

<p>NORTH DAKOTA</p>  <p>DEPARTMENT OF CORRECTIONS AND REHABILITATION</p> <p>POLICIES AND PROCEDURES</p>		<p>POLICY NUMBER:</p> <p>1A-27</p>
		<p>APPENDICES:</p> <p>A. Application for Parole Review (Females) B. North Dakota Parole Board Conditions of Parole (Appendix A) C. New Arrival Information (Male Application Form)</p>
		<p>ACA/Pbs RELATED STANDARDS:</p>
<p>CHAPTER TITLE:</p> <p>1. Administration and Management</p>	<p>SECTION:</p> <p>A. General Administration</p>	<p>SUBJECT:</p> <p>Parole Board</p>
<p>DATE ISSUED:</p> <p>June 15, 2011</p>	<p>DATE(s) REVISED:</p>	

1. **AUTHORITY:** Authority for this policy is found in Section 54-07-01 and chapters 12-47, 12-59, 12.1-34, and 54-23.3 of the North Dakota Century Code.

2. **DEFINITIONS AND ACRONYMS:**

- A. **Emergency:** An emergency is a situation that poses an *immediate risk* to an inmate's health or life. (Examples: Heart Attack, Stroke, Severe Trauma requiring Intensive Care, Severe Illness or Abnormality Requiring Complex, High Risk or Intensive Medical Intervention)
- B. **Initial Review:** An action and order issued by the board, typically within approximately 60-90 days of the inmate's arrival at a DOCR facility. This review is to determine parole eligibility and to set a future parole consideration review date.
- C. **Intermediate Measures:** Offender agreed to conditions or programs that may be implemented by the DOCR when an offender violates parole in lieu of parole revocation.
- D. **Level of Service Inventory Revised (LSI-R):** A predictive risk and needs scale that assesses an offender's propensity for further unlawful and rule violating behavior based upon criminal history and dynamic risk factors.
- E. **Parole:** The release of an inmate to the community by the Parole Board before the end of the inmate's sentence, subject to conditions imposed by the Board and subject to the supervision and control of the North Dakota Department of Corrections and Rehabilitation.
- F. **Parolee:** An offender released on parole by the Board.
- G. **Parole Denied:** An action and order issued by the board denying the applicant parole and establishing a reason for denial.
- H. **Parole Granted:** An action and order issued by the board that sets a parole release date and establishes terms and conditions of the parole.

- I. Parole Rescission: An action and order reconsidering the grant of parole prior to the inmate's parole release.
 - J. Parole Revocation: An action and order issued by the board when a parolee has been found to be in violation of any term or condition of parole established by the parole board or the DOCR.
 - K. Preliminary Hearing: A hearing before a hearing officer to determine if there is probable cause to believe that a parolee has violated conditions of parole and whether they should remain in custody pending a final hearing.
 - L. Victim: A natural person who has suffered direct or threatened physical, financial, or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act. The term "victim" includes the family members of a minor, incompetent, incapacitated, or deceased person.
 - M. CWIS: Central Warrants Information System
 - N. DOCR: The Department of Corrections and Rehabilitation
 - O. NCIC: National Crime Information Center database
 - P. ND: North Dakota
 - Q. N.D.C.C.: North Dakota Century Code
 - R. PBPR: Performance Based Parole Reduction
 - S. PBSR: Performance Based Sentence Reduction
 - T. SAVIN: Statewide Automated Victim Information and Notification system
3. **POLICY:** The Parole Board will provide a process to review inmates eligible for parole as determined by the DOCR based on eligibility and applicable statutes.
- A. The mission of the board is to conduct informed and fair hearings on cases subject to the jurisdiction of the board and take appropriate action to ensure public and victim safety and to reduce the likelihood of future criminal behavior of offenders by providing opportunities for rehabilitation.
 - B. The vast majority of inmates confined within DOCR facilities are eventually returned to the community. The Parole Board may grant parole to eligible inmates subject to terms and conditions of supervision established by the board to provide for public safety while providing an opportunity for the parolee to engage in lawful behavior.
 - C. The board shall make other relevant parole decisions including revocation of parole, rescission of parole, initial reviews, use of intermediate measure and other actions necessary to execute its lawful authority.
 - D. The Parole Board is not an administrative agency as defined by N.D.C.C. 28-32-01(1)(n) and is not subject to Administrative Agencies Practice Act

N.D.C.C. 28-32-01(1)(p). Any rules the Board may adopt need not be published in the ND Administrative Code.

