

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 18

Introduced by Wayne, 13; McKinney, 11.

Read first time January 05, 2023

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend sections
- 2 29-2101 and 29-2103, Reissue Revised Statutes of Nebraska; to change
- 3 provisions relating to motions for a new trial; to provide for
- 4 applicability; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2101, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-2101 A new trial, after a verdict of conviction, may be granted,
4 on the application of the defendant, for any of the following grounds
5 ~~affecting~~ materially affecting his or her substantial rights:

6 (1) Irregularity in the proceedings of the court, of the prosecuting
7 attorney, or of the witnesses for the state or in any order of the court
8 or abuse of discretion by which the defendant was prevented from having a
9 fair trial;

10 (2) ~~Misconduct~~ misconduct of the jury, of the prosecuting attorney,
11 or of the witnesses for the state;

12 (3) ~~Accident~~ accident or surprise which ordinary prudence could not
13 have guarded against;

14 (4) ~~The~~ the verdict is not sustained by sufficient evidence or is
15 contrary to law;

16 (5) ~~Newly~~ newly discovered evidence material for the defendant which
17 he or she could not with reasonable diligence have discovered or ~~and~~
18 produced at the trial. For purposes of this subdivision, testimony or
19 evidence from a witness who previously had a testimonial or
20 constitutional privilege and who, because of such privilege, refused to
21 testify or produce evidence in a prior proceeding, shall be considered
22 newly discovered evidence;

23 (6) ~~Newly~~ newly discovered exculpatory DNA or similar forensic
24 testing evidence obtained under the DNA Testing Act; or

25 (7) ~~Error~~ error of law occurring at the trial.

26 The changes made to this section by this legislative bill shall
27 apply to all persons, otherwise eligible in accordance with the
28 provisions of this section, whether convicted prior to, on, or subsequent
29 to the effective date of this act.

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

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

4 (2) A motion for a new trial shall state the grounds under section
5 29-2101 which are the basis for the motion and shall be supported by
6 evidence as provided in section 29-2102.

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

13 (4)(a) Except as provided in subdivision (4)(b) of this section, a
14 ~~(4)~~A motion for new trial based on the grounds set forth in subdivision
15 (5) of section 29-2101 shall be filed within a reasonable time after the
16 discovery of the new evidence and cannot be filed more than five years
17 after the date of the verdict, unless the motion and supporting documents
18 show the new evidence could not with reasonable diligence have been
19 discovered or ~~and~~ produced at trial and such evidence is so substantial
20 that a different result may have occurred.

21 (b) The time limitation in this subsection does not apply if the
22 motion for a new trial involves a conviction for a Class I, IA, or IB
23 felony.

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

28 (6) The changes made to this section by this legislative bill shall
29 apply to all persons, otherwise eligible in accordance with the
30 provisions of this section, whether convicted prior to, on, or subsequent
31 to the effective date of this act.

1 Sec. 3. Original sections 29-2101 and 29-2103, Reissue Revised
2 Statutes of Nebraska, are repealed.