

ONE HUNDRED SEVENTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE RESOLUTION 395**

Introduced by Cavanaugh, J., 9.

PURPOSE: The purpose of this resolution is to propose an interim study to examine the judicial inefficiency and increased costs to the state arising from Nebraska's four separate statutory based mechanisms for postconviction relief. The study shall include, but need not be limited to, an examination of:

(1) Nebraska's statutory mechanisms for postconviction relief, including a new trial in section 29-2101, postconviction relief in section 29-3001, habeas corpus in section 29-2801, and the DNA Testing Act;

(2) How Nebraska's splintered postconviction structure wastes judicial resources, adds burdens to prosecutors, and increases costs to the state when it prevents innocent petitioners from presenting the full scope of their claims at one time in front of one court;

(3) The gateway standard for innocence adopted by the federal court system and other state jurisdictions, including South Dakota, Montana, Missouri, and North Carolina under the United States Supreme Court decision in Schlup v. Delo, 513 U.S. 298 (1995). The gateway standard is a narrow exception provided to defendants who can prove their innocence in order to overcome a procedural default that otherwise prevents a challenge to the conviction. Such exception is not currently applicable under Nebraska's postconviction mechanisms;

(4) Claims of actual innocence, even absent an independent constitutional violation, if a person establishes by clear and convincing evidence that no reasonable fact finder would have found such person guilty of the underlying offense; and

(5) Whether Nebraska should join other states by adopting a rule that necessitates ineffective assistance of counsel claims involving issues of trial strategy be brought for the first time at the postconviction phase in order to

protect defendants, prevent injustice, and preserve judicial resources.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Judiciary Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.
2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.