- E. Parole Board members may not engage in ex parte communications with applicants for parole or with applicants' representatives or advocates.

4. PROCEDURE:

A. Membership and meetings:

1. The Governor shall appoint six members to the State Parole Board.
2. One board member must be experienced in law enforcement, one member must be a licensed attorney and four members must be qualified by special experience in education or training.
3. The governor shall appoint one member as the chairman and may appoint one member as a vice-chairperson. The chairman shall designate three members of the Parole Board to a panel for each meeting of the Parole Board. Two acting members of a panel constitute a quorum.
4. The board may only take action with the concurrence of at least two acting members of a panel.
5. The Director of the North Dakota Department of Corrections and Rehabilitation, or the Director's designee, shall serve as the Clerk to the Parole Board. The Clerk may appoint a Deputy Clerk.
6. The board may schedule as many meetings per year as necessary to conduct parole reviews, but in any event, not less than six meetings per year. Meetings may be scheduled in coordination with Pardon Advisory Board meetings.
7. The board may use video conference or other communication mediums to conduct any of the meetings.
8. The chairperson may call special meetings in order to review emergency parole-related matters or to address other business of the board.

- B. Duties and responsibilities of the board: The board shall consider eligible inmates for parole based upon guidelines in this policy and state law.

C. Notifications:

1. Registered victims must be notified of parole board proceedings in accordance with state law. Victims may provide information to the board in person, written form or other approved medium deemed necessary and appropriate by the board. Notification provided through the SAVIN system meets the notification requirements.
2. Notice of impending review of an application for parole must be provided to the district court judge and states attorney of the county

having jurisdiction over the original offense. The notice must include the date, time and place of the hearing. It must also include the name of the applicant, the date of entry and docket number of the criminal judgment, and the crime or crimes stated in the judgment.

D. Parole Eligibility:

1. Inmates sentenced to a period of incarceration at the DOCR may be eligible for parole consideration notwithstanding other provisions of this policy and state laws. All parole eligible inmates shall submit a signed application on a form approved by the clerk. The form must include the inmate's first and last name, the DOCR inmate number and a signature by the inmate or someone acting on behalf of the inmate.
2. Inmates who are subject to mandatory sentencing requirements under state law, including N.D.C.C. 12.1-32-02.1, (mandatory sentences for armed offenders) 39-08-01.2(2) (causing injury or death while driving under the influence), 39-30-02 (2nd chop shop violation) will not be eligible for parole while serving the mandatory portion of their sentence. Inmates whose sentences are subject to N.D.C.C. § 12.1-32-09.1 must serve 85% of their sentence in prison before they are eligible for parole.
3. Inmates having 45 days or less to serve after arriving at a DOCR facility will not receive parole consideration on account of limitations caused by the short sentence.

E. Duties and responsibilities of the parole clerk. The DOCR Director or the Director's designee shall serve as the parole clerk and shall:

1. Maintain a register of all applications filed with the board, a record of proceedings and maintain a record of all actions by the board whether granted, denied, revoked, rescinded, deferred, revised or other action.
2. Conduct investigations for and provide information to the board. The clerk will receive all information to be considered by the board.
3. Direct officers of the DOCR to provide testimony or written comments for the board to consider when the offender is on supervision or has recently been on supervision by the DOCR.
4. Provide written notice of an application for parole consideration to the district court judge and the state's attorneys in the county or counties where the judgment of conviction was entered against the applicant. The notice must include the name of the applicant, the date of entry and docket number of the criminal judgment, the crime or crimes stated in the criminal judgment, and the date and place for the meeting on the application.
5. The clerk will ensure that victim rights (N.D.C.C. 12.1-34 and 12.1-35) are protected and that victims receive notice of an application for parole consideration and have the opportunity to present information to the board in the manner that the board prescribes.

