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Reprieves Return: Minnesota's Decision to Awaken the Reprieve

Mary Fee

Monica Shaffer

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REPRIEVES RETURN: MINNESOTA’S DECISION TO AWAKEN THE REPRIEVE

*Mary Fee & Monica Shaffer*¹

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¹ Mary Fee graduated from the University of Michigan Law School. She serves as General Counsel and Deputy Chief of Staff to Governor Tim Walz and Lieutenant Governor Peggy Flanagan.

Monica Shaffer graduated from Mitchell Hamline School of Law. In 2022, while in law school, she worked on Governor Tim Walz’s and Lieutenant Governor Peggy Flanagan’s legal team, providing support for the Governor’s work on the Board of Pardons.

We would like to thank all those who helped work on this Article, especially Justice Karl Procaccini and Ben Noeldner. The opinions expressed in this Article do not represent the opinions of the Governor’s Office or the Board of Pardons. We take responsibility for any errors. We do not endorse any legal theories or arguments that advocates may make before the Board of Pardons. This Article seeks to shed light on a lesser-known form of clemency and to encourage creativity and increased use of the clemency process in Minnesota.

I. INTRODUCTION

In 2022, a sixteen-year-old boy found himself in his second year of what Paul Schnell, Commissioner of Corrections, called “purgatory.”² Convicted of second-degree unintentional murder when he was fourteen, Carlos Dickerson Jr. was prosecuted as an adult and sent to the Lino Lakes prison to participate in the Youthful Offender Program (Program).³ The Program was not designed for long-term participants, and most juveniles participate for only a few months before they move into adult programming.⁴ However, Dickerson was the youngest person to ever enter the Program.⁵

While other juvenile participants came and went, Dickerson stayed. And federal law kept Dickerson isolated from others incarcerated at Lino Lakes because the law requires juveniles to be held separately from adults.⁶ At the time, Minnesota law also prevented the Department of Corrections from housing him—even temporarily—at the Red Wing Correctional Facility, where it sends most juvenile offenders.⁷ With two years left before he could move to adult programming, Dickerson was stuck.⁸ Neither the Minnesota Judicial Branch nor the Department of Corrections could provide Dickerson any relief for the situation, so he approached the Board of Pardons for an archaic form of relief: a reprieve.⁹

This Article examines the uniqueness of the Minnesota Board of Pardons (Board) by reviewing previous statutory limits to the Board’s power and the 2023 changes from the Minnesota Legislature through the lens of the reprieve—a largely unknown and little-used form of clemency. This Article will highlight the potential for reprieves as a form of clemency. First, Part II of the Article reviews the origins of

² Liz Sawyer, *For Minors Convicted as Adults, the Sentence Is ‘Purgatory,’* STAR TRIB. (Minneapolis) (Jan. 21, 2023), <https://www.startribune.com/for-minors-convicted-as-adults-the-sentence-is-purgatory/600245415> [https://perma.cc/K5T7-Z64M].

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*; see Prison Rape Elimination Act National Standards, 28 C.F.R. § 115.14 (2024).

⁷ Sawyer, *supra* note 2; see MINN. STAT. § 242.18 (2022) (repealed 2023); MINN. DEP’T OF CORR., DIV. DIRECTIVE 204.020, YOUTHFUL OFFENDERS IN ADULT FACILITIES (2015).

⁸ Sawyer, *supra* note 2.

⁹ *Id.*

clemency law in Minnesota.¹⁰ Next, Part III examines the nature of the reprieve today in Minnesota and nationally by reviewing statutes, caselaw, and trends.¹¹ Part IV then explains the changes enacted in 2023 by the Minnesota Legislature that overhauled the Board and conspicuously left reprieves on the table as a form of clemency.¹² Finally, Part V concludes by encouraging advocates and applicants across the state to consider creative uses of the reprieve and echoing the Supreme Court's assertion that clemency can take whatever form justice requires.¹³

II. ORIGINS OF THE MINNESOTA BOARD OF PARDONS

Clemency is “an act of leniency” or mercy.¹⁴ In Minnesota, it includes relief in the form of a pardon, commutation, or reprieve.¹⁵ Historically, “[c]lemency has long been considered an extraordinary remedy that can be extended for virtually any reason, whenever mercy, expediency, or personal whim dictate[.]”¹⁶ Roman emperors used clemency to excuse crimes that furthered patriotism or quelled mutinies;¹⁷ English monarchs used it to endear the sovereign to the subjects, promote loyalty, and preserve power;¹⁸ presidents and governors used it in early U.S. history to pardon rebels, insurrectionists, and (most famously) Confederate soldiers.¹⁹

By the time the Framers²⁰ drafted the U.S. Constitution, the English King's formerly unlimited powers of clemency had been reined in by Parliament.²¹ But when settling the American colonies, the King delegated to each colony's royal governor the broad power of clemency.²² The Framers imported these powers to the Executive Branch

¹⁰ See *infra* Part II.

¹¹ See *infra* Part III.

¹² See *infra* Part IV.

¹³ See *infra* Part V.

¹⁴ SAMUEL P. STAFFORD II, NAT'L CTR. FOR STATE CTS., CLEMENCY: LEGAL AUTHORITY, PROCEDURE, AND STRUCTURE xiii (1977).

¹⁵ MINN. STAT. § 638.011, subdiv. 3 (Supp. 2023).

¹⁶ Daniel T. Kobil, *The Quality of Mercy Strained: Wrestling the Pardoning Power from the King*, 69 TEX. L. REV. 569, 578 (1991).

¹⁷ *Id.* at 584.

¹⁸ *Id.* at 586.

¹⁹ *Id.* at 592–93.

²⁰ The term “Framers” refers to the individuals present at the Constitutional Convention.

²¹ Kobil, *supra* note 16, at 586–89.

²² *Id.* at 589.

through the U.S. Constitution.²³ The U.S. Supreme Court has repeatedly affirmed and leaned on the history of the clemency power as an act of grace.²⁴

The original 1857 Minnesota Constitution vested the pardon power in the Governor alone.²⁵ However, in 1895, the Legislature proposed an amendment that removed this unilateral authority and created the Board.²⁶ The amendment removed the language, “[a]nd he shall have power to grant reprieves and pardons after conviction for offenses against the state,” and replaced it with,

And he shall have power *in conjunction with the board of pardons*, of which the governor shall be ex-officio a member, and the other members of which shall consist of the attorney general of the state of Minnesota and the chief justice of the supreme court of the state of Minnesota, and whose powers and duties shall be defined and regulated by law, to grant reprieves and pardons after conviction for offenses against the state.²⁷

The Legislature changed this language in 1974 during a push “to make the Constitution more readable and stylistically correct,”²⁸ to arrive at the language that appears today:

The governor, the attorney general and the chief justice of the supreme court constitute a board of pardons. Its powers and duties shall be defined and regulated by law. The governor in conjunction with the board of pardons has power to grant reprieves and pardons after conviction for an offense against the state except in cases of impeachment.²⁹

²³ *Id.* at 590–92 (explaining the debate records from the Constitutional Convention and the framework of the Constitution that together demonstrate the importance of vesting clemency solely with the Executive).

