

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2122

Introduced by

Judiciary Committee

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

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

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

6 **SECTION 1. AMENDMENT.** Section 12-55.1-05 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12-55.1-05. Pardon clerk - Duties.** The director of the ~~division of parole and probation~~
9 department of corrections and rehabilitation or the director's designee shall serve as the pardon
10 clerk under this chapter. The pardon clerk shall:

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

23 **SECTION 2. AMENDMENT.** Section 12-59-02 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **12-59-02. Meetings - Compensation - Rules.** The governor shall appoint a member
2 of the parole board to be chairman. The chairman of the parole board shall designate three
3 members of the parole board for each meeting of the parole board. Meetings of the parole
4 board must be held in accordance with rules established by the parole board and must be held
5 as often as required to properly conduct the business of the board, but in any event not less
6 than six times per year. The parole board may only take action upon the concurrence of at
7 least two members who participated in the same meeting. The final decision of at least two
8 parole board members who participated in the same parole board meeting constitutes the
9 decision of the parole board. Members are entitled to be compensated at the rate of
10 seventy-five dollars per day for each day actually and necessarily spent in the performance of
11 their duties as board members plus the same mileage and expenses as are authorized for state
12 officials and employees. The director of the ~~division of parole and probation~~, department of
13 corrections and rehabilitation or the director's designee, is the clerk for the parole board.

14 **SECTION 3. AMENDMENT.** Section 12-59-07 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **12-59-07. Requirements precedent to parole.** The parole board may grant an
17 application for parole if the board is convinced the applicant will conform to the terms and
18 conditions of parole the board or the ~~division of parole and probation~~ department of corrections
19 and rehabilitation may establish for the applicant. The ~~division of parole and probation~~
20 department of corrections and rehabilitation may establish intermediate conditions of parole,
21 including incarceration for a period of seventy-two hours and restitution, subject to the
22 subsequent approval of the parole board.

23 **SECTION 4. AMENDMENT.** Section 12-59-08 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **12-59-08. Application for parole - Emergency paroles.** An applicant for parole shall
26 file an application with the ~~division of parole and probation~~ department of corrections and
27 rehabilitation. The parole board may consider the application at a meeting scheduled by the
28 chairman. The board may request an applicant to personally appear before the board before
29 the board makes a decision on an application. The board may grant or deny parole, or grant a
30 conditional parole, or continue its consideration to another meeting. In the event of an
31 application for emergency parole, two members of the parole board may grant emergency

1 parole, subject to terms and conditions of emergency parole that may be established by two
2 members of the parole board or by the ~~division of parole and probation~~ department of
3 corrections and rehabilitation. An applicant who receives parole remains in the legal custody of
4 the department of corrections and rehabilitation until the expiration of the maximum term or
5 terms of imprisonment for which the applicant was sentenced, less any sentence reduction the
6 applicant has received.

7 **SECTION 5. AMENDMENT.** Section 12-59-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12-59-09. Contents of application for parole.** An application for parole must be in
10 writing, addressed to the ~~division of parole and probation~~ department of corrections and
11 rehabilitation, and must be signed by the applicant or some person in the applicant's behalf.

12 **SECTION 6. AMENDMENT.** Section 12-59-10 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **12-59-10. Notice of application for parole.** The ~~division of parole and probation~~
15 department of corrections and rehabilitation shall provide written notice of an application for
16 parole to the district court and state's attorney's office in the county or counties where judgment
17 of conviction was entered against the applicant. The notice must include the name of the
18 applicant, the date of entry and docket number of the criminal judgment, the crime or crimes
19 stated in the criminal judgment, and the date and place for the meeting on the application.

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

22 **12-59-15. Breach of parole - Hearings - Order of recommitment.**

- 23 1. When it is alleged that a parolee has violated any of the terms or conditions of
24 parole established by the parole board or by the ~~division of parole and probation~~
25 department of corrections and rehabilitation, the director of the ~~division of parole~~
26 ~~and probation or the director's designee~~ department of corrections and
27 rehabilitation may issue a warrant for the arrest of the parolee.
- 28 2. Upon issuance of a warrant of arrest for a parole violation, the running of the time
29 period of parole must be suspended until the parole board issues a final order
30 under this section. The parolee is entitled to credit for time spent in physical
31 custody from the time of arrest until the time the parole board issues a final order.

- 1 3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after
2 the arrest and reasonably near the place of the alleged violation or arrest, to
3 determine whether there is probable cause to find that the parolee violated any of
4 the terms and conditions of parole established by the board or by the ~~division of~~
5 ~~parole and probation~~ department of corrections and rehabilitation.
- 6 4. The preliminary hearing must be conducted before the director of the ~~division of~~
7 ~~parole and probation~~ department of corrections and rehabilitation or other hearing
8 officer authorized by the director. The preliminary hearing must be conducted by a
9 disinterested hearing officer not directly involved in the supervision of the parolee
10 or by the person bringing the allegation of a parole violation.
- 11 5. If the hearing officer determines there is probable cause to find that the parolee
12 has violated any of the terms and conditions of parole established by the board or
13 by the ~~division of parole and probation~~ department of corrections and
14 rehabilitation, the board may redetermine the time remaining in the period of parole
15 to reflect any portion of the period during which the parolee was not under
16 supervision or not in the custody of law enforcement personnel in the state.
- 17 6. If the hearing officer determines there is probable cause to find that the parolee
18 has violated any of the terms and conditions of parole established by the board or
19 by the ~~division of parole and probation~~ department of corrections and
20 rehabilitation, the parolee must be returned to the physical custody of the
21 department of corrections and rehabilitation, transferred to another correctional
22 facility or the state hospital, or released from actual custody pursuant to such
23 terms and conditions as may be established by the parole board or the ~~division of~~
24 ~~parole and probation~~ department of corrections and rehabilitation, pending a final
25 revocation hearing before the parole board. If the board determines at the final
26 revocation hearing that the parolee has violated any of the terms and conditions of
27 parole established by the board or by the ~~division of parole and probation~~
28 department of corrections and rehabilitation, it may order that the parolee be
29 recommitted to the physical custody of the department of corrections and
30 rehabilitation to serve all or part of the remaining time of the sentence that has not
31 been served in custody.

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

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

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