

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2045

Introduced by

Legislative Council

(Judiciary Committee)

(Senators W. Stenehjem, Traynor)
(Representative Kretschmar)

1 A BILL for an Act to create and enact chapter 12-55.1 of the North Dakota Century Code,
2 relating to the pardon advisory board and to pardons, conditional pardons, reprieves, and
3 commutations; to amend and reenact subsection 5 of section 12-60-16.2, subsections 15 and
4 17 of section 12.1-34-02, subsection 4 of section 12.1-34-03, subsection 5 of section 27-20-52,
5 subsection 1 of section 28-32-01, and subsection 1 of section 54-07-01.2 of the North Dakota
6 Century Code, relating to the pardon advisory board and to membership of boards; and to
7 repeal chapter 12-55 of the North Dakota Century Code, relating to pardons, reprieves, and
8 commutations.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1.** Chapter 12-55.1 of the North Dakota Century Code is created and
11 enacted as follows:

12 **12-55.1-01. Definitions.** In this title, unless the context otherwise requires:

- 13 1. "Commutation" means the change of the punishment to which a person is
14 sentenced to a less severe punishment.
- 15 2. "Conditional pardon" means a pardon, commutation, reprieve, or remission of fine
16 subject to terms and conditions established by the governor upon the
17 recommendation of the pardon advisory board.
- 18 3. "Department" means the department of corrections and rehabilitation.
- 19 4. "Pardon" means the removal of punishment or custody imposed upon a person for
20 the commission of an offense. A pardon does not remove the fact of that person's
21 conviction or plea or finding of guilt for an offense unless specifically stated in the
22 certificate of pardon.
- 23 5. "Remission of fine" means a release or partial release of a fine.

1 6. "Reprieve" means a temporary relief from or postponement of the execution of a
2 criminal sentence.

3 **12-55.1-02. Pardon advisory board - Membership.** The governor may appoint a
4 pardon advisory board to consist of five members including the attorney general and two
5 members of the parole board. The governor shall appoint two persons who are residents and
6 citizens of this state to the remaining two positions. The governor shall appoint a chairperson
7 from within the membership of the pardon advisory board. The governor may dissolve the
8 pardon advisory board at any time. The members appointed by the governor are entitled to be
9 paid compensation and expenses at the same rate paid to members of the legislative
10 assembly. The board shall provide information and make recommendations to the governor
11 concerning any matters before the governor under this chapter.

12 **12-55.1-03. Pardon advisory board meetings - Rules.** If the governor appoints a
13 pardon advisory board, the pardon advisory board may adopt rules necessary to govern its
14 proceedings, including the time and place of meetings of the board. The governor may call
15 meetings of the pardon advisory board as the governor deems necessary to carry out the
16 board's duties.

17 **12-55.1-04. Governor may remit fines and grant commutations, pardons, and**
18 **reprieves.** The governor has the power to remit fines and grant commutations, reprieves,
19 pardons, and conditional pardons after judgment of conviction. If the governor grants a
20 conditional pardon, the pardon must state the terms and conditions of the pardon. The
21 governor shall sign every commutation, reprieve, pardon, conditional pardon, or remission of
22 fine granted by the governor. The recommendations of the pardon advisory board and the
23 determination of the governor are not reviewable by any court.

24 **12-55.1-05. Pardon clerk - Duties.** The director of the division of parole and probation
25 shall serve as the pardon clerk under this chapter. The pardon clerk shall:

26 1. Maintain a register of all applications filed for commutation, reprieve, pardon,
27 conditional pardon, or remission of fine and shall maintain a complete and
28 accurate record of all proceedings in connection with the applications, including all
29 correspondence, documents, evidence, and appearances made in connection with
30 the application.

1 2. Conduct investigations, employ psychologists, psychiatrists, or other specialists
2 necessary for the determination of matters before the pardon advisory board or the
3 governor under this chapter, and perform other duties in connection with matters
4 under this chapter as may be requested by the pardon advisory board or the
5 governor.

6 3. Maintain a record of every commutation, reprieve, pardon, conditional pardon, or
7 remission of fine granted or refused, along with the reasons for each action.

8 **12-55.1-06. Application for commutation, reprieve, pardon, conditional pardon, or**
9 **remission of fine.** An application for commutation, reprieve, pardon, conditional pardon, or
10 remission of fine must be made with the pardon clerk on a form prescribed by the clerk and in
11 accordance with any rules adopted under this chapter.

12 **12-55.1-07. Notice of application.** The pardon clerk shall provide written notice of an
13 application for a commutation, reprieve, pardon, conditional pardon, or remission of fine to the
14 district court and the state's attorneys in the county or counties where the judgment of
15 conviction was entered against the applicant. The notice must include the name of the
16 applicant, the date of entry and docket number of the criminal judgment, the crime or crimes
17 stated in the criminal judgment, and the date and place for the meeting on the application.

