


<b>DIRECTIVE/POLICY/PROCEDURES</b>  <b>NORTH DAKOTA</b> <b>DEPARTMENT OF CORRECTIONS</b> <b>AND REHABILITATION</b>		<b>DIRECTIVE/POLICY/PROCEDURE NUMBER:</b> 1A-14
		<b>ACA/ACI/PBS RELATED STANDARDS:</b>
		<b>RELATED REFERENCES:</b>
<b>CHAPTER TITLE:</b> 1. Administration and Management	<b>SECTION:</b> A. General Administration	<b>SUBJECT:</b> Pardon Advisory Board

Effective Date: August 5, 2010

**Revision/Review History**


Revised: February 24, 2011  
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**Summary of Revision(s)**

*Changes made by the Pardon Advisory Board 07/10/2019*

1. Appendix added: Summary Pardon Application
2. Added the definitions: Pardon Application and Summary Pardon Application
3. 4-B: It is the policy of the board to consider applications for commutation, pardon, reprieve, or remittance of fines, if the applicant has filed a written application with the **pardon clerk** ~~Pardon Board Clerk~~ in the form prescribed by the board.
4. 5-J-1-a: Maintain a register of all applications filed with the board, a record of proceedings, and ~~maintain~~ a record of all actions and recommendations by the board whether granted or denied ~~along~~ with the reasons for each action.
5. 5-J-1-b: Conduct investigations for and provide information to the board. The **pardon** clerk will receive all information to be considered by the board.
6. 5-J-1-e: The **pardon** clerk ~~will~~ **shall** ensure that victim rights contained in the North Dakota Constitution Article I, Section 25 and North Dakota Century Code 12-1.34 and 12.1-35 are protected, and that victims have the opportunity to present information to the board in the manner the board prescribes.
7. 5-J-1-e-1.): Victims who ~~that~~ can be located or who are already registered with the Department of Corrections and Rehabilitation to receive notifications regarding an offender must be notified of a pardon application in any case that is not on the **consent agenda** ~~Consent Agenda~~ with a recommendation to deny relief.
8. 5-J-1-f: The **pardon** clerk shall ensure that meeting notices are filed with the North Dakota Secretary of State in accordance with the state's open meetings laws.
9. 5-J-1-g: The **pardon** clerk shall assure the management of records is in accordance with applicable state and federal laws.
10. 5-J-1-j: The **pardon** clerk may appoint a deputy **pardon** clerk to assist in the execution of duties.
11. 5-K-1: **Only** individuals who have committed a crime and were convicted in a North Dakota court of law **are eligible for review by the Pardon Advisory Board. The Pardon Advisory Board may not provide pardons for federal offenses, tribal offenses, or offenses from other states.** (~~Excludes federal offenses and tribal offenses~~)

