

Fifty-fifth
Legislative Assembly
of North Dakota

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 pardons, reprieves, and commutations and to a pardon advisory board; to amend
3 and reenact section 12-59-08, subsection 5 of section 12-60-16.2, subsections 15 and 17 of
4 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 board of pardons, emergency parole, and the membership of
7 boards; and to repeal chapter 12-55 of the North Dakota Century Code, relating to pardons,
8 reprieves, and 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 of sentence" means the change of the punishment to which a
14 person is sentenced to a less severe punishment.
15 2. "Department" means the department of corrections and rehabilitation.
16 3. "Pardon" means the removal of punishment or custody imposed upon a person for
17 the commission of an offense.
18 4. "Reprieve" means a temporary relief from or postponement of the execution of a
19 criminal punishment or sentence.

20 **12-55.1-02. Pardon advisory board - Membership.** The governor may appoint a
21 pardon advisory board that consists of five members. The term of office of any member of the
22 board extends from the time of appointment to the end of the term of office of the governor
23 making the appointment. A governor may remove any member without cause and may appoint
24 another member to serve the remainder of the term. Each member must be a citizen and a

1 resident of this state. One member must be a licensed attorney. The appointed members are
2 entitled to be paid mileage and expenses as authorized by law for state officials and
3 employees.

4 **12-55.1-03. Pardon advisory board meetings - Rules.** If the governor appoints a
5 pardon advisory board, the board shall adopt rules necessary to govern its proceedings,
6 including the time, place, and frequency of regular meetings of the board. The governor or the
7 chairman of the pardon advisory board, who must be elected from within the membership, may
8 call other special meetings as are necessary to carry out the board's duties. The board may
9 provide information and make recommendations to the governor concerning any matters before
10 the governor under this chapter.

11 **12-55.1-04. Governor may remit fines and grant pardons, reprieves, or**
12 **commutations.** The governor has the exclusive power to remit fines and forfeitures and to
13 grant reprieves, commutations, and pardons after conviction for all offenses. In exercising
14 these powers, the governor shall act in the manner provided in this chapter. The governor shall
15 sign every pardon, parole, reprieve, or commutation granted by the governor.

16 **12-55.1-05. Director - Appointment - Duties.** The director of the division of adult
17 services, with the approval of the governor and the director of the department, shall appoint a
18 director of parole and probation. The director of parole and probation shall serve as the
19 secretary of the parole board. The director of parole and probation shall:

- 20 1. Maintain a docket of all applications filed with the governor or the parole board and
21 of all action taken on the applications.
- 22 2. Maintain a record of every petition for a pardon, parole, reprieve, or commutation of
23 sentence received by the governor and the parole board, and of every letter or
24 paper filed or appearance made in connection with the petition.
- 25 3. Maintain a record of every pardon, parole, reprieve, or commutation of sentence
26 granted or refused and of the reasons assigned for each action.
- 27 4. Maintain a complete and accurate filing system of all proceedings before the
28 governor and the parole board.
- 29 5. Maintain and preserve all files and records of the governor and the parole board
30 and perform duties in relation to the files and records as the governor and the
31 parole board may prescribe.

6. Supervise the welfare of persons paroled from the custody of the department and of persons sentenced to probation.

7. Maintain a complete record of all persons under the director's supervision and make reports relating to those persons as the governor or the parole board may require.

8. Conduct investigations and perform other duties in connection with applications and petitions for pardon, commutation of sentence, or parole as may be prescribed by the governor or the parole board.

9. Perform other related duties assigned by the governor, the parole board, or the director of the division of adult services.

12-55.1-06. General powers of governor. The governor may employ psychiatrists or specialists for mental or medical examination of applicants and may take any reasonable steps necessary for the proper determination of any matters before the governor under this chapter.

