

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1081**

Introduced by Morfeld, 46.

Read first time January 21, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal procedure; to amend sections  
2 29-3001 and 29-3003, Reissue Revised Statutes of Nebraska; to change  
3 provisions relating to limitation periods for certain claims for  
4 postconviction relief; to provide for withdrawal of a plea as  
5 prescribed; and to repeal the original sections.  
6 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 Nebraska ~~this state~~ or the  
7 Constitution of the United States, may file a verified motion, in the  
8 court which imposed such sentence, stating the grounds relied upon and  
9 asking the court to 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 Nebraska ~~this state~~ or the Constitution of the United  
18 States, the court shall vacate and set aside the judgment and shall  
19 discharge the prisoner or resentence the prisoner or grant a new trial as  
20 may appear appropriate. Proceedings under the provisions of sections  
21 29-3001 to 29-3004 shall be civil in nature. Costs shall be taxed as in  
22 habeas 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 prisoner actually discovered consequences  
15 resulting from the conviction if (i) such consequences were not known to  
16 the prisoner when the prisoner entered a plea resulting in the conviction  
17 and (ii) such consequences are significant enough that counsel's failure  
18 to properly advise the prisoner of such consequences constituted  
19 ineffective assistance of counsel; or

20 (f) ~~(e)~~ August 27, 2011.

21 Sec. 2. Section 29-3003, Reissue Revised Statutes of Nebraska, is  
22 amended to read:

23 29-3003 (1) Except as provided in subsection (2) of this section,  
24 the ~~The~~ remedy provided by sections 29-3001 to 29-3004 is cumulative and  
25 is not intended to be concurrent with any other remedy existing in the  
26 courts of this state. Any proceeding filed under the provisions of  
27 sections 29-3001 to 29-3004 which states facts which if true would  
28 constitute grounds for relief under another remedy shall be dismissed  
29 without prejudice.

30 (2) Nothing in sections 29-3001 to 29-3004 shall be construed to  
31 prohibit a person who could have asserted a claim for relief under such

1 sections prior to the enactment of this legislative bill from separately  
2 pursuing the withdrawal of a previously entered plea that resulted in  
3 consequences significant enough that counsel's failure to properly advise  
4 the person of such consequences constituted ineffective assistance of  
5 counsel if such person did not learn of such consequences until after  
6 release from custody.

7       Sec. 3. Original sections 29-3001 and 29-3003, Reissue Revised  
8 Statutes of Nebraska, are repealed.