



APPLYING FOR POST-CONVICTION RELIEF

An Informational Guide to a North Dakota Civil Court Process

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The information provided in this informational guide is not intended for legal advice but only as a general guide to a civil court process.

If you decide to represent yourself, you will need to do additional research to prepare.

When you represent yourself, you must abide by the following:

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
 - North Dakota Rules of Civil Procedure;
 - North Dakota Rules of Court;
 - North Dakota Rules of Evidence;
 - North Dakota Administrative Rules and Orders;
 - Any local court rules.

Links to the laws, case law, and court rules can be found at www.ndcourts.gov.

A glossary with definitions of legal terms is available at www.ndcourts.gov by clicking on the “Self Help” link.

When you represent yourself, you are held to same requirements and responsibilities as a lawyer, even if you don’t understand the rules or procedures. If you are unsure if this information suits your circumstances, consult a lawyer.

***This information is not a complete statement of the law.** This covers basic information about the process of applying to a North Dakota State District Court for post conviction relief. The Center is not responsible for any consequences that may result from the information provided. The information cannot replace the advice of competent legal counsel licensed in the state of North Dakota. Use at your own risk.*

WHAT IS POST-CONVICTION RELIEF?

A person convicted of a crime may file an application for post-conviction relief.

Post-conviction proceedings are designed to resolve genuine factual disputes which might affect the validity of the conviction.

Post-conviction relief proceedings are civil in nature, rather than criminal. The North Dakota Rules of Civil Procedure apply.

WHEN CAN I ASK FOR A COURT-APPOINTED LAWYER TO REPRESENT ME?

A person convicted of a crime may apply for a court-appointed lawyer after the person files their application for post-conviction relief with the clerk of court.

The court cannot appoint a lawyer before the application for post-conviction relief is filed with the clerk of court.

LAWS AND RULES RELATED TO POST-CONVICTION RELIEF:

[North Dakota Century Code \(NDCC\)](#). The laws of North Dakota enacted by the North Dakota State Legislature. You will see a series of numbers beginning with the letters NDCC. The numbers refer to Title, Chapter and Section. You can find the North Dakota Century Code (NDCC) at www.legis.nd.gov and in print in many North Dakota public and academic libraries.

[North Dakota Century Code Chapter 29-32.1: Uniform Post-Conviction Procedure Act](#). The procedures and requirements for applying for post-conviction relief are found in this Chapter of the NDCC. Case law of ND Dakota Supreme Court decisions related to this Chapter can be found in the print versions of the NDCC.

[North Dakota Rules of Civil Procedure](#). The rules that govern procedures in civil actions in district court. You can find them at www.ndcourts.gov/legal-resources/rules and in print in many North Dakota public and academic libraries.

Laws constantly change through legislation, administrative rulings and court decisions. To determine how a law applies to your situation, review the applicable law or laws, administrative rulings and court decisions. Notes of court decisions related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code are found in many North Dakota public and academic libraries.

Only a lawyer licensed to practice in North Dakota who has agreed to represent you can give you legal advice, which includes interpreting how the laws and rules apply to your situation.

STEP ONE – REVIEW THE LAW:

Carefully review North Dakota Century Code Chapter 29-32.1. Requirements and procedures are found in this Chapter. If your application for post-conviction relief does not meet the requirements, your application may be dismissed or denied.

Section 29-32.1-01(1) lists eight conditions for applying for post-conviction relief. You will need to show that your conviction meets at least one of the conditions.

Applications for post-conviction relief must be filed within 2 years of the date the conviction became final. If more than 2 years has passed since the date the conviction became final, you will need to determine if an exception applies. Exceptions can be found in Section 29-32.1-01(3).

North Dakota Century Code Chapter 29-32.1, current as of March 15, 2019, is attached to this informational guide.

STEP TWO – PREPARE THE APPLICATION FOR POST-CONVICTION RELIEF:

Prepare your application for post-conviction relief.

The ND Legal Self Help Center does not have forms or instructions for applying for post-conviction relief. You will need to create your own document.