12-55.1-07. Governor may grant absolute or conditional pardon - Warrant by governor - Pardon or commutation of sentence requirement. The governor may grant an absolute or a conditional pardon. A conditional pardon must state the terms and conditions upon which it is granted. The governor may issue the warrant to any officer authorized to carry into effect a pardon granted by the governor. The warrant must be obeyed and executed instead of the original sentence. The governor shall sign every pardon or commutation of sentence granted by the governor.

12-55.1-08. Application for pardon, reprieve, or commutation of sentence. An application for pardon, reprieve, or commutation of sentence must be filed with the director of parole and probation.

12-55.1-09. Contents of application for pardon, reprieve, or commutation of sentence. An application for a pardon, reprieve, or commutation of sentence must be addressed to the governor and signed by the convicted person or a person on the convicted person's behalf. The application must state concisely the ground upon which the pardon, reprieve, or commutation is sought, and must contain the following:

1. The name under which the convicted person was indicted, informed against, and convicted, and every alias by which the convicted person has been known.

- 1 2. The date and the terms of the sentence imposed against the convicted person and
2 the name of the offense for which the sentence was imposed.
- 3 3. The name of the trial judge and the state's attorney who participated at the trial of
4 the convicted person and the name of the county in which the convicted person
5 was tried.
- 6 4. A concise statement of the evidence adduced at the trial that contains an
7 endorsement of the trial judge or state's attorney who participated at the trial that
8 the statement is substantially correct. If the statement and endorsement are not
9 furnished, the reason must be stated.
- 10 5. If an appeal was made from the judgment of conviction, the date of the final
11 determination by the supreme court and a transcript of the evidence adduced at
12 the trial.
- 13 6. The age, birthplace, parentage, occupation, and the residence of the convicted
14 person during the five years immediately preceding conviction.
- 15 7. A statement of other arrests, indictments, information, and convictions, if any,
16 against the convicted person.
- 17 8. Any information the governor or the pardon advisory board may require by rule.

18 **12-55.1-10. Hearing on application for pardon, reprieve, emergency parole, or**
19 **commutation.** An application for pardon, reprieve, or commutation, except in case of extreme
20 emergency, may be heard only at a regular scheduled hearing before the governor. In case of
21 an emergency, the governor may schedule a special hearing for an application for pardon,
22 commutation, or emergency parole. The application must contain the facts as to the
23 emergency and must be signed by the applicant or a person on the applicant's behalf. The
24 governor first shall determine whether an emergency exists. If the governor finds that there is
25 no emergency, the governor may not take any further action. If the governor finds that there is
26 an emergency, the governor may hold a hearing after sufficient notice is given to the judge and
27 the state's attorney who participated in the trial.

28 **12-55.1-11. Notice of application for pardon, reprieve, or commutation of**
29 **sentence - To whom and by whom given - Service.** The director of parole and probation
30 shall give notice of an application for a pardon, reprieve, or commutation of sentence, and
31 notice of the time and place of a hearing to the governor, the judge who presided over the trial,

1 and the state's attorney who participated in the trial of the applicant. If the judge or state's
2 attorney is no longer in office, notice must be given to the judge's or state's attorney's
3 successor in office. The notice must include the name of the person making application for
4 pardon, reprieve, or commutation of sentence, the crime of which the applicant was convicted,
5 the time and place of the conviction, the sentence imposed, the name of the judge who
6 presided over the trial, and the name of the state's attorney who prosecuted the trial of the
7 applicant. Notice must be made by registered mail.

8 **12-55.1-12. Governor may reconsider action.** The governor may reconsider an
9 action in granting a pardon to any convicted person at any time before the convicted person has
10 been released and finally discharged from the custody of the department. The action may be
11 taken based upon the governor's own decision or upon the petition of interested parties.

12 **12-55.1-13. Officer having warrant of pardon, commutation, or reprieve to make**
13 **return.** Whenever a convicted person is pardoned, the convicted person's punishment is
14 commuted, or a reprieve is granted by the governor, the officer to whom the warrant is issued
15 shall execute the warrant and make a return to the governor showing the officer's actions. The
16 officer shall file an attested copy of the warrant and return with the clerk of the court in which
17 the offender was convicted. Based upon the attested copy of the warrant and return, the clerk
18 shall add a brief abstract to the record of the conviction.

