

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 137

Introduced by Lautenbaugh, 18.

Read first time January 07, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend section 29-3001,
2 Reissue Revised Statutes of Nebraska; to change
3 provisions relating to postconviction relief; and to
4 repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

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

3 29-3001 A prisoner in custody under sentence and claiming
4 a right to be released on the ground that there was such a denial or
5 infringement of the rights of the prisoner as to render the judgment
6 void or voidable under the Constitution of this state or the
7 Constitution of the United States, may file a verified motion ~~at any~~
8 ~~time~~ within one year after the date the judgment of conviction became
9 final in the court which imposed such sentence, stating the grounds
10 relied upon, and asking the court to vacate or set aside the
11 sentence. Any such prisoner whose conviction was final prior to the
12 effective date of this act may file such a verified motion within one
13 year after the effective date of this act.

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

1 Costs shall be taxed as in habeas corpus cases.

2 A court may entertain and determine such motion without
3 requiring the production of the prisoner, whether or not a hearing is
4 held. Testimony of the prisoner or other witnesses may be offered by
5 deposition. The court need not entertain a second motion or
6 successive motions for similar relief on behalf of the same prisoner.

7 Sec. 2. Original section 29-3001, Reissue Revised
8 Statutes of Nebraska, is repealed.