

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 548**

Introduced by Wayne, 13.

Read first time January 19, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal procedure; to amend section  
2 29-3001, Reissue Revised Statutes of Nebraska; to adopt the Nebraska  
3 Racial Justice Act; to provide new grounds for postconviction relief  
4 and change provisions relating to postconviction acts; to harmonize  
5 provisions; and to repeal the original section.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 5 of this act shall be known and may be  
2 cited as the Nebraska Racial Justice Act.

3           Sec. 2. For purposes of the Nebraska Racial Justice Act:

4           (1) More frequently sought or obtained or more frequently imposed  
5 means that:

6           (a) Statistical evidence or aggregate data demonstrate a significant  
7 difference in seeking or obtaining convictions or in imposing sentences  
8 comparing defendants who have committed the same or similar offenses and  
9 are similarly situated; and

10          (b) The prosecutor cannot establish race-neutral reasons for the  
11 disparity;

12          (2) Prisoner means a prisoner in custody under sentence for a felony  
13 due to a conviction occurring before, on, or after the effective date of  
14 this act;

15          (3) Prosecutor means any prosecutor, including, but not limited to,  
16 the Attorney General, a deputy or assistant attorney general, a county  
17 attorney, a deputy county attorney, a city attorney, or a deputy city  
18 attorney, or a special prosecutor;

19          (4) Race includes race, ethnicity, and national origin. A prisoner  
20 may share a race with more than one group, and a prisoner may aggregate  
21 data among groups to show a violation of section 3 of this act; and

22          (5) Racially discriminatory language means language that, to an  
23 objective observer, explicitly or implicitly appeals to racial bias,  
24 including, but not limited to, racially charged or racially coded  
25 language, language that compares the prisoner to an animal, or language  
26 that references the prisoner's physical appearance, culture, race,  
27 ethnicity, or national origin. Evidence that particular words or images  
28 are used exclusively or disproportionately in cases where the prisoner is  
29 of a specific race is relevant to determining whether language is  
30 discriminatory.

31          Sec. 3. (1) A prosecutor shall not seek or obtain a criminal

1 conviction on the basis of race or seek to impose a sentence on the basis  
2 of race.

3 (2) A court shall not impose a conviction or sentence on the basis  
4 of race.

5 (3) A conviction or sentence imposed in violation of this section is  
6 void and shall be vacated upon proof of a violation of this section,  
7 including a violation of this section occurring before, on, or after the  
8 effective date of this act, presented in an action for post-conviction  
9 relief under sections 29-3001 to 29-3004.

10 (4) Nothing in the Nebraska Racial Justice Act shall:

11 (a) Preclude a prisoner from seeking relief under another statute or  
12 preclude a claim for post-conviction relief under sections 29-3001 to  
13 29-3004 or any other law asserting a violation of the prisoner's  
14 constitutional rights that is based on the same facts as a claim under  
15 the Nebraska Racial Justice Act; or

16 (b) Prevent the prosecution of a hate crime or the filing of a civil  
17 action under sections 28-110 to 28-114.

18 Sec. 4. In an action for post-conviction relief under sections  
19 29-3001 to 29-3004, a prisoner may establish a violation of section 3 of  
20 this act by proving, by a preponderance of the evidence, any of the  
21 following:

22 (1) A judge, an attorney, a law enforcement officer, an expert  
23 witness, or juror involved in the case exhibited bias or animus towards  
24 the prisoner because of the prisoner's race;

25 (2) During the prisoner's trial, in court and during the  
26 proceedings, the judge, an attorney, a law enforcement officer, an expert  
27 witness, or a juror used racially discriminatory language about the  
28 prisoner or the prisoner's race or otherwise exhibited bias or animus  
29 towards the prisoner because of the prisoner's race. The prisoner need  
30 not show purposeful discrimination. This subdivision does not apply if  
31 the person speaking is describing language used by another that is

1 relevant to the case or if the person speaking is giving a racially  
2 neutral and unbiased physical description of a person;

3 (3) Race was a factor in the exercise of peremptory challenges. The  
4 prisoner need not show that purposeful discrimination occurred;