19 **12-55.1-14. Effect of pardon - Governor may restore civil rights.** A pardon does
20 not remove the fact of that person's conviction or plea or finding of guilt for the offense unless
21 specifically stated in the certificate of pardon. The governor may restore the civil rights to any
22 person convicted of any offense committed against the state, upon cause being shown, after
23 the execution or expiration of sentence or at any other time.

24 **12-55.1-15. Official statements of judge and state's attorney - Contents.** The judge
25 and the state's attorney may make any recommendations that may be of assistance to the
26 governor, a pardon advisory board, or the parole board in considering the person's case. The
27 judge before whom any person has been convicted of a felony and the state's attorney of the
28 county in which the crime was committed shall file with the clerk of court separate official
29 statements that include:

- 30 1. The facts and circumstances constituting and surrounding the crime for which the
31 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.

12-55.1-16. Duty of court reporter and clerk regarding official statements of judge

and state's attorney. 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 as described in section

12-55.1-15. The clerk of court with whom the statements are filed shall attach a copy of the

statements to the commitment, if the prisoner is committed to the custody of the department, or

to the order suspending the sentence and placing the prisoner on probation, if the sentence is

suspended. The clerk shall provide to the department the commitment or order suspending

sentence with the attached copies of the official statements.

12-55.1-17. Governor may issue warrant. The governor may issue a warrant to any

proper officer to execute any act for which the governor is authorized and which is regulated by

this chapter. The officer shall obey the warrant.

12-55.1-18. Records confidential - Inspection. All medical records, supervision

history reports, pardon advisory board minutes, and all other records, reports, and minutes

obtained in the discharge of an official duty by the governor or a pardon advisory board are

confidential and may not be disclosed to anyone other than the governor, a pardon advisory

board, a district judge, a supreme court justice, a committee of the legislative assembly, or

others authorized by law to receive the information. The governor may authorize the inspection

of any records, reports, or minutes, or any parts thereof, by the defendant or convicted person,

the defendant or convicted person's attorney, or any other person the governor determines to

have a proper interest in the matter.

SECTION 2. AMENDMENT. Section 12-59-08 of the North Dakota Century Code is

amended and reenacted as follows:

1 **12-59-08. Application for parole - Hearing - Emergency paroles.** All applications for
2 parole ~~shall~~ must be filed with the ~~clerk of the board~~ director of parole and probation.
3 Applications may be heard at a meeting to be determined by the parole board, after the initial
4 consideration guaranteed by section 12-59-05. In the event of an emergency application, the
5 ~~ex-officio members of the board of pardons, acting as authorized by section 12-55-04,~~ governor
6 may, in accordance with section ~~12-55-19~~ 12-55.1-10, grant ~~such~~ the emergency parole.
7 Thereafter the parolee ~~shall be~~ is under the supervision and jurisdiction of the parole board.

8 **SECTION 3. AMENDMENT.** Subsection 5 of section 12-60-16.2 of the 1995
9 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

18 **SECTION 4. AMENDMENT.** Subsections 15 and 17 of section 12.1-34-02 of the 1995
19 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 20 15. Notice of final disposition and parole procedures. Victims and witnesses must be
21 informed by the prosecuting attorney of the final disposition of any criminal case.
22 The prosecuting attorney shall explain to the victim the parole process and pardon
23 process and further advise the victim of the necessity of advising the custodial
24 authority and the parole board and the ~~pardon board~~ governor of the victim's
25 address in order for the victim to receive further information under other provisions
26 of this chapter.
- 27 17. Participation in parole board and ~~pardon board~~ governor's decision. Victims may
28 submit a written statement for consideration by the parole board or ~~pardon board~~
29 ~~prior to the governor before~~ the governor before the parole board or ~~pardon board~~ taking the governor
30 takes any action on a defendant's request for parole or pardon. Victims of violent
31 crimes may at the discretion of the parole board or ~~pardon board~~ the governor

personally appear and address the parole board or ~~pardon board~~ the governor.
Notice must be given by the parole board or ~~pardon board~~ the governor 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 ~~pardon board~~
the governor and, if applicable, notice of the date of the prisoner's release on
parole or the prisoner's pardon. Notice must be given within a reasonable time
after the parole board or ~~pardon board~~ the governor reaches ~~its~~ a decision but in
any event ~~prior to~~ before the parolee's or pardoned prisoner's release from
custody.

