

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 202

Introduced by Council, 11; Avery, 28.

Read first time January 07, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend section 28-101,
2 Revised Statutes Cumulative Supplement, 2010; to
3 authorize petitions for recall and resentencing for
4 certain minors sentenced to life imprisonment; and to
5 repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 28-101 Sections 28-101 to 28-1356 and section 2 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. (1) Notwithstanding any other provision of law,
6 any person sentenced to life imprisonment, who, at the time of the
7 commission of the crime, was under eighteen years of age and has
8 served at least twenty-five years of that sentence, may submit to the
9 sentencing court a petition for recall and resentencing, however,
10 such persons who have served twenty or more years but not more than
11 twenty-five years as of January 1, 2012, shall not be permitted to
12 submit a petition for recall and resentencing pursuant to this
13 section until they have served twenty-five years. Persons who have
14 served fifteen or more years but less than twenty-five years as of
15 January 1, 2012, shall be permitted to submit a petition for recall
16 and resentencing as follows:

17 (a) Those persons who entered custody prior to July 1,
18 1994, may submit a petition in 2012;

19 (b) Those persons who entered custody on or after July 1,
20 1994, but prior to January 1, 1995, may submit a petition in 2013;

21 (c) Those persons who entered custody on or after January
22 1, 1995, but prior to July 1, 1995, may submit a petition in 2014;
23 and

24 (d) Those persons who entered custody on or after July 1,
25 1995, but prior to January 1, 1997, may submit a petition in 2015.

1 (2) The person shall file the original petition with the
2 sentencing court. A copy of the petition shall be served on the
3 Attorney General or county attorney that prosecuted the case. The
4 petition shall include the person's statement that he or she was
5 under eighteen years of age at the time of the crime, was sentenced
6 to life imprisonment, and that one of the following is true:

7 (a) The person was convicted pursuant to section 28-303
8 or 28-304 or of aiding and abetting another person in the violation
9 of such section;

10 (b) The person does not have juvenile felony
11 adjudications for assault or other felony crimes with a significant
12 potential for personal harm to victims prior to the offense for which
13 the sentence is being considered for recall;

14 (c) The person committed the offense with at least one
15 adult co-person; or

16 (d) The person has performed acts that tend to indicate
17 rehabilitation or the potential for rehabilitation, including, but
18 not limited to, availing himself or herself of rehabilitative,
19 educational, or vocational programs, if those programs have been
20 available at his or her classification level and facility, using
21 self-study for self-improvement, or showing evidence of remorse.

22 (3) If any of the information required in subsection (2)
23 of this section is missing from the petition, or if proof of service
24 on the Attorney General or county attorney is not provided, the court
25 shall return the petition to the person and advise him or her that

1 the matter cannot be considered without the missing information. The
2 person may resubmit a petition with the information or proof of
3 service.

4 (4) A reply to the petition, if any, shall be filed with
5 the court within sixty days after the date on which the Attorney
6 General or county attorney was served with the petition, unless a
7 continuance is granted for good cause.

8 (5) If the court finds by a preponderance of the evidence
9 that the statements in the petition are true, the court shall hold a
10 hearing to consider whether to recall the sentence and commitment
11 previously ordered and to resentence the person in the same manner as
12 if the person had not previously been sentenced, if the new sentence,
13 if any, is not greater than the initial sentence. Victims, or family
14 members of a victim if the victim is deceased, shall retain the right
15 to participate in the hearing.

16 (6) The factors that the court may consider when
17 determining whether to recall and resentence include, but are not
18 limited to, the following:

19 (a) The person was convicted pursuant to section 28-303
20 or 28-304 or of aiding and abetting another person in the violation
21 of such section;

22 (b) The person does not have juvenile felony
23 adjudications for assault or other felony crimes with a significant
24 potential for personal harm to victims prior to the offense for which
25 the sentence is being considered for recall;

1 (c) The person committed the offense with at least one
2 adult co-person;

3 (d) Prior to the offense for which the sentence is being
4 considered for recall, the person had insufficient adult support or
5 supervision and had suffered from psychological or physical trauma,
6 or significant stress;

7 (e) The person suffers from cognitive limitations due to
8 mental illness, developmental disabilities, or other factors that did
9 not constitute a defense, but influenced the person's involvement in
10 the offense;

11 (f) The person has performed acts that tend to indicate
12 rehabilitation or the potential for rehabilitation, including, but
13 not limited to, availing himself or herself of rehabilitative,
14 educational, or vocational programs, if those programs have been
15 available at his or her classification level and facility, using
16 self-study for self-improvement, or showing evidence of remorse;

17 (g) The person has maintained family ties or connections
18 with others through letter writing, calls, or visits, or has
19 eliminated contact with individuals outside of prison who are
20 involved with crime; and

21 (h) The person has had no disciplinary actions for
22 violent activities in the last five years in which the person was
23 determined to be the aggressor.

24 (7) The court shall have the discretion to recall the
25 sentence and commitment previously ordered and to resentence the

1 person in the same manner as if the person had not previously been
2 sentenced, if the new sentence, if any, is not greater than the
3 initial sentence. The discretion of the court shall be exercised in
4 consideration of the criteria in subsection (6) of this section.
5 Victims, or family members of a victim if the victim is deceased,
6 shall be notified of the resentencing hearing and shall retain their
7 rights to participate in the hearing.

8 (8) If the sentence is not recalled, the person may
9 submit another petition for recall and resentencing to the sentencing
10 court when the person has been committed to the custody of the
11 department for at least fifteen years. If recall and resentencing is
12 not granted under that petition, the person may file another petition
13 after having served twenty years. If recall and resentencing is not
14 granted under that petition, the person may file another petition
15 after having served twenty-four years. The final petition may be
16 submitted, and the response to that petition shall be determined,
17 during the twenty-fifth year of the person's sentence.

18 (9) In addition to the criteria in subsection (6) of this
19 section, the court may consider any other criteria that the court
20 deems relevant to its decision, so long as the court identifies them
21 on the record, provides a statement of reasons for adopting them, and
22 states why the person does or does not satisfy the criteria.

23 (10) This section applies retroactively.

24 Sec. 3. Original section 28-101, Revised Statutes
25 Cumulative Supplement, 2010, is repealed.