

ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011
COMMITTEE STATEMENT
LB251

Hearing Date: Wednesday January 26, 2011
Committee On: Judiciary
Introducer: Council
One Liner: Change court fees

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Ashford, Coash, Council, Harr, Larson, Lathrop, Lautenbaugh, McGill

Nay:

Absent:

Present Not Voting:

Proponents:

SEN. BRENDA COUNCIL
ROBERT BARTLE
JANICE WALKER
JOHN LINDSAY
JOSEPH KOHOUT

Representing:

INTRODUCER
NE STATE BAR
NE SUPREME COURT
NEBRASKA COUNTY JUDGES ASSOCIATION
NEBRASKA COUNTY COURT ASSOCIATION

Opponents:

PATRICK HENG
TESSA HERMANSON

Representing:

NEBRASKA COLLECTOR'S ASSOCIATION
CREDIT MANAGEMENT SERVICES

Neutral:

ELAINE MENZEL
JANET WIECHELMAN

Representing:

NACO
CLERK OF DISTRICT COURT ASSOCIATION

Summary of purpose and/or changes:

Legislative Bill 251 would increase all court filing fees by \$20

Explanation of amendments:

LB 251 is amended by AM945

AM945 would gut all sections of LB 251 and replace it with what is currently LB 202 as amended by the Judiciary Committee. 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 imprisonment to petition the Board of Pardons for a commutation of their sentence.

Specifically, AM945 provides the following:

- 1) Provides that when a petitioner who, was under 18 years of age at the time of the commission of the offense for
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which the defendant was sentenced to life imprisonment, and has served at least 20 years, the defendant may submit to the Board of Pardons a petition for a sentence commutation.

2) Requires the petitioner to file the original petition with the Board, that a copy of petition be served on the Attorney General or county attorney that prosecuted the case, include the defendant's statement that he or she was under 18 years of age at the time of the offense, was sentenced to life imprisonment and that one of the following is true:

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

d) The petitioner 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 Board 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 Board finds by a preponderance of the evidence that the statements in the petition are true, the Board shall hold a hearing to consider whether to commute the sentence previously ordered. Provides that victims or family members of deceased victims may participate in the hearing.

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

6) Specifies factors that the Board of Pardons may consider when determining whether to commute the sentence of the petitioner, but are not limited to:

a) The petitioner was convicted pursuant to 28-303 or 28-304 or of aiding and abetting murder;

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

d) Prior to the offense under consideration for commutation, the defendant had insufficient adult support or supervision and suffered from psychological or physical trauma;

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

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

g) The petitioner has maintained family ties or connections with others through letter writing, calls, or visits and eliminated contact with individuals outside of prison who are involved in crime.

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

7) Provides that the Board shall have the discretion to commute the sentence of the petitioner and that such discretion shall be exercised taking subsection (6) under consideration. This section also provides victim notification of the sentence commutation hearing and may take part in the hearing.

8) States that if the sentence is not commuted, the defendant may submit another petition for commutation to the Board of Pardons when the defendant has been committed to the custody of the department for at least 20 years; if commutation is not granted, the individual may 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

9) Provides that the Board of Pardons may consider any other criteria that the board deems relevant as long as the board identifies the criteria on the record.

10) Provides retroactive application of this act.

Brad Ashford, Chairperson