

ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011
COMMITTEE STATEMENT
LB202

Hearing Date: Thursday January 27, 2011
Committee On: Judiciary
Introducer: Council
One Liner: Authorize petitions for recall and resentencing for certain minors sentenced to life imprisonment

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Ashford, Coash, Council, Harr, Larson, Lautenbaugh, McGill
Nay:
Absent: 1 Senator Lathrop
Present Not Voting:

Proponents:

SARAH FORREST
VAL PETER
MARGARET BROWN
MARK RATHJEN
BRETT BYFORD

ANN MARIE BIRKY

NATALIE BYFORD
JIM ERWIN
MICHAEL GARZA
JEAN EILEEN DURGIN-CLINCHARD
MEL BECKMAN
GRACE MANTICH
AMY MILLER

Representing:

VOICES FOR CHILDREN
COALITION FOR FAIR TREATMENT
LEAGUE OF WOMEN VOTERS
SELF
COALITION FOR THE FAIR SENTENCING OF
MINORS
CRIMINAL JUSTICE PRISON REFORM COMMITTEE
OF THE UNITARIAN CHURCH OF LINCOLN
SELF
CHRISTIAN HERITAGE FATHERHOOD
SELF
FAMILY & FRIENDS OF INMATES
SELF
ACLU

Opponents:

DON KLEINE

Representing:

DOUGLAS COUNTY ATTORNEY

Neutral:

Representing:

Summary of purpose and/or changes:

LB 202 is a bill that authorizes a person who was under 18 years of age at the time of committing an offense for which the person was sentenced to life without the possibility of parole (LWOP) to petition the court for re-sentencing.

Specifically, LB 202 provides the following:

1) Provides that when a defendant who, was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to LWOP, has served at least 15 years, the defendant may submit to the sentencing court a petition for recall and re-sentencing.

2) Requires the petition for hearing to include the defendant's statement that one of the following is true:

a) The defendant was convicted pursuant to section 28-303(Murder in the first degree) or 28-304(Murder in the second degree) or aiding and abetting another person in violation of such section.

b) The defendant has no juvenile felony adjudications for assault or other felonies with a significant potential for personal harm to victims prior to the murder conviction.

c) The defendant committed the offense with at least one adult co-defendant.

d) The defendant has performed acts that indicate potential for rehabilitation, including participating in educational, or vocational programs and showing evidence of remorse.

3) Provides that if any of the information required in subsection (2) of this section is missing, or if proof of service on the Attorney General or county attorney is not provided, the person may resubmit a petition with the information or proof of service.

4) A reply to the petition if any, shall be filed with the court within sixty days after the Attorney General or county attorney was served with the petition unless a continuance is provided

5) Provides that if the court finds by a preponderance of the evidence that the statements in the petition are true, the court shall hold a hearing to consider whether to recall the sentence previously ordered and to re-sentence the defendant in the same manner as if the defendant had not been previously sentenced.

This section also specifies that victims, or family members if the victim is deceased, retain the right to participate in the hearing.

6) Specifies the factors that the court may consider when determining whether to recall and re-sentence an individual include, but are not limited to:

a) The defendant was convicted pursuant to felony murder or aiding and abetting murder;

b) The defendant committed the murder with at least one adult co-defendant;

c) The defendant has no juvenile felony adjudications for assault or other felonies with a significant potential for personal harm to victims prior to the murder conviction;

d) Prior to the murder conviction, the defendant had insufficient adult support or supervision and suffered from psychological or physical trauma;

e) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors;

f) The defendant has performed acts that indicate the potential for rehabilitation, including participating in rehabilitative, educational, or vocational programs; and

g) The defendant has had no disciplinary actions for violent activities in the last five years.

7) Provides that the court shall have the discretion to recall a sentence and commitment previously ordered and as if the person seeking the recall had not been sentenced if the new sentence if any is not greater than the initial sentence.

8) States that if the sentence is not recalled, the defendant may submit another petition for re-sentencing to the

court when the defendant has been committed to the custody of the department for at least 15 years; or if not granted, after 20 years; or if not granted, after 24 years. A final petition may be submitted during the 25th year of the defendant's sentence.

9) Provides that the court may consider any other criteria that the court deems relevant as long as the court identifies the criteria on the record.

10) Provides retroactive application of this act.

Explanation of amendments:

AM399 makes the following changes to LB 202:

* Revises section 2 (1) to provide that the "petition for recall" shall now be filed with the Board of Pardons instead of the "sentencing court" and that the petition is called a "petition for sentence commutation." This change was needed because under The Nebraska Constitution, the only entity that can change a valid sentence of conviction is the Board of Pardons.

* Strikes section 2, 1(b) through (d) to clarify that a person must have been sentenced while under eighteen years of age and has served at least twenty years of incarceration before being able to file a petition for sentence commutation.

Revises (8) to clarify that if the initial petition for sentence commutation is denied that the individual can submit another petition after five years from the initial petition, and then ten years, then fifteen years and the final petition may be submitted twenty years after the initial petition is denied

Brad Ashford, Chairperson