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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **2806**

04/03/2019 Authored by Long, Dehn, Pinto and Moller

The bill was read for the first time and referred to the Committee on Ways and Means

03/11/2020 Adoption of Report: Amended and re-referred to the Judiciary Finance and Civil Law Division without further recommendation

1.1 A bill for an act
1.2 relating to corrections; establishing the Clemency Review Commission; amending
1.3 Minnesota Statutes 2018, section 638.01; proposing coding for new law in
1.4 Minnesota Statutes, chapter 638; repealing Minnesota Statutes 2018, sections
1.5 638.02; 638.03; 638.04; 638.05; 638.06; 638.07; 638.075; 638.08.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2018, section 638.01, is amended to read:

1.8 **638.01 BOARD OF PARDONS; ~~HOW CONSTITUTED; POWERS.~~**

1.9 The Board of Pardons shall consist of the governor, the chief justice of the supreme
1.10 court, and the attorney general. The governor, in conjunction with the board, may grant
1.11 pardons ~~and reprieves~~ and commute the sentence of any person convicted of any offense
1.12 ~~against~~ under the laws of the this state, in the manner and under the conditions ~~and rules~~
1.13 ~~hereinafter prescribed, but not otherwise~~ in this chapter.

1.14 **Sec. 2. [638.09] CLEMENCY REVIEW COMMISSION.**

1.15 (a) Notwithstanding the provisions of chapter 15, the Clemency Review Commission
1.16 is established to review applications for pardons or commutations before they are considered
1.17 by the Board of Pardons. By majority vote, the commission shall make a recommendation
1.18 on each eligible application as to whether it should be granted or denied. The commission
1.19 shall provide its recommendations to the board with the vote of each commission member
1.20 reported in writing.

1.21 (b) The commission shall consist of nine members, each serving a four-year term. The
1.22 governor, the attorney general, and the chief justice of the supreme court shall each appoint

2.1 three members and replace members upon expiration of the members' terms. In the event
2.2 of a vacancy, the board member who selected the previous incumbent shall make an interim
2.3 appointment to expire at the end of the prior incumbent's four-year term. A person may
2.4 serve no more than two terms on the commission, excluding interim appointments.

2.5 (c) The commission shall biennially elect one of its members as chair and one as
2.6 vice-chair. The chair of the commission shall serve as secretary of the board.

2.7 (d) Each member of the commission shall be compensated at the rate of \$55 for each
2.8 day or part thereof spent on commission activities. Each member shall be reimbursed for
2.9 all reasonable expenses actually paid or incurred by that member in the performance of
2.10 official duties.

2.11 (e) The commission may obtain office space and supplies and hire administrative staff
2.12 to carry out its official functions.

2.13 (f) At least six members of the commission shall constitute a quorum for official
2.14 administrative business.

2.15 **Sec. 3. [638.10] PARDONS AND COMMUTATIONS.**

2.16 Subdivision 1. **Pardons and commutations.** (a) The Board of Pardons may pardon a
2.17 criminal conviction imposed under the laws of this state or commute a criminal sentence
2.18 imposed by a court of this state to time served or a lesser sentence. Every pardon or
2.19 commutation shall be in writing and shall have no force or effect unless granted by a majority
2.20 vote of the board with the governor in that majority. Every conditional pardon shall state
2.21 the terms and conditions upon which it was granted and every commutation shall specify
2.22 the terms of the commuted sentence.

2.23 (b) When granted, a pardon has the effect of setting aside the conviction and purging
2.24 the conviction from the person's record. The person then is not required to disclose the
2.25 conviction at any time or place other than in a judicial proceeding or as part of the licensing
2.26 process for peace officers.

2.27 Subd. 2. **Eligibility for a pardon.** (a) Any person convicted of a crime in any court of
2.28 this state may apply for a pardon of the person's conviction on or after five years from the
2.29 date of the expiration of the person's sentence or the date of the person's discharge. Upon
2.30 a showing of unusual circumstances and special need, the board may waive the required
2.31 waiting period by a majority vote with the governor in that majority.

