A BILL FOR AN ACT relating to the death penalty; to create the Death Penalty Defense Standards Advisory Council; to provide powers and duties for the council; and to require a report.

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

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

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

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

(ii) The chief counsel of the commission; and

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

(c) The four members who are appointed by the commission under
subdivision (2)(b)(iii) of this section shall serve terms of four years,
except that, of the members first appointed, one member shall serve a
term of one year, one member shall serve a term of two years, one member
shall serve a term of three years, and one member shall serve a term of
four years.
(d) A member may be reappointed at the expiration of his or her term. Any vacancy occurring other than by expiration of a term shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

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

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

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

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

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

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

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

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

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

(f) Identifying and assessing other considerations relating to capital defense costs, including, but not limited to, court rules for appointing counsel; a process for awarding defense contracts; provisions
for reimbursing defense expenses; standards for accommodating conflicts
of interest; requirements for continuing legal education and training;
ensuring the availability of supportive services and expert witnesses;
ensuring that death penalty attorneys have adequate personnel, including
support staff, investigators, and mitigation specialists; and possible
legislation or appropriations.

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

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

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