

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2128

Introduced by

Senator Sand

Representative Carlisle

(At the request of the Department of Corrections and Rehabilitation)

1 A BILL for an Act to amend and reenact sections 12-59-02, 12-59-04, 12-59-05, 12-59-07,
2 12-59-08, 12-59-09, 12-59-10, 12-59-15, and subsections 1 and 2 of section 12.1-33-02.1,
3 relating to parole proceedings, records, requirements, and violations; and to repeal section
4 12-59-16, relating to execution of an order for recommitment of a prisoner.

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

6 **SECTION 1. AMENDMENT.** Section 12-59-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12-59-02. Meetings - ~~Quorum~~ - Compensation.** The board shall organize by
9 selecting a chairman. Meetings of the board ~~shall~~ must be held ~~at the state penitentiary on call~~
10 ~~of the chairman~~ as often as required to properly conduct the business of the board, but in any
11 event not less than six times per year. ~~Two members shall constitute a quorum, and no action~~
12 ~~shall be taken without~~ The parole board may only take action upon the concurrence of at least
13 two members. Members ~~shall~~ are entitled to be compensated at the ~~rate of thirty dollars same~~
14 rate provided for members of the legislative council under section 54-35-10, per day for each
15 day actually and necessarily spent in the performance of their duties as board members plus
16 the same mileage and expenses as are authorized for state officials and employees. The
17 director of the division of parole and probation, or the director's designee, shall be the clerk for
18 the parole board.

19 **SECTION 2. AMENDMENT.** Section 12-59-04 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **12-59-04. Records ~~privileged confidential~~ - Inspection.** All ~~presentence and~~
22 department of corrections and rehabilitation records, including preparole reports, and the
23 supervision history, obtained in the discharge of official duty by any member or employee of the
24 parole board, shall be privileged and shall not be disclosed directly or indirectly to anyone other

1 ~~than the board, the judge, committees of the legislative assembly, or others entitled by law to~~
2 ~~receive such information, except that the board or court may, in its discretion, permit the~~
3 ~~inspection of the report or parts thereof by the defendant or prisoner or his attorney, or other~~
4 ~~person having a proper interest therein, whenever the best interest or welfare of a particular~~
5 ~~defendant or prisoner makes such action desirable or helpful~~ or employee of a division or
6 department of the department of corrections and rehabilitation, are confidential and may not be
7 disclosed except in the manner provided under section 12-47-36. An application for parole and
8 the decision of the parole board on the application are open records.

9 **SECTION 3. AMENDMENT.** Section 12-59-05 of the 1995 Supplement to the North
10 Dakota Century Code is amended and reenacted as follows:

11 **12-59-05. Consideration by board –Guarantee.** ~~At a meeting to be determined by the~~
12 ~~parole board, within one year after a prisoner's admission to the penitentiary, or within six~~
13 ~~months after the prisoner's admission to the Missouri River correctional center, at such intervals~~
14 ~~thereafter as it may determine and by application pursuant to section 12-59-08, the board may~~
15 ~~deny or grant parole or continue consideration to another meeting.~~ The parole board may not
16 review an application for parole unless the applicant is serving a sentence of six months or
17 longer in the legal and physical custody of the department of corrections and rehabilitation.
18 The board shall consider all pertinent information regarding each ~~prisoner~~ applicant, including
19 the circumstances of the offense, the presentence report, the ~~previous~~ applicant's family,
20 educational, and social history and criminal record, the applicant's conduct, employment, and
21 attitude in prison, and the reports of such physical and mental examinations as have been
22 made participation in education and treatment programs while in the custody of the department
23 of corrections and rehabilitation, and the applicant's medical and psychological records.

24 **SECTION 4. AMENDMENT.** Section 12-59-07 of the 1995 Supplement to the North
25 Dakota Century Code is amended and reenacted as follows:

26 **12-59-07. Requirements precedent to parole.** ~~No parole may be granted to any~~
27 ~~person confined in the penitentiary or the Missouri River correctional center unless the person~~
28 ~~has maintained a good record at the penitentiary or the Missouri River correctional center for a~~
29 ~~reasonable period prior to application for a parole and the board is convinced that the applicant~~
30 ~~will conform to all the rules and regulations adopted by said board.~~ The parole board may grant
31 an application for parole if the board is convinced the applicant will conform to the terms and

1 conditions of parole the board or the division of parole and probation may establish for the
2 applicant. The division of parole and probation may establish intermediate conditions of parole,
3 including incarceration for a period of seventy-two hours and restitution, subject to the
4 subsequent approval of the parole board.