2.32 (b) The Clemency Review Commission shall review all requests for a waiver of the
2.33 waiting period and make recommendations by majority vote to the board. Consideration of

3.1 requests to waive the waiting period are exempt from the meeting requirements of this
3.2 chapter.

3.3 Subd. 3. **Eligibility for a commutation.** (a) Any person may apply for a commutation
3.4 of an unexpired criminal sentence imposed by a court of this state, including those confined
3.5 in a correctional facility or on probation, parole, supervised release, or conditional release.
3.6 An application for commutation may not be filed until the date that the person has served
3.7 at least one-half of the sentence imposed or on or after five years from the date of the
3.8 conviction, whichever is less. Upon a showing of unusual circumstances and special need,
3.9 the board may waive the required waiting period by a majority vote with the governor in
3.10 that majority.

3.11 (b) The commission shall review all requests for a waiver of the waiting period and
3.12 make recommendations by majority vote to the board. Consideration of requests to waive
3.13 the waiting period are exempt from the meeting requirements of this chapter.

3.14 Subd. 4. **Filing of a pardon or commutation.** After granting a pardon or commutation,
3.15 the board shall file a copy of the pardon or commutation with the district court of the county
3.16 in which the conviction and sentence were imposed. In the case of a pardon, the court shall
3.17 order the conviction set aside, include a copy of the pardon in the court file, and send copies
3.18 of the order and the pardon to the Bureau of Criminal Apprehension. In the case of a
3.19 commutation, the court shall amend the sentence to reflect the specific relief granted by the
3.20 board, include a copy of the commutation in the court file, and send copies of the amended
3.21 sentencing order and commutation to the commissioner of corrections and the Bureau of
3.22 Criminal Apprehension.

3.23 Subd. 5. **Reapplication.** (a) Once an application for a pardon or commutation has been
3.24 considered and denied on the merits, no subsequent application may be filed for five years
3.25 after the date of the most recent denial unless permission is granted from at least two board
3.26 members. A person may request permission to reapply prior to the expiration of the five-year
3.27 period based only on new and substantial information that was not and could not have been
3.28 previously considered by the board or the commission. If a request to reapply contains new
3.29 and substantial information, the commission shall review the request and make a
3.30 recommendation by majority vote to the board. Consideration of requests to reapply are
3.31 exempt from the meeting requirements under this chapter.

3.32 (b) The denial or grant of an application for a commutation of sentence does not preclude
3.33 a person from later seeking a pardon of the criminal conviction once the eligibility
3.34 requirements of subdivision 2 have been satisfied.

4.1 Sec. 4. **[638.11] APPLICATIONS.**

4.2 (a) Each application for a pardon or commutation shall be in writing, signed under oath
4.3 by the applicant, and contain a brief statement of the relief sought and the reasons why it
4.4 should be granted. The application shall also contain the following information and any
4.5 additional information that the commission or board requires:

4.6 (1) the applicant's name, address, date of birth, place of birth, and every alias by which
4.7 the applicant is or has been known;

4.8 (2) the name of the offense for which relief is requested, the date and county of
4.9 conviction, the sentence imposed, and the expiration or discharge date of the sentence;

4.10 (3) the names of the sentencing judge, prosecuting attorney, and any victims of the
4.11 offense;

4.12 (4) a brief description of the offense;

4.13 (5) the date and outcome of any prior applications for a pardon or commutation;

4.14 (6) a statement of other felony or gross misdemeanor convictions and any pending
4.15 criminal charges or investigations; and

4.16 (7) a statement by the applicant consenting to the disclosure to the commission and the
4.17 board of any private data concerning the applicant contained in the application or in any
4.18 other record relating to the grounds on which the relief is sought, including conviction and
4.19 arrest records.

4.20 (b) Applications shall be made on forms approved by the commission or the board and
4.21 shall be filed with the commission by the deadlines set by the commission or the board. The
4.22 commission shall review applications for completeness. Any application that is considered
4.23 incomplete shall be returned to the applicant who may then provide the missing information
4.24 and resubmit the application within a time period prescribed by the commission.

