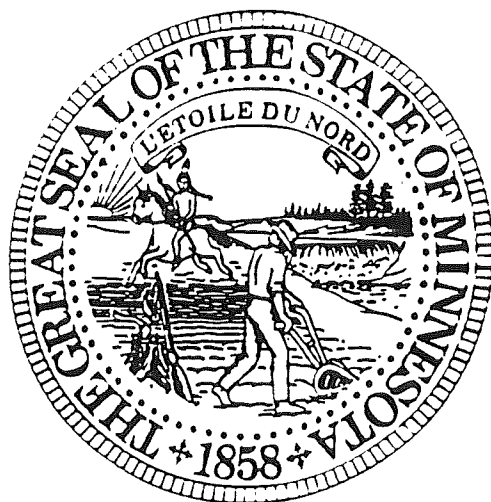


A REPORT OF THE MINNESOTA PARDON BOARD REVIEW COMMISSION



**AS REQUESTED BY
THE GOVERNOR, CHIEF JUSTICE,
AND ATTORNEY GENERAL**

MARCH 11, 1992

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PARDON BOARD REVIEW COMMISSION

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MINNESOTA PARDON BOARD REVIEW COMMISSION

The authority to grant pardons in Minnesota is set forth both in the Minnesota Constitution and in Minnesota statutes. The Minnesota Constitution provides that the power to grant reprieves and pardons lies with a panel consisting of the governor, attorney general, and chief justice of the supreme court, sitting as a Board of Pardons. The operation of the Board is governed by Minnesota Statutes, ch. 638, and administrative rules.

In the spring of 1991, following an investigative news report and in response to heightened public awareness and concern over increased crime, the Board established the Minnesota Pardon Board Review Commission. The Commission was directed to review the current practices of the Board of Pardons and to suggest modifications or changes in the operation of the pardon system. The Commission focused its attention exclusively on the "pardon extraordinary," a statutorily authorized form of clemency. The Commission began its work in September, 1991, and concluded in February, 1992.

The Commission conducted a series of hearings, took public testimony, heard from staff and past members of the Board, and attempted to reconstruct some of the history of the Board's practices. However, the Commission was hampered by the antiquated filing system and minimal staffing of present Board operations. All records of the Pardon Board are maintained manually. There is no accurate statistical analysis of past Board actions available.

The Minnesota Constitution makes specific reference to pardons and reprieves, giving the authority to grant these types of relief to the governor

and Board of Pardons in all cases except impeachment. Minn. Const. art. V, § 7. The present system of pardons extraordinary and commutations is a creature of statute. Minnesota Statutes, ch. 638, provides for three forms of relief which can be conferred by the Board of Pardons: **full pardons, commutations of sentence,** and **pardons extraordinary.** A full pardon is generally regarded as an act of grace. Commutation lessens the sentence. A pardon extraordinary has the effect of sealing the record and setting aside the conviction. At this time, the pardon extraordinary seals the record of that conviction and no one, including law enforcement, prosecuting agencies, courts, employers, etc., has access to a record absent a court order. By statute, an individual never has to disclose that conviction. However, the criminal record can be re-opened by court order upon subsequent criminal conduct by the offender.

Full pardons and commutations of sentence are extremely rare. To the contrary, applications for pardons extraordinary are granted in a very high percentage of cases. Since 1983, the Board of Pardons has granted 312 out of 376 (or approximately 83%) of the pardon extraordinary applications it reviewed. The Commission believes that pardons extraordinary are indeed extraordinary relief and should be used more sparingly.

In 1941, the Legislature introduced the pardon extraordinary. The original legislation was only applicable to offenders under 21 years of age as an act of protection, not unlike the Juvenile Court system. However, once the Youth Conservation Commission Act was passed in 1963, the need to protect the youthful offender no longer existed. At that point, the Legislature allowed the pardon extraordinary to be applied to adult offenders. In 1972, the law was amended to seal an adult offenders criminal history record. The sealing

of these records has become a major concern of the Commission. The Commission was also concerned by the fact that on receipt of a pardon extraordinary, federal authorities destroy criminal records.

The principal purpose of the pardon extraordinary, as explained to the Commission, is to help individuals who have paid their debt to society to obtain a fresh start and to protect them from employment discrimination by not having to reveal prior convictions. The Commission does not see that purpose as sufficient to deny law enforcement officials full knowledge of past convictions at the earliest stages of a criminal investigation. The sealed record also causes problems in cases where a person should be charged or sentenced as a multiple offender, but, because of the sealed record, the prior acts are unavailable to authorities. The 1991 Minnesota Legislature reflected similar concerns when it provided that conviction records in pardon extraordinary cases shall no longer be sealed, but rather that the court file shall include in it a copy of the pardon (Laws 1991, ch. 319, § 26).

