

Approved by
Revisor of Statutes



1.1 Mariani from the Public Safety and Criminal Justice Reform Finance and Policy Division
1.2 to which was referred:

1.3 H. F. No. 2806, A bill for an act relating to corrections; establishing a Clemency Review
1.4 Commission; modifying Board of Pardons procedures; making clarifying changes; amending
1.5 Minnesota Statutes 2018, sections 638.01; 638.02, subdivisions 1, 2; 638.04; 638.06; 638.07;
1.6 638.075; 638.08.

1.7 Reported the same back with the following amendments:

1.8 Delete everything after the enacting clause and insert:

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

1.10 **638.01 BOARD OF PARDONS; ~~HOW CONSTITUTED; POWERS.~~**

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

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

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

1.23 (b) The commission shall consist of nine members, each serving a four-year term. The
1.24 governor, the attorney general, and the chief justice of the supreme court shall each appoint
1.25 three members and replace members upon expiration of the members' terms. In the event

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

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

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

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

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

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

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

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

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

2.31 (b) The Clemency Review Commission shall review all requests for a waiver of the
2.32 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."

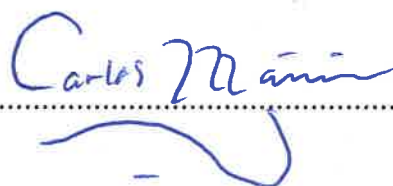
8.19 Delete the title and insert:

8.20 "A bill for an act

8.21 relating to corrections; establishing the Clemency Review Commission; amending
8.22 Minnesota Statutes 2018, section 638.01; proposing coding for new law in
8.23 Minnesota Statutes, chapter 638; repealing Minnesota Statutes 2018, sections
8.24 638.02; 638.03; 638.04; 638.05; 638.06; 638.07; 638.075; 638.08."

8.25 With the recommendation that the bill as amended be returned to the Committee on
8.26 Ways and Means with a recommended re-referral to the Judiciary Finance and Civil Law
8.27 Division.

8.28 This Division action taken February 27, 2020

8.29 

....., Chair