

**ONE HUNDRED SEVENTH LEGISLATURE - FIRST SESSION - 2021**  
**COMMITTEE STATEMENT**  
**LB28**

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**Hearing Date:** Friday January 29, 2021  
**Committee On:** Judiciary  
**Introducer:** Wayne  
**One Liner:** Provide for motions for new trial based on newly discovered evidence

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

<b>Aye:</b>	6	Senators Brandt, DeBoer, Lathrop, McKinney, Morfeld, Pansing Brooks
<b>Nay:</b>	2	Senators Geist, Slama
<b>Absent:</b>		
<b>Present Not Voting:</b>		

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**Oral Testimony:**

**Proponents:**

Senator Justin Wayne  
Thomas Riley  
Janell Folkerts  
Jason Witmer  
Jonathan Lathan

**Representing:**

Introducer  
Nebraska Criminal Defense Attorneys Association  
Self  
Self  
Self

**Opponents:**

Katie Benson

**Representing:**

Nebraska County Attorneys Association

**Neutral:**

**Representing:**

**Submitted Written Testimony:**

**Proponents:**

Spike Eickholt

**Representing:**

ACLU of Nebraska

**Opponents:**

James D Smith

**Representing:**

Nebraska Attorney General's Office & Nebraska County Attorneys Association

**Neutral:**

**Representing:**

**Summary of purpose and/or changes:**

LB 28 amends provisions regarding motions for, or granting a new trial after conviction based on newly discovered evidence. The proposal expands the category of newly discovered evidence to include testimony or evidence from a witness that refused to testify at a prior proceeding due to a constitutional privilege and provides that the change applies to

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convictions before or after the effective date of the bill. The bill also removes a five year limitation on motions for a new trial based on newly discovered evidence.

#### Section by section

Section 1 Amends 29-2101, regarding granting of a new trial, to expand the category of "newly discovered evidence" (subsection (5)) to include testimony from a witness who had asserted a constitutional privilege at a prior proceeding. New language is also added to provide that the change will apply to convictions occurring prior to the effective date of the bill.

Section 2 Amends 29-2103, regarding the motion for a new trial, to expand the category of "newly discovered evidence" (subsection (4)) to include testimony from a witness who had asserted a constitutional privilege at a prior proceeding. New language is also added to provide that the change will apply to convictions occurring prior to the effective date of the bill. The bill also removes a five year limitation on motions for a new trial based on newly discovered evidence.

Section 3 Repeals original sections.

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#### **Explanation of amendments:**

Committee Amendment AM545 is a white copy amendment that restores the five year limitation on motions for a new trial based on new evidence, but excludes convictions for Class I, IA, or IB from the five year limitation.

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Steve Lathrop, Chairperson