²⁴ *Id.* at 594.

²⁵ MINN. CONST. of 1857, art. V, § 4 (“[A]nd he shall have power to grant reprieves and pardons after conviction for offences against the State, except in cases of impeachment.”).

²⁶ H.F. 875, 29th Leg., Reg. Sess. (Minn. 1895); Act approved Apr. 26, 1895, ch. 2, § 1, 1895 Minn. Laws 6.

²⁷ H.F. 875, 29th Leg., Reg. Sess. (Minn. 1895) (emphasis added).

²⁸ *Shefa v. Ellison*, 968 N.W.2d 818, 829 n.15 (Minn. 2022).

²⁹ MINN. CONST. art. V, § 7.

The structure of a clemency board on which the Governor sits is unusual—only four other states require the Governor to share the clemency power with a board.³⁰ Until 2023, clemency required a unanimous vote of the Board in Minnesota.³¹ Under that statutory framework, the Board could grant absolute or conditional pardons, commutations of sentences, pardons extraordinary, and reprieves.³² Pardons extraordinary, which set aside and nullified a conviction for individuals who had completed their criminal sentences and met a prescribed waiting period, were the Board’s primary form of relief.³³ Less common were commutations, which reduce or alter a person’s ongoing sentence.³⁴ For example, a person could request that the Board modify multiple sentences to run concurrently, instead of consecutively; that their sentence be shortened; or that their eligibility for parole be moved forward.³⁵

³⁰ MARGARET COLGATE LOVE, *50-State Comparison: Pardon Policy & Practice*, RESTORATION OF RTS. PROJECT, <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisoncharacteristics-of-pardon-authorities-2> [<https://perma.cc/KSR3-UEFN>] (explaining that Minnesota (before the 2023 legislative session), Florida, Nebraska, and Nevada were the only states that required the Governor to act concurrently with others, not just on the recommendation of others, to award clemency).

³¹ MINN. STAT. § 638.02, subdiv. 1 (2022) (repealed 2023). The Board faced Dickerson’s request only months after the Minnesota Supreme Court decided *Shefa v. Ellison*, a case that shone a light on the Board’s limitations. 968 N.W.2d at 818 (listing the case as filed on January 12, 2022); see *infra* text accompanying note 112 (stating that Dickerson appeared before the Board in December 2022). The Board heard Amreya Rahmeto Shefa’s application for a pardon in 2021, but because only the Governor and Attorney General voted in favor of granting clemency (the Chief Justice voted against), the Board denied Shefa’s relief. *Shefa*, 968 N.W.2d at 823. For a comprehensive review of what happened before the Board in Shefa’s pardon application and hearing, see Maddie Post, *Inefficient Mercy: The Procedural, Constitutional, and Prudential Issues that Plague Minnesota’s Pardoning Process*, 48 MITCHELL HAMLIN L. REV. 307, 311–16 (2022). The supreme court held that the statute required a unanimous vote, but that the Constitution did not. *Id.* at 830 (“Acting within these constitutional limitations, the Legislature may choose any voting scheme that it deems appropriate.”). In 2023, the Legislature removed the unanimous voting requirement as part of its overhaul of the clemency process. See *infra* Part IV.

³² MINN. STAT. §§ 638.01–.02 (2022) (repealed 2023); *Board of Pardons Application Forms*, MINN. DEP’T OF CORR., <https://mn.gov/doc/about/pardon-board/application-forms> [<https://perma.cc/T7K8-PT3M>].

³³ Karl C. Procaccini, *The Prerogative of Mercy in Minnesota: Current Clemency Process and Recent Trends*, 19 U. ST. THOMAS L.J. 569, 571–72 (2023). Pardons extraordinary were a statutorily created form of relief originally designed to pardon individuals who committed a crime before age twenty-one. *Id.* at 571.

³⁴ *Id.* at 575.

³⁵ A review of the Minnesota Board of Pardons before 2023 is outside the scope of this Article. For more information, see articles written by Maddie Post, *supra* note 31, and Karl Procaccini, *supra* note 33.

In the past few years, the Board has expanded the forms of clemency it has granted. For instance, in 2020, the Board granted its first posthumous pardon to correct a heinous wrong in Minnesota history.³⁶ In 1920, a white woman in Duluth, Minnesota, accused four Black men of raping her, and in response, a mob lynched three of the men—Elias Clayton, Elmer Jackson, and Isaac McGhie.³⁷ Although Max Mason escaped the lynching, an all-white jury convicted him based on flimsy evidence and testimony.³⁸ Three days before the 100-year anniversary of the lynching, Mason finally received some justice in the form of a posthumous pardon extraordinary from the Board.³⁹ That same summer, the Board granted its first commutation in almost thirty years.⁴⁰ In 2021, the Board granted its first absolute pardon in over thirty-five years.⁴¹ The absolute pardon ensured that the recipient could avoid deportation for her nonviolent crimes, which had occurred back in 2008.⁴²

Then in 2022, Carlos Dickerson Jr. presented the Board with another opportunity to broaden the scope of clemency when he made an uncommon request—for a reprieve.

III. RETURN OF THE REPRIEVE

The reprieve derives from English common law and the power of the King, just like other forms of clemency.⁴³ The reprieve existed to promote justice and prevent immediate executions.⁴⁴ In English law, Blackstone defined a reprieve as “the withdrawing of a sentence for an interval of time;

³⁶ Dan Kraker, *Minn. Grants State's First Posthumous Pardon to Max Mason, in Case Related to Duluth Lynchings*, MINN. PUB. RADIO (June 12, 2020), <https://www.mprnews.org/story/2020/06/12/minn-grants-states-first-posthumous-pardon-to-max-mason> [<https://perma.cc/6VLC-TK9Q>].

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Procaccini, *supra* note 33, at 581.

⁴¹ *Id.*

⁴² Tim Blotz, *Minnesota Woman Granted First Unconditional Pardon in 35 Years*, FOX 9 (Jan. 25, 2021), <https://www.fox9.com/news/minnesota-woman-given-first-full-state-pardon-in-more-than-35-years> [<https://perma.cc/5XKE-T8FJ>].

⁴³ See *Haugen v. Kitzhaber*, 306 P.3d 592, 602 (Or. 2013) (noting “[t]he federal clemency power derives from English common law” under which the king had the power to “grant[] pardons or reprieves”).

⁴⁴ *Id.* at 603.

whereby the execution is suspended.”⁴⁵ A reprieve was the most limited form of clemency because it only postponed or paused punishment temporarily.⁴⁶ Typically, the King exercised the power to allow a person to complete any pending appeals.⁴⁷

The Minnesota Constitution vests authority to grant reprieves in the Board but provides limited guidance: under Article V, the Board has the “power to grant reprieves and pardons after conviction.”⁴⁸ This language is nearly identical to the U.S. Constitution, which provides that the President has the “Power to grant Reprieves and Pardons” but does not include the language “after conviction.”⁴⁹ Minnesota’s adoption of the U.S. Constitution’s language—even with the additional clause—demonstrates an intent to provide the Board with a similar, if slightly more limited, level of power to that held by the President.⁵⁰ It also implies that the prerogatives of mercy and grace provided by the King of England to the royal governors, written into the U.S. Constitution by the Framers, carry through the Minnesota Constitution to the Governor and the Board today.