The application must contain:

- Name the State of North Dakota as the Respondent;
- Identify the proceedings in which the applicant was convicted and sentenced;
- Give the date of the judgment and sentence complained of;
- Set forth a concise statement of each ground for relief;
- Specify the relief sought; and
- Identify all proceedings for direct review of the judgment of conviction or sentence and all previous post-conviction proceedings taken by the applicant to secure relief from the conviction or sentence;
 - Identify the grounds asserted therein; and
 - The orders or judgments entered.

The application does not need to contain arguments, citations to laws, or discussions of authorities.

An example of an application for post-conviction relief is attached to this informational guide. You may find this of interest as a formatting template. Please be aware that this is not a ND Legal Self Help Center form and the Center does not guarantee or certify its accuracy or legal sufficiency. Use at your own risk.

Make a copy of the completed application for post-conviction relief. Keep the copy of each completed document for your records. The original documents are filed with the clerk of court.

STEP THREE – FILE THE ORIGINAL, COMPLETED APPLICATION FOR POST-CONVICTION RELIEF WITH THE CLERK OF COURT:

Take your completed application to the North Dakota clerk of district court in which your conviction and sentence took place. You will not be required to pay a filing fee.

If the clerk of court accepts your application for filing, the clerk of court will deliver a copy to the state's attorney of the county in which the criminal action was filed.

The clerk of court will notify you that assistance of counsel may be available to persons unable to obtain counsel. The clerk of court will inform you of the procedure for obtaining counsel.

WHAT TO EXPECT AFTER AN APPLICATION FOR POST-CONVICTION RELIEF IS FILED:

The State must respond within 30 days of docketing the application by the clerk of court.

The State may ask the court to dismiss an application on the ground that it is evident from the application that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings.

The State's response may raise the following defenses:

- The application demonstrates no entitlement to post conviction relief and no purpose would be served by any further proceedings;
- The claim has been fully and finally determined in a previous proceeding; or
- The application constitutes misuse of the application for post-conviction relief process.

The court may do the following:

- On its own motion, before any response by the State, enter a judgment denying a meritless application on any and all issues raised in the application.
- Allow amendment of the application or any pleading or motion.
- Allow further pleadings or motions.
- Extend the time for filing any pleading.
- Allow you to withdraw the application without prejudice. This is allowed for good cause.
- Allow either party to use the discovery procedures available in criminal or civil proceedings. This is allowed for good cause and may be used only to the extent and in the manner the court has ordered, or to which the parties have agreed.
- On its own motion, summarily deny a second or successive application for similar relief on behalf of the same applicant and may summarily deny any application when the issues raised in the application have previously been decided by the appellate court in the same case.
- On its own motion, dismiss any grounds of an application which allege ineffective assistance of post-conviction counsel. You may not claim constitutionally ineffective assistance of post-conviction counsel in proceedings under Chapter 29-32.1.
- Grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.
- If an evidentiary hearing is necessary, determine which issues of material fact are in controversy and appropriately restrict the hearing.

If the court determines an evidentiary hearing is necessary:

- Evidence must be presented in open court, recorded, and preserved as part of the record of the proceedings.
- A certified record of previous proceedings may be used as evidence of facts and occurrences established therein, but use of that record does not preclude either party from offering additional evidence as to those facts and occurrences.
- The deposition of a witness may be received in evidence, without regard to the availability of the witness, if written notice of intention to use the deposition was given

in advance of the hearing and the deposition was taken subject to the right of cross-examination.

Appeal of final judgment:

A final judgment entered in an application for post-conviction relief under Chapter 29-32.1 may be reviewed by the North Dakota Supreme Court upon appeal as provided by rules of the North Dakota Supreme Court.

(North Dakota Century Code Chapter 29-32.1, current as of March 15, 2019, and a formatting example of an application for post-conviction relief are found on the next eight pages of this informational guide.)

CHAPTER 29-32.1
UNIFORM POSTCONVICTION PROCEDURE ACT

29-32.1-01. Remedy - To whom available - Conditions.

