


<p>POLICY & PROCEDURES</p>  <p>NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION</p>	POLICY & PROCEDURES NUMBER:	
	1A-13	
	ACA/ACI/PBS RELATED STANDARDS:	
RELATED REFERENCES:		
DIVISION: Transitional Planning	SECTION: Administration	SUBJECT: Parole Board


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Revision/Review History

Revised: February 24, 2011
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 Revised: July 12, 2017
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 Revised: October 9, 2018

Summary of Revision(s)

1. Changed both headers, changed all wording referring to directives to policies. Tim B. 01/16/2018
2. Updated Intermediate Measure policy 4,H, 2. The Parole Board will only review IM's that impose a period of incarceration.
3. Changes terms "inmate" and "offender" to "adults in custody" throughout policy.

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1. **AUTHORITY:** Authority for this policy with procedures 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 adults in custody parole process, and to the members of the North Dakota Parole Board.
3. **DEFINITIONS AND ACRONYMS:**
 - A. **Adult in Custody:** Means an individual sentenced to the legal and physical custody of the Department of Corrections and Rehabilitation or an individual transferred to the physical custody of the Department of Corrections and Rehabilitation by another state or the federal government. An adult in custody transferred to the custody of the DOCR by another state or the federal government is not subject to the authority of the board unless the adult in custody has pled guilty to, or has been convicted of, a criminal offense in a North Dakota district court.
 - B. **Adult under Supervision:** Means 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 in accordance with a criminal judgment of a North Dakota district court or an order of the North Dakota Parole Board.
 - C. **Board:** Means the North Dakota Parole Board
 - D. **DOCR:** Means the North Dakota Department of Corrections and Rehabilitation
 - E. **Initial Review:** Issued by the board or the clerk and typically occurs within 30- 90 days of the adult in custody's arrival a DOCR facility. The purpose of the review is to determine parole eligibility and set 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.

- F. 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 adults in custody agreed to conditions or programs that may be implemented by the Department of Corrections and Rehabilitation in lieu of parole revocation when an adult in custody violates parole.
- G. LSI-R: Means Levels of Service Inventory-Revised, an actuarial risk assessment tool.
- H. ND: Means the state of North Dakota
- I. N.D.C.C.: Means the North Dakota Century Code
- J. Parole: The discretionary conditional release of an adult from custody before the expiration of the adult in custody's term of imprisonment.
- K. Parole Denied: An action and order issued by the board denying the adult in custody parole and establishing a reason for denial.
- L. Parole Granted: An action and order issued by the board that sets a parole release date and establishes terms and conditions of the parole.
- M. Parole Rescission: An action and order reconsidering the grant of parole prior to the adult in custody's discharge from the North Dakota State Penitentiary or any of its affiliated facilities
- N. 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.
- O. PBPR: Means Performance Based Parole Reduction under N.D.C.C. § 12-59- 21
- P. PBSR: Means Performance Based Sentence Reduction under N.D.C.C. § 12-54.1-01
- Q. 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 the parolee is to remain in custody pending a final revocation hearing
- R. Serious Medical Condition: An injury, illness, disease, physiologic or psychological condition or disorder that poses an immediate risk to the adult in custody's health or life and requires high risk or highly complex medical intervention or intensive or high needs or specialized care (Examples include: stroke, heart attack, aggressive or advanced stage forms of cancer

or medical condition that requires long term hospitalization, nursing home, or hospice care; a mental illness that causes the adults in custody to be unable to provide for essential needs and requires long-term hospitalization, nursing home, or group home placement

- S. SAVIN: Means the Statewide Automated Victim Information and Notification system under N.D.C.C. § 12.1-34-06 operated by the North Dakota Office of the Attorney General
 - T. Terminal medical condition. A serious medical condition with a prognosis that death is likely and imminent.
 - U. TPS: Means DOCR Transitional Planning Services
 - V. Victim: An individual 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.
4. **POLICY:** The Parole Board shall provide a process to review adults in custody 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 adults in custody by providing opportunities for rehabilitation.
 - B. The vast majority of adults in custody confined within DOCR facilities are eventually returned to the community. The Parole Board may grant parole to eligible adults in custody 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 according to N.D.C.C. § 28-32-01(1)(p) and is not subject to Administrative Agencies Practice Act, N.D.C.C. chapter 28-32, except for final parole revocation hearings, which must be conducted by the Office of Administrative Hearings in accordance with N.D.C.C. § 54-57-03(1) and chapter 12-59. Any rules the board may adopt are not subject to administrative rule-making under chapter 28-32 and need not be published in the North Dakota Administrative Code.
 - E. Parole Board members may not engage in ex-parte communications with adults in custody subject to the jurisdiction of the board for parole or with their representatives or advocates.

