

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 127

Introduced by McKeon, 41; Hardin, 48; Lippincott, 34; Lonowski, 33.

Read first time January 10, 2025

Committee:

- 1 A BILL FOR AN ACT relating to criminal actions; to amend section 29-1208,
- 2 Reissue Revised Statutes of Nebraska; to provide for damages for
- 3 defendants in criminal actions that are dismissed or in which the
- 4 defendant is found not guilty; to define a term; to harmonize
- 5 provisions; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** (1) The Legislature finds that people who are mistakenly
2 or wrongfully prosecuted suffer significant financial hardship as a
3 result. The purpose of this section is to lessen the hardship faced by
4 such people and to serve as an incentive for the government to use
5 caution and restraint in making prosecutorial decisions.

6 (2) For purposes of this section, prosecutor includes the Attorney
7 General, a deputy attorney general, assistant attorneys general, a county
8 attorney, a deputy county attorney, a city attorney, or any other person
9 with the authority to prosecute criminal actions.

10 (3) Except as provided in subsection (4) of this section, a person
11 against whom any criminal charge has been filed or prosecuted shall be
12 awarded damages as provided in this section if:

13 (a) The person is granted an absolute discharge as provided in
14 section 29-1208;

15 (b) The prosecutor voluntarily dismisses the charges, except as
16 provided in subsection (5) of this section;

17 (c) The charges are dismissed by the trial court or on appeal;

18 (d) In a jury trial, the jury returns a verdict of not guilty;

19 (e) In a bench trial, the court finds the person to be not guilty;

20 or

21 (f) The conviction is overturned on appeal or pursuant to any form
22 of postconviction relief.

23 (4)(a) A defendant is not entitled to relief under this section for
24 any offense described in subsection (3) of this section if:

25 (i) The defendant is convicted of another offense arising out of
26 substantially the same misconduct;

27 (ii) The other offense is classified as the same level of
28 misdemeanor or felony or as a higher level;

29 (iii) The conviction for such other offense is not dismissed,
30 overturned, or vacated.

31 (b) Misconduct is substantially the same if the misconduct arises

1 out of the same transaction or event, is part of a common scheme or plan,
2 or is substantively similar and close in time. Factors to consider in
3 determining whether misconduct is substantially similar include the
4 passage of time between each occurrence; the parties involved in each
5 occurrence, including the victims; and the charges brought.

6 (5) A defendant may enter into an agreement with a prosecutor to
7 dismiss charges and may waive the payment of damages under this section
8 in such agreement.

9 (6) Upon the occurrence of an event described in subsection (3) of
10 this section, the trial court shall hold a hearing to determine the
11 amount of damages to be awarded. The court shall award:

12 (a) Reasonable attorney's fees and other litigation expenses,
13 including for trial and any appeals or actions for postconviction relief;
14 and

15 (b) Actual damages caused by the filing of charges, arrest,
16 detention, prosecution, conviction, or imprisonment, including, but not
17 limited to, lost wages.

18 **Sec. 2.** Section 29-1208, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 29-1208 If a defendant is not brought to trial before the running of
21 the time for trial as provided for in section 29-1207, as extended by
22 excluded periods, he or she shall be entitled to:

23 (1) His ~~his~~ or her absolute discharge from the offense charged and
24 for any other offense required by law to be joined with that offense;
25 and -

26 (2) Damages as provided in section 1 of this act.

27 **Sec. 3.** Original section 29-1208, Reissue Revised Statutes of
28 Nebraska, is repealed.