

Sixty-first  
Legislative Assembly  
of North Dakota

Introduced by

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

1 A BILL for an Act to amend and reenact section 27-06-06 of the North Dakota Century Code,  
2 relating to preparation and filing of transcripts in criminal actions; to amend and reenact section  
3 12-55.1-05 of the North Dakota Century Code, relating to the powers and duties of the North  
4 Dakota pardon advisory board; and to amend and reenact sections 12-59-02, 12-59-07,  
5 12-59-08, 12-59-09, 12-59-10, and 12-59-15 of the North Dakota Century Code, relating to the  
6 powers and duties of the North Dakota parole board.

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

8 **SECTION 1. AMENDMENT.** Section 27-06-06 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **27-06-06. Transcript in criminal action prepared at expense of state - Filing and**  
11 **use of transcript.** A judge of a district court in which a criminal action or proceeding has been  
12 tried, on that judge's own motion or on application of the defendant or the state's attorney of the  
13 county, may order a transcript of the original shorthand notes of the action or proceeding, or of  
14 any part thereof, to be made by the reporter at state expense whenever there is reasonable  
15 cause therefor. The transcript, when prepared, must consist of one copy to be filed in the office  
16 of the clerk of court, one copy for each party separately represented, and, if ~~parole or probation~~  
17 ~~be granted, one copy to the division of parole and probation~~ the defendant is sentenced to the  
18 legal and physical custody of, or placed under the supervision and management of, the  
19 department of corrections and rehabilitation, one copy to the department. The court reporter  
20 shall receive compensation for preparation of the transcript in accordance with the provisions of  
21 section 27-06-08.

22 **SECTION 2. AMENDMENT.** Section 12-55.1-05 of the North Dakota Century Code is  
23 amended and reenacted as follows:

1           **12-55.1-05. Pardon clerk - Duties.** The director of the ~~division of parole and probation~~  
2 department of corrections and rehabilitation shall serve as the pardon clerk under this chapter.

3 The pardon clerk shall:

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

16           **SECTION 3. AMENDMENT.** Section 12-59-02 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18           **12-59-02. Meetings - Compensation - Rules.** The governor shall appoint a member  
19 of the parole board to be chairman. The chairman of the parole board shall designate three  
20 members of the parole board for each meeting of the parole board. Meetings of the parole  
21 board must be held in accordance with rules established by the parole board and must be held  
22 as often as required to properly conduct the business of the board, but in any event not less  
23 than six times per year. The parole board may only take action upon the concurrence of at  
24 least two members who participated in the same meeting. The final decision of at least two  
25 parole board members who participated in the same parole board meeting constitutes the  
26 decision of the parole board. Members are entitled to be compensated at the rate of  
27 seventy-five dollars per day for each day actually and necessarily spent in the performance of  
28 their duties as board members plus the same mileage and expenses as are authorized for state  
29 officials and employees. The director of the ~~division of parole and probation, or the director's~~  
30 ~~designee,~~ department of corrections and rehabilitation is the clerk for the parole board.

1           **SECTION 4. AMENDMENT.** Section 12-59-07 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **12-59-07. Requirements precedent to parole.** The parole board may grant an  
4 application for parole if the board is convinced the applicant will conform to the terms and  
5 conditions of parole the board or the ~~division of parole and probation~~ department of corrections  
6 and rehabilitation may establish for the applicant. The ~~division of parole and probation~~  
7 department of corrections and rehabilitation may establish intermediate conditions of parole,  
8 including incarceration for a period of seventy-two hours and restitution, subject to the  
9 subsequent approval of the parole board.

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

12          **12-59-08. Application for parole - Emergency paroles.** An applicant for parole shall  
13 file an application with the ~~division of parole and probation~~ department of corrections and  
14 rehabilitation. The parole board may consider the application at a meeting scheduled by the  
15 chairman. The board may request an applicant to personally appear before the board before  
16 the board makes a decision on an application. The board may grant or deny parole, or grant a  
17 conditional parole, or continue its consideration to another meeting. In the event of an  
18 application for emergency parole, two members of the parole board may grant emergency  
19 parole, subject to terms and conditions of emergency parole that may be established by two  
20 members of the parole board or by the ~~division of parole and probation~~ department of  
21 corrections and rehabilitation. An applicant who receives parole remains in the legal custody of  
22 the department of corrections and rehabilitation until the expiration of the maximum term or  
23 terms of imprisonment for which the applicant was sentenced, less any sentence reduction the  
24 applicant has received.