5. **PROCEDURES:**

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, which may include experience as a prosecuting attorney, one member must be a licensed attorney and four members must be qualified by special experience, or education or training.
3. The Governor shall appoint one member of the board as the Chairman. The Chairman shall designate three members of the Parole Board to a panel for each meeting of the Parole Board. Two members of a panel who participated in the same meeting 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 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 Chairman 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 adults in custody for parole based upon state law and under this policy.

C. Parole Eligibility:

1. All adults in custody 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 adult in custody is prohibited by statute or an adult in custody has less than 120 days of eligibility.
2. Adults in custody 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 (2'd chop shop violation) are not be eligible for parole while serving the mandatory portion of their sentence. Adults in custody 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. Adults in custody who have 120 days or less to serve on their sentence after arrival at a DOCR facility may not receive parole consideration because of the limitations caused by the short sentence.
- D. Duties and responsibilities of the parole clerk. The Director of the DOCR or the director's designee shall serve as the parole clerk and shall:
1. Maintain a register of all cases of adults in custody the board has reviewed 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 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 adult in custody may be released on parole. The notice must include the name of the adult in custody, and docket number of the criminal judgment, and the date, time, and place for the meeting of the Parole Board to review whether the adult in custody may be released on parole.
 6. Ensure victim rights (Article I, § 25, N.D. Const., N.D.C.C. chapters 12.1-34 and 12.1-35) are protected and victims receive notice of an application for parole consideration in accordance with state constitutional and statutory requirements, including the statewide-automated victim information and notification system (SAVIN) 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 and posted at the meeting location in accordance with the state's open meetings laws.
 8. Ensure the management of Parole Board records is in accordance with applicable state and federal laws.

9. Schedule interviews of adults in custody when the Parole Board has requested their personal appearance before the Board.
- E. Establishing the docket and the parole review process.
1. Initial Review
 - a. The Parole Board may conduct an initial Parole Board Review of each eligible adult in custody's parole eligibility status within approximately 60-90 days of the adult in custody's arrival a DOCR facility, when the adult in custody has three or more years to serve from date of arrival to the longest good time release date.
 - b. 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.
 - c. The clerk shall set parole review dates for parole-eligible adults in custody who have three years or less to serve from date of arrival in prison to the longest good time release date.
 - d. The board or the clerk may reconsider qualified adults in custody on the Initial Review docket if there are changes in the adults in custody's status that may significantly impact parole decision outcomes to include new crimes and significant change in a good time release date.
 - e. If the parole board agrees with case planning recommendations, the individual will have a parole review entry as a Miscellaneous Review entered into Elite (month and year). If the board does not agree with the case planning recommendation, the clerk shall place the case back on a case planning agenda through the Add-On process.
 2. Initial Review Reassessment.
 - a. Any adult in custody who has not had a parole review, but is eligible for parole, and has a good time release (GTR) date of seven or more years from the day the individual comes into the physical custody of the DOCR may be eligible a parole reassessment. If the parole board has taken action either denying or granting parole in a case during the adult in custody's current incarceration period, the reassessment process does not apply. (Exception: If individual is sentenced to additional time after the parole board made a decision. Example: Individual is reviewed September 1, 2016 with a GTR

date of December 1, 2016 and is denied and ordered to serve the balance of the sentence. After the decision and prior to release, a new sentence comes in extending the longest GTR date by seven years or more, then this process would apply). The clerk may recommend an initial review reassessment of an adult in custody who does not have a GTR of seven or more years from the date the individual comes into the physical custody of the DOCR.