A. *Minnesota Statutes*

Minnesota law provides few guideposts for determining the origins and limitations on reprieves in Minnesota. One possibility is that the reprieve was intended to be a form of clemency linked to the death penalty. However, its consistent presence in law, even after the Legislature abolished the death penalty, makes clear that it exists as an independent form of clemency in its own right.

⁴⁵ *Id.* at 598 (quoting WILLIAM BLACKSTONE, 4 COMMENTARIES ON THE LAWS OF ENGLAND 387 (1769)).

⁴⁶ Kobil, *supra* note 16, at 578.

⁴⁷ *Id.*

⁴⁸ MINN. CONST. art. V, § 7.

⁴⁹ U.S. CONST. art. II, § 2, cl. 1. The additional phrase “after conviction” suggests that while the President may grant clemency for alleged crimes, the Board is limited to actual convictions. See Frank O. Bowman III, *After Trump: Limiting the President’s Pardon Power: Are Blanket Pardons Constitutional?*, 33 FED. SENT’G REP. 301, 302 (2021) (explaining that the Constitutional Convention considered and declined to include this limitation of “after conviction” within Article II, Section 2).

⁵⁰ See Laura Palacios, Note, *The Presidential Pardon Power: Interpreting Its Scope and Enacting an Effective Solution to Limit Its Potential for Abuse*, 40 T. JEFFERSON L. REV. 209, 218–19 (2018) (explaining the attempted addition of “after conviction” during the Constitutional Convention).

“Reprieve” is not defined in statute or in the Constitution. Prior to the 2023 overhaul of the chapter, the Minnesota Statutes 2022, chapter 638, mentioned the word “reprieve” three times.⁵¹ First, reprieve appeared as an enumerated power of the Board: “The board may grant pardons and reprieves and commute the sentence”⁵² The word next appeared within the instructions to the Board requiring the issuance of a warrant to effectuate a reprieve: “The Board of Pardons may issue its warrant, under its seal, to any proper officers to carry into effect any pardon, commutation, or reprieve.”⁵³ Finally, it appeared in the requirements of record keeping: “The Board of Pardons shall keep a record of every petition received, and of every pardon, reprieve, or commutation”⁵⁴ The term did not appear in the sections explaining the format of issuance and Board voting,⁵⁵ dictating the meetings,⁵⁶ granting the right for victims and law enforcement to submit recommendations on applications,⁵⁷ or requiring the Board to file reports with the Legislature.⁵⁸

Minnesota became a state in 1858.⁵⁹ At that time, the 1858 Minnesota Statutes included the concept of a reprieve but called it a respite: the chapter titled “Judgments in Criminal Cases, and the Execution Thereof” included a section that expressly outlined three categories for respites: for

⁵¹ MINN. STAT. § 638.01 (2022) (amended 2023); MINN. STAT. §§ 638.03, 638.07 (2022) (repealed 2023).

⁵² MINN. STAT. § 638.01 (2022) (amended 2023).

⁵³ MINN. STAT. § 638.03 (2022) (repealed 2023).

⁵⁴ MINN. STAT. § 638.07 (2022) (repealed 2023).

⁵⁵ MINN. STAT. § 638.02 (2022) (repealed 2023) (“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.”).

⁵⁶ See MINN. STAT. § 638.04 (2022) (repealed 2023) (“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.”).

⁵⁷ See *id.* (“The statement may . . . give the victim’s recommendation on whether the application for a pardon or commutation should be granted or denied. . . . [A]ny law enforcement agency may . . . giv[e] its recommendation on whether the application should be granted or denied.”).

⁵⁸ MINN. STAT. § 638.075 (2022) (repealed 2023) (“By February 15 of each year, the Board of Pardons shall file a written report with the legislature containing . . . the number of applications received by the board during the preceding calendar year for pardons, pardons extraordinary, and commutations of sentence . . .”).

⁵⁹ *Admission of Minnesota into the Union 1858*, OFF. OF THE MINN. SEC’Y OF STATE STEVE SIMON, <https://www.sos.state.mn.us/about-minnesota/minnesota-government/admission-of-minnesota-into-the-union-1858> [<https://perma.cc/7AEV-57KQ>].

insanity, for pregnancy, and at the discretion of the Governor.⁶⁰ Because the term “reprieve” still appeared in the Minnesota Constitution but “respite” appeared in statutes, it is possible that the Legislature intended a respite to be something distinct from a reprieve.⁶¹ However, by the beginning of the 1900s, the term “reprieve” had replaced “respite” in the statutes.⁶²

Some reprieve statutes discussed the term in the context of the death penalty. Even there, however, a close reading of the language suggests that reprieves were not limited to that circumstance. For example, section 638.02 previously provided an exception to the unanimous vote requirement for a subset of reprieves:

Such board may grant an absolute or a conditional pardon, but every conditional pardon shall state the terms and conditions on which it was granted. *A reprieve in a case where capital punishment has been imposed may be granted by any member of the board, but for such time only as may be reasonably necessary to secure a meeting for the consideration of an application for pardon or commutation of sentence.* 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.⁶³

The italicized sentence implies the existence of reprieves for reasons other than capital punishment. The entire clause, “in a case where capital punishment has been imposed,” would be superfluous if a reprieve were necessarily limited to cases of capital punishment. Under canons of construction, a statute

⁶⁰ MINN. STAT. § 116.8 (1858).

⁶¹ Compare MINN. CONST. art. V, § 7 (including the word “reprieve”), with MINN. STAT. § 116.8 (1858) (including the word “respite”).

⁶² MINN. STAT. § 5426 (1905).

⁶³ MINN. STAT. § 5425 (1905) (emphasis added). The 2022 version of the statute is nearly identical except for the deleted middle sentence: “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.” MINN. STAT. § 638.02, subdiv. 1 (2022) (repealed 2023). This middle sentence remained in the statute until 1963, at which point the Legislature removed it without recorded explanation.

should not be interpreted in a way that would render other provisions of the statute superfluous.⁶⁴ No other statutory instances of reprieve are modified by the descriptor “in a case where capital punishment has been imposed,” which further suggests that the Legislature intended uses for a reprieve beyond capital punishment cases.⁶⁵

Finally, and most relevant to the argument that reprieves were not and are not limited to capital cases, is the continuing presence of reprieves in law. Reprieves have remained sparsely, but stubbornly, throughout the pardon statutes.⁶⁶ While the Legislature abolished the death penalty in Minnesota in 1911,⁶⁷ it left the language of reprieves largely unchanged for more than a hundred years. For example, the only differences between the 1905 and the 2022 language in this section describing the Board’s authority are those in italics below:

The board of pardons shall consist of the governor, the chief justice of the supreme court, and the attorney general. *Said* board may grant pardons and reprieves and commute the sentence of any person convicted of any offence against the laws of the state, in the manner and under the conditions and *regulations* hereinafter prescribed, but not otherwise.⁶⁸

⁶⁴ Jacob Scott, *Codified Canons and the Common Law of Interpretation*, 98 GEO. L.J. 341, 368 tbl.3 (2010) (explaining the textual canons, including the rule of surplusage).

