

FIRST ENGROSSMENT
with House Amendments

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.
- 17 3. "Department" means the department of corrections and rehabilitation.
- 18 4. "Pardon" means the removal of punishment or custody imposed upon a person for
19 the commission of an offense. A pardon does not remove the fact of that person's
20 conviction or plea or finding of guilt for an offense unless specifically stated in the
21 certificate of pardon.
- 22 5. "Remission of fine" means a release or partial release of a fine.
- 23 6. "Reprieve" means a temporary relief from or postponement of the execution of a
24 criminal sentence.

1 **12-55.1-02. Pardon advisory board - Membership.** The governor may appoint a
2 pardon advisory board to consist of five members including two members of the parole board.
3 The governor shall appoint three persons who are residents and citizens of this state to the
4 remaining three positions. The governor shall appoint a chairperson from within the
5 membership of the pardon advisory board. The governor may dissolve the pardon advisory
6 board at any time. The members appointed by the governor are entitled to be paid
7 compensation of sixty-two dollars and fifty cents per day and expenses at the same rate paid to
8 state officers. The board shall provide information and make recommendations to the governor
9 concerning any matters before the governor under this chapter.

10 **12-55.1-03. Pardon advisory board meetings - Rules.** If the governor appoints a
11 pardon advisory board, the pardon advisory board may adopt rules necessary to govern its
12 proceedings, including the time and place of meetings of the board. The governor may call
13 meetings of the pardon advisory board as the governor deems necessary to carry out this
14 chapter.

15 **12-55.1-04. Governor may remit fines and grant commutations, pardons, and**
16 **reprieves.** The governor has the power to remit fines and grant commutations, reprieves,
17 pardons, and conditional pardons after judgment of conviction. If the governor grants a
18 conditional pardon, the pardon must state the terms and conditions of the pardon. The
19 governor shall sign every commutation, reprieve, pardon, conditional pardon, or remission of
20 fine granted by the governor. The recommendations of the pardon advisory board and the
21 determination of the governor are not reviewable by any court.

22 **12-55.1-05. Pardon clerk - Duties.** The director of the division of parole and probation
23 shall serve as the pardon clerk under this chapter. The pardon clerk shall:

- 24 1. Maintain a register of all applications filed for commutation, reprieve, pardon,
25 conditional pardon, or remission of fine and shall maintain a complete and
26 accurate record of all proceedings in connection with the applications, including all
27 correspondence, documents, evidence, and appearances made in connection with
28 the application.
- 29 2. Conduct investigations, employ psychologists, psychiatrists, or other specialists
30 necessary for the determination of matters before the pardon advisory board or the
31 governor under this chapter, and perform other duties in connection with matters

1 under this chapter as may be requested by the pardon advisory board or the
2 governor.

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

5 **12-55.1-06. Application for commutation, reprieve, pardon, conditional pardon, or**
6 **remission of fine.** An application for commutation, reprieve, pardon, conditional pardon, or
7 remission of fine must be made with the pardon clerk on a form prescribed by the clerk and in
8 accordance with any rules adopted under this chapter.

9 **12-55.1-07. Notice of application.** The pardon clerk shall provide written notice of an
10 application for a commutation, reprieve, pardon, conditional pardon, or remission of fine to the
11 district court and the state's attorneys in the county or counties where the judgment of
12 conviction was entered against the applicant. The notice must include the name of the
13 applicant, the date of entry and docket number of the criminal judgment, the crime or crimes
14 stated in the criminal judgment, and the date and place for the meeting on the application.

15 **12-55.1-08. Governor may reconsider action.** If the governor has granted an
16 application for a commutation, reprieve, conditional pardon, or remission of fine and the
17 applicant is still in custody in any correctional facility, the governor may reconsider the decision
18 any time before the applicant is released from the correctional facility. If an applicant is
19 released from custody pursuant to a conditional pardon and the applicant has violated any of
20 the terms or conditions of the conditional pardon, the governor may revoke the conditional
21 pardon in the same manner provided for violation of any of the terms or conditions of parole. In
22 all other cases, the governor may reconsider a decision on an application if the reconsideration
23 is made within thirty days from the date of the initial decision. A decision made on
24 reconsideration may not be reviewed by any court.