1. A person who has been convicted of and sentenced for a crime may institute a proceeding applying for relief under this chapter upon the ground that:
 - a. The conviction was obtained or the sentence was imposed in violation of the laws or the Constitution of the United States or of the laws or Constitution of North Dakota;
 - b. The conviction was obtained under a statute that is in violation of the Constitution of the United States or the Constitution of North Dakota, or that the conduct for which the applicant was prosecuted is constitutionally protected;
 - c. The court that rendered the judgment of conviction and sentence was without jurisdiction over the person of the applicant or the subject matter;
 - d. The sentence is not authorized by law;
 - e. Evidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice;
 - f. A significant change in substantive or procedural law has occurred which, in the interest of justice, should be applied retrospectively;
 - g. The sentence has expired, probation or parole or conditional release was unlawfully revoked, or the applicant is otherwise unlawfully in custody or restrained; or
 - h. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error available before July 1, 1985, under any common law, statutory or other writ, motion, proceeding, or remedy.
2. Except as provided in subsection 3, an application for relief under this chapter must be filed within two years of the date the conviction becomes final. A conviction becomes final for purposes of this chapter when:
 - a. The time for appeal of the conviction to the North Dakota supreme court expires;
 - b. If an appeal was taken to the North Dakota supreme court, the time for petitioning the United States supreme court for review expires; or
 - c. If review was sought in the United States supreme court, the date the supreme court issues a final order in the case.
3.
 - a. Notwithstanding subsection 2, a court may consider an application for relief under this chapter if:
 - (1) The petition alleges the existence of newly discovered evidence, including DNA evidence, which if proved and reviewed in light of the evidence as a whole, would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted;
 - (2) The petitioner establishes that the petitioner suffered from a physical disability or mental disease that precluded timely assertion of the application for relief; or
 - (3) The petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States supreme court or a North Dakota appellate court and the petitioner establishes that the interpretation is retroactively applicable to the petitioner's case.
 - b. An application under this subsection must be filed within two years of the date the petitioner discovers or reasonably should have discovered the existence of the new evidence, the disability or disease ceases, or the effective date of the retroactive application of law.
4. A proceeding under this chapter is not a substitute for and does not affect any remedy incident to the prosecution in the trial court or direct review of the judgment of conviction or sentence in an appellate court. Except as otherwise provided in this chapter, a proceeding under this chapter replaces all other common law, statutory, or other remedies available before July 1, 1985, for collaterally challenging the validity of the judgment of conviction or sentence. It is to be used exclusively in place of them. A

proceeding under this chapter is not available to provide relief for disciplinary measures, custodial treatment, or other violations of civil rights of a convicted person occurring after the imposition of sentence.

29-32.1-02. Exercise of original jurisdiction in habeas corpus.

A court in which original jurisdiction in habeas corpus is vested may entertain a habeas corpus proceeding under chapter 32-22 or this chapter. This chapter, to the extent appropriate, governs the proceeding.

29-32.1-03. Commencement of proceedings - Filing - Service.

1. A proceeding is commenced by filing an application with the clerk of the court in which the conviction and sentence took place. The state must be named as respondent. No filing fee is required.
2. An application may be filed at any time.
3. If an application is filed before the time for appeal from the judgment of conviction or sentence has expired, the court, on motion of the applicant, may extend the time for appeal until a final order has been entered in the proceeding under this chapter.
4. If an application is filed while an appeal or other review is pending, the appellate court, on motion of either party or on its own motion, may defer further action on the appeal or other review until the determination of the application by the trial court or may order the application certified and consolidated with the pending appeal or other review.
5. Upon receipt of an application, the clerk shall forthwith file it, make an entry in the appropriate docket, and deliver a copy to the state's attorney of the county in which the criminal action was venued.
6. If the applicant is not represented by counsel, the clerk shall notify the applicant that assistance of counsel may be available to persons unable to obtain counsel. The clerk shall also inform the applicant of the procedure for obtaining counsel.
7. The application may be considered by any judge of the court in which the conviction took place.

29-32.1-04. Application - Contents.

