

**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. 2128

(Senator Sand)

(Representative Carlisle)

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

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

12-59-04. Records ~~privileged confidential~~ - Inspection. All ~~presentence and department of corrections and rehabilitation records, including preparole reports, and the supervision history, obtained in the discharge of official duty by any member or employee of the parole board, shall be privileged and shall not be disclosed directly or indirectly to anyone other than the board, the judge, committees of the legislative assembly, or others entitled by law to receive such information, except that the board or court may, in its discretion, permit the inspection of the report or parts thereof by the defendant or prisoner or his attorney, or other person having a proper interest therein, whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful~~ or employee of a division or department of the department of corrections and rehabilitation, are confidential and may not be disclosed except in the manner provided under section 12-47-36. An application for parole and the decision of the parole board on the application are open records.

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

12-59-05. Consideration by board - ~~Guarantee~~. ~~At a meeting to be determined by the parole board, within one year after a prisoner's admission to the penitentiary, or within six months after the prisoner's admission to the Missouri River correctional center, at such intervals thereafter as it may determine and by application pursuant to section 12-59-08, the board may deny or grant parole or continue consideration to another meeting. Applications for parole must be reviewed in accordance with the rules adopted by the parole board. The board shall consider all pertinent information regarding each prisoner applicant, including the circumstances of the offense, the presentence report, the previous applicant's family, educational, and social history and criminal record, the applicant's conduct, employment, and attitude in prison, and the reports of such physical and mental examinations as have~~

~~been made participation in education and treatment programs while in the custody of the department of corrections and rehabilitation, and the applicant's medical and psychological records.~~

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

12-59-07. Requirements precedent to parole. ~~No parole may be granted to any person confined in the penitentiary or the Missouri River correctional center unless the person has maintained a good record at the penitentiary or the Missouri River correctional center for a reasonable period prior to application for a parole and the board is convinced that the applicant will conform to all the rules and regulations adopted by said board.~~ The parole board may grant an application for parole if the board is convinced the applicant will conform to the terms and conditions of parole the board or the division of parole and probation may establish for the applicant. The division of parole and probation may establish intermediate conditions of parole, including incarceration for a period of seventy-two hours and restitution, subject to the subsequent approval of the parole board.

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

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

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

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

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

12-59-10. Notice of application for parole -To whom and by whom given- Service. ~~Notice of an application for a parole and of the time and place of hearing the same shall be given by the clerk of the board to the judge and the state's attorney who participated in the trial of the applicant, and if the judge or state's attorney is no longer in office, notice also shall be given to his successor in office. Such notice shall set forth the name of the person making application, the crime of which he was convicted, the time and place of the conviction, the sentence imposed, the name of the judge who presided over the trial, and the name of the state's attorney who prosecuted the trial of the applicant. Service of such notice shall be made by registered or certified mail. The division of parole and probation shall provide written notice of an application for parole to the district court and state's attorney's office in the county or counties where 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.~~

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

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

1. When it is alleged that a parolee has violated ~~the conditions of the parole agreement, the chief parole officer~~ any of the terms or conditions of parole established by the parole board or by the division of parole and probation, the director of the division of parole and probation or the director's designee may issue a warrant for the arrest of the parolee.
2. ~~If an alleged violation is for failing to appear for any meeting required by the parolee's supervisory officer without just cause or for leaving the jurisdiction without permission, the parole board may suspend the running of the time period of parole until the parolee is in the custody of any law enforcement personnel in the state. Upon issuance of a warrant of arrest for a parole violation, the running of the time period of parole must be suspended until the parolee is in the custody of a law enforcement agency.~~
3. The parolee ~~shall be~~ is entitled to a preliminary hearing, as promptly as is convenient after the arrest and reasonably near the place of the alleged violation or arrest, to determine whether there is probable cause ~~or reasonable grounds to believe~~ to find that the parolee violated the conditions of the parole agreement any of the terms and conditions of parole established by the board or by the division of parole and probation.
4. The preliminary hearing ~~shall~~ must be conducted before the ~~chief parole officer~~ director of the division of parole and probation or any other independent hearing officer authorized by the chief parole officer, but in no case shall it be conducted before anyone directly involved in the case director. The preliminary hearing must be conducted by a disinterested hearing officer not directly involved in the supervision of the parolee or by the person bringing the allegation of a parole violation.
5. ~~If at the preliminary hearing the hearing officer determines that the parolee violated the conditions of the parole agreement by failing to appear for any meeting required by the parolee's supervisory officer without just cause or by leaving the jurisdiction without permission there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the division of parole and probation, the board may redetermine the time remaining in the period of parole to reflect any portion of the period during which the parolee was not under supervision or not in the custody of law enforcement personnel in the state.~~
6. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the division of parole and probation, the parolee must be returned to the penitentiary or the Missouri River correctional center physical custody of the department of corrections and rehabilitation, transferred to a county jail another correctional facility or the state hospital, or released from actual custody on the terms of the parole agreement pursuant to such terms and conditions as may be established by the parole board or the division of parole and probation, pending a final revocation hearing before the parole board. If the board determines, at the final revocation hearing, that the parolee has violated the conditions of the parole agreement any of the terms and conditions of parole established by the board or by the division of parole and probation, it may order that the parolee be recommitted to the penitentiary or the Missouri River correctional center, as provided in the parolee's sentence, to serve in custody, in the penitentiary or the Missouri River correctional center, physical custody of the department of corrections and rehabilitation to serve all or part of the remaining time of the sentence that has not been served in custody in the penitentiary or the Missouri River correctional center.
7. At any hearing pursuant to this section a record ~~shall~~ must be made and the parolee shall have:
 - a. Written notice of the purpose of the hearing and the alleged violations.

- b. The opportunity to be heard in person and present witnesses and documentary evidence.
 - c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that ~~such~~ confrontation would create a risk of harm to the witness.
 - d. A written statement as to the reasons for the decision.
8. When the board determines the parolee has ~~violated subsection 2~~ absconded from supervision, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

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

- 1. A person ~~shall~~ may not be disqualified to practice, pursue, or engage in any occupation, trade, or profession for which a license, permit, certificate, or registration is required from any state agency, board, commission, or department solely because of prior conviction of an offense. However, a person may be denied a license, permit, certificate, or registration because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession.
- 2. A state agency, board, commission, or department shall consider the following in determining sufficient rehabilitation:
 - a. The nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession.
 - b. Information pertaining to the degree of rehabilitation of the convicted person.
 - c. The time elapsed since the conviction or release. Completion of ~~probation or parole,~~ or a period of five years after final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation.

SECTION 10. REPEAL. Section 12-59-16 of the 1995 Supplement to 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. 2128.

Senate Vote: Yeas 47 Nays 0 Absent 2

House Vote: Yeas 78 Nays 13 Absent 6

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