

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 245

FINAL READING
(SECOND)

Introduced by Pansing Brooks, 28; Riepe, 12; Chambers, 11.

Read first time January 14, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend sections
- 2 29-2102, 29-2103, and 29-4120, Reissue Revised Statutes of Nebraska;
- 3 to change provisions relating to motions for new trial and DNA
- 4 testing of biological material; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2102, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-2102 (1) The grounds set forth in subdivisions (2), (3), and (6)
4 of section 29-2101 shall be supported by affidavits showing the truth of
5 such grounds, and the grounds may be controverted by affidavits. The
6 ground set forth in subdivision (5) of section 29-2101 shall be supported
7 by evidence of the truth of the ground in the form of affidavits,
8 depositions, or oral testimony.

9 (2) If the motion for new trial and supporting documents fail to set
10 forth sufficient facts, the court may, on its own motion, dismiss the
11 motion without a hearing. If the motion for new trial and supporting
12 documents set forth facts which, if true, would materially affect the
13 substantial rights of the defendant, the court shall cause notice of the
14 motion to be served on the prosecuting attorney, grant a hearing on the
15 motion, and determine the issues and make findings of fact and
16 conclusions of law with respect thereto.

17 (3) In considering a motion for new trial based on the grounds set
18 forth in subdivision (5) of section 29-2101, if the court finds that
19 there is evidence materially affecting the substantial rights of the
20 defendant which he or she could not with reasonable diligence have
21 discovered and produced at trial, the court may, upon the motion of any
22 party and following a hearing, vacate and set aside the judgment and
23 release the person from custody or grant a new trial as appropriate.

24 Sec. 2. Section 29-2103, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 29-2103 (1) A motion for new trial shall be made by written
27 application and may be filed either during or after the term of the court
28 at which the verdict was rendered.

29 (2) A motion for a new trial shall state the grounds under section
30 29-2101 which are the basis for the motion and shall be supported by
31 evidence as provided in section 29-2102.

1 (3) A motion for new trial based on the grounds set forth in
2 subdivision (1), (2), (3), (4), or (7) of section 29-2101 shall be filed
3 within ten days after the verdict was rendered unless such filing is
4 unavoidably prevented, and the grounds for such motion may be stated by
5 directly incorporating the appropriate language of section 29-2101
6 without further particularity.

7 (4) A motion for new trial based on the grounds set forth in
8 subdivision (5) of section 29-2101 shall be filed within a reasonable
9 time after the discovery of the new evidence and cannot be filed more
10 than five ~~three~~ years after the date of the verdict, unless the motion
11 and supporting documents show the new evidence could not with reasonable
12 diligence have been discovered and produced at trial and such evidence is
13 so substantial that a different result may have occurred.

14 (5) A motion for new trial based on the grounds set forth in
15 subdivision (6) of section 29-2101 shall be filed within ninety days
16 after a final order is issued under section 29-4123 or within ninety days
17 after the hearing if no final order is entered, whichever occurs first.

18 Sec. 3. Section 29-4120, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 29-4120 (1) Notwithstanding any other provision of law, a person in
21 custody pursuant to the judgment of a court may, at any time after
22 conviction, file a motion, with or without supporting affidavits, in the
23 court that entered the judgment requesting forensic DNA testing of any
24 biological material that:

25 (a) Is related to the investigation or prosecution that resulted in
26 such judgment;

27 (b) Is in the actual or constructive possession or control of the
28 state or is in the possession or control of others under circumstances
29 likely to safeguard the integrity of the biological material's original
30 physical composition; and

31 (c) Was not previously subjected to DNA testing or can be subjected

1 to retesting with more current DNA techniques that provide a reasonable
2 likelihood of more accurate and probative results.

3 (2) Notice of such motion shall be served by the person in custody
4 upon the county attorney of the county in which the prosecution was held.

5 (3) Upon receiving notice of a motion filed pursuant to subsection
6 (1) of this section, the county attorney shall take such steps as are
7 necessary to ensure that any remaining biological material that was
8 secured by the state or a political subdivision in connection with the
9 case is preserved pending the completion of proceedings under the DNA
10 Testing Act.

11 (4) The county attorney shall prepare an inventory of all evidence
12 that was secured by the state or a political subdivision in connection
13 with the case and shall submit a copy of the inventory to the person or
14 the person's counsel and to the court. If evidence is intentionally
15 destroyed after notice of a motion filed pursuant to this section, the
16 court shall impose appropriate sanctions, including criminal contempt.

17 (5) Upon consideration of affidavits or after a hearing, the court
18 shall order DNA testing pursuant to a motion filed under subsection (1)
19 of this section upon a determination that (a)(i) the biological material
20 was not previously subjected to DNA testing or (ii) the biological
21 material was tested previously, but current technology could provide a
22 reasonable likelihood of more accurate and probative results, (b) such
23 testing was effectively not available at the time of trial, that the
24 biological material has been retained under circumstances likely to
25 safeguard the integrity of its original physical composition, and (c)
26 ~~that~~ such testing may produce noncumulative, exculpatory evidence
27 relevant to the claim that the person was wrongfully convicted or
28 sentenced.

29 (6) All forensic DNA tests shall be performed by a laboratory which
30 is accredited by the American Society of Crime Laboratory Directors-LAB-
31 Laboratory Accreditation Board or the National Forensic Science

1 Technology Center or by any other national accrediting body or public
2 agency which has requirements that are substantially equivalent to or
3 more comprehensive than those of the society or center.

4 Sec. 4. Original sections 29-2102, 29-2103, and 29-4120, Reissue
5 Revised Statutes of Nebraska, are repealed.