- b. The Parole Board shall review the case on the initial review portion of its docket. If the parole board agrees with the case planning recommendations, the individual will have a parole review entry as a Miscellaneous Review entered into Elite (month and year) and an Initial Review entry (month and year) with the comment "Initial Review Reassessment." If the board does not agree with the case planning recommendation, then the clerk shall place the case back on a case planning agenda through the Add-On process.
- c. TPS will run the Initial Review Reassessment list on the first Monday of the month two months prior to the parole board meeting to identify "Initial Review Reassessment" cases.
- d. TPS notify the adults in custody's case managers, who shall complete and enter an institutional adjustment summary in Elite no later than two weeks after receiving the notification from TPS.
- e. The adult in custody's case manager, through case manager's unit manager, shall refer the case to the DOCR Case Planning Committee through the Add-On process for review and recommendations.
- f. The Case Planning Committee shall review institutional adjustment summary, program/work/education participation, institutional conduct, classification and custody level and make a recommendation for action to the Parole Board:
 - 1.) Recommended actions may include:
 - a.) No change.
 - b.) Set an earlier parole review than was initially set (set month and year), revisit and update the case plan.
 - c.) Set a later parole review than was initially set (set month and year), revisit and update the case plan.
 - d.) Notification to courts, victims, through SAVIN,

etc., is not required because these are handled just as the board currently handles the Initial Reviews. Purpose of the review is not to make a release decision but instead to make a decision about the timing of making a release decision.

- g. The Parole Board shall review the case in the Initial Review portion of its docket. If the Parole Board agrees with the case planning recommendations, the individual's Miscellaneous Review will be modified in Elite to this date (month and year). If the Parole Board does not agree with the case planning recommendation, then the clerk shall place the case back on a case planning agenda through the Add-On process. The DOCR shall provide necessary and appropriate information to the board to aid in their decisions.
- h. Notification to courts and victims, including through SAVIN, is not required because notifications are handled the same way as the board currently handles the Initial Reviews. The purpose of the initial review is not to make a release decision but instead to make a decision about the timing of making a release decision.

3. Additional Sentences.

- a. DOCR Legal Records personnel shall place the case back on a case planning agenda via the Add-On process when an adult in custody's GTRD changes by more than six months, the case is eligible for STEP (DEFINE), subject to the 85% or a minimum mandatory statute.
- b. Case Planning Committee shall review the additional sentence and may reconsider timing for parole board review.
- c. If the adult in custody has three or more years to serve from the date of arrival to the longest good time release date, case planning shall set a parole review and the parole board may review case on the Initial Review portion of their docket.

4. Medical Parole

- a. All requests for medical parole review must be sent to the clerk. A serious or terminal medical condition must be diagnosed by a DOCR medical provider. Only a DOCR medical provider may submit a request for medical parole review to the clerk. The DOCR medical provider shall provide written documentation summarizing the adults in custody's medical conditions, recommended courses of care and treatment and a prognosis. The clerk shall consult with the chairperson and the chairperson shall direct the clerk to either place the case on the next available board meeting docket or establish a special meeting

to review the case. The board is the sole authority for all matters relating to medical review and action. All decisions of the board are final.

5. 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 direction from the board.
6. 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.
7. 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)
8. During the course of the meeting, the board may interview the adults in custody or conduct a review of the appropriate documents without interviewing the adults in custody. Granting or not granting an interview does not constitute a negative recommendation for relief.
9. In order to determine whether an adult in custody may receive a parole, the board shall consider all pertinent information regarding the adults in custody, including the circumstances of the *offense*, victim impact and concerns, the adult in custody's family, education, social history and criminal record. The board shall consider the adult in custody's conduct, employment, and participating in education and treatment programs while incarcerated, parole plan and the adult in custody's medical and psychological records and current mental and physical state. The board shall also consider whether the adult in custody will conform to the terms and conditions of parole.
10. The board may only take action upon the concurrence of at least two members who participated in the same meeting.
11. All actions by the board must be recorded and adults in custody shall 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 P a r o l e .
 - 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 shall comply with all 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 include changes to parole release dates caused by 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 include changes to a specified transitional facility due to an adult in custody'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.

F. 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) LS1-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 legal records. (Examples: Adults in custody 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.

G. 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 that imposes a period of incarceration or placement at Tompkins Rehabilitation Center or at the North Dakota State Hospital. 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. Intermediate measures that do not impose a period of incarceration or placement at Tompkins Rehabilitation Center or the North Dakota State Hospital must be authorized by transitional planning services.

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 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 DOCR may choose not to extradite in cases in which 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 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 North Dakota 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. The DOCR may request a final revocation 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. A parole violator will not receive further parole consideration unless there is more than nine months remaining on the parole violator's sentence after the parole revocation action, or unless the board sets a future review date in the revocation order.

H. Parole Reconsideration (Rescission):

1. Pursuant to N.D.C.C. 12-59-12, the board may reconsider its action granting parole prior to the adults in custody'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 policy with procedures 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.