25 **12-55.1-09. Statements of judge and state's attorney.** The judge and the state's
26 attorney may make any recommendations that may be of assistance to the governor, pardon
27 advisory board, or parole board in considering the person's case. The judge before whom any
28 person has been convicted of a felony and the state's attorney of the county in which the crime
29 was committed may file with the clerk of court separate official statements that may include:

30 1. The facts and circumstances constituting and surrounding the crime for which the
31 person was convicted.

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

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

15 **12-55.1-11. Records.** The records of an applicant for commutation, reprieve, pardon,
16 conditional pardon, or remission of fine are subject to section 12-47-36. The pardon clerk may
17 permit the inspection of an application for a commutation, reprieve, pardon, conditional pardon,
18 or remission of fine; the recommendations of the pardon advisory board, if any; and the
19 decision of the governor, including any decision made after reconsideration or after
20 proceedings for revocation.

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

- 23 5. The North Dakota state penitentiary, ~~board of pardons~~ pardon clerk, parole board,
24 and local correctional facility administrators shall furnish the bureau with all
25 information concerning the receipt, escape, death, release, pardon, conditional
26 pardon, reprieve, parole, commutation of sentence, ~~granting of executive~~
27 ~~elementary~~, or discharge of an individual who has been sentenced to that agency's
28 custody for any reportable offense which is required to be collected, maintained, or
29 disseminated by the bureau. In the case of an escape from custody or death while
30 in custody, information concerning the receipt and escape or death, must also be
31 furnished.

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

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

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

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

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

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

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

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

11 1. "Administrative agency" or "agency" means each board, bureau, commission,
12 department, or other administrative unit of the executive branch of state
13 government, including one or more officers, or employees, or other persons
14 directly or indirectly purporting to act on behalf or under authority of the agency.
15 An administrative unit located within or subordinate to an administrative agency
16 shall be treated as part of that agency to the extent it purports to exercise authority
17 subject to this chapter. The term administrative agency does not include:

- 18 a. The office of management and budget except with respect to rules relating to
19 the state building code as authorized or required under section 54-21.3-03,
20 rules relating to the Model Energy Code as required under section
21 54-21.2-03, rules relating to the central personnel system as authorized under
22 section 54-44.3-07, rules relating to state purchasing practices as required
23 under section 54-44.4-04, rules relating to records management as
24 authorized or required under chapter 54-46, and rules relating to the central
25 microfilm unit as authorized under chapter 54-46.1.
- 26 b. The adjutant general with respect to the division of emergency management.
- 27 c. The council on the arts.
- 28 d. The state auditor.
- 29 e. The department of economic development and finance.
- 30 f. The dairy promotion commission.
- 31 g. The education factfinding commission.

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

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

- 28 1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1,
29 ~~42-55-04~~ 12-55.1-02, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02,
30 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,
31 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of

1 the following boards and commissions must, subject to the limitations of this
2 section, be considered to have resigned from such boards and commissions
3 effective January first of the first year of each four-year term of the governor:

- 4 a. The aeronautics commission.
- 5 b. The milk marketing board.
- 6 c. The dairy promotion commission.
- 7 d. The state banking board.
- 8 e. The state credit union board.
- 9 f. The advisory board of directors to the Bank of North Dakota.
- 10 g. The ~~board of pardons~~ pardon advisory board.
- 11 h. The state parole board.
- 12 i. The state board of public school education.
- 13 j. The education standards and practices board and the administrator's
14 professional practices board.
- 15 k. The board of trustees for the teachers' fund for retirement.
- 16 l. The educational telecommunications council.
- 17 m. The state game and fish advisory board.
- 18 n. The health council.
- 19 o. The air pollution control advisory council.
- 20 p. The board of animal health.
- 21 q. The administrative committee on veterans' affairs.
- 22 r. The committee on aging.
- 23 s. The committee on employment of people with disabilities.
- 24 t. The commission on the status of women.
- 25 u. The North Dakota council on the arts.
- 26 v. The state historical board.
- 27 w. The Yellowstone-Missouri-Fort Union commission.
- 28 x. The state water commission.
- 29 y. The state water pollution control board.

30 **SECTION 8. REPEAL.** Chapter 12-55 of the North Dakota Century Code is repealed.