18 **12-55.1-08. Governor may reconsider action.** If the governor has granted an
19 application for a commutation, reprieve, conditional pardon, or remission of fine and the
20 applicant is still in custody in any correctional facility, the governor may reconsider the decision
21 any time before the applicant is released from the correctional facility. If an applicant is
22 released from custody pursuant to a conditional pardon and the applicant has violated any of
23 the terms or conditions of the conditional pardon, the governor may revoke the conditional
24 pardon in the same manner provided for violation of any of the terms or conditions of parole. In
25 all other cases, the governor may reconsider a decision on an application if the reconsideration
26 is made within thirty days from the date of the initial decision. A decision made on
27 reconsideration may not be reviewed by any court.

28 **12-55.1-09. Statements of judge and state's attorney.** The judge and the state's
29 attorney may make any recommendations that may be of assistance to the governor, pardon
30 advisory board, or parole board in considering the person's case. The judge before whom any

1 person has been convicted of a felony and the state's attorney of the county in which the crime
2 was committed may file with the clerk of court separate official statements that may include:

- 3 1. The facts and circumstances constituting and surrounding the crime for which the
4 person was convicted.
- 5 2. The age of the person.
- 6 3. All available information regarding the person before the commission of the crime
7 for which the person was convicted.
- 8 4. All available information regarding the person's habits, associates, disposition, and
9 reputation.
- 10 5. All facts and circumstances that may indicate whether the person is capable of
11 becoming a law-abiding citizen.
- 12 6. The state's attorney's reasons for the recommended sentence and the court's
13 reasons for the sentence imposed.

14 **12-55.1-10. Duty of court reporter and clerk of court.** The court reporter, at the
15 direction of the judge or state's attorney, shall prepare the official statements of the judge and
16 state's attorney. The clerk of court with whom the statements are filed shall attach a copy of
17 the statements to the criminal judgment. The clerk shall provide to the department the criminal
18 judgment with the attached copy of the official statements.

19 **12-55.1-11. Records.** The records of an applicant for commutation, reprieve, pardon,
20 conditional pardon, or remission of fine are subject to section 12-47-36. The pardon clerk may
21 permit the inspection of an application for a commutation, reprieve, pardon, conditional pardon,
22 or remission of fine; the recommendations of the pardon advisory board, if any; and the
23 decision of the governor, including any decision made after reconsideration or after
24 proceedings for revocation.

25 **SECTION 2. AMENDMENT.** Subsection 5 of section 12-60-16.2 of the 1995
26 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 27 5. The North Dakota state penitentiary, ~~board of pardons~~ pardon clerk, parole board,
28 and local correctional facility administrators shall furnish the bureau with all
29 information concerning the receipt, escape, death, release, pardon, conditional
30 pardon, reprieve, parole, commutation of sentence, ~~granting of executive~~
31 ~~elementary~~, or discharge of an individual who has been sentenced to that agency's

1 custody for any reportable offense which is required to be collected, maintained, or
2 disseminated by the bureau. In the case of an escape from custody or death while
3 in custody, information concerning the receipt and escape or death; must also be
4 furnished.

5 **SECTION 3. AMENDMENT.** Subsections 15 and 17 of section 12.1-34-02 of the 1995
6 Supplement to the North Dakota Century Code are amended and reenacted as follows:

7 15. Notice of final disposition and parole procedures. Victims and witnesses must be
8 informed by the prosecuting attorney of the final disposition of any criminal case.
9 The prosecuting attorney shall explain to the victim the parole process and pardon
10 process and further advise the victim of the necessity of advising the custodial
11 authority and the parole board and the pardon ~~board~~ clerk of the victim's address
12 in order for the victim to receive further information under other provisions of this
13 chapter.

14 17. Participation in parole board and pardon ~~board~~ decision. Victims may submit a
15 written statement for consideration by the parole board ~~or, the governor, or the~~
16 pardon advisory board, if one has been appointed, prior to the parole board ~~or, the~~
17 governor, or the pardon advisory board taking any action on a defendant's request
18 for parole or pardon. Victims of violent crimes may at the discretion of the parole
19 board ~~or, the governor, or the~~ pardon advisory board personally appear and
20 address the parole board ~~or, the governor, or the~~ pardon advisory board. Notice
21 must be given by the parole board or pardon ~~board~~ clerk informing the victim of the
22 pending review and of the victim's rights under this section. The victim must be
23 provided notice of the decision of the parole board or of the governor and the
24 recommendations of the pardon advisory board, if any, and, if applicable, notice of
25 the date of the prisoner's release on parole or the prisoner's pardon, conditional
26 pardon, reprieve, commutation, or remission of fine. Notice must be given within a
27 reasonable time after the parole board or ~~pardon board reaches its~~ the governor
28 makes a decision but in any event ~~prior to~~ before the parolee's or pardoned
29 prisoner's release from custody.