5 **SECTION 5. AMENDMENT.** Section 12-59-08 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12-59-08. Application for parole - ~~Hearing~~ - Emergency paroles.** ~~All applications for~~
8 ~~parole shall be filed with the clerk of the board. Applications may be heard at a meeting to be~~
9 ~~determined by the parole board, after the initial consideration guaranteed by section 12-59-05.~~
10 An applicant for parole shall file an application with the division of parole and probation. The
11 parole board may consider the application at a meeting scheduled by the chairman. The board
12 may request an applicant to personally appear before the board before the board makes a
13 decision on an application. The board may grant or deny parole, or grant a conditional parole,
14 or continue its consideration to another meeting. In the event of an emergency application, the
15 ~~ex officio members of the board of pardons, acting as authorized by section 12-55-04, may, in~~
16 ~~accordance with section 12-55-19,~~ application for emergency parole, two members of the
17 parole board may grant such emergency parole, subject to terms and conditions of emergency
18 parole that may be established by two members of the parole board or by the division of parole
19 and probation. Thereafter the parolee shall be under the supervision and jurisdiction of the
20 ~~parole board. An applicant who receives parole remains in the legal custody of the department~~
21 of corrections and rehabilitation until the expiration of the maximum term or terms of
22 imprisonment for which the applicant was sentenced, less any sentence reduction the applicant
23 has received.

24 **SECTION 6. AMENDMENT.** Section 12-59-09 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **12-59-09. Contents of application for parole.** An application for parole shall must be
27 in writing, addressed to the ~~board~~ division of parole and probation, and shall must be signed by
28 the ~~convict~~ applicant or some person in his the applicant's behalf. ~~It shall state concisely the~~
29 ~~ground upon which the parole is sought.~~

30 **SECTION 7. AMENDMENT.** Section 12-59-10 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **12-59-10. Notice of application for parole ~~—To whom and by whom given—~~**

2 ~~**Service.** Notice of an application for a parole and of the time and place of hearing the same~~
3 ~~shall be given by the clerk of the board to the judge and the state's attorney who participated in~~
4 ~~the trial of the applicant, and if the judge or state's attorney is no longer in office, notice also~~
5 ~~shall be given to his successor in office. Such notice shall set forth the name of the person~~
6 ~~making application, the crime of which he was convicted, the time and place of the conviction,~~
7 ~~the sentence imposed, the name of the judge who presided over the trial, and the name of the~~
8 ~~state's attorney who prosecuted the trial of the applicant. Service of such notice shall be made~~
9 ~~by registered or certified mail. The division of parole and probation shall provide written notice~~
10 ~~of an application for parole to the district court and state's attorney's office in the county or~~
11 ~~counties where judgment of conviction was entered against the applicant. The notice must~~
12 ~~include the name of the applicant, the date of entry and docket number of the criminal~~
13 ~~judgment, the crime or crimes stated in the criminal judgment, and the date and place for the~~
14 ~~meeting on the application.~~

15 **SECTION 8. AMENDMENT.** Section 12-59-15 of the 1995 Supplement to the North
16 Dakota Century Code is amended and reenacted as follows:

17 **12-59-15. Breach of parole - Hearings - Order of recommitment.**

- 18 1. When it is alleged that a parolee has violated ~~the conditions of the parole~~
19 ~~agreement, the chief parole officer~~ any of the terms or conditions of parole
20 ~~established by the parole board or by the division of parole and probation, the~~
21 ~~director of the division of parole and probation or the director's designee~~ may issue
22 a warrant for the arrest of the parolee.
- 23 2. ~~If an alleged violation is for failing to appear for any meeting required by the~~
24 ~~parolee's supervisory officer without just cause or for leaving the jurisdiction~~
25 ~~without permission, the parole board may suspend the running of the time period~~
26 ~~of parole until the parolee is in the custody of any law enforcement personnel in~~
27 ~~the state. Upon issuance of a warrant of arrest for a parole violation, the running~~
28 ~~of the time period of parole must be suspended until the parolee is in the custody~~
29 ~~of a law enforcement agency.~~
- 30 3. The parolee ~~shall be~~ is entitled to a preliminary hearing, as promptly as is
31 convenient after the arrest and reasonably near the place of the alleged violation

1 or arrest, to determine whether there is probable cause ~~or reasonable grounds to~~
2 believe to find that the parolee violated ~~the conditions of the parole agreement~~ any
3 of the terms and conditions of parole established by the board or by the division of
4 parole and probation.