5 (4) The prisoner was charged with or convicted of a more serious  
6 offense than defendants of other races who committed similar offenses and  
7 are similarly situated, and the evidence establishes that the prosecution  
8 more frequently sought or obtained convictions for more serious offenses  
9 against defendants who share the prisoner's race in the county where the  
10 prisoner was charged or convicted;

11 (5) A longer or more severe sentence was imposed on the prisoner  
12 than was imposed on other similarly situated defendants convicted of the  
13 same offense, and longer or more severe sentences were more frequently  
14 imposed for that offense on defendants that share the prisoner's race  
15 compared to defendants of other races in the county where the sentence  
16 was imposed; or

17 (6) A longer or more severe sentence was imposed on the prisoner  
18 than was imposed on other similarly situated defendants convicted of the  
19 same or similar offenses and longer or more severe sentences were more  
20 frequently imposed, in the county where the sentence was imposed, for the  
21 same or similar offenses:

22 (a) On defendants that share the prisoner's race compared to  
23 defendants of other races; or

24 (b) In cases with victims of one race than in cases with victims of  
25 other races.

26 Sec. 5. In an action for postconviction relief under sections  
27 29-3001 to 29-3004 alleging a violation of section 3 of this act:

28 (1) Evidence to establish such violation may include, but is not  
29 limited to, statistical evidence, aggregate data, expert testimony, and  
30 the sworn testimony of witnesses;

31 (2) The court may appoint an independent expert; and

1       (3) The prisoner may file a motion requesting disclosure to the  
2 prisoner of all evidence relevant to a potential violation of section 3  
3 of this act in the possession or control of the prosecutor, the state, or  
4 a political subdivision of the state. A motion filed under this  
5 subdivision shall describe the type of records or information the  
6 prisoner seeks. Upon a showing of good cause, and if the records are not  
7 privileged, the court shall order the records to be released. Upon a  
8 showing of good cause, the court may permit the prosecution to redact  
9 information prior to disclosure.

10       Sec. 6. Section 29-3001, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12       29-3001   (1)(a) ~~(1)~~ A prisoner in custody under sentence and  
13 claiming a right to be released on the ground that there was such a  
14 denial or infringement of the rights of the prisoner as to render the  
15 judgment void or voidable under the Constitution of Nebraska ~~this state~~  
16 or the Constitution of the United States, may file a verified motion, in  
17 the court which imposed such sentence, stating the grounds relied upon  
18 and asking the court to vacate or set aside the conviction or sentence.

19       (b) A prisoner in custody under sentence for a felony claiming that  
20 such prisoner's conviction was obtained in violation of the Nebraska  
21 Racial Justice Act or that such prisoner's sentence violates such act may  
22 file a verified motion, in the court which imposed such sentence, stating  
23 the grounds relied upon and asking the court to vacate or set aside the  
24 conviction or sentence. This subdivision applies to violations of the  
25 Nebraska Racial Justice Act occurring before, on, or after the effective  
26 date of this act.

27       (2)(a) ~~(2)~~ Unless the motion and the files and records of the case  
28 show to the satisfaction of the court that the prisoner is entitled to no  
29 relief, the court shall cause notice thereof to be served on the county  
30 attorney, grant a prompt hearing thereon, and determine the issues and  
31 make findings of fact and conclusions of law with respect thereto.

1           (b) If the court finds that there was such a denial or infringement  
2 of the rights of the prisoner as to render the judgment void or voidable  
3 under the Constitution of Nebraska this state or the Constitution of the  
4 United States, the court shall vacate and set aside the judgment and  
5 shall discharge the prisoner or resentence the prisoner or grant a new  
6 trial as may appear appropriate. On resentencing, the court shall not  
7 impose a new sentence greater than that previously imposed.

8           (c) Proceedings under the provisions of sections 29-3001 to 29-3004  
9 shall be civil in nature. Costs shall be taxed as in habeas corpus cases.

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

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

18           (a) The date the judgment of conviction became final by the  
19 conclusion of a direct appeal or the expiration of the time for filing a  
20 direct appeal;

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

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

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

1           (e) For a claim based on a violation of the Nebraska Racial Justice  
2 Act that occurred prior to the effective date of this act, September 15,  
3 2022 August 27, 2011.

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