

AMENDMENTS TO LB245

Introduced by Harr, 8.

1 1. Insert the following new sections:

2 Section 1. For purposes of a motion for new trial:

3 (1) Newly discovered evidence means evidence discovered following
4 the conclusion of the trial which was not available prior to or during
5 the trial and that is of such a nature that, if it had been offered and
6 admitted at trial, it is probable that it would have produced a
7 substantially different result; and

8 (2) Newly discovered evidence does not include (a) evidence that was
9 discovered as a result of delayed or belated diligence, (b) the testimony
10 or statement of a codefendant or accomplice who did not testify at the
11 trial and who subsequently came forward to offer testimony exculpating
12 the defendant, or (c) any testimony or statement of any witness, prior to
13 or during trial, who subsequently changed such testimony or statement.

14 Sec. 2. Section 29-2102, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 29-2102 (1) A motion for new trial must set forth all material facts
17 constituting the grounds for relief. A motion for new trial must make a
18 prima facie showing that the facts alleged in the motion materially
19 affect the defendant's substantial rights and that he or she is entitled
20 to a hearing on the merits. Conclusions of law are insufficient to
21 support a motion for new trial.

22 (2) The grounds set forth in subdivisions (2), (3), and (6) of
23 section 29-2101 shall be supported by affidavits showing the truth of
24 such grounds, and the grounds may be controverted by affidavits. The
25 ground set forth in subdivision (5) of section 29-2101 shall be supported
26 by evidence of the truth of the ground in the form of affidavits,
27 depositions, or oral testimony.

1 (3) Upon initial review of a motion for new trial and supporting
2 documents, a court shall determine whether the motion and documents set
3 forth facts which, if true, would materially affect the defendant's
4 substantial rights. If the motion and supporting documents fail to set
5 forth sufficient facts, the court shall, on its own motion, dismiss the
6 motion for new trial without a hearing. If the motion for new trial and
7 supporting documents set forth facts which, if true, would materially
8 affect the defendant's substantial rights, the court shall cause notice
9 of the motion to be served on the prosecuting attorney, grant a hearing
10 on the motion, and determine the issues and make findings of fact and
11 conclusions of law with respect thereto.

12 Sec. 4. Section 29-4123, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 29-4123 (1) The results of the final DNA or other forensic testing
15 ordered under subsection (5) of section 29-4120 shall be disclosed to the
16 county attorney, to the person filing the motion, and to the person's
17 attorney.

18 (2) Upon receipt of the results of such testing, any party may
19 request a hearing before the court when such results exonerate or
20 exculpate the person. Following such hearing, the court may, on its own
21 motion or upon the motion of any party, vacate and set aside the judgment
22 and release the person from custody based upon final testing results
23 exonerating or exculpating the person.

24 (3) If the court does not grant the relief contained in subsection
25 (2) of this section, any party may file a motion for a new trial under
26 sections 29-2101 to 29-2103 and section 1 of this act.

27 2. In the Standing Committee amendments, AM197, on page 1, line 19,
28 after the period insert "A defendant is limited to one motion for new
29 trial based on the grounds set forth in subdivision (5) of section
30 29-2101.".

31 3. Renumber the remaining sections and correct the repealer

1 accordingly.