

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 59

Introduced by Cavanaugh, J., 9.

Read first time January 05, 2023

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 29-3001, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to limitations for a postconviction relief action; 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 Nebraska, is
2 amended to read:

3 29-3001 (1) A prisoner in custody under sentence and claiming a
4 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 void
6 or voidable under the Constitution of this state or the Constitution of
7 the United States, may file a verified motion, in the court which imposed
8 such sentence, stating the grounds relied upon and asking the court to
9 vacate or set aside the sentence.

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

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

28 (4) A one-year period of limitation shall apply to the filing of a
29 verified motion for postconviction relief. The one-year limitation period
30 shall run from the later of:

31 (a) The date the judgment of conviction became final by the

1 conclusion of a direct appeal or the expiration of the time for filing a
2 direct appeal;

3 (b) The date on which the factual predicate of the constitutional
4 claim or claims alleged could have been discovered through the exercise
5 of due diligence;

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

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

14 (e) The date on which the Supreme Court of the United States denies
15 a writ of certiorari or affirms a conviction appealed from the Nebraska
16 Supreme Court. This subdivision only applies if, within thirty days after
17 petitioning the Supreme Court of the United States for a writ of
18 certiorari, the prisoner files a notice in the district court of
19 conviction stating that the prisoner has filed such petition August 27,
20 2011.

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