⁶⁵ The text also suggests that in cases involving capital punishment, the reprieve aligned with the traditional notions of it being short-lived and for a limited purpose: “[F]or such time only as may be reasonably necessary to secure a meeting for the consideration of an application for pardon or commutation of sentence.” MINN. STAT. § 5425 (1905).

⁶⁶ The sections where the word “reprieve” appeared in the 2022 statutes were the same sections in which it appeared in 1905: the authority, the unanimous vote requirement, the ability to issue a warrant, and the responsibility to keep records sections. See MINN. STAT. §§ 5424–5426, 5430 (1905). In 1905, the only available forms of clemency were pardon, commutation, or reprieve—so it is not entirely clear as to why the third form of clemency is absent from the application and procedure sections of the Board of Pardons chapter. See MINN. STAT. §§ 5428–5429 (1905). Minnesota did not introduce pardons extraordinary until 1941. See MINN. STAT. § 638.02 (1941). Through 2022, the Board had the power to grant pardons, commutations, and pardons extraordinary (and reprieves). See MINN. STAT. §§ 638.01–.02 (2022).

⁶⁷ *Minnesota*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/minnesota> [<https://perma.cc/MJP6-EAR4>].

⁶⁸ MINN. STAT. § 5424 (1905) (emphasis added).

The word “said” changed to “the” and the word “regulations” changed to “rules.”⁶⁹

In sum, the history of both the Minnesota Constitution and Statutes reiterates that a reprieve was and remains a form of clemency available to the Board, outlasting the abolishment of the death penalty and decades of statutory updates. However, neither provides any particularly substantive guidance on its use.

B. Caselaw

Minnesota caselaw also provides little insight into the use of reprieves, as the word only appears in cases that quote the Minnesota Constitution.⁷⁰ However, cases from other jurisdictions provide slightly more insight into the usage of reprieves.

The U.S. Supreme Court’s 1856 opinion in *Ex parte Wells* provides an important backdrop: the opinion discussed the President’s power to grant a conditional pardon and transform the sentence of death by hanging into life imprisonment.⁷¹ One attorney argued that the transformation of the sentence from death to life imprisonment was a power not granted to the President because this commuted the sentence without an enumerated grant of that power in the Constitution or any statute.⁷² The Court held that the clemency power indicated by the words “reprieve” and “pardon” was not strictly limited to narrow definitions of those terms but instead that the Framers had intended the words to encompass the President’s power to broadly grant clemency.⁷³ The Court emphasized the Executive’s ability to devise whatever remedy was appropriate within the realm of “reprieves and pardons” as understood at the time of this nation’s founding.⁷⁴

A few decades later, the Supreme Court considered the many forms of English reprieves in the 1916 case *Ex parte*

⁶⁹ Compare *id.*, with MINN. STAT. § 638.01 (2022) (amended 2023).

⁷⁰ See *Shefa v. Ellison*, 968 N.W.2d 818 (Minn. 2022); *Cole v. Star Tribune*, 581 N.W.2d 364, 369 (Minn. Ct. App. 1998); *State v. Meyer*, 37 N.W.2d 3, 13–14 (Minn. 1949); *Guy v. Utecht*, 12 N.W.2d 753, 756 (Minn. 1943). A few other cases use the word colloquially, but that is not relevant here.

⁷¹ *Ex parte Wells*, 59 U.S. 307, 309 (1855).

⁷² *Id.* at 314.

⁷³ *Id.* at 314–15 (“The real language of the constitution is general, that is, common to the class of pardons, or extending the power to pardon to all kinds of pardons known in the law as such, whatever may be their denomination.”).

⁷⁴ *Id.*

United States.⁷⁵ The Court stated that a reprieve must accomplish “a purpose contemplated by law.”⁷⁶ This means that a reprieve can take many forms; the key is that the purpose or outcome must be one that the laws of England identified prior to the creation of the United States. In England, reprieves could be granted by a judge when there was doubt or insufficiency of the conviction, when the laws of nature demanded it (such as in cases of insanity or pregnancy), or when the King declared it.⁷⁷ This power was not reserved only to the King, but the King seemed to have broader discretion and greater authority to be creative in the use of a reprieve. The original 1858 Minnesota Statutes and the Governor’s power to unilaterally make these decisions in the interest of justice follows the original English reprieve—the statutes mention the same examples for when the laws of nature would require a reprieve and the broad or creative use of a reprieve unilaterally by the King (or the Governor, or later, the Board).⁷⁸ Relevantly, the Court does not limit its discussion to the capital context, making clear that even by 1916, the Court understood that reprieves could have a broader use.⁷⁹

Outside the Supreme Court, two other federal cases discuss reprieves in instances not involving the death penalty—one from the Ninth Circuit and another from the Second Circuit.

In 2018, the Ninth Circuit case, *United States v. Buenrostro*, combined two prior U.S. Supreme Court opinions to suggest another creative theory for clemency power.⁸⁰ First, the opinion restated the holding from *Schick v. Reed* that the power to commute a sentence derives from the clemency power to “grant Reprieves and Pardons.”⁸¹ The court combined this holding with the holding from *United States v. Wilson*, which stated that the pardon power bestows “an act of grace” on the recipient by removing the particular

⁷⁵ 242 U.S. 27, 43–44 (1916).

⁷⁶ *Id.* at 44.

⁷⁷ *Id.* at 43–44 (enumerating three kinds of reprieves: *ex mandato regis*, *ex arbitrio judicis*, and *ex necessitate legis* (citing 2 MATTHEW HALE, PLEAS OF THE CROWN, 412 (1678))).

⁷⁸ See MINN. STAT. § 116.8 (1858) (providing the text of the 1858 Minnesota Statutes section about what is effectively the Governor’s reprieve power).

⁷⁹ See *Ex parte United States*, 242 U.S. at 43–44 (using a reprieve to withdraw “a sentence for an interval of time” without mention of capital sentences, or to “respite the execution” of a sentence in reference to a capital conviction).

⁸⁰ *United States v. Buenrostro*, 895 F.3d 1160 (9th Cir. 2018).

⁸¹ *Id.* at 1166 (quoting *Schick v. Reed*, 419 U.S. 256, 260 (1974)).

punishment imposed upon the person.⁸² When those holdings were read together, the Ninth Circuit revived the holding of *Ex parte Wells*, implying that so long as the broader principle of clemency (an act of grace) remains the objective, the Executive can fashion new forms of relief from the present tools of clemency (reprieve, pardon, and commutation) when the situation requires.

