

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2045
(Legislative Council)
(Judiciary Committee)
(Senators W. Stenehjem, Traynor)
(Representative Kretschmar)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Commutation" means the change of the punishment to which a person is sentenced to a less severe punishment.
2. "Conditional pardon" means a pardon, commutation, reprieve, or remission of fine subject to terms and conditions established by the governor upon the recommendation of the pardon advisory board.
3. "Department" means the department of corrections and rehabilitation.
4. "Pardon" means the removal of punishment or custody imposed upon a person for the commission of an offense. A pardon does not remove the fact of that person's conviction or plea or finding of guilt for an offense unless specifically stated in the certificate of pardon.
5. "Remission of fine" means a release or partial release of a fine.
6. "Reprieve" means a temporary relief from or postponement of the execution of a criminal sentence.

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

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

12-55.1-04. Governor may remit fines and grant commutations, pardons, and reprieves.

The governor has the power to remit fines and grant commutations, reprieves, pardons, and conditional pardons after judgment of conviction. If the governor grants a conditional pardon, the pardon must state the terms and conditions of the pardon. The governor shall sign every commutation, reprieve, pardon, conditional pardon, or remission of fine granted by the governor. The recommendations of the pardon advisory board and the determination of the governor are not reviewable by any court.

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

1. Maintain a register of all applications filed for commutation, reprieve, pardon, conditional pardon, or remission of fine and shall maintain a complete and accurate record of all proceedings in connection with the applications, including all correspondence, documents, evidence, and appearances made in connection with the application.
2. Conduct investigations, employ psychologists, psychiatrists, or other specialists necessary for the determination of matters before the pardon advisory board or the governor under this chapter, and perform other duties in connection with matters under this chapter as may be requested by the pardon advisory board or the governor.
3. Maintain a record of every commutation, reprieve, pardon, conditional pardon, or remission of fine granted or refused, along with the reasons for each action.

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

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

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

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

1. The facts and circumstances constituting and surrounding the crime for which the person was convicted.
2. The age of the person.
3. All available information regarding the person before the commission of the crime for which the person was convicted.
4. All available information regarding the person's habits, associates, disposition, and reputation.

5. All facts and circumstances that may indicate whether the person is capable of becoming a law-abiding citizen.
6. The state's attorney's reasons for the recommended sentence and the court's reasons for the sentence imposed.

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

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

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

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

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

15. Notice of final disposition and parole procedures. Victims and witnesses must be informed by the prosecuting attorney of the final disposition of any criminal case. The prosecuting attorney shall explain to the victim the parole process and pardon process and further advise the victim of the necessity of advising the custodial authority and the parole board and the pardon ~~board~~ clerk of the victim's address in order for the victim to receive further information under other provisions of this chapter.
17. Participation in parole board and pardon ~~board~~ decision. Victims may submit a written statement for consideration by the parole board ~~or~~, the governor, or the pardon advisory board, if one has been appointed, prior to the parole board ~~or~~, the governor, or the pardon advisory board taking any action on a defendant's request for parole or pardon. Victims of violent crimes may at the discretion of the parole board ~~or~~, the governor, or the pardon advisory board personally appear and address the parole board ~~or~~, the governor, or the pardon advisory board. Notice must be given by the parole board or pardon ~~board~~ clerk informing the victim of the pending review and of the victim's rights under this section. The victim must be provided notice of the decision of the parole board or of the governor and the recommendations of the pardon advisory board, if any, and, if applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon, conditional pardon, reprieve, commutation, or remission of fine. Notice must be given within a reasonable time after the parole board or ~~pardon board reaches its~~ the governor makes a decision but in any event ~~prior to~~ before the parolee's or pardoned prisoner's release from custody.

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

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

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

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

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

1. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules relating to the state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03, rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.
 - b. The adjutant general with respect to the division of emergency management.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational telecommunications council.
 - i. The board of equalization.
 - j. The board of higher education.
 - k. The Indian affairs commission.
 - l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, and the North Dakota mill and elevator association.
 - m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
 - n. ~~The board of pardons~~ pardon advisory board.
 - o. The parks and recreation department.

- p. The parole board.
- q. The superintendent of public instruction, except with respect to rules prescribed under section 15-21-07 and rules implementing chapter 15-22.
- r. The state fair association.
- s. The state department of health with respect to the state toxicologist.
- t. The board of university and school lands except with respect to activities under chapter 47-30.1.
- u. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- v. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- w. The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.2.

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

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1, ~~42-55-04~~ ~~12-55.1-02~~, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02, 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, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
 - a. The aeronautics commission.
 - b. The milk marketing board.
 - c. The dairy promotion commission.
 - d. The state banking board.
 - e. The state credit union board.
 - f. The advisory board of directors to the Bank of North Dakota.
 - g. The ~~board of pardons~~ pardon advisory board.
 - h. The state parole board.
 - i. The state board of public school education.
 - j. The education standards and practices board and the administrator's professional practices board.
 - k. The board of trustees for the teachers' fund for retirement.
 - l. The educational telecommunications council.
 - m. The state game and fish advisory board.
 - n. The health council.
 - o. The air pollution control advisory council.

- p. The board of animal health.
- q. The administrative committee on veterans' affairs.
- r. The committee on aging.
- s. The committee on employment of people with disabilities.
- t. The commission on the status of women.
- u. The North Dakota council on the arts.
- v. The state historical board.
- w. The Yellowstone-Missouri-Fort Union commission.
- x. The state water commission.
- y. The state water pollution control board.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2045.

Senate Vote: Yeas 46 Nays 0 Absent 3

House Vote: Yeas 71 Nays 23 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State