NORTH DAKOTA

PARDON ADVISORY

BOARD POLICY

November 1, 2005

Pardon Advisory Board, Policy and Procedures

I. AUTHORITY:

Authority for this policy is found in Chapters 12-55.1 and 12.1-34 of the North Dakota Century Code (NDCC) and Article 5, Section 7 of the North Dakota Constitution.

II. DEFINITIONS (NDCC 12-55.1-01):

A. Commutation: The change of the punishment to which a person is sentenced to a less severe punishment.

B. Conditional pardon: A pardon, commutation, reprieve, or remission of fine subject to terms and conditions established by the governor upon the recommendation of the Pardon Advisory Board.

C. Pardon: The removal of punishment or custody imposed upon a person for the commission of an offense. A pardon does not remove that person's conviction or plea or finding of guilt for an offense unless specifically stated in the certificate of pardon.

D. Remission of fine: A release or partial release of a fine.

E. Reprieve: A temporary relief from or postponement of the execution of a criminal sentence.

III. MISSION:

A. The mission of the Pardon Advisory Board is to hear requests within its jurisdiction and base its recommendations in keeping with constitutional and statutory intent and the best interest of society. All germane information that is available to the Pardon Advisory Board, including any new mitigating information regarding the conviction as well as social development and achievement of the requester, will be considered.

IV. PARDON ADVISORY BOARD:

A. The governor may appoint a Pardon Advisory Board to consist of five members including the attorney general and two members of the parole board. The governor shall appoint two persons who are residents and citizens of this state to the remaining two positions. The governor shall appoint a chairperson from within the membership of the Pardon Advisory Board.

B. The governor may dissolve the Pardon Advisory Board at any time.

C. The governor may call the meetings of the Pardon Advisory Board as the governor deems necessary.

D. The Pardon Advisory Board is not an administrative agency as defined by NDCC 28-32-01(1)(n) and is not subject to the Administrative Agencies Practice Act NDCC 28-32-01(1)(p). Any rules the Board may adopt need not be published in the North Dakota Administrative Code.

E. Pardon Advisory Board members may not engage in ex parte communications with applicants for pardons or with their representatives or advocates.

V. POLICIES AND PROCEDURES:

A. Meetings and rules.

1. The board will schedule at least two meetings per year to review sentences imposed on offenders. Unless otherwise indicated, all meetings will be held in Bismarck. Pardon Advisory Board meetings will follow meetings of the parole board by one day or more, when ever possible.

2. A simple majority of the Board constitutes a quorum.

3. The Board may call executive sessions as allowed by NDCC 44-04-19.

4. The rules and procedures for reviewing requests for relief are contained within this policy.

B. Duties and responsibilities of the board. The board shall provide information and make recommendations to the governor concerning any matters before the governor under this chapter. Recommendations may include remission of fine, commutation of sentence, grant of a pardon and grant of a reprieve. Recommendations for conditional pardons will include recommended terms and conditions of the pardon.

C. Duties and responsibilities of the pardon clerk. The director of the field services division shall serve as the pardon clerk and will:

1. Maintain a register of all applications filed with the board as well as a record of proceedings. Maintain a record of all actions of the board.

2. Conduct investigations for and provide information to the board. The pardon 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 department.

4. Provide written notice of an application to the district court 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 pardon clerk will ensure that victims rights (NDCC 12.1-34 and 12.1-35) are protected and that victims have the opportunity to present information to the board in the manner that the board prescribes.

D. Cases eligible for Pardon Advisory Board review.

1. Offenders in DOCR custody or on supervision with the Field Services Division of the DOCR.

   a. Inmates currently incarcerated.
   Inmates who have no legal remedy through the Parole Board may be eligible for review by the Pardon Advisory Board providing that review does not conflict with any other provisions of this policy.

   b. Offenders under the supervision of the Field Services Division of the DOCR.
   The supervising officer of any offender on supervision may apply for relief on behalf of the offender with the pardon clerk.

2. Persons not in the custody of, or under the supervision and management of, the DOCR.

   The applicant must have encountered a significant problem with the consequences of his or her conviction or sentence (e.g. difficulty entering a professional school or securing employment).

3. In very limited circumstances, the Board may consider applications from individuals who present a compelling need for relief as a result of unusual circumstances not otherwise specified by the above criteria.

E. Application and review process.

1. Applications for board review must be made with the pardon clerk on a form prescribed by the pardon clerk. (12-55.1-06)

2. The written application must be submitted to the pardon clerk at least 90 days before the Pardon Advisory Board convenes. Field services staff will investigate the application and prepare a packet for each application.

a. If applications are incomplete, the pardon clerk will notify the applicant of the items that need completion before the applicant will receive consideration.

b. Any incomplete application may be deferred until such time the application is complete. An incomplete application includes failure of the applicant to respond to the pardon clerk's or his designee's requests for information.

3. The pardon clerk shall conduct a pre-screening of all applications to determine the merit of the application. For inmate applications, the clerk will determine if the inmate is eligible for parole board consideration. In all cases, the clerk will also consider the reason for the pardon request.

4. The pardon clerk will staff each case on the proposed docket with a representative of the Governor and the Pardon Advisory Board Chairman.

5. The pardon clerk will prepare a final docket at least 45 days before the Pardon Advisory Board convenes.

6. The pardon clerk may formulate a recommendation concerning an applicants request for relief.

7. The pardon clerk will present a final packet for each application to members of the board at least 30 days before board convenes. This may include any sentencing report prepared by the division and statements of the sentencing judge, states attorney and victim.

8. The board may review the application with the applicant or may review the application without a personal appearance. Granting or not granting a personal appearance should not constitute a negative recommendation for relief. The pardon clerk will schedule all personal appearances.

9. Any request made by the Pardon Advisory Board Chairman for the personal appearance of an applicant will be honored.

10. After appropriate review, the board will make a recommendation to the Governor regarding each case on the final docket.

11. If the governor denies the applicant the requested relief, the applicant may not reapply for relief for a period of one year from the date the governor denied relief, or if the board has set a later date, the date the board has set. The board is not precluded by this section from considering an emergency application for relief at any time.

12. Any reapplication will be submitted on a summary form as provided by the pardon clerk and must demonstrate specific changes in circumstances since the prior application.

13. The governor may reconsider the decision to grant an applicant relief at any time before the applicant is released from the correctional facility. If an applicant is released from custody pursuant to a conditional pardon and the applicant has violated any of the terms or conditions of the conditional pardon, the governor may revoke the conditional pardon in the same manner provided for violation of any of the terms or conditions of parole. In all other cases, the governor may reconsider a decision on an application if the reconsideration is made within thirty days from the date of the initial decision.

This policy with subsequent changes becomes effective when signed by the Governor, the Chair of the Pardon Advisory Board, and the Clerk of the Pardon Advisory Board.

Duane L. DeKrey, Chairman
Pardon Advisory Board

1-04-06
Date

Warren R. Emmer, Pardon Clerk
Pardon Advisory Board

1-03-06
Date