Then, in the Second Circuit in 2022, Judge Underhill echoed *Buenrostro*'s reasoning in his dissent in *United States v. Peguero*.⁸³ Judge Underhill wrote that parole and probation are forms of reprieve.⁸⁴ He reasoned that both are discretionary and are ultimately grants of conditional liberty contingent on restrictions.⁸⁵ Therefore, the imposition of parole or probation is effectively a "reprieve from prison."⁸⁶ When an offender violates a term of parole or probation, the person's reprieve may be revoked, and they are returned to prison for punishment.⁸⁷ Judge Underhill's dissent further supports the notion that reprieves can take many forms so long as the reprieve is in the interest of grace. He suggests that a reprieve is inherently temporary but could also last as long as the duration of the sentence.⁸⁸ Underhill's dissent also emphasizes the impermanent nature of this type of reprieve because it can be revoked if the recipient does not follow the required conditions.⁸⁹

While these federal cases provide some additional context for what a reprieve is and how it may be used, they also emphasize that the form of relief remains malleable.

C. Reprieves Nationally

Finally, looking to other states' practices provides other examples of the broad uses and scope of relief that reprieves can provide.

In recent years, the federal government has granted reprieves sparingly. The most recent use of a reprieve came from President Clinton, who granted two reprieves, both to

⁸² *Id.* (quoting *United States v. Wilson*, 32 U.S. 150, 160 (1833)).

⁸³ 34 F.4th 143 (2d Cir. 2022).

⁸⁴ *Id.* at 170–71 (Underhill, J., dissenting).

⁸⁵ *See id.*

⁸⁶ *Id.* at 170.

⁸⁷ *See id.* at 170–71 (explaining that both parole and probation are "discretionary reprieve[s] from prison, once considered an act of grace to one convicted of a crime" (quotation omitted)).

⁸⁸ *See id.*

⁸⁹ *Id.*

the same man.⁹⁰ The reprieves postponed the man's execution from August to December, and then from December to June.⁹¹ The Pew Research Center notes that many presidents have issued "other" forms of clemency (beyond pardons and commutations), including reprieves, remissions, and respites.⁹²

Many states grant reprieves to postpone capital sentences, but they also employ other creative uses for reprieves. For instance, in California, reprieves can be used to change where a person serves a portion of their sentence.⁹³ Governor Newsom has granted temporary medical reprieves, allowing the California Department of Corrections and Rehabilitation to place inmates deemed "a high medical risk" in alternative community placements, so long as those placements were "consistent with public health and public safety."⁹⁴ He also granted a "reprieve of sentence" to several

⁹⁰ See *Commutations Granted by President William J. Clinton (1993–2001)*, OFF. OF THE PARDON ATT'Y, <https://www.justice.gov/pardon/commutations-granted-president-william-j-clinton-1993-2001> [<https://perma.cc/U7KG-ECDF>].

⁹¹ *Id.* (showing the reprieves for Juan Raul Garza on August 2, 2000, and again on December 11, 2000).

⁹² John Gramlich, *Trump Used His Clemency Power Sparingly Despite a Raft of Late Pardons and Commutations*, PEW RSCH. CTR. (Jan. 22, 2021),

<https://www.pewresearch.org/short-reads/2021/01/22/trump-used-his-clemency-power-sparingly-despite-a-raft-of-late-pardons-and-commutations> [<https://perma.cc/AH3U-AYJJ>]. Presidents have also imposed blanket delays on the execution of prisoners on death row through moratoria—implementing protocols and regulations or conducting reviews of administrative laws in the Department of Justice. See Michael Tarm & Alanna Durkin Richer, *What's the Status of the U.S. Death Penalty?*, ASSOC. PRESS (Mar. 13, 2023),

<https://apnews.com/article/death-penalty-federal-executions-saipov-868f1175af273ecf925cc59eaf889278> [<https://perma.cc/8QMA-TKTR>]; see also Memorandum from Merrick Garland, Att'y Gen. on Federal Executions Pending Review of Policies and Procedures to the Deputy Att'y Gen., Assoc. Att'y Gen. & Heads of Dep't Components (July 1, 2021),

<https://www.justice.gov/opa/page/file/1408636/download>

[<https://perma.cc/3XC3-V5RS>]. Conversely, in the final months of former President Trump's administration, then-Attorney General Barr changed the policies and protocols to "make it easier to schedule and perform federal executions." *New Details Emerge Surrounding Federal Executions Under Trump Administration*, DEATH PENALTY INFO. CTR. (Oct. 6, 2023),

<https://deathpenaltyinfo.org/news/new-details-emerge-surrounding-federal-executions-under-trump-administration> [<https://perma.cc/R8MD-MDE7>]. The Biden administration rescinded those changes and issued a moratorium on executions. See Tarm & Richer, *supra*; Garland, *supra*.

⁹³ Press Release, Office of Governor Gavin Newsom, Governor Newsom Grants Executive Clemency (July 1, 2022),

<https://www.gov.ca.gov/2022/07/01/governor-newsom-grants-executive-clemency-7-1-22> [<https://perma.cc/CQ8M-KH33>].

⁹⁴ *Id.* In Minnesota, the Commissioner of Corrections has the authority to place inmates on conditional medical release. MINN. STAT. § 244.05, subdiv. 8 (Supp. 2023).

incarcerated individuals allowing them to transfer to an alternative placement while waiting to complete the parole grant review process.⁹⁵

Reprieves may also provide a workaround when other systems do not provide the specific relief an incarcerated individual needs. In Texas, a reprieve can provide relief for individuals who need to appear in civil court proceedings, are terminally ill or totally disabled, require emergency medical supervision, or need to attend to family emergencies.⁹⁶ Georgia uses reprieves for similar purposes—to allow temporary compassionate release for a person to visit a dying family member, attend a funeral, or provide brief support to loved ones.⁹⁷ Nebraska uniquely employs reprieves to lift the fifteen-year driver's license revocation sentence imposed for a driving under the influence conviction.⁹⁸

States that have abolished the death penalty continue to include reprieves in their constitutions, laws, and codes.⁹⁹ In New Jersey, Governor Murphy used the power to grant reprieves to relieve select inmates from the threats of the pandemic.¹⁰⁰ In New Mexico, the clemency instructions and

⁹⁵ See GOVERNOR GAVIN NEWSOM, EXECUTIVE REPORT ON PARDONS, COMMUTATIONS OF SENTENCE, AND REPRIEVES 431–32 (2022); GOVERNOR GAVIN NEWSOM, EXECUTIVE REPORT ON PARDONS, COMMUTATIONS OF SENTENCE, AND REPRIEVES 217 (2021).

⁹⁶ *What Is an Emergency Medical Reprieve, Reprieve for Family Emergency, or Emergency Reprieve to Attend Civil Court Proceedings?*, TEX. BD. OF PARDONS & PAROLES (Jan. 2, 2019),

https://www.tdcj.texas.gov/bpp/exec_clem/Reprieve.html

[<https://perma.cc/4KJP-44FK>]. To request a reprieve, the inmate, or another person on their behalf, submits a written application to the Texas Board of Pardons and Paroles, which considers the application and submits a recommendation to the Governor. See 37 TEX. ADMIN. CODE § 143.31 (2024).