6. The clerk shall assure that meeting notices are filed with the ND Secretary of State in accordance with the state's open meetings laws.
 7. The clerk shall assure the management of records is in accordance with applicable state and federal laws.
 8. The clerk shall schedule all interviews of applicants.
- F. Establishing the docket and the parole review process.
1. The parole board shall consider each qualified inmate's parole eligibility status within approximately 60-90 days of the inmate's arrival a DOCR facility. This is referred to as the "Initial Parole Board Review."
 - a. The purpose of the Initial Review is for the board to examine information gathered and various assessments conducted by the DOCR as well as the nature of the offense(s) and length of sentence(s). Based upon that information the board may defer the case to a later month and year for parole consideration.
 - b. The board may reconsider qualified inmates on the Initial Review docket if there are changes in the inmate's status that would impact parole decision outcomes to include new crimes and significant change in a good time date.
 2. The DOCR will provide necessary and appropriate information to the board to aid in their decisions.
 3. The clerk shall receive all applications for emergency parole review. If the clerk determines the application meets the board's emergency definition, the clerk shall place the case on the next available board meeting docket or request the chairperson call a special meeting to review the application. If an application for emergency parole does not meet the emergency definition, the clerk shall inform the inmate in writing that the application will not be placed on a docket, save the communication in the file and inform the board of the decision at the next board meeting.
 4. The clerk may place cases on an earlier review than what was ordered by the board when there is cause. The clerk shall establish cause based upon guidance from the board.
 5. The clerk shall establish a tentative docket approximately two weeks prior to the board meeting. The clerk will provide the board with recommendations for action and all necessary documents to aid their decision-making process.
 6. The final docket will be established by the board approximately five days prior to the meeting. The clerk may add cases to the final docket with the consent of the board. (Examples: Parole Violators or Parole Rescission cases)
 7. During the course of the meeting, the board may interview the inmate or

conduct a review of the appropriate documents without interviewing the inmate. Granting or not granting an interview should not constitute a negative recommendation for relief.

8. In order to determine whether an inmate may receive a parole, the board will consider all pertinent information regarding the inmate, including the circumstances of the offense, victim impact and concerns, the inmate's family, education, social history and criminal record. The board will consider the inmate's conduct, employment, and participating in education and treatment programs while incarcerated, parole plan and the inmate's medical and psychological records and current mental and physical state. The board will also consider whether the inmate will conform to the terms and conditions of parole.
9. All actions by the board will be recorded and inmates will receive a written order with the board's decision.
 - a. If parole is denied, at least one reason for denial must be recorded and listed on the Order Denying Parole.
 - b. If parole is granted, the board shall establish a parole release date and the terms and conditions of parole using the ND Parole Board Conditions of Parole (Appendix A). The parolee must abide by any reasonable requests of the supervising parole officer, that may assist the parolee with their rehabilitation, and that may reasonably protect the safety of the community.

G. Setting parole expiration dates and PBPR.

1. The board shall set a parole expiration date no earlier than the longest expiration date of the court-imposed sentence less the award of PBPR and accrued Performance Based Sentence Reduction (PBSR) at a rate up to five days per month.
 - a. PBPR may be awarded on the condition that the parolee is:
 - 1.) Gainfully employed or seeking employment;
 - 2.) Participating in recommended treatment or educational programs or other recidivism reduction strategies; and
 - 3.) Engaging in behavior reasonably consistent with the conditions of parole.
 - b. The supervising parole officer may make a written report to the board any time the offender is not complying with the PBPR rules. The board shall make all final decisions regarding the loss of PBPR.
 - c. The board may set parole expiration dates beyond the longest expiration date of the court-imposed sentence not to exceed:
 - 1.) Two years for a misdemeanor, or
 - 2.) Five years for a felony.

d. The board may terminate parole earlier than the parole expiration date in those cases that a parole expiration date was set beyond the court-imposed expiration of sentence.

1.) The board may terminate parole earlier upon a motion by the board or upon the filing of a Petition to Terminate Parole with the board by a parole officer. The petition must state the reasons for the request. The DOCR should consider the following factors when petitioning the board for early termination:

1. Type of offense
2. Prior record
3. Victim issues
4. Overall performance of the parolee while on parole
5. Recidivism reduction
 - a. LSI-R Raw Score
 - b. LSI-R Protective Factors Score

e. The board may not terminate supervision for a parolee who has a life sentence with the opportunity for parole less than five years from the established date of release on parole.

2. The clerk may adjust parole expiration dates established by the board so dates coincide with revised PBSR and PBPR dates adjusted by inmate records. (Examples: Inmates who receive awards of more jail time, meritorious awards or loss of good time all entered after the board reviewed the case and established the expiration date). In no case may the date be adjusted to be earlier than the PBSR and PBPR date.

H. Breach of Parole (Parole Violations, Intermediate Measures and Revocation):

1. When a parolee violates any term or condition of parole, the DOCR may establish intermediate conditions of parole, including incarceration for a period of up to seventy-two hours, and restitution, when the DOCR determines that intermediate terms and conditions of parole are necessary for the rehabilitation of the parolee, or are appropriate in lieu of revocation proceedings, or are necessary for the safety of the community.