4.25 Sec. 5. **[638.12] NOTIFICATIONS.**

4.26 Subdivision 1. **Notice to victim.** After receiving an application for a pardon or
4.27 commutation, the Clemency Review Commission shall make all reasonable efforts to locate
4.28 any victim of the applicant's crime. At least 30 days before the date of the commission
4.29 meeting at which the application shall be heard, the commission shall notify any located
4.30 victim of the application, of the time and place of the meeting, and the victim's right to
4.31 attend the meeting and submit an oral or written statement to the commission.

5.1 Subd. 2. Notice to sentencing judge and prosecuting attorney. At least 30 days before
5.2 the date of the commission meeting at which the application shall be heard, the commission
5.3 shall notify the sentencing judge and prosecuting attorney or their successors of the
5.4 application and solicit the judge's and attorney's views on whether clemency should be
5.5 granted.

5.6 Subd. 3. Notice to applicant. Following its initial investigation of an application for a
5.7 pardon or commutation, the commission shall notify the applicant of the scheduled date,
5.8 time, and location that the applicant shall appear before the commission for consideration.

5.9 **Sec. 6. [638.13] MEETINGS.**

5.10 Subdivision 1. Commission meetings. (a) The Clemency Review Commission shall
5.11 meet at least four times each year for one or more days each meeting to hear eligible
5.12 applications of pardons or commutations and make recommendations to the board on each
5.13 application. One or more of the meetings may be held at facilities operated by the Department
5.14 of Corrections. All commission meetings shall be open to the public as provided in chapter
5.15 13D.

5.16 (b) Applicants for pardons or commutations must appear before the commission either
5.17 in person or through any available form of telecommunication. The victim of an applicant's
5.18 crime may appear and speak at the commission's meeting or submit a written statement to
5.19 the commission. The commission may treat a victim's statement as confidential and not
5.20 disclose the statement to the applicant or the public if there is or has been a recent order for
5.21 protection, restraining order, or other no contact order prohibiting the applicant from
5.22 contacting the victim. In addition, any law enforcement agency may appear and speak at
5.23 the meeting or submit a written statement to the commission, giving the agency's
5.24 recommendation on whether clemency should be granted or denied.

5.25 (c) The commission must consider any statement provided by a victim or law enforcement
5.26 agency when making its recommendation on an application. Whenever possible, the
5.27 commission shall record its meetings by audio or audiovisual means. Any recordings and
5.28 statements from victims or law enforcement agencies shall be provided to the board along
5.29 with the commission's recommendations.

5.30 (d) Not later than ten working days of the date of its decision, the commission shall
5.31 notify the applicant in writing of its decision to recommend a grant or denial of clemency
5.32 to the board.

6.1 Subd. 2. Board meetings. (a) The board shall meet at least two times each year to
6.2 consider applications for pardons or commutations that have received a favorable
6.3 recommendation from the commission and any other applications that have received further
6.4 consideration from at least one board member. Whenever the commission recommends
6.5 denial of an application and the board does not disapprove or take other action with respect
6.6 to that recommendation, it shall be presumed that the board concurs with the adverse
6.7 recommendation and that the application has been considered and denied on the merits. All
6.8 board meetings shall be open to the public as provided in chapter 13D.

6.9 (b) Applicants, victims, and law enforcement agencies may not submit oral or written
6.10 statements at a board meeting, unless the board requests additional testimony. The board
6.11 shall consider any statements provided to the commission when making a decision on an
6.12 application for a pardon or commutation.

6.13 (c) The commission shall notify the applicant in writing of the board's decision to grant
6.14 or deny clemency not later than ten working days from the date of the board's decision.