⁹⁷ *Reprieves & Commutations*, STATE BD. OF PARDONS & PAROLES, <https://pap.georgia.gov/parole-consideration/parole-process-georgia/reprieves-commutations> [<https://perma.cc/9XGK-HC6R>]. The Governor does not grant clemency in Georgia but appoints members to the Board of Pardons and Paroles, which grants clemency. See GA. CONST. art. IV, § 2.

⁹⁸ *Reprieve of the Fifteen Year License Revocation*, NEB. DEP'T OF MOTOR VEHICLES, <https://dmv.nebraska.gov/legal/reprieve-fifteen-year-license-revocation> [<https://perma.cc/ZT7U-CKBP>]. The Department of Motor Vehicles receives the application and makes a recommendation to the Board of Pardons. *Id.* The applicant may then receive a hearing from the Board of Pardons, which is responsible for granting the relief. *Id.*

⁹⁹ See, e.g., IOWA CODE §§ 914.1–7 (2024); ILL. ADMIN. CODE tit. 20, § 1610.180 (2024); MICH. ADMIN. CODE r. 791.7760 (2024).

¹⁰⁰ Press Release, Phil Murphy, Governor of New Jersey, Governor Murphy Signs an Executive Order to Establish a Process to Grant Temporary Reprieve to Certain At-Risk Inmates (Apr. 10, 2020), <https://www.nj.gov/governor/news/news/562020/20200410d.shtml> [<https://perma.cc/UEC8-HZNC>].

application include information about applying for a reprieve.¹⁰¹

Even when reprieves appear in the context of capital punishment, in many states the reprieve is no longer a temporary form of clemency. For example, following his own moratorium on the death penalty, the Governor of Washington issued a “warrant of reprieve” in 2016 to stop the execution of an inmate until the Legislature abolished the death penalty in 2023.¹⁰² Similarly, the Governor of California issued a moratorium through executive order, granting indefinite reprieves to the 737 inmates awaiting the death penalty in 2019.¹⁰³ In Pennsylvania, prosecutors criticized this practice, accusing Governor Wolf (and now Governor Shapiro) of misusing what was intended only as a temporary tool to provide permanent relief.¹⁰⁴ The argument that these states have recharacterized the reprieve holds some merit, but it appears that the moratoria last only as long as the Governor remains in office. Looking at these examples of modern reprieves in the context of the death penalty, it is clear that a reprieve may still be temporary but can last for years rather than days or months, and rather than granting reprieves to applicants individually, governors may issue them as blanket policies.

While the original use of a reprieve—to pause the execution of a sentence, often for capital punishment—still exists, many states have adapted their use of reprieves to

¹⁰¹ See *Apply for Clemency*, OFF. OF THE GOVERNOR MICHELLE LUJAN GRISHAM, <https://www.governor.state.nm.us/contact-the-governor/apply-for-clemency> [<https://perma.cc/2UP4-MRZK>].

¹⁰² *Washington Governor Issues Reprieve, Calls for Abolition of Death Penalty*, DEATH PENALTY INFO. CTR. (Jan. 3, 2017), <https://deathpenaltyinfo.org/news/washington-governor-issues-reprieve-calls-for-abolition-of-death-penalty> [<https://perma.cc/5JCT-5M4D>]; Lisa Baumann, *Washington State Officially Abolishes Death Penalty*, ASSOCIATED PRESS (Apr. 20, 2023), <https://apnews.com/article/death-penalty-abolished-washington-cf9f7ebcedofdbadc704d362109ac162> [<https://perma.cc/QAE6-BDWW>].

¹⁰³ GOVERNOR GAVIN NEWSOM, EXECUTIVE REPORT ON PARDONS, COMMUTATIONS OF SENTENCE, AND REPRIEVES 318–20 (2019). California still imposes the death penalty and has the largest death row in the country. Eric Westervelt, *California Says It Will Dismantle Death Row. The Move Brings Cheers and Anger*, NAT’L PUB. RADIO (Jan. 13, 2023), <https://www.npr.org/2023/01/13/1148846720/california-says-it-will-dismantle-death-row-the-move-brings-cheers-and-anger> [<https://perma.cc/CG42-ENB9>].

¹⁰⁴ Marc Levy, *Pennsylvania Governor Blocks Death Penalty, Calls for Repeal*, ASSOCIATED PRESS (Feb. 16, 2023), <https://apnews.com/article/josh-shapiro-crime-pennsylvania-state-government-legal-proceedings-tom-wolf-888585cae5ffddoc5e7acadb35501db3> [<https://perma.cc/X4R3-RWXB>].

achieve the unique forms of justice a situation may require, expanding both the scope and timing of this form of clemency.

D. Minnesota's First Modern Reprieve

Minnesota joined the ranks of many other states when, in 2022, it employed a reprieve to find a creative solution for a non-capital case.

In 2020, at the age of fourteen, Carlos Dickerson Jr. was the youngest person in Minnesota history to be certified and prosecuted as an adult.¹⁰⁵ He pleaded guilty to second-degree unintentional murder, and a Ramsey County judge sentenced him to twelve years in prison, the first several of which were to be served in the Youthful Offender Program (Program) in the Lino Lakes Prison.¹⁰⁶ Most minors sentenced to the Program are admitted with less than a year to spend in the Program—the average length of stay is 209 days.¹⁰⁷ Meanwhile, Dickerson was set to spend four or five times that long in the Program, and often without the company of other juveniles.¹⁰⁸

Dickerson sought help from the American Civil Liberties Union (ACLU) and the Commissioner of Corrections Paul Schnell, asking to be relocated to Red Wing, a juvenile correctional facility.¹⁰⁹ Red Wing provides “daily treatment programs [for] substance use, anger management and childhood trauma,” and offers coursework to complete a GED and learn trade skills.¹¹⁰ Unfortunately, under then-existing state law, the Department of Corrections lacked authority to transfer Dickerson.¹¹¹

In December 2022, Dickerson’s application was the last heard before the Minnesota Board of Pardons on the final day of that session’s meeting.¹¹² Attending the hearing by Zoom, Dickerson’s youthful face appeared by video on screens

¹⁰⁵ Sawyer, *supra* note 2.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *See id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* To prevent this from happening again, in 2023, the Legislature passed a law that gives the Commissioner of Corrections the ability to transfer an inmate as necessary to support the person’s rehabilitation. MINN. STAT. § 242.18(b) (Supp. 2023). Specifically, in cases where a juvenile is certified as an adult, the commissioner may commit the juvenile to whatever “facility that best meets [the juvenile’s] rehabilitative needs.” *Id.*

¹¹² The description of Dickerson’s hearing comes from the authors’ own observations of the December 20, 2022, Board of Pardons meeting.

before the Board, while Dickerson's family and attorneys sat in the room, ready to plead his case. The hearing began with an explanation of his request, followed by tearful testimony from Dickerson's grandparents explaining the frequent calls from their grandson expressing a need for some company. Lastly, Dickerson spoke. Reading from a notebook clutched in his hands, his voice shaking, he testified about how he spent his time at Lino Lakes and what he hoped to accomplish at Red Wing. When he finished, Governor Walz asked Dickerson about his favorite subject in school, underscoring again the significance of this application. After the testimony finished, the Board began discussing creative solutions.

