

AMENDMENTS TO LB 137

Introduced by Judiciary

1           1. Strike the original sections and insert the following  
2 new sections:

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

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

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

1 Proceedings under the provisions of sections 29-3001 to 29-3004  
2 shall be civil in nature. Costs shall be taxed as in habeas corpus  
3 cases.

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

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

13 (a) The date the judgment of conviction became final by  
14 the conclusion of a direct appeal or the expiration of the time for  
15 filing a direct appeal;

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

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

24 (d) The date on which a constitutional claim asserted was  
25 initially recognized by the Supreme Court of the United States or  
26 the Nebraska Supreme Court, if the newly recognized right has been  
27 made applicable retroactively to cases on postconviction collateral

1 review; or

2 (e) The effective date of this act.

3 Sec. 2. Original section 29-3001, Reissue Revised

4 Statutes of Nebraska, is repealed.