6.15 **Sec. 7. [638.14] GROUNDS FOR RECOMMENDING CLEMENCY.**

6.16 Subdivision 1. Factors. When making recommendations on applications for pardons or
6.17 commutations, the Clemency Review Commission shall consider any factors the commission
6.18 deems appropriate, including but not limited to the following:

6.19 (1) the nature, seriousness, circumstances, and age of the applicant's offense;

6.20 (2) the successful completion or revocation of previous probation, parole, supervised
6.21 release, or conditional release;

6.22 (3) the number, nature, and circumstances of the applicant's other criminal convictions;

6.23 (4) the extent to which the applicant has demonstrated rehabilitation through
6.24 postconviction conduct, character, and reputation;

6.25 (5) the extent to which the applicant has accepted responsibility, demonstrated remorse,
6.26 and made restitution to victims;

6.27 (6) whether the sentence is clearly excessive in light of the applicant's offense, criminal
6.28 history, and any sentence received by an accomplice, with due regard given to any plea
6.29 agreement, the sentencing judge's views, and the sentencing ranges established by law;

6.30 (7) whether the applicant's age or medical status indicates that it is in the best interest
6.31 of society that the applicant receive clemency;

6.32 (8) recommendations from victims, sentencing judges, and prosecuting attorneys;

7.1 (9) the applicant's asserted need for a pardon or commutation, including family needs
7.2 and barriers to housing or employment created by the conviction; and

7.3 (10) the amount of time already served by the applicant and the availability of other
7.4 forms of judicial or administrative relief.

7.5 Subd. 2. **Denial recommendation.** The commission may recommend denial without a
7.6 hearing of an application for a commutation when the applicant is presently challenging the
7.7 conviction or sentence through court proceedings, has failed to exhaust all available state
7.8 court remedies for challenging the sentence, or the matter should first be considered by the
7.9 parole authority.

7.10 **Sec. 8. [638.15] ACCESS TO RECORDS; ISSUANCE OF PROCESS.**

7.11 Subdivision 1. **Access to records.** Upon receipt of an application for a pardon or
7.12 commutation, the Board of Pardons or Clemency Review Commission may request and
7.13 obtain any relevant reports, data, and other information from a district court, law enforcement
7.14 agency, or state agency. The commission and board shall have access to sealed court records,
7.15 presentence investigation reports, police reports, criminal history reports, prison records,
7.16 and any other relevant information. District courts, law enforcement agencies, and state
7.17 agencies shall promptly respond to record requests from the commission and the board.

7.18 Subd. 2. **Legal process.** The commission and the board may issue process requiring the
7.19 presence of any person before them and the production of papers, records, and exhibits in
7.20 any pending matter. When any person is summoned before the commission or the board,
7.21 the person may be allowed compensation for travel and attendance as the commission or
7.22 the board may deem reasonable.

7.23 **Sec. 9. [638.16] RULES.**

7.24 The Board of Pardons and the Clemency Review Commission may adopt rules under
7.25 chapter 14 for the effective enforcement of their powers and duties.

7.26 **Sec. 10. [638.17] RECORDS.**

7.27 The Clemency Review Commission shall keep a record of every application received,
7.28 its recommendation on each application, and the final disposition of each application by
7.29 the Board of Pardons. The records and all the files shall be kept by the commission and
7.30 shall be open to public inspection at all reasonable times, except for sealed court records,
7.31 presentence investigation reports, Social Security numbers, financial account numbers,

8.1 driver's license information, medical records, confidential Bureau of Criminal Apprehension
8.2 records, and confidential victim statements as provided in section 638.12.

8.3 Sec. 11. **[638.18] ANNUAL REPORTS TO LEGISLATURE.**

8.4 By February 15 of each year, the Clemency Review Commission shall submit a written
8.5 report to the chairs and ranking minority members of the house of representatives and senate
8.6 committees with jurisdiction over public safety, corrections, and judiciary containing at a
8.7 minimum the following information:

8.8 (1) the number of applications for pardons and commutations received by the commission
8.9 during the preceding calendar year;

8.10 (2) the number of favorable and adverse recommendations made by the commission for
8.11 each category;

8.12 (3) the number of applications granted and denied by the Board of Pardons for each
8.13 category; and

8.14 (4) the crimes for which the applications were granted by the board, the year of each
8.15 conviction, and the age of the offender at the time of the offense.