The Board members first discussed whether the Board even had the authority to take the action Dickerson was requesting. While Dickerson, his attorney, and his family looked on, the Board determined that a reprieve of this kind would be proper and would fit within the Board's authority. The Board agreed to temporarily suspend Dickerson's adult certification until he turned eighteen, so that the Commissioner of Corrections could transfer him to Red Wing. The Board reminded Dickerson that the reprieve required him to satisfy several conditions, including participation in programming and compliance with all rules,¹¹³ and that if he failed, his adult certification could be reinstated by the Department of Corrections. The Board concluded by wishing Dickerson well in the years ahead and expressing hope for his future.

This creative use of a reprieve allowed the Board to provide specific relief that would have otherwise been unavailable to Dickerson. Dickerson's case serves as an example of the modern reprieve: a creative solution to achieve specific justice.

IV. PARDON REFORM AND OPENING THE DOOR FOR MORE REPRIEVES

The meeting at which the Board considered Dickerson's request for a reprieve was one of the last Board meetings of its kind. Weeks after the meeting, the 2023 legislative session began and the Legislature heard proposals

¹¹³ Dickerson's reprieve included the following conditions: that Dickerson remain detained at Red Wing and committed to the Commissioner of Corrections; that Dickerson participate and progress in programming determined by the Commissioner; and that Dickerson refrain from engaging in behavior that the Commissioner considers to endanger others or the effectiveness of other residents' programming.

to fundamentally overhaul Minnesota Statutes chapter 638 by increasing the capacity for the Board and streamlining the clemency process. The legislation received support from the Minnesota Department of Corrections, the Governor's Office, national clemency experts, prosecutors, and victim-advocate groups alike.¹¹⁴

Commissioner of Corrections, Paul Schnell, testified that the change in the law “makes clemency a priority in our state.”¹¹⁵ When explaining the bill, he testified that “at its core, this bill prioritizes needed supports and structure for full engagement in the pardon process, making it accessible to more Minnesotans and providing enhanced capacity for . . . some of the three busiest people in [the] state.”¹¹⁶ He went on to explain that the changes allow an “antiquated but important process” to improve so that it can be effective in today's world.¹¹⁷

The changes were overdue. In the last five years, petitions for clemency in Minnesota increased 325 percent.¹¹⁸ Because of the changes, Minnesota falls closer in line with other states. Despite being a “low incarceration state,”¹¹⁹ Minnesota's clemency process failed to keep up with the holistic approach to criminal justice for which recent

¹¹⁴ *Board of Pardons Provisions Modified, Clemency Review Commission Established, Report Required, Rulemaking Authorized, and Money Appropriated: Hearing on H.F. 2788 Before the H. Pub. Safety Fin. & Pol'y Comm.*, 93d Leg., Reg. Sess., at 2:06:54 (Minn. 2023) (statement of Rep. Esther Agbaje, Assistant Majority Leader), <https://www.house.mn.gov/hjvid/93/896625> (last visited Feb. 25, 2024) [hereinafter H. Comm. Hearing Mar. 17, 2023].

¹¹⁵ *Certain Judiciary, Public Safety, Corrections, Human Rights, Firearm, and 911 Emergency Communication System Statutory Policy Provisions Amendment: Hearing on S.F. 2909 Before the Sen. Comm. on Judiciary & Pub. Safety*, 93d Leg., Reg. Sess., at 1:04:16 (Minn. 2023) (statement of Paul Schnell, Comm'r, Dep't of Corr.), <https://www.lrl.mn.gov/media/file?body=s&cid=3128&date=03/29/2023> (last visited Feb. 25, 2024).

¹¹⁶ H. Comm. Hearing Mar. 17, 2023, *supra* note 114, at 2:11:31 (statement of Paul Schnell, Comm'r, Dep't of Corr.).

¹¹⁷ *Id.*

¹¹⁸ DEP'T OF CORR., ONE MINNESOTA BUDGET: CLEMENCY REVIEW COMMISSION, 93d Leg., Reg. Sess. (Minn. 2023) (presented to the S. Judiciary & Pub. Safety Comm.).

¹¹⁹ Tim Walker, *Changes to Board of Pardons Would Bring More Efficiency and More Mercy, Bill Sponsor Says*, MINN. H. REP. (Mar. 4, 2022) (testimony of Mark Osler, Professor at University of St. Thomas, before the H. Pub. Safety Comm. at 4:50:00), <https://www.house.mn.gov/SessionDaily/Story/17196> [<https://perma.cc/J6LV-XNQ4>].

Minnesota leaders have strived. One of the bill sponsors, Representative Esther Agbaje, explained the bill by saying,

[W]hat we're trying to do in Minnesota is ensuring that we have a systemic process that continues to be fair, looks at the cases, continues to make sure we are addressing people's needs through the process. And so, we've developed a bill to try to ensure that more people who come through this system are able to utilize the system and that it's able to be effective for more people.¹²⁰

The importance of second chances and of updating the clemency process in Minnesota was underscored by the testimony of individuals who received clemency from the Board.¹²¹ When individuals demonstrate that they have completed the rigorous work to prove that they have changed, they deserve a chance at a clean slate. The changes brought by this legislation make the process more accessible, improve engagement with victims, advocates, and families, and allow opportunities to help correct past injustices such as disproportionate sentencing.¹²²

The legislation took a short chapter filled with inconsistent language and uncertain procedure and transformed it into a comprehensive chapter that provides clarity and consistency for applicants and advocates. The key changes can be summarized in three points.

¹²⁰ H. Comm. Hearing Mar. 17, 2023, *supra* note 114, at 2:06:54 (statement of Rep. Esther Agbaje, Assistant Majority Leader).

¹²¹ *Sentencing Guidelines Departure Presumed for Offenders Who Have Been the Victim of Domestic Abuse, Sexual Assault, or Sex Trafficking; and Resentencing Provided for Offenders Who Have Been the Victim of Domestic Abuse, Sexual Assault, or Sex Trafficking: Hearing on H.F. 3856 Before H. Pub. Safety & Crim. Just. Reform Fin. & Pol'y Comm.*, 92d Leg., Reg. Sess., at 1:25:15 (Minn. 2022) (statement by Samantha Heiges, member of the public and pardon recipient), <https://www.house.mn.gov/hjvid/92/895471> [<https://perma.cc/8YAM-5D8U>]; Walker, *supra* note 119, at 18:20:00 (testimony of Amber Jochem, member of the public and pardon recipient, before the H. Pub. Safety Comm.).

¹²² H. Comm. Hearing Mar. 17, 2023, *supra* note 114, at 2:15:00 (testimony of Sarah Florman, member of the public and representative from the Minnesota Coalition Against Sexual Assault). One victim advocate pointed out that individuals who committed crimes at the behest of an abuser should have their sentences reconsidered, given the impact abuse and assault have on a person. *Id.* The changes to clemency law in Minnesota make it so that applications can receive more consideration, especially when situations like victim abuse are present.

