

## 8.1. A.11 Withholding of Parole Eligibility:

### I Policy Index:

**Date Signed:** 9/15/16

**Distribution:** Public

**Replaces Policy:**

**Affected Units:** South Dakota Board of Pardons and Paroles

**Effective Date:** Upon Signature

**Scheduled Revision Date:** 9/2017

**Revision Number:** 5

**Office of Primary Responsibility:** South Dakota Board of Pardons and Paroles

### II Purpose:

To provide procedural process to comply with SDCL 24-15-32.1

### III Definitions:

#### **SDCL 24-15A-32.1:**

Upon recommendation of sex offender treatment program staff and following a review of the inmate's history, treatment status, risk of re-offense, and psycho-sexual assessment, the Warden may, at any time prior to the inmate's final discharge, recommend to the Board of Pardons and Paroles that the parole eligibility pursuant to SDCL 24-15A-32 be withheld on an inmate sentence as a result of a conviction of a felony sex offense as defined in SDCL 22-24B-1

The board may, after a hearing, determine if parole eligibility is to be withheld. The decision of the board to withhold parole eligibility is final.

### IV Procedures:

#### **Applicability:**

- A. Inmates who are eligible for parole pursuant to SDCL 24-15A-32 and whose sentence(s) is for a sex offense (22-24B-1) may have their parole eligibility withheld as defined in SDCL 24-15A-32.1.
- B. Only inmates whose date of sex offense(s) occurred on or after July 1, 2006 may have their parole eligibility withheld under 24-1A-32.1.
- C. An inmate with multiple sentences may only have parole eligibility withheld on those sentences that meet the guidelines of SDCL 24-15A-32.1 and DOC Policy 1.4.B.11 - Withholding of Parole Eligibility.
- D. Parole eligibility may be withheld on an inmate who is past his/her initial parole date, as long as the inmate has not discharged the sentence(s) for the sex offense(s) the inmate is being recommended to have their parole eligibility withheld on.
  1. This would include non-compliant inmates who went before the Board of Pardons and Paroles (Board) and have been subsequently denied parole by the Board (See DOC policy 1.4.B.1 *Individual Program Directives (IPD)*)
  2. This would also include any inmate released on parole or suspended sentence that subsequently violated the terms of parole/suspended sentence and was returned to prison.

**Hearing Process:**

- A. Board office staff will schedule a hearing before a panel that conducts revocation hearings. (See Parole Board Office - Operations Memorandum - 9.1.A.11)
- B. The hearing officer(s) shall follow hearing script. (Attachment #1 & #2).

**Hearing Outcomes:**

- A. In all cases the board may withhold parole eligibility and allow the inmate to continue to expiration of sentence with the exception of split sentences.
- B. Where the inmate is serving a split sentences the board may withhold the parole eligibility, but not impose the suspended sentence under this policy, or Pursuant to SDCL 24-15A-32.1.
- C. The board may in all cases set a next review date and impose conditions. (See: Board Policy 8.1.A.5)

**Notification after Hearing:**

- A. Inmate will be notified in writing of the board decision within 10 working days.

**Related Directives:**

SDCL Chapters 24-15A, 24-13, 24-14, SDCL 22-24B-1, DOC Policy 1.4.B.11, Board Policies 8.1.A.5 and Board Office Operations Memorandum 9.1.A.11

**VI Revision Log:**

May 2009: New.

November 2012: Review, no changes

March 2014 : no changes review

May 2015 – No Changes

Sept 2016 – No changes

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|---------------------------|----------------|
|                           | <b>9/15/16</b> |
| <i>Kay Nikolas, Chair</i> | <i>Date</i>    |

## **WITHHOLDING OF PAROLE ELIGIBILITY HEARING:**

### **INITIAL APPEARANCE AND READING OF RIGHTS**

#### **Reading of Rights:**

1. You have the right to remain silent.  
  
You need not put on any evidence in your behalf.  
  
The Board must be reasonably satisfied that parole eligibility should be withheld.
2. On the other hand, you have the right to testify on your own behalf if you so desire; call witnesses on your own behalf; and place before the Board any documentary evidence you wish us to consider.
3. You have the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); Additionally, the rules of evidence do not apply to this hearing. (SDCL 24-13-12)
4. You may be represented by an attorney at your own expense. You do not have a right to a court appointed attorney at this hearing.
5. You have the right to know reasons the Warden has recommended the Board withhold your parole eligibility.

#### **Do you understand what I have just read to you?**

Have the inmate identify himself/herself by full name, number and indicate that they understand their rights in these proceedings for the court reporter.

Attachment #2

## **WITHHOLDING OF PAROLE ELIGIBILITY HEARING**

Hearing Officer: Identify Hearing Officer(s) Present for the record.

1. Ask Board Counsel (if present) to identify self for the record.
2. Identify Violator: Name and Number for the record.
3. Ask that Representatives identify themselves for the record.
4. Identify type of hearing: This is the time and place set for a Hearing to Consider the Withholding of Parole Eligibility.

Give Oath: (Oath should be given to all that will be giving testimony.)

Do you solemnly swear that the testimony you are about to give in the matter now in hearing is the truth, the whole truth and nothing but the truth?

Reading of Rights - Attachment #1 to Board Policy

Hearing Officer: Explain the following if inmate is appearing without an attorney:

One of those rights is "The right to be represented by an attorney at your own expense."  
An attorney can help you in the presentation of evidence and protection of your legal rights.

Do you wish to proceed without an attorney?

If yes – Proceed

If no – Proceeding will end. The inmate will be given time to retain an attorney. A new hearing date will be established by the Hearing Officer.

Ask inmate did he/she understand those Rights as read.

If yes – Proceed

If no – Clarify

Ask inmate if they have any questions regarding the procedures.

If yes – Clarify

If no – Proceed

Ask the inmate if they were "Served a Packet of Documents"?

Review Documents Served on Inmate:

Ask if they received all documents?

Do you have any objection to entering the packet into evidence? Mark the Packet as Exhibit #1

Ask inmate what was his/her original charge? Sentence?

Did your attorney (if represented by council) receive a copy?

Response should be yes. Or will be provided by Violation Manger.

Hearing Officer:

Read Notification For Warden's Review:

Maximum Consequences: Review

Do you understand that if you admit to the allegations or if the Board finds you are an unacceptable risk to the community, we can withhold your parole eligibility, we can set you for a parole hearing at any time in the future prior to your discharge of this number?

Ask inmate: Were you made any Promises or Threatened in any way to make the following decision?

For Each Allegation:

1. Read Allegation:
2. Ask if Admitting or Denying?
3. If admitting, (what basis) ask them to explain.
4. If denying, (what basis) ask them to explain.

Inmate's Attorney's (if represented) may offer testimony at this time:

Inmate's family/friends may offer mitigating information at this time:

Upon completion of testimony:

Inform the Inmate that a final decision will be determined and they will be notified by the close of business on Friday of this week.

You may notify family and friends after you receive your official notice. Counsel may call the Board Office, Monday if they wish to know the Boards final decision. 367-5040

Thank you, this concludes this hearing.