5 4. The preliminary hearing ~~shall~~ must be conducted before the ~~chief parole officer~~
6 director of the division of parole and probation or any other ~~independent~~ hearing
7 officer authorized by the ~~chief parole officer, but in no case shall it be conducted~~
8 ~~before anyone directly involved in the case~~ director. The preliminary hearing may
9 not be conducted by the parole officer directly involved in the supervision of the
10 parolee or by the person bringing the allegation of a parole violation.

11 5. If ~~at the preliminary hearing~~ the hearing officer determines ~~that the parolee violated~~
12 ~~the conditions of the parole agreement by failing to appear for any meeting~~
13 ~~required by the parolee's supervisory officer without just cause or by leaving the~~
14 ~~jurisdiction without permission~~ there is probable cause to find that the parolee has
15 violated any of the terms and conditions of parole established by the board or by
16 the division of parole and probation, the board may redetermine the time remaining
17 in the period of parole to reflect any portion of the period during which the parolee
18 was not under supervision or not in the custody of law enforcement personnel in
19 the state.

20 6. If the hearing officer determines there is probable cause to find that the parolee
21 has violated any of the terms and conditions of parole established by the board or
22 by the division of parole and probation, the parolee must be returned to the
23 ~~penitentiary or the Missouri River correctional center~~ physical custody of the
24 department of corrections and rehabilitation, transferred to a county jail another
25 correctional facility or the state hospital, or released from actual custody on the
26 ~~terms of the parole agreement~~ pursuant to such terms and conditions as may be
27 established by the parole board or the division of parole and probation, pending a
28 final revocation hearing before the parole board. If the board determines; at the
29 final revocation hearing; that the parolee has violated ~~the conditions of the parole~~
30 ~~agreement~~ any of the terms and conditions of parole established by the board or
31 by the division of parole and probation, it may order that the parolee be

1 recommitted to the ~~penitentiary or the Missouri River correctional center~~, as
2 provided in the parolee's sentence, to serve in custody, in the ~~penitentiary or the~~
3 ~~Missouri River correctional center~~, physical custody of the department of
4 corrections and rehabilitation to serve all or part of the remaining time of the
5 sentence that has not been served in custody ~~in the penitentiary or the Missouri~~
6 ~~River correctional center~~.

- 7 7. At any hearing pursuant to this section a record ~~shall~~ must be made and the
8 parolee shall have:
- 9 a. Written notice of the purpose of the hearing and the alleged violations.
 - 10 b. The opportunity to be heard in person and present witnesses and
11 documentary evidence.
 - 12 c. The opportunity to confront and cross-examine adverse witnesses, unless the
13 hearing officer determines that ~~such~~ confrontation would create a risk of harm
14 to the witness.
 - 15 d. A written statement as to the reasons for the decision.
- 16 8. When the board determines the parolee has ~~violated subsection 2~~ absconded from
17 supervision, the board may order the parolee to pay the costs of being returned to
18 the board. Moneys recovered under this subsection must be remitted to the
19 department of corrections and rehabilitation.

20 **SECTION 9. AMENDMENT.** Subsections 1 and 2 of section 12.1-33-02.1 of the North
21 Dakota Century Code are amended and reenacted as follows:

- 22 1. A person ~~shall~~ may not be disqualified to practice, pursue, or engage in any
23 occupation, trade, or profession for which a license, permit, certificate, or
24 registration is required from any state agency, board, commission, or department
25 solely because of prior conviction of an offense. However, a person may be
26 denied a license, permit, certificate, or registration because of prior conviction of
27 an offense if it is determined that such person has not been sufficiently
28 rehabilitated, or that the offense has a direct bearing upon a person's ability to
29 serve the public in the specific occupation, trade, or profession.
- 30 2. A state agency, board, commission, or department shall consider the following in
31 determining sufficient rehabilitation:

- 1 a. The nature of the offense and whether it has a direct bearing upon the
- 2 qualifications, functions, or duties of the specific occupation, trade, or
- 3 profession.
- 4 b. Information pertaining to the degree of rehabilitation of the convicted person.
- 5 c. The time elapsed since the conviction or release. Completion of ~~probation or~~
- 6 ~~parole,~~ or a period of five years after final discharge or release from any term
- 7 of probation, parole or other form of community corrections, or imprisonment,
- 8 without subsequent conviction shall be deemed prima facie evidence of
- 9 sufficient rehabilitation.

10 **SECTION 10. REPEAL.** Section 12-59-16 of the 1995 Supplement to the North
11 Dakota Century Code is repealed.