30 **SECTION 4. AMENDMENT.** Subsection 4 of section 12.1-34-03 of the 1995
31 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 1 4. To notify law enforcement authorities, prosecuting attorney, custodial authority,
2 parole board, pardon ~~board~~ clerk, and court, where appropriate, of any change of
3 address. The address information provided to these persons must be kept
4 confidential.

5 **SECTION 5. AMENDMENT.** Subsection 5 of section 27-20-52 of the 1995
6 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 7 5. A court in which the child is convicted of a criminal offense for the purpose of a
8 presentence report or other dispositional proceeding, or by officials of penal
9 institutions and other penal facilities to which the child is committed, or by a the
10 parole ~~or board, the governor, or the pardon advisory board, if one has been~~
11 appointed, in considering the child's parole or discharge or in exercising
12 supervision over the child; and

13 **SECTION 6. AMENDMENT.** Subsection 1 of section 28-32-01 of the 1995
14 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 15 1. "Administrative agency" or "agency" means each board, bureau, commission,
16 department, or other administrative unit of the executive branch of state
17 government, including one or more officers, or employees, or other persons
18 directly or indirectly purporting to act on behalf or under authority of the agency.
19 An administrative unit located within or subordinate to an administrative agency
20 shall be treated as part of that agency to the extent it purports to exercise authority
21 subject to this chapter. The term administrative agency does not include:
- 22 a. The office of management and budget except with respect to rules relating to
23 the state building code as authorized or required under section 54-21.3-03,
24 rules relating to the Model Energy Code as required under section
25 54-21.2-03, rules relating to the central personnel system as authorized under
26 section 54-44.3-07, rules relating to state purchasing practices as required
27 under section 54-44.4-04, rules relating to records management as
28 authorized or required under chapter 54-46, and rules relating to the central
29 microfilm unit as authorized under chapter 54-46.1.
- 30 b. The adjutant general with respect to the division of emergency management.
- 31 c. The council on the arts.

- 1 d. The state auditor.
- 2 e. The department of economic development and finance.
- 3 f. The dairy promotion commission.
- 4 g. The education factfinding commission.
- 5 h. The educational telecommunications council.
- 6 i. The board of equalization.
- 7 j. The board of higher education.
- 8 k. The Indian affairs commission.
- 9 l. The industrial commission with respect to the activities of the Bank of North
10 Dakota, the North Dakota housing finance agency, the North Dakota
11 municipal bond bank, and the North Dakota mill and elevator association.
- 12 m. The department of corrections and rehabilitation except with respect to the
13 activities of the division of adult services under chapter 54-23.4.
- 14 n. The ~~board of pardons~~ pardon advisory board.
- 15 o. The parks and recreation department.
- 16 p. The parole board.
- 17 q. The superintendent of public instruction, except with respect to rules
18 prescribed under section 15-21-07 and rules implementing chapter 15-22.
- 19 r. The state fair association.
- 20 s. The state department of health with respect to the state toxicologist.
- 21 t. The board of university and school lands except with respect to activities
22 under chapter 47-30.1.
- 23 u. The administrative committee on veterans' affairs except with respect to rules
24 relating to the supervision and government of the veterans' home and the
25 implementation of programs or services provided by the veterans' home.
- 26 v. The industrial commission with respect to the lignite research fund except as
27 required under section 57-61-01.5.
- 28 w. The secretary of state with respect to rules adopted for the presidential
29 preference contest under section 16.1-11-02.2.

30 **SECTION 7. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the 1995
31 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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- 1 1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1,
2 ~~42-55-04~~ 12-55.1-02, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02,
3 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16,
4 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of
5 the following boards and commissions must, subject to the limitations of this
6 section, be considered to have resigned from such boards and commissions
7 effective January first of the first year of each four-year term of the governor:
8 a. The aeronautics commission.
9 b. The milk marketing board.
10 c. The dairy promotion commission.
11 d. The state banking board.
12 e. The state credit union board.
13 f. The advisory board of directors to the Bank of North Dakota.
14 g. The ~~board of pardons~~ pardon advisory board.
15 h. The state parole board.
16 i. The state board of public school education.
17 j. The education standards and practices board and the administrator's
18 professional practices board.
19 k. The board of trustees for the teachers' fund for retirement.
20 l. The educational telecommunications council.
21 m. The state game and fish advisory board.
22 n. The health council.
23 o. The air pollution control advisory council.
24 p. The board of animal health.
25 q. The administrative committee on veterans' affairs.
26 r. The committee on aging.
27 s. The committee on employment of people with disabilities.
28 t. The commission on the status of women.
29 u. The North Dakota council on the arts.
30 v. The state historical board.
31 w. The Yellowstone-Missouri-Fort Union commission.

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- 1 x. The state water commission.
- 2 y. The state water pollution control board.
- 3 **SECTION 8. REPEAL.** Chapter 12-55 of the North Dakota Century Code is repealed.