8.16 Sec. 12. **REPEALER.**

8.17 Minnesota Statutes 2018, sections 638.02; 638.03; 638.04; 638.05; 638.06; 638.07;
8.18 638.075; and 638.08, are repealed.

638.02 PARDONS.

Subdivision 1. **Absolute or conditional pardons; commutation of sentences.** The Board of Pardons may grant an absolute or a conditional pardon, but every conditional pardon shall state the terms and conditions on which it was granted. Every pardon or commutation of sentence shall be in writing and shall have no force or effect unless granted by a unanimous vote of the board duly convened.

Subd. 2. **Petition; pardon extraordinary.** Any person, convicted of a crime in any court of this state, who has served the sentence imposed by the court and has been discharged of the sentence either by order of court or by operation of law, may petition the Board of Pardons for the granting of a pardon extraordinary. Unless the Board of Pardons expressly provides otherwise in writing by unanimous vote, the application for a pardon extraordinary may not be filed until the applicable time period in clause (1) or (2) has elapsed:

(1) if the person was convicted of a crime of violence as defined in section 624.712, subdivision 5, ten years must have elapsed since the sentence was discharged and during that time the person must not have been convicted of any other crime; and

(2) if the person was convicted of any crime not included within the definition of crime of violence under section 624.712, subdivision 5, five years must have elapsed since the sentence was discharged and during that time the person must not have been convicted of any other crime.

If the Board of Pardons determines that the person is of good character and reputation, the board may, in its discretion, grant the person a pardon extraordinary. The pardon extraordinary, when granted, has the effect of setting aside and nullifying the conviction and of purging the person of it, and the person shall never after that be required to disclose the conviction at any time or place other than in a judicial proceeding or as part of the licensing process for peace officers.

The application for a pardon extraordinary, the proceedings to review an application, and the notice requirements are governed by the statutes and the rules of the board in respect to other proceedings before the board. The application shall contain any further information that the board may require.

Subd. 3. **Pardon extraordinary; filing; copies sent.** Upon granting a pardon extraordinary the Board of Pardons shall file a copy of it with the district court of the county in which the conviction occurred, and the court shall order the conviction set aside and include a copy of the pardon in the court file. The court shall send a copy of its order and the pardon to the Bureau of Criminal Apprehension.

Subd. 4. **Grandfather provision.** Any person granted a pardon extraordinary by the Board of Pardons prior to April 12, 1974 may apply to the district court of the county in which the conviction occurred for an order setting aside the conviction as set forth in subdivision 3.

Subd. 5. **Records.** The term "records" shall include but is not limited to all matters, files, documents and papers incident to the arrest, indictment, information, trial, appeal, dismissal and discharge, which relate to the conviction for which the pardon extraordinary has been granted.

638.03 WARRANT; RETURN.

The Board of Pardons may issue its warrant, under its seal, to any proper officers to carry into effect any pardon, commutation, or reprieve. As soon as may be after the execution of the warrant, the officer to whom it is directed shall make return thereof, under hand, with the doings thereon, to the governor. Such officer shall also file with the court administrator in which the offender was convicted an attested copy of the warrant and return, a brief abstract of which such court administrator shall subjoin to the record of the conviction.

638.04 MEETINGS.

The Board of Pardons shall hold meetings at least twice each year and shall hold a meeting whenever it takes formal action on an application for a pardon or commutation of sentence. All board meetings shall be open to the public as provided in chapter 13D.

The victim of an applicant's crime has a right to submit an oral or written statement at the meeting. The statement may summarize the harm suffered by the victim as a result of the crime and give the victim's recommendation on whether the application for a pardon or commutation should be granted or denied. In addition, any law enforcement agency may submit an oral or written statement at the meeting, giving its recommendation on whether the application should be granted

or denied. The board must consider the victim's and the law enforcement agency's statement when making its decision on the application.