There are, however, other issues which the Legislature may want to address. For example, should such records be public or available just to employers? If so, should it apply to any employer or to employers in selected fields, such as day care, teaching, law enforcement, nursing homes, etc.? The Commission concluded that an individual's criminal conviction record should be available for public scrutiny.

To protect applicants from unfair discrimination, the Commission urged the creation of statutory protection in circumstances where an applicant was refused employment because of a prior criminal record. The Commission suggested that the employer would have to demonstrate that the criminal conviction was directly related to the position sought. This is similar

to the protection under current law given public employees in the Criminal Rehabilitation Act (Minnesota Statutes, § 364).

The 1991 Minnesota Legislature also mandated victim input into the pardon process. All reasonable efforts are to be made to locate victims and give them notice of the pardon application. Victims have a right to submit an oral or written statement at the hearing on the pardon. In addition, the Legislature gave specific authority for law enforcement to be heard on the application (Laws 1991, ch. 319, § 27). The Commission supports this expanded victim and law enforcement participation in the pardon process.

The Commission recognized that these increased opportunities to be heard may also impact on the extent and nature of the hearing process. They raise administrative concerns regarding the resources available to the Board of Pardons to fully comply with these mandates. In addition, the expanded scope of the hearing process may create practical concerns regarding the time demands on the governor, attorney general, and chief justice for them to fully and adequately consider the applications before them. At present, over 80 applications are pending for consideration at the Board's next meeting.

The Commission recognized that the present pardon review process has created a temporary application backlog. At the same time, the Commission's recommendations are expected to tighten pardon extraordinary qualifications. As a result, the Commission recommends that there be a review of the administrative work load within two years of the implementation of these recommendations.

The Commission recommends that longer waiting periods be established before an individual is eligible for a pardon. Current rules require

an 18-month waiting period. The Commission recommends that this waiting period be extended, by law, to five years for property crimes and ten years for crimes against persons.

The Commission has chosen to submit to the Board of Pardons a set of general principles upon which it found consensus. The hope of the Commission is that these guiding principles will be presented to the Minnesota Legislature and will serve as a framework for legislative and Board review.

GENERAL PRINCIPLES

1. The Commission recommends that pardons extraordinary not result in criminal history data being erased. Rather, the grant of a pardon should be recorded as an addition to the offender's criminal record.

2. The Commission recommends that offenders be ineligible for a pardon extraordinary for a period of five years after expiration of sentence for property crimes, and ten years for crimes against persons.

3. The Commission recommends that if the Board of Pardons departs from the time limitation for eligibility as suggested in this report, the Board must provide a written statement explaining the reasons for departure.

4. The Commission recommends that pardon extraordinary applications be submitted under oath.

5. The Commission recommends that pardon extraordinary applications be published in the local newspaper in the county where the offense occurred.

6. The Commission recommends that victims be granted a reasonable opportunity to have input into the pardon process.

7. The Commission recommends that the Board of Pardons deliberations be closed to the public.

8. The Commission recommends that the Board of Pardons consider the applicant's length of residency in Minnesota since discharge from sentence. If the applicant has resided for more than one year in any other state during the time between discharge and application, the applicant shall supply a waiver of that state's data privacy restrictions.

9. The Commission recommends that a standardized court order setting aside a conviction, pursuant to Minnesota Statutes, § 638.02, subdivision 3, be established and the filing of that order with the Bureau of Criminal Apprehension should be mandatory.

10. The Commission recommends that an offender who has received a pardon extraordinary not be disqualified from employment unless the crime directly relates to the employment sought. The Commission suggests that this proposal be enacted into law.

11. The Commission recommends that funds be appropriated to automate the pardon process and provide statistical analysis capabilities.

12. The Commission recommends the Board of Pardons should be required to report the following information to the Legislature each year:

- a. The number of applications for pardons, commutations, and pardons extraordinary.
- b. The number granted.
- c. The offenses for which the grants were made.

13. The Commission recommends that the Board and the Legislature review the language in Minnesota Statutes, § 638.02, subdivision 2, which

limits pardons to those with a single recorded conviction. The Commission notes that the practice of the Board has been to the contrary.

14. The Commission recommends that the filing time of the application of a pardon extraordinary be changed from 30 days to 60 days before the hearing.

15. The Commission recommends that the Legislature review other judicial and legislative mechanisms for deleting or expunging the record of an individual, such as Minnesota Statutes, § 152.18, and § 609.166, to ensure fairness and equality in the process.

16. The Commission recommends that one year after the changes set forth in this report have been implemented an assessment be conducted of the staffing of the Board of Pardons to determine if resources are sufficient.

17. The Commission recommends that two years after the implementation of these recommendations there be a review of the Board of Pardons' administrative work load.