

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1123

Introduced by Dungan, 26; Aguilar, 35; Cavanaugh, J., 9; McKinney, 11;
Riepe, 12.

Read first time January 10, 2024

Committee:

1 A BILL FOR AN ACT relating to criminal procedure; to amend section
2 29-3001, Revised Statutes Supplement, 2023; to provide for
3 postconviction relief for a claim of actual innocence; to provide
4 exceptions for time limitations and procedural defaults; to define
5 terms; and to repeal the original section.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-3001, Revised Statutes Supplement, 2023, is
2 amended to read:

3 29-3001 (1) A prisoner in custody under sentence and claiming a
4 right to be released on a the ground listed in subsection (2) of this
5 section that there was such a denial or infringement of the rights of the
6 prisoner as to render the judgment void or voidable under the
7 Constitution of this state or the Constitution of the United States, may
8 file a verified motion, in the court which imposed such sentence, stating
9 the grounds relied upon and asking the court to vacate or set aside the
10 sentence.

11 (2) The following shall constitute grounds for relief under this
12 section:

13 (a) There was such a denial or infringement of the rights of the
14 prisoner as to render the judgment void or voidable under the
15 Constitution of Nebraska or the Constitution of the United States; or

16 (b) The prisoner is actually innocent.

17 (3)(a) To establish actual innocence:

18 (i) The prisoner must prove by clear and convincing evidence that no
19 reasonable factfinder would have convicted the prisoner; and

20 (ii) The prisoner must present evidence of actual innocence that was
21 not presented at trial. This may include, but is not limited to:
22 Exculpatory DNA testing results; evidence implicating an alternative
23 suspect, including third-party confessions; impeachment evidence of
24 state's witnesses; or relevant forensic scientific evidence that
25 undermines forensic evidence presented at trial.

26 (b) Forensic scientific evidence shall be considered undermined if
27 new research or information exists that repudiates:

28 (i) The foundational validity of the challenged evidence or
29 testimony; or

30 (ii) The applied validity of the method or technique.

31 (c) For purposes of this subsection:

1 (i) Applied validity means the reliability of the method or
2 technique in practice; and

3 (ii) Foundational validity means the reliability of the method to be
4 repeatable, reproducible, and accurate in a scientific setting.

5 ~~(4) (2)~~ Unless the motion and the files and records of the case show
6 to the satisfaction of the court that the prisoner is entitled to no
7 relief, the court shall cause notice thereof to be served on the county
8 attorney, grant a prompt hearing thereon, and determine the issues and
9 make findings of fact and conclusions of law with respect thereto. If the
10 court finds that there are grounds for relief under subsection (2) of
11 this section ~~was such a denial or infringement of the rights of the~~
12 ~~prisoner as to render the judgment void or voidable under the~~
13 ~~Constitution of this state or the Constitution of the United States,~~ the
14 court shall vacate and set aside the judgment and shall discharge the
15 prisoner or resentence the prisoner or grant a new trial as may appear
16 appropriate. Proceedings under ~~the provisions of~~ sections 29-3001 to
17 29-3004 shall be civil in nature. Costs shall be taxed as in habeas
18 corpus cases.

19 ~~(5) (3)~~ A court may entertain and determine such motion without
20 requiring the production of the prisoner, whether or not a hearing is
21 held. Testimony of the prisoner or other witnesses may be offered by
22 deposition. The court need not entertain a second motion or successive
23 motions for similar relief on behalf of the same prisoner.

24 (6) Except as provided in subsection (7) of this section, a (4) A
25 one-year period of limitation shall apply to the filing of a verified
26 motion for postconviction relief. The one-year limitation period shall
27 run from the later of:

28 (a) The date the judgment of conviction became final by the
29 conclusion of a direct appeal or the expiration of the time for filing a
30 direct appeal;

31 (b) The date on which the factual predicate of the constitutional

1 claim or claims alleged could have been discovered through the exercise
2 of due diligence;

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

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

11 (e) The date on which the Supreme Court of the United States denies
12 a writ of certiorari or affirms a conviction appealed from the Nebraska
13 Supreme Court. This subdivision only applies if, within thirty days after
14 petitioning the Supreme Court of the United States for a writ of
15 certiorari, the prisoner files a notice in the district court of
16 conviction stating that the prisoner has filed such petition.

17 (7)(a) Any procedural default or time limitation may be excused by
18 the court to prevent a manifest injustice.

19 (b) In determining whether to excuse a procedural default or time
20 limitation under this subsection due to a manifest injustice, the court's
21 inquiry shall be limited to determining whether the prisoner makes a
22 colorable claim of actual innocence.

23 (8) Failure to bring an ineffective assistance of trial counsel
24 claim on direct appeal shall not result in the procedural default of that
25 claim.

26 Sec. 2. Original section 29-3001, Revised Statutes Supplement,
27 2023, is repealed.