

LEGISLATURE OF NEBRASKA  
ONE HUNDRED NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 448**

Introduced by Dungan, 26; Riepe, 12.

Read first time January 21, 2025

Committee: Judiciary

1 A BILL FOR AN ACT relating to postconviction relief; to amend sections  
2 29-3002, 29-3003, 29-3004, and 29-3915, Reissue Revised Statutes of  
3 Nebraska, and section 29-3001, Revised Statutes Cumulative  
4 Supplement, 2024; to name the Postconviction Relief Act; to provide  
5 for postconviction relief for a claim of actual innocence; to  
6 provide exceptions for time limitations and procedural defaults; to  
7 define terms; to provide for disclosure of certain files by  
8 attorneys, law enforcement, and prosecutors; to provide for  
9 discovery; to harmonize provisions; and to repeal the original  
10 sections.

11 Be it enacted by the people of the State of Nebraska,

1           **Section 1.** Sections 1 to 6 of this act shall be known and may be  
2 cited as the Postconviction Relief Act.

3           **Sec. 2.** Section 29-3001, Revised Statutes Cumulative Supplement,  
4 2024, is amended to read:

5           ~~29-3001~~ (1) A prisoner in custody under sentence and claiming a  
6 right to be released on ~~a~~ the ground listed in subsection (2) of this  
7 section that there was such a denial or infringement of the rights of the  
8 prisoner as to render the judgment void or voidable under the  
9 Constitution of this state or the Constitution of the United States, may  
10 file a verified motion, in the court which imposed such sentence, stating  
11 the grounds relied upon and asking the court to vacate or set aside the  
12 sentence.

13           (2) The following shall constitute grounds for relief under this  
14 section:

15           (a) There was such a denial or infringement of the rights of the  
16 prisoner as to render the judgment void or voidable under the  
17 Constitution of Nebraska or the Constitution of the United States; or

18           (b) The prisoner is actually innocent.

19           (3)(a) To establish actual innocence:

20           (i) The prisoner must present evidence of actual innocence that was  
21 not presented at trial. This may include, but is not limited to:  
22 Exculpatory DNA testing results; evidence implicating an alternative  
23 suspect, including third-party confessions; impeachment evidence of  
24 state's witnesses; or relevant forensic scientific evidence that  
25 undermines other evidence presented at trial, including forensic  
26 evidence; and

27           (ii) The prisoner must prove by clear and convincing evidence that  
28 there is a reasonable likelihood that the factfinder's consideration of  
29 such evidence would have resulted in a different outcome at trial.

30           (b) Forensic scientific evidence shall be considered undermined if  
31 new research or information exists that repudiates:

1        (i) The foundational validity of the challenged evidence or  
2 testimony; or

3        (ii) The applied validity of the method or technique.

4        (c) For purposes of this subsection:

5        (i) Applied validity means the reliability of the method or  
6 technique in practice; and

7        (ii) Foundational validity means the reliability of the method to be  
8 repeatable, reproducible, and accurate in a scientific setting.

9        (4) (2) Unless the motion and the files and records of the case show  
10 to the satisfaction of the court that the prisoner is entitled to no  
11 relief, the court shall cause notice thereof to be served on the county  
12 attorney, grant a prompt hearing thereon, and determine the issues and  
13 make findings of fact and conclusions of law with respect thereto. If the  
14 court finds that there are grounds for relief under subsection (2) of  
15 this section ~~was such a denial or infringement of the rights of the~~  
16 ~~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 Postconviction Relief Act ~~provisions~~  
21 ~~of sections 29-3001 to 29-3004~~ shall be civil in nature. Costs shall be  
22 taxed as in habeas corpus cases.

23        (5) (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        (6) Except as provided in subsection (7) of this section, a (4) A  
29 one-year period of limitation shall apply to the filing of a verified  
30 motion for postconviction relief. The one-year limitation period shall  
31 run from the later of:

1 (a) The date the judgment of conviction became final by the  
2 conclusion of a direct appeal or the expiration of the time for filing a  
3 direct appeal;

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

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

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

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

21 (7)(a) Any procedural default or time limitation may be excused by  
22 the court to prevent a manifest injustice.