12. 5-K-2: Inmates who have a legal remedy through the Parole Board are ~~will~~ not eligible for review by the Pardon Advisory Board until they have exhausted the Parole Board process. ~~providing that review does not conflict with any provisions of this policy.~~
13. 5-L-1: Pardon applications must be made with the pardon clerk on a form prescribed by the **pardon** clerk and in accordance with any rules adopted by the board. **Summary pardon applications may be used only for applicants prosecuted for and convicted of possession of marijuana, ingestion of marijuana, or possession of marijuana paraphernalia.**
14. 5-L-2: The written application must be submitted to the pardon clerk at least 90 days before the Pardon Advisory Board convenes. Department of Corrections and Rehabilitation staff will review and may investigate the application and prepare an information packet for each application. **Applicants may be subject to a criminal record check, including criminal history record information.**
15. 5-L-2-a: If the application is incomplete, the **pardon** clerk shall notify the applicant of the items that must be completed before the applicant may receive consideration by the board.
16. 5-L-2-b: Any incomplete application may be deferred until such time that the application is complete. An incomplete application includes failure of the applicant to respond to the **pardon** clerk's request for information.
17. 5-L-3: The pardon clerk shall conduct a screening of all applicants to determine the eligibility and merit of the application. **If the pardon clerk determines applicants who submitted summary pardon applications are ineligible, the pardon clerk shall return the summary pardon applications and advise the applicants that they may use the pardon application.** For inmate applications, the **pardon** clerk shall determine if the inmate is already eligible for parole review. In all cases, **except summary pardon applications**, the **pardon** clerk shall consider the reason for the pardon request.
18. 5-L-4-a: The words Consent Agenda. Capital letters for Consent Agenda were changed to small letters – consent agenda.
19. 5-L-4-b: Added: The board may utilize a consent agenda in order to make recommendations to the Governor to grant relief to applicants prosecuted for and convicted of possession of marijuana, possession of marijuana paraphernalia, or ingestion of marijuana. The consent agenda must be established by a representative of the Governor and the Pardon Advisory Board Chairperson. The preparation of the consent agenda must include confirmation the offense is eligible for the summary application process and confirmation the applicant has not pled guilty, or been found guilty of, another criminal offense in any court, including in the state of North Dakota, tribal court, any other state, or in the federal courts, within the last five years prior to the date of the application.
20. 5-L-6: After review and action by the board, the **pardon** clerk shall prepare orders recommending an applicant be denied relief or may issue a recommendation for relief to the Governor for further review and action.
21. 5-L-7: If the Governor denies an applicant relief, the applicant may not reapply for the longer of one year from the date the Governor issued the denial or the length of time provided in the denial issued by the Governor. ~~for a period of one year from the date the Governor issued the denial or a specified period of time as contained in the denial issued by the Governor. (Example: Mr. Doe may not reapply to the Pardon Advisory Board for five years)~~

<p><b>NORTH DAKOTA</b></p>  <p><b>PARDON ADVISORY BOARD</b></p> <p><b>DIRECTIVE</b></p>		<p><b>DIRECTIVE NUMBER:</b></p> <p>1A-14</p>
		<p><b>APPENDICES:</b></p> <ul style="list-style-type: none"> <li>• <a href="#">North Dakota Pardon Advisory Board Application.pdf</a></li> <li>• <a href="#">Summary Pardon Application.pdf</a></li> </ul>
		<p><b>ACA/PbS RELATED STANDARDS:</b></p>
<p><b>CHAPTER TITLE:</b></p> <p>1. Administration and Management</p>	<p><b>SECTION:</b></p> <p>A. General Administration</p>	<p><b>SUBJECT:</b></p> <p>Pardon Advisory Board</p>

1. **AUTHORITY:** Authority for this directive with expectations is found in chapters 12-55.1 and 12.1-34 of the North Dakota Century Code and Article 5, Section 7 of the North Dakota Constitution.
2. **APPLICABILITY:** All employees of the Department of Corrections and Rehabilitation especially to those involved with the pardon of inmates.
3. **DEFINITIONS:**
  - 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. **Inmate:** A person sentenced to the legal and physical custody of the Department of Corrections and Rehabilitation, or persons transferred to the physical custody of the Department of Corrections and Rehabilitation by another state or the federal government.
  - D. **Offender:** An individual sentenced to the 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 persons under the supervision and management of the Department of Corrections and Rehabilitation.
  - E. **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.
  - F. **Pardon Application:** The form prescribed by the pardon clerk for applying for a pardon.
  - G. **Pardon Advisory Board:** An autonomous body appointed by the Governor of North Dakota and authorized to review and provide recommendations to the

governor regarding the grant of pardons, commutations, reprieves or remission of fines for individuals convicted of crimes in the State of North Dakota.

- H. Pardon Clerk: The Director of Department of Corrections and Rehabilitation or the director's designee shall serve as the Pardon Clerk to the Pardon Advisory Board.
- I. Remission of Fine: A release or partial release of a fine.
- J. Reprieve: A temporary relief from or postponement of the execution of a criminal sentence.
- K. Summary Pardon Application: A shortened application form prescribed by the pardon clerk for a pardon for eligible convictions of possession of marijuana, ingestion of marijuana, or marijuana paraphernalia.