638.05 APPLICATION FOR PARDON.

Every application for relief by the Pardon Board shall be in writing, addressed to the Board of Pardons, signed under oath by the convict or someone in the convict's behalf, shall state concisely the grounds upon which the relief is sought, and in addition shall contain the following facts:

- (1) the name under which the convict was indicted, and every alias by which the convict is or was known;
- (2) the date and terms of sentence, and the names of the offense for which it was imposed;
- (3) the name of the trial judge and the county attorney who participated in the trial of the convict, together with that of the county of trial;
- (4) a succinct statement of the evidence adduced at the trial, with the endorsement of the judge or county attorney who tried the case that the statement is substantially correct. If this statement and endorsement are not furnished, the reason for failing to furnish them shall be stated;
- (5) the age, birthplace, and occupation and residence of the convict during five years immediately preceding conviction;
- (6) a statement of other arrests, indictments, and convictions, if any, of the convict.

Every application for relief by the pardon board shall contain a statement by the applicant consenting to the disclosure to the board of any private data concerning the applicant contained in the application or in any other record relating to the grounds on which the relief is sought. In addition, if the applicant resided in another state after the sentence was discharged, the application for relief by the pardon board shall contain a statement by the applicant consenting to the disclosure to the board of any data concerning the applicant that was collected or maintained by the foreign state relating to the grounds on which the relief is sought, including disclosure of criminal arrest and conviction records.

638.06 ACTION ON APPLICATION.

Every application for relief by the Pardon Board shall be filed with the secretary of the Board of Pardons not less than 60 days before the meeting of the board at which consideration of the application is desired. If an application for a pardon or commutation has been once heard and denied on the merits, no subsequent application shall be filed without the consent of two members of the board endorsed on the application. Immediately on receipt of any application, the secretary to the board shall mail notice of the application, and of the time and place of hearing on it, to the judge of the court where the applicant was tried and sentenced, and to the prosecuting attorney who prosecuted the applicant, or a successor in office. Additionally, the secretary shall publish notice of an application for a pardon extraordinary in the local newspaper of the county where the crime occurred. The secretary shall also make all reasonable efforts to locate any victim of the applicant's crime. The secretary shall mail notice of the application and the time and place of the hearing to any victim who is located. This notice shall specifically inform the victim of the victim's right to be present at the hearing and to submit an oral or written statement to the board as provided in section 638.04.

638.07 RECORDS; SECRETARY.

The Board of Pardons shall keep a record of every petition received, and of every pardon, reprieve, or commutation of sentence granted or refused, and the reasons assigned therefor, and shall have a seal, with which every pardon, reprieve, or commutation of sentence shall be attested. It may adopt such additional necessary and proper rules as are not inconsistent herewith. The commissioner of corrections or a designee shall be the secretary of the board. The commissioner shall have charge of and keep its records and perform such other duties as the board may from time to time direct. The commissioner is hereby authorized and empowered to serve subpoenas and other writs or processes necessary to return parole violators to prison, and to bring before the board witnesses to be heard in matters pending before it. The records and all the files shall be kept and preserved by the secretary, and shall be open to public inspection at all reasonable times.

638.075 ANNUAL REPORTS TO LEGISLATURE.

By February 15 of each year, the Board of Pardons shall file a written report with the legislature containing the following information:

APPENDIX
Repealed Minnesota Statutes: H2806-1

(1) the number of applications received by the board during the preceding calendar year for pardons, pardons extraordinary, and commutations of sentence;

(2) the number of applications granted by the board for each category; and

(3) the crimes for which the applications were granted by the board, the year of each conviction, and the age of the offender at the time of the offense.

638.08 ISSUANCE OF PROCESS; WITNESSES; STANDING APPROPRIATION.

The Board of Pardons may issue process requiring the presence of any person or officer before it, with or without books and papers, in any matter pending, and may take such reasonable steps in the matter as it may deem necessary to a proper determination thereof. When any person is summoned before the board by its authority, the person may be allowed such compensation for travel and attendance as it may deem reasonable.