

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2122
(Judiciary Committee)
(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact sections 12-55.1-05, 12-59-02, 12-59-07, 12-59-08, 12-59-09, 12-59-10, 12-59-15, and 27-06-06 of the North Dakota Century Code, relating to the powers and duties of the parole board, the powers and duties of the pardon advisory board, and preparation and filing of transcripts in criminal actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

12-55.1-05. Pardon clerk - Duties. The director of the ~~division of parole and probation~~ department of corrections and rehabilitation or the director's designee 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.

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

12-59-02. Meetings - Compensation - Rules. The governor shall appoint a member of the parole board to be chairman. The chairman of the parole board shall designate three members of the parole board for each meeting of the parole board. Meetings of the parole board must be held in accordance with rules established by the parole board and must be held as often as required to properly conduct the business of the board, but in any event not less than six times per year. The parole board may only take action upon the concurrence of at least two members who participated in the same meeting. The final decision of at least two parole board members who participated in the same parole board meeting constitutes the decision of the parole board. Members are entitled to be compensated at the rate of seventy-five dollars 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,~~ department of corrections and rehabilitation or the director's designee, is the clerk for the parole board.

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

12-59-07. Requirements precedent to parole. 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~~ department of corrections and rehabilitation may establish

for the applicant. The ~~division of parole and probation~~ department of corrections and rehabilitation 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 4. AMENDMENT. Section 12-59-08 of the North Dakota Century Code is amended and reenacted as follows:

12-59-08. Application for parole - Emergency paroles. An applicant for parole shall file an application with the ~~division of parole and probation~~ department of corrections and rehabilitation. 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 application for emergency parole, two members of the parole board may grant 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~~ department of corrections and rehabilitation. 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 5. 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 must be in writing, addressed to the ~~division of parole and probation~~ department of corrections and rehabilitation, and must be signed by the applicant or some person in the applicant's behalf.

SECTION 6. 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. The ~~division of parole and probation~~ department of corrections and rehabilitation 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 7. AMENDMENT. Section 12-59-15 of 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 any of the terms or conditions of parole established by the parole board or by the ~~division of parole and probation~~ department of corrections and rehabilitation, the director of the ~~division of parole and probation or the director's designee~~ department of corrections and rehabilitation may issue a warrant for the arrest of the parolee.
2. Upon issuance of a warrant of arrest for a parole violation, the running of the time period of parole must be suspended until the parole board issues a final order under this section. The parolee is entitled to credit for time spent in physical custody from the time of arrest until the time the parole board issues a final order.
3. The parolee 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 to find that the parolee violated any of the terms and conditions of parole established by the board or by the ~~division of parole and probation~~ department of corrections and rehabilitation.

4. The preliminary hearing must be conducted before the director of the ~~division of parole and probation~~ department of corrections and rehabilitation or other hearing officer authorized by the 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 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~~ department of corrections and rehabilitation, 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~~ department of corrections and rehabilitation, the parolee must be returned to the physical custody of the department of corrections and rehabilitation, transferred to another correctional facility or the state hospital, or released from actual custody pursuant to such terms and conditions as may be established by the parole board or the ~~division of parole and probation~~ department of corrections and rehabilitation, pending a final revocation hearing before the parole board. If the board determines at the final revocation hearing 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~~ department of corrections and rehabilitation, it may order that the parolee be recommitted to the 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.
7. At any hearing pursuant to this section a record 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 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 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 8. AMENDMENT. Section 27-06-06 of the North Dakota Century Code is amended and reenacted as follows:

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

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 Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2122.

Senate Vote: Yeas 45 Nays 0 Absent 2

House Vote: Yeas 91 Nays 0 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State