

AMENDMENTS TO LB 202

Introduced by Judiciary

1 1. Strike the original sections and insert the following
2 new sections:

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

5 28-101 Sections 28-101 to 28-1356 and section 2 of this
6 act shall be known and may be cited as the Nebraska Criminal Code.

7 Sec. 2. (1) Notwithstanding any other provision of law,
8 any person sentenced to life imprisonment, who, at the time of the
9 commission of the crime, was under eighteen years of age and has
10 served at least twenty years of that sentence, may submit to the
11 Board of Pardons a petition for sentence commutation.

12 (a) Those persons who entered custody prior to July 1,
13 1994, may submit a petition in 2012;

14 (2) The person shall file the original petition with the
15 board. A copy of the petition shall be served on the Attorney
16 General or county attorney that prosecuted the case. The petition
17 shall include the person's statement that he or she was under
18 eighteen years of age at the time of the crime, was sentenced to
19 life imprisonment, and that one of the following is true:

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

23 (b) The person does not have juvenile felony

1 adjudications for assault or other felony crimes with a significant
2 potential for personal harm to victims prior to the offense for
3 which the sentence is being considered for commutation;

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

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

12 (3) If any of the information required in subsection
13 (2) of this section is missing from the petition, or if proof of
14 service on the Attorney General or county attorney is not provided,
15 the board shall return the petition to the person and advise him
16 or her that the matter cannot be considered without the missing
17 information. The person may resubmit a petition that includes the
18 information or proof of service.

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

23 (5) If the board finds by a preponderance of the evidence
24 that the statements in the petition are true, the board shall
25 hold a hearing to consider whether to commute the sentence of the
26 person. Victims, or family members of a victim if the victim is
27 deceased, may participate in the hearing.

1 (6) The factors that the board shall consider when
2 determining whether to commute the sentence include, but are not
3 limited to, the following:

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

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

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

13 (d) Prior to the offense for which the sentence is
14 being considered for commutation, the person had insufficient adult
15 support or supervision and had suffered from psychological or
16 physical trauma, or significant stress;

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

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

27 (g) The person has maintained family ties or connections

1 with others through letter writing, calls, or visits, or has
2 eliminated contact with individuals outside of prison who are
3 involved with crime; and

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

7 (7) The board shall have the discretion to commute the
8 sentence of the person. The discretion of the board shall be
9 exercised in consideration of the criteria in subsection (6) of
10 this section. Victims, or family members of a victim if the victim
11 is deceased, shall be notified of the sentence commutation hearing
12 and may participate in the hearing.

13 (8) If the sentence is not commuted, the person may
14 submit another petition for sentence commutation to the board five
15 years after the initial filing. If sentence commutation is not
16 granted under that petition, the person may file another petition
17 ten years after the initial filing. If sentence commutation is not
18 granted under that petition, the person may file another petition
19 fifteen years after the initial filing. If sentence commutation is
20 not granted under that petition, a final petition may be submitted
21 twenty years after the initial filing.

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

1 (10) This section applies retroactively and shall be
2 utilized as part of the board's pardon authority as defined in
3 section 83-170.

4 Sec. 3. Section 83-1,127, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 83-1,127 The Board of Pardons shall:

7 (1) Exercise the pardon authority as defined in section
8 83-170 for all criminal offenses except treason and cases of
9 impeachment;

10 (2) Hold sentence commutation hearings pursuant to
11 section 2 of this act;

12 ~~(2)~~ (3) Make rules and regulations for its own
13 administration and operation;

14 ~~(3)~~ (4) Appoint and remove its employees as prescribed
15 by the State Personnel System and delegate appropriate powers and
16 duties to them;

17 ~~(4)~~ (5) Consult with the Board of Parole concerning
18 applications for the exercise of pardon authority;

19 ~~(5)~~ (6) Consult with the Department of Motor Vehicles
20 concerning applications received from the department pursuant to
21 section 60-6,209 for the exercise of pardon authority; and

22 ~~(6)~~ (7) Exercise all powers and perform all duties
23 necessary and proper in carrying out its responsibilities under the
24 provisions of the Nebraska Treatment and Corrections Act.

25 Sec. 4. Original section 83-1,127, Reissue Revised
26 Statutes of Nebraska, and section 28-101, Revised Statutes
27 Cumulative Supplement, 2010, are repealed.