SECTION 5. 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~~ the governor, and court, where appropriate, of any
change of address. The address information provided to these persons must be
kept confidential.

SECTION 6. 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 parole
~~or pardon board~~ or the governor in considering the child's parole or discharge or in
exercising supervision over the child; and

SECTION 7. 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:

- 1 a. The office of management and budget except with respect to rules relating to
2 the state building code as authorized or required under section 54-21.3-03,
3 rules relating to the Model Energy Code as required under section 54-21.2-03,
4 rules relating to the central personnel system as authorized under section
5 54-44.3-07, rules relating to state purchasing practices as required under
6 section 54-44.4-04, rules relating to records management as authorized or
7 required under chapter 54-46, and rules relating to the central microfilm unit
8 as authorized under chapter 54-46.1.
- 9 b. The adjutant general with respect to the division of emergency management.
- 10 c. The council on the arts.
- 11 d. The state auditor.
- 12 e. The department of economic development and finance.
- 13 f. The dairy promotion commission.
- 14 g. The education factfinding commission.
- 15 h. The educational telecommunications council.
- 16 i. The board of equalization.
- 17 j. The board of higher education.
- 18 k. The Indian affairs commission.
- 19 l. The industrial commission with respect to the activities of the Bank of North
20 Dakota, the North Dakota housing finance agency, the North Dakota
21 municipal bond bank, and the North Dakota mill and elevator association.
- 22 m. The department of corrections and rehabilitation except with respect to the
23 activities of the division of adult services under chapter 54-23.4.
- 24 n. ~~The board of pardons.~~
- 25 ~~o.~~ The parks and recreation department.
- 26 ~~p.~~ o. The parole board.
- 27 ~~q.~~ p. The superintendent of public instruction, except with respect to rules
28 prescribed under section 15-21-07 and rules implementing chapter 15-22.
- 29 ~~r.~~ q. The state fair association.
- 30 ~~s.~~ r. The state department of health with respect to the state toxicologist.

~~t.~~ s. The board of university and school lands except with respect to activities under chapter 47-30.1.

~~u.~~ t. 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.~~ u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.

~~w.~~ v. The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.2.

SECTION 8. 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.~~

~~h.~~ The state parole board.

~~i.~~ h. The state board of public school education.

~~j.~~ i. The education standards and practices board and the administrator's professional practices board.

~~k.~~ j. The board of trustees for the teachers' fund for retirement.

~~l.~~ k. The educational telecommunications council.

- 1 ~~h.~~ l. The state game and fish advisory board.
- 2 ~~h.~~ m. The health council.
- 3 ~~e.~~ n. The air pollution control advisory council.
- 4 ~~p.~~ o. The board of animal health.
- 5 ~~e.~~ p. The administrative committee on veterans' affairs.
- 6 ~~r.~~ q. The committee on aging.
- 7 ~~s.~~ r. The committee on employment of people with disabilities.
- 8 ~~t.~~ s. The commission on the status of women.
- 9 ~~u.~~ t. The North Dakota council on the arts.
- 10 ~~v.~~ u. The state historical board.
- 11 ~~w.~~ v. The Yellowstone-Missouri-Fort Union commission.
- 12 ~~x.~~ w. The state water commission.
- 13 ~~y.~~ x. The state water pollution control board.
- 14 **SECTION 9. REPEAL.** Chapter 12-55 of the North Dakota Century Code is repealed.