2. Officers shall give written notice to the Parole Board when they institute an intermediate measure or sanction for alleged violations of parole conditions. The Parole Board shall review the intermediate measures and authorize the measures or make appropriate changes. If the board does not authorize an intermediate measure the clerk shall notify the supervising officer and require the officer to initiate revocation proceedings.

3. If a parolee has violated any of the terms or conditions of parole, the supervising parole officer may apply to the parole clerk or designee, for a

warrant of arrest and authority to hold. If the supervising parole officer has probable cause to believe a parolee has violated any of the terms or conditions of parole, the supervising parole officer may take the parolee into custody and detain the parolee in a correctional facility pending application for a warrant of arrest and authority to hold. The application for a warrant of arrest and authority to hold must be supported by a notarized affidavit showing probable cause. Unless there are extraordinary circumstances, the supervising parole officer shall first consult with a supervisor before taking a parolee into custody.

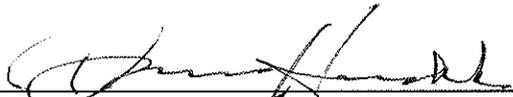
4. Upon the issuance of the warrant the parole clerk may enter the warrant into the NCIC database or the CWIS if it is determined that the parolee cannot be readily located in order to serve the warrant and be taken into custody.
5. As soon as reasonably possible after a parolee has been taken into custody, the supervising parole officer shall advise the parolee in writing of the alleged violations of the terms and conditions of parole and the parolee's right to a preliminary parole revocation hearing, an administrative hearing and a final parole revocation hearing.
6. The preliminary parole revocation hearing is conducted in order to determine whether there is probable cause to believe that the parolee violated one or more of the terms or conditions of parole and whether further detention is warranted pending a final hearing for revocation of parole. The preliminary hearing may only be conducted by a parole officer not directly involved in the supervision of the parolee and not involved in bringing the allegation of a violation of any of the terms or conditions of parole. The parolee is entitled to:
 - a. Written notice of the purpose of the hearing and the alleged violations;
 - b. The opportunity to be heard in person and present witnesses and documentary evidence;
 - c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation may create a risk of harm to the witness;
 - d. The right to submit a written statement to the Parole Board as to the reasons why parole should not be revoked or why the Board should not order all or a part of the remaining sentence.
 - e. Although there is no right to appointed legal counsel, the parolee may obtain a lawyer at the parolee's own expense.
 - f. A written statement as to the findings of the hearing.
7. The administrative parole revocation hearing must be held before an Administrative Law Judge designated by the ND Office of Administrative Hearings. The parolee is entitled to:
 - a. Written notice of the purpose of the hearing and the alleged violations of the terms or conditions of parole;
 - b. The opportunity to be heard in person and to present testimony and evidence;

- c. The opportunity to confront and cross-examine adverse witnesses, unless a determination has been made that there is a risk to safety and security;
 - d. Although not a right, the parolee may obtain a lawyer at the parolee's own expense; and
 - e. A written decision with findings of fact and reasons for the decision.
8. The parolee may waive all hearings and admit to any or all of the alleged violations of parole. The offender may present a statement in mitigation of revocation of parole. There may be instances in which it is in the best interest of the DOCR to conduct a preliminary hearing. The DOCR may hold a preliminary hearing regardless of the parolee's choice to waive the hearing.
 9. The Parole Board shall make the final determination whether the parolee should be returned to physical custody to serve all or part of the remaining part of the offender's sentence that has not been served in custody.
 10. The parole clerk shall determine the appropriate placement for a parolee who has been found guilty of, or who has pled guilty to, a violation of any of the terms and conditions of parole and has been ordered returned to the physical custody of the DOCR.
 11. Typically a parole violator will not receive further parole consideration unless there is more than nine months remaining on their sentence after the parole revocation action or the board sets a future review date in the revocation order.
- I. Parole Reconsideration (Rescission): Pursuant to N.D.C.C. 12-59-12, the Board may reconsider its action granting parole prior to the inmate's release from prison. When doing so, the clerk or deputy clerk may suspend a parole date, conduct any necessary investigation or hearings and shall place the case on the docket for reconsideration and action at the next regularly scheduled Board meeting.
5. **SIGNATURE:** This policy becomes effective when signed by the Clerk and the Chairperson of the board.



 Patrick N. Bohn, Clerk

6-29-11
 Date



 Duane Houdek, Chairman

6/29/11
 Date