1. The application must identify the proceedings in which the applicant was convicted and sentenced, give the date of the judgment and sentence complained of, set forth a concise statement of each ground for relief, and specify the relief requested. Argument, citations, and discussion of authorities are unnecessary.
2. The application must identify all proceedings for direct review of the judgment of conviction or sentence and all previous postconviction proceedings taken by the applicant to secure relief from the conviction or sentence, the grounds asserted therein, and the orders or judgments entered. The application must refer to the portions of the record of prior proceedings pertinent to the alleged grounds for relief. If the cited record is not in the files of the court, the applicant shall attach that record or portions thereof to the application or state why it is not attached. Affidavits or other material supporting the application may be attached, but are unnecessary.

29-32.1-05. Counsel at public expense - Applicant's inability to pay costs and litigation expenses.

1. If an applicant requests counsel and the court is satisfied that the applicant is indigent, counsel shall be provided at public expense to represent the applicant.
2. Costs and expenses incident to a proceeding under this chapter, including fees for counsel provided at public expense, must be reimbursed in the same manner as are costs and expenses incurred in the defense of criminal prosecutions.

29-32.1-06. Response by answer or motion.

1. Within thirty days after the docketing of an application or within any further time the court may allow, the state shall respond by answer or motion.

2. The state may move to dismiss an application on the ground that it is evident from the application that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceedings. In considering the motion, the court shall take account of substance regardless of defects of form.
3. The following defenses may be raised by answer or motion:
 - a. The claim has been fully and finally determined in a previous proceeding in accordance with subsection 1 of section 29-32.1-12; or
 - b. The application constitutes misuse of process in accordance with subsection 2 of section 29-32.1-12.

29-32.1-07. Amended and supplemental pleadings.

1. The court may make appropriate orders allowing amendment of the application or any pleading or motion, allowing further pleadings or motions, or extending the time for filing any pleading.
2. At any time before the entry of judgment, the court, for good cause, may grant leave to withdraw the application without prejudice.

29-32.1-08. Discovery.

The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner the court has ordered or to which the parties have agreed.

29-32.1-09. Summary disposition.

1. The court, on its own motion, may enter a judgment denying a meritless application on any and all issues raised in the application before any response by the state. The court also may summarily deny a second or successive application for similar relief on behalf of the same applicant and may summarily deny any application when the issues raised in the application have previously been decided by the appellate court in the same case.
2. The court, on its own motion, may dismiss any grounds of an application which allege ineffective assistance of postconviction counsel. An applicant may not claim constitutionally ineffective assistance of postconviction counsel in proceedings under this chapter.
3. The court may grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.
4. If an evidentiary hearing is necessary, the court may determine which issues of material fact are in controversy and appropriately restrict the hearing.

29-32.1-10. Hearing - Evidence.

1. Evidence must be presented in open court, recorded, and preserved as part of the record of the proceedings.
2. A certified record of previous proceedings may be used as evidence of facts and occurrences established therein, but use of that record does not preclude either party from offering additional evidence as to those facts and occurrences.
3. The deposition of a witness may be received in evidence, without regard to the availability of the witness, if written notice of intention to use the deposition was given in advance of the hearing and the deposition was taken subject to the right of cross-examination.

29-32.1-11. Findings of fact - Conclusions of law - Order.

1. The court shall make explicit findings on material questions of fact and state expressly its conclusions of law relating to each issue presented.

2. If the court rules that the applicant is not entitled to relief, its order must indicate whether the decision is based upon the pleadings, is by summary disposition, or is the result of an evidentiary hearing.
3. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the previous proceedings, and any supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.

29-32.1-12. Affirmative defenses - Res judicata - Misuse of process.

1. An application for postconviction relief may be denied on the ground that the same claim or claims were fully and finally determined in a previous proceeding.
2. A court may deny relief on the ground of misuse of process. Process is misused when the applicant:
 - a. Presents a claim for relief which the applicant inexcusably failed to raise either in a proceeding leading to judgment of conviction and sentence or in a previous postconviction proceeding; or
 - b. Files multiple applications containing a claim so lacking in factual support or legal basis as to be frivolous.
3. Res judicata and misuse of process are affirmative defenses to be pleaded by the state. The burden of proof is also upon the state, but, as to any ground for relief which, by statute or rule of court, must be presented as a defense or objection at a specified stage of a criminal prosecution, the applicant shall show good cause for noncompliance with the statute or rule.

