

DIRECTIVE/POLICY/PROCEDURES  NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION		DIRECTIVE/POLICY/PROCEDURE NUMBER: 1A-13
		ACA/ACI/PBS RELATED STANDARDS:
CHAPTER TITLE: 1. Administration and Management	SECTION: A. General Administration	SUBJECT: Parole Board

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Revision/Review History

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Summary of Revision(s)

1. Reviewed, no changes.
2. Reformatted page numbers.
3. Added clarifying language regarding driving under the influence causing death or injury
4. Amended minimum amount of time a person must have on their sentence for parole review to 120 days.
5. Greater discretion regarding extradition of non-violent C felony offenses.

<p>NORTH DAKOTA</p>  <p>DEPARTMENT OF CORRECTIONS AND REHABILITATION</p> <p>DIRECTIVE</p>		<p>DIRECTIVE NUMBER:</p> <p>1A-13</p>
		<p>APPENDICES:</p> <p>A. Application for Parole Review (Females) B. ND Parole Board Conditions of Parole C. New Arrival Information</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>

1. **AUTHORITY:** Authority for this directive with expectations 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. **APPLICABILITY:** To all employees of the Department of Corrections and Rehabilitation especially to those employees involved with the inmate parole process.
3. **DEFINITIONS AND ACRONYMS:**
 - A. **Emergency Review:** Emergency review may be necessary when circumstances exist that pose 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:** Issued by the board or the clerk, typically occurs within 30-90 days of the inmate's arrival a Department of Corrections and Rehabilitation facility. This review determines parole eligibility and sets a future parole consideration review date. Parole review dates set by the board or the clerk may be reconsidered under the Initial Review if there are changes to good time release dates of more than 180 days.
 - C. **Inmate:** An individual serving a term of imprisonment at the North Dakota Department of Corrections and Rehabilitation.
 - D. **Intermediate Measures:** Community constraints used as strategies to address violations of supervision conditions. Strategies may address risk control, risk reduction or both. This also includes offender agreed to conditions or programs that may be implemented by the Department of Corrections and Rehabilitation when an offender violates parole in lieu of parole revocation.
 - E. **Offender:** An individual sentenced to the legal and physical custody of the Department of Corrections and Rehabilitation, individuals transferred to the physical custody of the Department of Corrections and Rehabilitation by another state or the federal government, or individuals under the supervision and management of the Department of Corrections and Rehabilitation.

- F. Parole: The discretionary conditional release of an inmate from custody before the expiration of the inmate's term of imprisonment.
 - 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 granting 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 Department of Corrections and Rehabilitation.
 - K. Preliminary Hearing: A hearing before a Hearing Officer to determine if there is probable cause to believe a parolee has violated conditions of parole and whether he or she should remain in custody pending a final hearing.
 - L. Victim: A 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. This includes the family members of a minor, incompetent, or deceased person.
 - M. DOCR: Department of Corrections and Rehabilitation
 - N. LSI-R: Levels of Service Inventory-Revised
 - O. ND: North Dakota
 - P. N.D.C.C.: North Dakota Century Code
 - Q. PBPR: Performance Based Parole Reduction
 - R. PBSR: Performance Based Sentence Reduction
 - S. SAVIN: Statewide Automated Victim Information and Notification
4. **DIRECTIVE:** The Parole Board shall provide a process to review inmates eligible for parole as determined by the ND 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 measures and any 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.

5. **EXPECTATIONS:**

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 Chairperson and may appoint one member as a Vice-Chairperson. The Chairperson 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 DOCR 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, no 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:

- 1. 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 through the SAVIN 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, and docket number of the criminal judgment.

D. Parole Eligibility:

1. All inmates sentenced to the legal and physical custody of the DOCR for a period of incarceration at the DOCR are subject to the jurisdiction of the Parole Board, except when parole for the inmate is prohibited by statute.
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 prior to July 1, 2013), 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 eighty-five percent (85%) of their sentence in prison before they are eligible for parole.
3. Inmates having 120 days or less to serve after arriving at a DOCR facility may not receive parole consideration due to limitations caused by the short sentence.