First, the legislation created a Clemency Review Commission (Commission). Each Board member appoints three individuals to the Commission.¹²³ The Commission members serve at the pleasure of their appointing authority and may serve for up to eight years.¹²⁴ The Commission reviews applications for completeness and bears the responsibility of communicating with all necessary third parties (such as the victim, sentencing judge, prosecutor, and public).¹²⁵ Beginning in July 2024, the Commission must meet to consider applications and make recommendations to the Board for its review.¹²⁶ The recommendations of the Commission are not binding on the Board,¹²⁷ but by delegating this work to the Commission, the Board's bandwidth to consider and decide applications for clemency will increase significantly.

The second key change to the clemency process is the simplification of the forms of clemency, which provides greater clarity to applicants and advocates. Beginning July 2024, the new law will narrow the available forms of clemency to a pardon, commutation, or reprieve—no more pardon extraordinary.¹²⁸ Furthermore, the statute clearly lays out everything that must be included in a clemency application for it to be considered.¹²⁹ The chapter even expressly identifies the parties that will be notified about the application,¹³⁰ what factors the Commission and Board may consider when reviewing applications,¹³¹ and what must happen at the court, state agency, and county levels after an award of clemency.¹³² The statute also includes a requirement for language accessibility and interpreters so that more victims, advocates, and individuals can engage in the process.¹³³

¹²³ MINN. STAT. § 638.09, subdiv. 2(b) (Supp. 2023).

¹²⁴ *Id.* § 638.09, subdiv. 2(b), 3(d).

¹²⁵ MINN. STAT. § 638.10, subdiv. 3 (Supp. 2023) (effective July 1, 2024); MINN. STAT. § 638.11 (Supp. 2023) (effective July 1, 2024).

¹²⁶ MINN. STAT. § 638.14, subdiv. 1 (Supp. 2023) (effective July 1, 2024); MINN. STAT. § 638.15, subdiv. 1, 4 (Supp. 2023) (effective July 1, 2024).

¹²⁷ MINN. STAT. § 638.09, subdiv. 1(b)(1) (Supp. 2023).

¹²⁸ *Compare* MINN. STAT. § 638.12, subdiv. 1 (the new statute listing only pardons, commutations, and reprieves) (Supp. 2023) (effective July 1, 2024), *with* MINN. STAT. § 638.02 (2022) (repealed 2023) (the previous statute listing absolute or conditional pardons, commutations, and pardons extraordinary).

¹²⁹ MINN. STAT. § 638.10, subdiv. 1 (Supp. 2023) (effective July 1, 2024).

¹³⁰ MINN. STAT. § 638.11 (Supp. 2023) (effective July 1, 2024).

¹³¹ MINN. STAT. § 638.15 (Supp. 2023) (effective July 1, 2024).

¹³² MINN. STAT. § 638.18 (Supp. 2023) (effective July 1, 2024).

¹³³ MINN. STAT. § 638.21 (Supp. 2023) (effective July 1, 2024).

Finally, the new legislation removed the unanimous vote requirement. The removal of this requirement means an applicant will receive relief unless the Governor or a board majority oppose the relief.¹³⁴ This shift allows the Board to act in conjunction with the Governor,¹³⁵ as required by the Minnesota Constitution as explained in the *Shefa* opinion.¹³⁶

Notably, and perhaps in response to Dickerson's reprieve, the Legislature maintained and elevated the reprieve. Chapter 638 expressly states that, "[t]he board may . . . grant a reprieve of a sentence imposed by a court of this state."¹³⁷ The drafters mentioned "reprieve" in the definition section of the chapter, highlighting it as an important form of clemency: "[c]lemency. Unless otherwise provided, 'clemency' includes a pardon, commutation, and reprieve after conviction . . ."¹³⁸ This means that anywhere in the rest of the chapter where the word "clemency" appears, it includes a reprieve. Therefore, the chapter outlines the process to apply for a reprieve,¹³⁹ the considerations that the Commission and the Board will use when reviewing an application for a reprieve,¹⁴⁰ and a promise that the application will be considered and decided.¹⁴¹

This unequivocal inclusion of a reprieve in the chapter may help prevent the reprieve from once again fading into the oblivion of clemency law in Minnesota. To the discerning eye, this inclusion appears to be a seal of approval from the

¹³⁴ Compare MINN. STAT. § 638.02, subdiv. 1 (2022) (repealed 2023) (containing the unanimous voting requirement), with MINN. STAT. § 638.01 (Supp. 2023) (no longer containing such language).

¹³⁵ MINN. STAT. § 638.01 (Supp. 2023) ("The governor in conjunction with the board may grant clemency according to this chapter.").

¹³⁶ MINN. CONST. art. V, § 7 ("The governor, the attorney general and the chief justice of the supreme court constitute a board of pardons. . . . The governor in conjunction with the board of pardons has power to grant reprieves and pardons after conviction for an offense against the state except in cases of impeachment."); *Shefa v. Ellison*, 968 N.W.2d 818, 829–30 (Minn. 2022) ("[T]he governor and the Board of Pardons both have an insufficient but necessary power to grant a pardon, which requires them to work together. . . . Acting within these constitutional limitations, the Legislature may choose any voting scheme that it deems appropriate.").

¹³⁷ MINN. STAT. § 638.12, subdiv. 1(a)(3) (Supp. 2023) (effective July 1, 2024).

¹³⁸ MINN. STAT. § 638.011, subdiv. 3 (Supp. 2023).

¹³⁹ MINN. STAT. § 638.10, subdiv. 1 (Supp. 2023) (effective July 1, 2024) ("A [reprieve] application must: . . . state the clemency sought . . .").

¹⁴⁰ MINN. STAT. § 638.15, subdiv. 1(a) (Supp. 2023) (effective July 1, 2024) ("When recommending whether to grant [a reprieve], the commission must consider any factors that the commission deems appropriate, including but not limited to . . .").

¹⁴¹ MINN. STAT. § 638.17 (Supp. 2023) (effective July 1, 2024).

Legislature that reprieves should remain part of Minnesota clemency.

V. WHAT NEXT?

For over 120 years, the Minnesota Legislature has maintained the possibility of a reprieve throughout numerous statutory changes, the abolition of the death penalty, and long periods of disuse. Now, the Board has indicated its openness to the reprieve, and the Legislature has reaffirmed its availability.

As this Article has shown, there is little to no restrictive precedent in Minnesota, and very little nationwide, that limits the bounds of the reprieve. While the reprieve's historical use was limited to temporary pauses and most often applied in capital cases, Carlos Dickerson Jr.'s reprieve provides a clear counterpoint to such a limited interpretation. States like California, Texas, Georgia, and Nebraska use reprieves in many contexts, and sometimes without regard for temporariness. Given the definitional flexibility of a reprieve and the lack of significant precedent on the subject, the door is open for advocates and applicants alike to consider creative solutions to achieve justice. As the Supreme Court has said, clemency can take whatever form justice requires.