

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 28**

Introduced by Wayne, 13.

Read first time January 07, 2021

Committee:

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend sections
- 2 29-2101 and 29-2103, Reissue Revised Statutes of Nebraska; to change
- 3 provisions relating to motions for a new trial; to provide for
- 4 applicability; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

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

3 29-2101 A new trial, after a verdict of conviction, may be granted,  
4 on the application of the defendant, for any of the following grounds  
5 affecting materially his or her substantial rights:

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

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

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

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

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

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

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

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

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

31 29-2103 (1) A motion for new trial shall be made by written

1 application and may be filed either during or after the term of the court  
2 at which the verdict was rendered.

3 (2) A motion for a new trial shall state the grounds under section  
4 29-2101 which are the basis for the motion and shall be supported by  
5 evidence as provided in section 29-2102.

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

12 (4) A motion for new trial based on the grounds set forth in  
13 subdivision (5) of section 29-2101 shall be filed within a reasonable  
14 time after the discovery of the new evidence ~~and cannot be filed more~~  
15 ~~than five years after the date of the verdict, unless the motion and~~  
16 ~~supporting documents show the new evidence could not with reasonable~~  
17 ~~diligence have been discovered and produced at trial and such evidence is~~  
18 ~~so substantial that a different result may have occurred.~~

19 (5) A motion for new trial based on the grounds set forth in  
20 subdivision (6) of section 29-2101 shall be filed within ninety days  
21 after a final order is issued under section 29-4123 or within ninety days  
22 after the hearing if no final order is entered, whichever occurs first.

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

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