4. **DIRECTIVE:**

- A. The North Dakota Pardon Advisory Board will meet and consider pending applications at a time set at the convenience of the board. If the board determines an application merits a hearing, the board will schedule the application for a hearing at a bi-annual meeting designated for hearings on applications.
- B. It is the policy of the board to consider applications for commutation, pardon, reprieve, or remittance of fines, if the applicant has filed a written application with the pardon clerk in the form prescribed by the board. The board will act upon approved applications when it has conducted such investigation (including any hearing) as it deems necessary, and it is prepared to evaluate the merits of the application.

5. **MISSION:**

- A. The mission of the North Dakota Pardon Advisory Board is to hear requests within its jurisdiction and base its recommendations to the Governor in keeping with the constitutional and statutory intent as well as the best interest of society. All germane information that is available to the Pardon Advisory Board, including any new mitigating information regarding the conviction, including the impact of substance abuse and behavioral health issues on the applicant and/or the conviction, the applicant's efforts to address substance abuse and behavioral health issues and needs, the personal and social development and achievement of the applicant, and any significant problems or circumstances the applicant may be encountering due to the conviction, will be considered.
- B. 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 people 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.
- C. Each member of the Pardon Advisory Board shall receive compensation and expense reimbursement for attending meetings or performing duties of the board. Compensation and reimbursement amounts are set by state law.

- D. The Governor may dissolve the Pardon Advisory Board at any time.
- E. The Governor may call the meetings of the Pardon Advisory Board as the Governor deems necessary.
- F. The Pardon Advisory Board is not an administrative agency as defined by North Dakota Century Code 28-32-01(1)(n) and is not subject to Administrative Agencies Practice Act North Dakota Century Code 28-32-01(1)(p). Any rules the board may adopt need not be published in the North Dakota Administrative Code.
- G. Pardon Advisory Board members may not engage in ex-parte communications with applicants for pardons or with their representatives or advocates.
- H. Meetings and Rules:
  - 1. The board shall schedule at least two meetings per year to review applications. All meetings will be held in Bismarck unless otherwise indicated.
  - 2. A simple majority of the board constitutes a quorum.
  - 3. The board may call executive sessions as allowed by North Dakota Century Code 44-04-19.
  - 4. The rules and procedures for reviewing requests for relief are contained within this directive.
- I. Duties and responsibilities of the board.
  - 1. The board shall provide information and make recommendations to the Governor concerning matters before the Governor under this chapter.
  - 2. Recommendations for relief may include remission of fine, commutation of sentence, grant of pardon, grant of conditional pardon and grant of reprieve.
  - 3. Recommendations for conditional pardons will include recommended terms and conditions of the pardon.
- J. Duties and responsibilities of the pardon clerk.
  - 1. The Director of Department of Corrections and Rehabilitation or a person assigned by the Director shall serve as the pardon clerk and shall:
    - a. Maintain a register of all applications filed with the board, a record of proceedings, and a record of all actions and recommendations by the board whether granted or denied with the reasons for each action.
    - b. Conduct investigations for and provide information to the board. The pardon clerk will receive all information to be considered by the board.

