

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 207

Introduced by Morfeld, 46.

Read first time January 11, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the death penalty; to create the Death
- 2 Penalty Defense Standards Advisory Council; to provide powers and
- 3 duties for the council; and to require a report.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) The Legislature finds and declares that several
2 other states with the death penalty, including Alabama, Arizona, Georgia,
3 Louisiana, Nevada, Ohio, Oregon, and Texas, have explored and implemented
4 the American Bar Association's Guidelines for the Appointment and
5 Performance of Defense Counsel in Death Penalty Cases. In 2016, Nebraska
6 voters reinstated capital punishment in this state. In order to ensure
7 the rights of the accused are upheld, to minimize liability of counties
8 and the state for ineffective assistance of counsel claims, and to
9 provide for certainty in the integrity of convictions and sentences
10 imposed pursuant to capital prosecutions, it is imperative that
11 Nebraska's capital defense system meet best practices for capital
12 defense.

13 (2)(a) The Death Penalty Defense Standards Advisory Council is
14 created. The council shall be administered by the Commission on Public
15 Advocacy.

16 (b) The council shall consist of seven members, including:

17 (i) The elected public defenders for Douglas County and Lancaster
18 County;

19 (ii) The chief counsel of the commission; and

20 (iii) Four members who have substantial experience in providing
21 indigent capital defense services either as a public defender,
22 contracting attorney, or court-appointed attorney. Such members shall be
23 nominated by the Nebraska State Bar Association and appointed by the
24 commission. At least one such member shall reside in a county with a
25 population of less than one hundred thousand residents.

26 (c) The four members who are appointed by the commission under
27 subdivision (2)(b)(iii) of this section shall serve terms of four years,
28 except that, of the members first appointed, one member shall serve a
29 term of one year, one member shall serve a term of two years, one member
30 shall serve a term of three years, and one member shall serve a term of
31 four years.

1 (d) A member may be reappointed at the expiration of his or her
2 term. Any vacancy occurring other than by expiration of a term shall be
3 filled for the remainder of the unexpired term in the same manner as the
4 original appointment.

5 (e) The council shall select one of its members as chairperson.

6 (3) Notwithstanding any other provision of law, membership on the
7 council shall not disqualify any member from holding his or her office or
8 position or cause the forfeiture thereof.

9 (4) Members of the council shall serve without compensation, but
10 shall be entitled to reimbursement for their actual and necessary
11 expenses as provided in sections 81-1174 to 81-1177.

12 (5) The council shall be responsible for developing and recommending
13 to the commission guidelines and standards for death penalty defense
14 systems, including, but not limited to, standards relating to the
15 following:

16 (a) An evaluation and exploration of the current capital defense
17 system in Nebraska;

18 (b) An evaluation and exploration of the American Bar Association's
19 Guidelines for the Appointment and Performance of Defense Counsel in
20 Death Penalty Cases;

21 (c) The feasibility of adopting such guidelines in Nebraska;

22 (d) An evaluation and exploration of the process utilized by other
23 states with the death penalty to convene stakeholders, adopt such
24 guidelines, ensure adequate appropriations to support these guidelines,
25 and ensure capital defense systems are meeting best practices;

26 (e) An evaluation and exploration of any other legal or policy
27 issues relating to ensuring the capital defense system is meeting best
28 practices as appropriate; and

29 (f) Identifying and assessing other considerations relating to
30 capital defense costs, including, but not limited to, court rules for
31 appointing counsel; a process for awarding defense contracts; provisions

1 for reimbursing defense expenses; standards for accommodating conflicts
2 of interest; requirements for continuing legal education and training;
3 ensuring the availability of supportive services and expert witnesses;
4 ensuring that death penalty attorneys have adequate personnel, including
5 support staff, investigators, and mitigation specialists; and possible
6 legislation or appropriations.

7 (6) The council may hold public hearings. Minutes of such meetings
8 shall be available to the public and provided electronically to members
9 of the Legislature and the State Court Administrator.

10 (7) To accomplish the objectives set forth in this section, the
11 council may request, obtain, review, and analyze information relating to
12 capital defense in Nebraska, and from other states, including, but not
13 limited to, reports, audits, data, projections, and statistics. The
14 council may contract with consultants or experts in order to perform
15 research, prepare reports, or to provide training and assistance for the
16 council or for capital defense attorneys.

17 (8) On or before May 1, 2020, the council shall make a report
18 detailing its findings and recommendations and electronically submit the
19 report to the Legislature and the State Court Administrator. Each member
20 of the Legislature shall receive an electronic copy of such report upon
21 making a request to the commission.