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

27          **12-59-09. Contents of application for parole.** An application for parole must be in  
28 writing, addressed to the ~~division of parole and probation~~ department of corrections and  
29 rehabilitation, and must be signed by the applicant or some person in the applicant's behalf.

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.** ~~The division of parole and probation~~  
2 ~~department of corrections and rehabilitation~~ shall provide written notice of an application for  
3 parole to the district court and state's attorney's office in the county or counties where judgment  
4 of conviction was entered against the applicant. The notice must include the name of the  
5 applicant, the date of entry and docket number of the criminal judgment, the crime or crimes  
6 stated in the criminal judgment, and the date and place for the meeting on the application.

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

9           **12-59-15. Breach of parole - Hearings - Order of recommitment.**

- 10           1. When it is alleged that a parolee has violated any of the terms or conditions of  
11 parole established by the parole board or by the ~~division of parole and probation~~  
12 ~~department of corrections and rehabilitation~~, the director of the ~~division of parole~~  
13 ~~and probation or the director's designee~~ department of corrections and  
14 rehabilitation may issue a warrant for the arrest of the parolee.
- 15           2. Upon issuance of a warrant of arrest for a parole violation, the running of the time  
16 period of parole must be suspended until the parole board issues a final order  
17 under this section. The parolee is entitled to credit for time spent in physical  
18 custody from the time of arrest until the time the parole board issues a final order.
- 19           3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after  
20 the arrest and reasonably near the place of the alleged violation or arrest, to  
21 determine whether there is probable cause to find that the parolee violated any of  
22 the terms and conditions of parole established by the board or by the ~~division of~~  
23 ~~parole and probation~~ department of corrections and rehabilitation.
- 24           4. The preliminary hearing must be conducted before the director of the ~~division of~~  
25 ~~parole and probation~~ department of corrections and rehabilitation or other hearing  
26 officer authorized by the director. The preliminary hearing must be conducted by a  
27 disinterested hearing officer not directly involved in the supervision of the parolee  
28 or by the person bringing the allegation of a parole violation.
- 29           5. If the hearing officer determines there is probable cause to find that the parolee  
30 has violated any of the terms and conditions of parole established by the board or  
31 by the ~~division of parole and probation~~ department of corrections and rehabilitation,

1 the board may redetermine the time remaining in the period of parole to reflect any  
2 portion of the period during which the parolee was not under supervision or not in  
3 the custody of law enforcement personnel in the state.

- 4 6. If the hearing officer determines there is probable cause to find that the parolee  
5 has violated any of the terms and conditions of parole established by the board or  
6 by the ~~division of parole and probation~~ department of corrections and rehabilitation,  
7 the parolee must be returned to the physical custody of the department of  
8 corrections and rehabilitation, transferred to another correctional facility or the state  
9 hospital, or released from actual custody pursuant to such terms and conditions as  
10 may be established by the parole board or the ~~division of parole and probation~~  
11 department of corrections and rehabilitation, pending a final revocation hearing  
12 before the parole board. If the board determines at the final revocation hearing  
13 that the parolee has violated any of the terms and conditions of parole established  
14 by the board or by the ~~division of parole and probation~~ department of corrections  
15 and rehabilitation, it may order that the parolee be recommitted to the physical  
16 custody of the department of corrections and rehabilitation to serve all or part of the  
17 remaining time of the sentence that has not been served in custody.

- 18 7. At any hearing pursuant to this section a record must be made and the parolee  
19 shall have:  
20 a. Written notice of the purpose of the hearing and the alleged violations.  
21 b. The opportunity to be heard in person and present witnesses and  
22 documentary evidence.  
23 c. The opportunity to confront and cross-examine adverse witnesses, unless the  
24 hearing officer determines that confrontation would create a risk of harm to  
25 the witness.  
26 d. A written statement as to the reasons for the decision.

- 27 8. When the board determines the parolee has absconded from supervision, the  
28 board may order the parolee to pay the costs of being returned to the board.  
29 Moneys recovered under this subsection must be remitted to the department of  
30 corrections and rehabilitation.