- c. Direct officers of the Department of Corrections and Rehabilitation 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.
  - d. 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.
  - e. The pardon clerk shall ensure that victim rights contained in the North Dakota Constitution Article I, Section 25 and North Dakota Century Code 12-1.34 and 12.1-35 are protected, and that victims have the opportunity to present information to the board in the manner the board prescribes.
    - 1.) Victims who can be located or who are already registered with the Department of Corrections and Rehabilitation to receive notifications regarding an offender must be notified of a pardon application in any case that is not on the consent agenda with a recommendation to deny relief.
  - f. The pardon clerk shall ensure that meeting notices are filed with the North Dakota Secretary of State in accordance with the state's open meetings laws.
  - g. The pardon clerk shall assure the management of records is in accordance with applicable state and federal laws.
  - h. The pardon clerk may appoint a deputy pardon clerk to assist in the execution of duties.
- K. Cases eligible for Pardon Advisory Board review.
- 1. Only individuals who have committed a crime and were convicted in a North Dakota court of law are eligible for review by the Pardon Advisory Board. The Pardon Advisory Board may not provide pardons for federal offenses, tribal offenses, or offenses from other states.
  - 2. Inmates who have a legal remedy through the Parole Board are not eligible for review by the Pardon Advisory Board until they have exhausted the Parole Board process.
- L. Application, establishing the docket and review process.
- 1. Pardon applications must be made with the pardon clerk on a form prescribed by the pardon clerk and in accordance with any rules adopted by the board. Summary pardon applications may be used only for applicants prosecuted for and convicted of possession of marijuana, ingestion of marijuana, or possession of marijuana paraphernalia.

2. The written application must be submitted to the pardon clerk at least 90 days before the Pardon Advisory Board convenes. Department of Corrections and Rehabilitation staff will review and may investigate the application and prepare an information packet for each application. Applicants may be subject to a criminal record check, including criminal history record information.
  - a. If the application is incomplete, the pardon clerk shall notify the applicant of the items that must be completed before the applicant may receive consideration by the board.
  - b. Any incomplete application may be deferred until such time that the application is complete. An incomplete application includes failure of the applicant to respond to the pardon clerk's request for information.
3. The pardon clerk shall conduct a screening of all applicants to determine the eligibility and merit of the application. If the pardon clerk determines applicants who submitted summary pardon applications are ineligible, the pardon clerk shall return the summary pardon applications and advise the applicants that they may use the pardon application. For inmate applications, the pardon clerk shall determine if the inmate is already eligible for parole review. In all cases, except summary pardon applications, the pardon clerk shall consider the reason for the pardon request.
4. The pardon clerk shall develop recommendations for action on each case and review each case with a representative of the Governor or and the Pardon Advisory Board Chairperson before finalizing the docket. The final docket must be established by the representative of the Governor and the Pardon Advisory Board Chairperson.
  - a. The board may utilize a consent agenda in order to make recommendations to the Governor to deny an applicant relief. The consent agenda must be established by a representative of the Governor and the Pardon Advisory Board Chairperson. The preparation of the consent agenda must include an explanation of the offense and an explanation why relief is not recommended.
  - b. The board may utilize a consent agenda in order to make recommendations to the Governor to grant relief to applicants prosecuted for and convicted of possession of marijuana, possession of marijuana paraphernalia, or ingestion of marijuana. The consent agenda must be established by a representative of the Governor and the Pardon Advisory Board Chairperson. The preparation of the consent agenda must include confirmation the offense is eligible for the summary application process and confirmation the applicant has not pled guilty, or been found guilty of, another criminal offense in any court, including in the state of North Dakota, tribal court, any other state, or in the federal courts, within the last five years prior to the date of the application.

- c. The pardon clerk will present a final information packet for each application on the docket to members of the board at least 30 days before the board convenes. This may include any sentencing report prepared by the Department of Corrections and Rehabilitation and statements of the sentencing judge, states attorney and victim.
  5. The board may interview the applicant or conduct a review of the application without interviewing the applicant during the course of the meeting. The pardon clerk shall schedule all interviews of applicants.
  6. After review and action by the board, the pardon clerk shall prepare orders recommending an applicant be denied relief or may issue a recommendation for relief to the Governor for further review and action.
  7. If the Governor denies an applicant relief, the applicant may not reapply for the longer of one year from the date the Governor issued the denial or the length of time provided in the denial issued by the Governor.
  8. The Governor may reconsider the decision to grant an applicant relief at any time before the applicant is released from a 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 30 days from the date of the initial decision.
6. **SIGNATURE:** This directive with expectations becomes effective when signed by the Chairman and Clerk of the Pardon Advisory Board of the State of North Dakota.

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