

LEGISLATURE OF NEBRASKA  
ONE HUNDRED NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 127**

Introduced by McKeon, 41; Hardin, 48; Lippincott, 34; Lonowski, 33.

Read first time January 10, 2025

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal actions; to amend section 29-1208,
- 2 Reissue Revised Statutes of Nebraska; to provide for damages for
- 3 defendants in criminal actions that are dismissed or in which the
- 4 defendant is found not guilty; to define a term; 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.** (1) The Legislature finds that people who are mistakenly  
2 or wrongfully prosecuted suffer significant financial hardship as a  
3 result. The purpose of this section is to lessen the hardship faced by  
4 such people and to serve as an incentive for the government to use  
5 caution and restraint in making prosecutorial decisions.

6           (2) For purposes of this section, prosecutor includes the Attorney  
7 General, a deputy attorney general, assistant attorneys general, a county  
8 attorney, a deputy county attorney, a city attorney, or any other person  
9 with the authority to prosecute criminal actions.

10           (3) Except as provided in subsection (4) of this section, a person  
11 against whom any criminal charge has been filed or prosecuted shall be  
12 awarded damages as provided in this section if:

13           (a) The person is granted an absolute discharge as provided in  
14 section 29-1208;

15           (b) The prosecutor voluntarily dismisses the charges, except as  
16 provided in subsection (5) of this section;

17           (c) The charges are dismissed by the trial court or on appeal;

18           (d) In a jury trial, the jury returns a verdict of not guilty;

19           (e) In a bench trial, the court finds the person to be not guilty;

20 or

21           (f) The conviction is overturned on appeal or pursuant to any form  
22 of postconviction relief.

23           (4)(a) A defendant is not entitled to relief under this section for  
24 any offense described in subsection (3) of this section if:

25           (i) The defendant is convicted of another offense arising out of  
26 substantially the same misconduct;

27           (ii) The other offense is classified as the same level of  
28 misdemeanor or felony or as a higher level;

29           (iii) The conviction for such other offense is not dismissed,  
30 overturned, or vacated.

31           (b) Misconduct is substantially the same if the misconduct arises

1 out of the same transaction or event, is part of a common scheme or plan,  
2 or is substantively similar and close in time. Factors to consider in  
3 determining whether misconduct is substantially similar include the  
4 passage of time between each occurrence; the parties involved in each  
5 occurrence, including the victims; and the charges brought.

6 (5) A defendant may enter into an agreement with a prosecutor to  
7 dismiss charges and may waive the payment of damages under this section  
8 in such agreement.

9 (6) Upon the occurrence of an event described in subsection (3) of  
10 this section, the trial court shall hold a hearing to determine the  
11 amount of damages to be awarded. The court shall award:

12 (a) Reasonable attorney's fees and other litigation expenses,  
13 including for trial and any appeals or actions for postconviction relief;  
14 and

15 (b) Actual damages caused by the filing of charges, arrest,  
16 detention, prosecution, conviction, or imprisonment, including, but not  
17 limited to, lost wages.

18 **Sec. 2.** Section 29-1208, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 29-1208 If a defendant is not brought to trial before the running of  
21 the time for trial as provided for in section 29-1207, as extended by  
22 excluded periods, he or she shall be entitled to:

23 (1) His ~~his~~ or her absolute discharge from the offense charged and  
24 for any other offense required by law to be joined with that offense;  
25 and -

26 (2) Damages as provided in section 1 of this act.

27 **Sec. 3.** Original section 29-1208, Reissue Revised Statutes of  
28 Nebraska, is repealed.