23 (b) In determining whether to excuse a procedural default or time  
24 limitation under this subsection due to a manifest injustice, the court's  
25 inquiry shall be limited to determining whether the prisoner makes a  
26 colorable claim of actual innocence.

27 (8) Failure to bring an ineffective assistance of trial counsel  
28 claim on direct appeal shall not result in the procedural default of that  
29 claim.

30 **Sec. 3.** Section 29-3002, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1       ~~29-3002~~ An order sustaining or overruling a motion filed under  
2 section 2 of this act ~~sections 29-3001 to 29-3004~~ shall be deemed to be a  
3 final judgment, and an appeal may be taken from the district court as  
4 provided for in appeals in civil cases. A prisoner may, in the discretion  
5 of the appellate court and upon application to the appellate court, be  
6 released on such recognizance as the appellate court fixes pending the  
7 determination of the appeal.

8       **Sec. 4.** Section 29-3003, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10       ~~29-3003~~ The remedy provided by the Postconviction Relief Act  
11 ~~sections 29-3001 to 29-3004~~ is cumulative and is not intended to be  
12 concurrent with any other remedy existing in the courts of this state.  
13 Any proceeding filed under the Postconviction Relief Act ~~provisions of~~  
14 ~~sections 29-3001 to 29-3004~~ which states facts which if true would  
15 constitute grounds for relief under another remedy shall be dismissed  
16 without prejudice.

17       **Sec. 5.** Section 29-3004, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19       ~~29-3004~~ The district court may appoint not to exceed two attorneys  
20 to represent the prisoners in all proceedings under the Postconviction  
21 Relief Act ~~sections 29-3001 to 29-3004~~. The district court, upon hearing  
22 the application, shall fix reasonable expenses and fees, and the county  
23 board shall allow payment to the attorney or attorneys in the full amount  
24 determined by the court. The attorney or attorneys shall be competent and  
25 shall provide effective counsel.

26       **Sec. 6.** (1) Upon request of the prisoner, the district court may  
27 order that:

28       (a) The prisoner's prior trial or appellate counsel make available  
29 to the prisoner such counsel's complete files relating to the case that  
30 is the subject of the proceedings under the Postconviction Relief Act;  
31 and

1       (b) The county attorney or other prosecutor make available to the  
2 prisoner the complete files of all law enforcement and prosecutorial  
3 agencies involved in the investigation or prosecution of the prisoner.

4       (2) Upon request of the prisoner, the district court may order that  
5 discovery be allowed as provided in sections 29-1912 to 29-1921 if the  
6 court finds that such discovery could assist the prisoner in  
7 investigating, preparing, or presenting a motion for relief under section  
8 2 of this act.

9       **Sec. 7.** Section 29-3915, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11       29-3915 The following persons who are financially unable to obtain  
12 counsel shall be entitled to be represented by a judicial district public  
13 defender:

14       (1) A person charged with a felony, including appeals from  
15 convictions for a felony;

16       (2) A person pursuing a postconviction proceeding under the  
17 Postconviction Relief Act sections 29-3001 to 29-3004 after conviction of  
18 a felony, when the public defender after investigation concludes that  
19 there may be merit to such a proceeding or when the court in which such  
20 proceeding is pending directs the public defender to represent the  
21 person;

22       (3) A minor brought before the juvenile court when neither the minor  
23 nor his or her parent or guardian is able to afford counsel; and

24       (4) A person against whom a petition has been filed with a mental  
25 health board as provided in sections 71-945 to 71-947.

26       **Sec. 8.** Original sections 29-3002, 29-3003, 29-3004, and 29-3915,  
27 Reissue Revised Statutes of Nebraska, and section 29-3001, Revised  
28 Statutes Cumulative Supplement, 2024, are repealed.