

**SENATE BILL NO. 2227**

Introduced by

Senators Carlisle, Flakoll, Warner

Representatives Grande, Klemin, Amerman

1 A BILL for an Act to amend and reenact sections 29-32.1-01 and 29-32.1-09 of the North  
2 Dakota Century Code, relating to limitations and summary disposition for postconviction relief  
3 proceedings.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 29-32.1-01 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **29-32.1-01. Remedy - To whom available - Conditions.**

8 1. A person who has been convicted of and sentenced for a crime may institute a  
9 proceeding applying for relief under this chapter upon the ground that:

- 10 a. The conviction was obtained or the sentence was imposed in violation of the laws  
11 or the Constitution of the United States or of the laws or Constitution of North  
12 Dakota;
- 13 b. The conviction was obtained under a statute that is in violation of the Constitution  
14 of the United States or the Constitution of North Dakota, or that the conduct for  
15 which the applicant was prosecuted is constitutionally protected;
- 16 c. The court that rendered the judgment of conviction and sentence was without  
17 jurisdiction over the person of the applicant or the subject matter;
- 18 d. The sentence is not authorized by law;
- 19 e. Evidence, not previously presented and heard, exists requiring vacation of the  
20 conviction or sentence in the interest of justice;
- 21 f. A significant change in substantive or procedural law has occurred which, in the  
22 interest of justice, should be applied retrospectively;

- 1           g. The sentence has expired, probation or parole or conditional release was  
2           unlawfully revoked, or the applicant is otherwise unlawfully in custody or  
3           restrained; or
- 4           h. The conviction or sentence is otherwise subject to collateral attack upon any  
5           ground of alleged error available before July 1, 1985, under any common law,  
6           statutory or other writ, motion, proceeding, or remedy.
- 7           2. Except as provided in subsection 3, an application for relief under this chapter must be  
8           filed within one year of the date the conviction becomes final. A conviction becomes  
9           final for purposes of this chapter when:
- 10          a. The time for appeal of the conviction to the North Dakota supreme court expires;  
11          b. If an appeal was taken to the North Dakota supreme court, the time for petitioning  
12          the United States supreme court for review expires; or
- 13          c. If review was sought in the United States supreme court, the date the supreme  
14          court issues a final order in the case.
- 15          3. a. Notwithstanding subsection 2, a court may consider an application for relief under  
16          this chapter if:
- 17               (1) The petition alleges the existence of newly discovered evidence ~~that,~~  
18               including DNA evidence, which if proved and reviewed in light of the  
19               evidence as a whole, would establish that the petitioner did not engage in  
20               the criminal conduct for which the petitioner was convicted;
- 21               (2) The petitioner establishes that the petitioner suffered from a physical  
22               disability or mental disease that precluded timely assertion of the application  
23               for relief; or
- 24               (3) The petitioner asserts a new interpretation of federal or state constitutional  
25               or statutory law by either the United States supreme court or a North Dakota  
26               appellate court and the petitioner establishes that the interpretation is  
27               retroactively applicable to the petitioner's case.
- 28          b. An application under this subsection must be filed within one year of the date the  
29          petitioner discovers or reasonably should have discovered the existence of the  
30          new evidence, the disability or disease ceases, or the effective date of the  
31          retroactive application of law.

1       4. A proceeding under this chapter is not a substitute for and does not affect any remedy  
2       incident to the prosecution in the trial court or direct review of the judgment of  
3       conviction or sentence in an appellate court. Except as otherwise provided in this  
4       chapter, a proceeding under this chapter replaces all other common law, statutory, or  
5       other remedies available before July 1, 1985, for collaterally challenging the validity of  
6       the judgment of conviction or sentence. It is to be used exclusively in place of them. A  
7       proceeding under this chapter is not available to provide relief for disciplinary  
8       measures, custodial treatment, or other violations of civil rights of a convicted person  
9       occurring after the imposition of sentence.

10       **SECTION 2. AMENDMENT.** Section 29-32.1-09 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12       **29-32.1-09. Summary disposition.**

- 13       1. The court, on its own motion, may enter a judgment denying a meritless application on  
14       any and all issues raised in the application before any response by the state. The  
15       court also may summarily deny a second or successive application for similar relief on  
16       behalf of the same applicant and may summarily deny any application when the issues  
17       raised in the application have previously been decided by the appellate court in the  
18       same case.
- 19       2. The court, on its own motion, may dismiss any grounds of an application which allege  
20       ineffective assistance of postconviction counsel. An applicant may not claim  
21       constitutionally ineffective assistance of postconviction counsel in proceedings under  
22       this chapter.
- 23       3. The court may grant a motion by either party for summary disposition if the application,  
24       pleadings, any previous proceeding, discovery, or other matters of record show that  
25       there is no genuine issue as to any material fact and the moving party is entitled to a  
26       judgment as a matter of law.
- 27       ~~2.4.~~ If an evidentiary hearing is necessary, the court may determine which issues of  
28       material fact are in controversy and appropriately restrict the hearing.