(7)~~ Other specified offense means misdemeanor stalking pursuant
6 to sections 28-311.02 to 28-311.05 or false imprisonment in the second
7 degree pursuant to section 28-315 or an attempt, conspiracy, or
8 solicitation to commit stalking pursuant to sections 28-311.02 to
9 28-311.05, false imprisonment in the first degree pursuant to section
10 28-314, false imprisonment in the second degree pursuant to section
11 28-315, knowing and intentional sexual abuse of a vulnerable adult or
12 senior adult pursuant to subdivision (1)(c) of section 28-386, or a
13 violation of the Sex Offender Registration Act pursuant to section
14 29-4011; and

15 (10) ~~(8)~~ Released means any release, parole, furlough, work release,
16 prerelease, or release in any other manner from a prison, a jail, or any
17 other detention facility or institution.

18 Sec. 4. Section 29-4104, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 29-4104 The State DNA Data Base is established. The Nebraska State
21 Patrol shall administer the State DNA Data Base and shall provide DNA
22 records to the Federal Bureau of Investigation for storage and
23 maintenance in the Combined DNA Index System. The patrol shall provide
24 for liaison with the Federal Bureau of Investigation and other law
25 enforcement agencies in regard to the state's participation in the
26 Combined DNA Index System. The State DNA Data Base shall store and
27 maintain DNA records related to:

28 (1) Forensic casework, including, but not limited to, forensic
29 casework relating to missing persons, relatives of missing persons, and
30 unidentified human remains;

31 (2) Convicted or charged offenders required to provide a DNA sample

1 under the DNA Identification Information Act;

2 (3) Anonymous DNA records used for research or quality control; and

3 (4) Missing persons, relatives of missing persons, and unidentified
4 human remains.

5 Sec. 5. Section 29-4106, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 29-4106 (1) A person who is convicted of a felony offense or other
8 specified offense on or after July 15, 2010, who does not have a DNA
9 sample available for use in the State DNA Sample Bank, shall, at his or
10 her own expense, have a DNA sample collected:

11 (a) Upon intake to a prison, jail, or other detention facility or
12 institution to which such person is sentenced. If the person is already
13 confined at the time of sentencing, the person shall have a DNA sample
14 collected immediately after the sentencing. Such DNA sample shall be
15 collected at the place of incarceration or confinement. Such person shall
16 not be released unless and until a DNA sample has been collected; or

17 (b) As a condition for any sentence which will not involve an intake
18 into a prison, jail, or other detention facility or institution. Such DNA
19 samples shall be collected as follows:

20 (i) In any county containing a city of the metropolitan class, a
21 person placed on probation or who received a penalty of a fine or time
22 served shall have such DNA sample collected by a probation officer at a
23 probation office. Such person shall not be released unless and until a
24 DNA sample has been collected; and

25 (ii) In all other counties, a person placed on probation shall have
26 such DNA sample collected by a probation officer at a probation office,
27 and a person not placed on probation who receives a penalty of a fine or
28 time served shall have such DNA sample collected by the county sheriff.
29 Such person shall not be released unless and until a DNA sample has been
30 collected.

31 (2) A person who has been convicted of a felony offense or other

1 specified offense before July 15, 2010, who does not have a DNA sample
2 available for use in the State DNA Sample Bank, and who is still serving
3 a term of confinement or probation for such felony offense or other
4 specified offense on July 15, 2010, shall not be released prior to the
5 expiration of his or her maximum term of confinement or revocation or
6 discharge from his or her probation unless and until a DNA sample has
7 been collected.

8 (3)(a) A person nineteen years of age or older who is charged with a
9 crime of violence or burglary on or after the operative date of this
10 section, who does not have a DNA sample available for use in the State
11 DNA Sample Bank, shall have a DNA sample collected by a law enforcement
12 official at the receiving criminal detention facility during the booking
13 process. If the first appearance of such person in court for the alleged
14 crime of violence or burglary is not due to arrest but by citation or
15 summons, the court shall order collection of a DNA sample.

16 (b) A DNA sample collected under this subsection shall not be tested
17 or placed in the State DNA Data Base until after a judicial determination
18 of probable cause pursuant to section 29-506 or 29-1607 on the crime of
19 violence or burglary has been made or a hearing to determine probable
20 cause has been waived, unless requested or consented to by the person
21 whose DNA sample is to be collected. If the charges for the crime of
22 violence or burglary are determined to be unsupported by probable cause,
23 the DNA sample shall be immediately destroyed and notice that the sample
24 was destroyed shall be sent to the person whose DNA sample was collected
25 and counsel of record for such person.

26 (c) Nothing in this subsection shall be construed to authorize the
27 collection of DNA samples from persons who are younger than nineteen
28 years of age.

29 (4) ~~(3)~~ A person who is serving a term of probation and has a DNA
30 sample collected pursuant to this section shall pay all costs associated
31 with the collection of the DNA sample.

1 (5) ~~(4)~~ If the court waives the cost of taking a DNA sample for any
2 reason, a county jail or other county detention facility or institution
3 collecting the DNA sample shall not be held financially responsible for
4 the cost of the DNA sample kit.

5 Sec. 6. Section 29-4106.01, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 29-4106.01 (1) A person required to submit a DNA sample pursuant to
8 subsection (1) or (2) of section 29-4106 shall be given the choice of
9 having the sample collected by a blood draw or a buccal cell collection
10 kit. Any person who collects a DNA sample pursuant to section 29-4106
11 shall honor the choice of collection method made by the person providing
12 the DNA sample. If the person required to submit the DNA sample does not
13 indicate a preference as to the method of collection, either method may
14 be used to collect the sample.

15 (2) A person required to submit a DNA sample pursuant to subsection
16 (3) of section 29-4106 shall have the sample collected by buccal cell
17 collection kit.

18 Sec. 7. Section 29-4109, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 29-4109 (1) A person whose DNA record has been included in the
21 State DNA Data Base pursuant to the DNA Identification Information Act
22 may request expungement on the grounds that: ~~the~~

23 (a) The conviction on which the authority for including such
24 person's DNA record was based has been reversed and the case dismissed;
25 or -

26 (b) The charge on which the authority for including such person's
27 DNA record was based has been dismissed.

28 (2) The Nebraska State Patrol shall purge all DNA records and
29 identifiable information in the data base pertaining to the person and
30 destroy all DNA samples from the person upon receipt of a written request
31 for expungement pursuant to this section and a certified copy of the

1 final court order reversing and dismissing the conviction or dismissing
2 the charge.

3 (3) Within ten calendar days of granting expungement, the Nebraska
4 State Patrol shall provide written notice of such expungement pursuant to
5 subsection (4) of section 29-4108, to any person to whom DNA records and
6 samples have been made available. The Nebraska State Patrol shall
7 establish procedures for providing notice of certification of expungement
8 to the person who was granted expungement.

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

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

14 Sec. 10. Original sections 29-4102, 29-4103, 29-4104, 29-4106,
15 29-4106.01, and 29-4109, Reissue Revised Statutes of Nebraska, are
16 repealed.

17 2. On page 1, strike beginning with "the" in line 1 through line 6
18 and insert "criminal procedure; to amend sections 29-3001, 29-4102,
19 29-4103, 29-4104, 29-4106, 29-4106.01, and 29-4109, Reissue Revised
20 Statutes of Nebraska; to change a motion for postconviction limitation;
21 to require collection of DNA samples under the DNA Identification
22 Information Act from persons arrested for burglary or crimes of violence;
23 to define terms; to provide for expungement; to harmonize provisions; to
24 provide operative dates; and to repeal the original sections."