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

1. Maintain a register of all applications filed with the board and record the minutes of proceedings.
2. Retain a copy of the minutes for three years after the current fiscal year in which the record is created. After three years the records must be transferred to the State Archives.
3. Conduct investigations for and provide information to the board. The clerk will receive all information to be considered by the board.
4. Direct officers of the DOCR to provide testimony or written comments for the board to consider when the parolee is on supervision or has recently been on supervision by the department.
5. Provide written notice to the district court judge and the state's attorneys in the county or counties where the judgment of conviction was entered when the parole board is reviewing whether an inmate may be released on parole. The notice must include the name of the applicant, docket number of the criminal judgment and the date and place for the meeting.

6. Ensure victim rights (N.D.C.C. 12.1-34 and 12.1-35) are protected and victims receive notice of an application for parole consideration and have the opportunity to present information to the board in the manner the board prescribes.
 7. Ensure meeting notices are filed with the North Dakota Secretary of State in accordance with the state's open meetings laws.
 8. Ensure the management of records is in accordance with applicable state and federal laws.
 9. 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 provided the inmate has three or more years to serve from date of arrival to the longest good time release date. This is referred to as the "Initial Parole Board Review."
 - a. The purpose of the Initial Review is for the board or the clerk 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 or the clerk may defer the case to a later month and year for parole consideration.
 - b. The clerk shall set parole review dates for parole eligible inmates who have three years or less to serve from date of arrival in prison to the longest good time release date.
 - c. The board or the clerk may reconsider qualified inmates on the Initial Review docket if there are changes in the inmate's status that may significantly impact parole decision outcomes to include new crimes and significant change in a good time release 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 shall provide the board with recommendations for action and all necessary documents to aid their decision-making process.
6. The final docket should 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 include: 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 shall 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 shall 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 shall also consider whether the inmate will conform to the terms and conditions of parole.
9. The board may only take action upon the concurrence of at least two members who participated in the same meeting.
10. All actions by the board must be recorded and inmates will receive a written order reflecting 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 Parole Agreement. The parolee must abide by any reasonable requests of the supervising parole officer that may assist the parolee with his or her rehabilitation, and may reasonably protect the safety of the community.
 - 1.) The clerk may make changes to a parole release date of 30 days or less for cause. Examples are changes to parole release dates due to transportation issues, inclement weather, lack of bed space at a facility that the individual is required to reside as a condition of parole and changes in program completion dates.
 - 2.) The clerk may make technical changes to terms of parole unless otherwise prohibited by the board. Examples are changes to a specified transitional facility due to an inmate's request, change of plans, facility conflict of interest or the facility will not accept the individual for placement.

- 3.) The clerk shall notify the board of any changes pursuant to this section at the next regularly scheduled board meeting.

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 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 parolee 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:
 - a.) Type of offense
 - b.) Prior record
 - c.) Victim issues
 - d.) Overall performance of the parolee while on parole.
 - e.) Recidivism reduction:
 - (1) LSI-R Raw Score

(2) 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 conduct awards or loss of PBSR 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 Division of Adult Services may establish intermediate conditions of parole, including incarceration for a period of up to 72 hours, and restitution, when the division determines 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 National Crime Information Center database and or the Central Warrants Information System, if it is determined the parolee cannot be readily located in order to serve the warrant and be taken into custody.
 - a. The department may choose not to extradite in cases where the parolee's most severe originating offense is a Class A Misdemeanor or a non-violent class C felony

5. As soon as reasonably possible after a parolee has been taken into custody, the supervising parole officer shall assure the parolee is served with a copy of the parole warrant and 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 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 there is a risk to safety and security;
 - d. 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 parolee 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 parolee'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):
1. 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 parole 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.
6. **SIGNATURE:** This directive with expectations becomes effective when signed by the Clerk and the Chairperson of the Board.

This copy has been approved by the Director with the original signature on file.