29-32.1-13. Reimbursement of costs and litigation expenses.

If an application is denied, the state may move for an order requiring the applicant to reimburse the state for costs and for litigation expenses paid for the applicant from public funds. The court may grant the motion if it finds that the applicant's claim is so completely lacking in factual support or legal basis as to be frivolous or that the applicant has deliberately misused process. The court may require reimbursement of costs and expenses only to the extent reasonable in light of the applicant's present and probable future financial resources.

29-32.1-14. Review.

A final judgment entered under this chapter may be reviewed by the supreme court of this state upon appeal as provided by rule of the supreme court.

29-32.1-15. Motion for DNA testing not available at trial.

1. Without limitation on a court's authority to order discovery under section 29-32.1-08, a person convicted of a crime may make a motion for the performance of forensic DNA testing to demonstrate the person's actual innocence if:
 - a. The testing is to be performed on evidence secured in relation to the trial which resulted in the conviction; and
 - b. The evidence was not subject to the testing because either the technology for the testing was not available at the time of the trial or the testing was not available as evidence at the time of the trial.
2. A person who makes a motion under subsection 1 must present a prima facie case that:
 - a. Identity was an issue in the trial; and
 - b. The evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.
3. The court shall order that the testing be performed if:
 - a. A prima facie case has been established under subsection 2;
 - b. The testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence; and

- c. The testing requested employs a scientific method generally accepted within the relevant scientific community. The court shall impose reasonable conditions on the testing designed to protect the state's interests in the integrity of the evidence and the testing process.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

 (Petitioner))
)
 PETITIONER,)
 Vs)
)
 State of North Dakota)
 (Respondent))
)
 RESPONDENT.)

Case No. _____

APPLICATION FOR
POST CONVICTION RELIEF

Comes Now the above-named Petitioner and Defendant, pro se, and respectfully makes Application for post-conviction relief, pursuant to Chapter 29-32.1 of the North Dakota Century Code, and in support thereof represents and shows to the Court:

1. Date of judgment of conviction: _____.
2. Presiding Judge, Case Number: _____.
3. Crime(s) convicted of and sentence(s): _____

 _____.
4. (Check one) Open guilty plea () Plea bargain () Bench trial () Jury trial ()
 If you entered a guilty plea to one count or indictment and a no-guilty plea to another count or indictment, please give details: _____

 _____.
5. Give details of any previous action taken to secure relief from conviction and sentence: _____

 _____.
6. Give condition (a-h) under NDCC 29-32.1-01(1) which qualifies petitioner for post-conviction relief: _____

Format example ONLY. This is NOT a NDLSHC form.

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7. State *concisely* every ground which you claim that you are being held unlawfully.

Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

For your information, the following is a list of frequently raised grounds for relief in post-conviction proceedings.

- a) Conviction was obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding the nature of the charge and the consequences of the plea.
- b) Conviction obtained by use of coerced confession.
- c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- e) Conviction obtained by a violation of the privilege against self-incrimination.
- f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- g) Conviction obtained by a violation of the protection against double jeopardy.
- h) Conviction obtained by action of a grand jury which was unconstitutionally selected and impaneled.
- i) Denial of effective assistance of counsel.
- j) Denial of right to appeal.

A. Ground one: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

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C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

WHEREFORE, Petitioner prays that the Court grant Petitioner relief to which (s)he may be entitled in the proceeding, including the following: _____

Dated this _____ day of _____, 20_____.

Petitioner pro se

STATE OF NORTH DAKOTA)

) SS.

VERIFICATION

COUNTY OF _____)

_____, being first duly sworn, deposes and says that (s)he is the Petitioner and Defendant in the foregoing Application; that (s)he has read the foregoing Application and knows the contents thereof and that the same is true of his/her own knowledge, except as to those matters stated therein upon information and belief and, as to such matters, (s)he believes it to be true.

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public/Clerk of Court

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If notary public, my commission expires