

8.1. A.16 Compassionate Parole

I Policy Index:

Date Signed: 8/16/18

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Replaces Policy:

Supersedes Policy Dated:

Affected Units: South Dakota Board of Pardons and Paroles

Effective Date: Upon Signature

Scheduled Revision Date:

Revision Number: New

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

II Purpose:

To provide procedural process to comply with SDCL (HB1109)

III Definitions:

SDCL (HB1109):

The secretary of corrections may consider referrals for compassionate parole consideration from the inmate's health care provider or the warden. If the secretary determines the inmate meets the criteria for compassionate parole consideration as set forth in section 1 of this Act (See Attachment 1), the secretary may refer the inmate for compassionate parole hearing. The executive director of the Board of Pardons and Paroles shall schedule a discretionary, compassionate parole hearing with the board within three months of receipt of referral.

IV Procedures:

- A. The Board of Pardons and Paroles shall consider the following factors in determining the grant or denial of a compassionate parole: (See Attachment 2)
- B. An inmate may not be released on compassionate parole if the inmate meets the eligibility requirements of a medically indigent person under the provisions of chapter 28-13. An inmate may not be released on compassionate parole, unless the inmate's release plan ensures the inmate's health care expenses will be paid either by the inmate or a third party payer including Medicare, Medicaid, Indian Health Service, veteran's assistance, or private insurance.
- C. The board may grant or deny a compassionate parole. If denied the board shall set the date for the next consideration of compassionate parole not to exceed one year. The board may elect to review the inmate sooner than one year. If the inmate no longer meets the criteria for compassionate parole as set forth in section 1 of this Act (Attachment 1), the inmate's health care provider or the warden shall notify the secretary of corrections. The secretary may remove the inmate from compassionate parole consideration. An inmate removed from compassionate parole consideration is subject to applicable parole provisions under chapters 24-13, 24-15, and 24-15A notwithstanding the provisions of this Act or a pending compassionate parole hearing. If an inmate is released on compassionate parole and is compliant with the terms of the inmate's supervision, no longer meeting the criteria for compassionate parole in section 1 of this Act (Attachment 1) does not constitute grounds for parole revocation.
- D. An inmate is ineligible for compassionate parole once the inmate reaches the parole eligibility date pursuant to § 24-15-5 or the inmate's initial parole date pursuant to § 24-15A-32. However, if an inmate previously referred by the secretary for compassionate parole continues to meet the criteria for

compassionate parole consideration as outlined in section 1 of this act (Attachment 1) the factors listed in section 3 of this Act (Attachment 2) shall be considered in any subsequent discretionary parole release decision.

- E. An inmate granted compassionate parole is subject to the provisions of chapters 24-13, 24-15, and 24-15A, including the provisions related to supervision, early final discharge, and revocation of parole, so far as those provisions are consistent with this Act.
- F. Nothing in this Act or its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any prisoner. An inmate is not entitled to compassionate parole or to be considered for compassionate parole. Compassionate parole may be recommended by the secretary and granted by the board if, in the judgement of the secretary and the board, the inmate meets the eligibility criteria for compassionate parole pursuant to section 1 of this Act (Attachment 1) and a compassionate parole release is unlikely to pose a detriment to the offender, victim, or community. The decision of the board regarding compassionate parole release is final.
- G. 24-15-4. No inmate sentenced to life imprisonment is eligible for parole by the Board of Pardons and Paroles except as provided in this Act.
- H. An inmate on parole through a compassionate parole release is ineligible for earned discharge credits until the inmate reaches an initial parole date pursuant § 24-15A-32 or an initial parole eligibility date pursuant to § 24-15-5.
- I. If an inmate on parole through a compassionate parole release has the inmate's parole revoked, a subsequent consideration of compassionate parole on the same sentence requires a new referral for consideration pursuant to section 2 of this Act (III Definitions).
- J. As a condition of supervision pursuant to § 24-15A-37, any inmate released on compassionate parole shall be compliant with medical care and maintain responsibility for health care expenses through self-pay or third party payer.
- K. When a parolee released under compassionate parole reaches their initial parole date pursuant to § 24-15A-32 or their parole eligibility date pursuant to § 24-15-5 and is paroled subject to the provisions of chapters 24-15 and 24-15A they are no longer subject to the provisions of this Act.

V Related Directives:

24-13, 24-15, and 24-15A

VI Revision Log:

<i>Original copy in Parole Board Office</i>	<i>8/16/18</i>
Mark Smith, Board	Date

**Attachment 1: SDCL (HB1109) Section One:
Parole eligibility for compassionate parole notwithstanding and contrary
provision in chapter 24-13, 24-15 or 24-15A, an inmate who:**

1. Has a terminal illness;
2. Is seriously ill and not likely to recover;
3. Requires extensive medical care or significant chronic medical care;
4. Is at least sixty-five years of age, has served at least ten consecutive years of the inmate's sentence incarcerated, whose current sentences are for convictions of a Class 3 felony or below and whose medical care needs are at least double the average annual medical cost of the inmate population; or
5. Is at least seventy years of age and has served at least thirty consecutive years of the inmate's sentence incarcerated; and
6. Is not serving a capital punishment sentence;
is eligible for compassionate parole consideration.

**Attachment 2:
SDCL (HB1109) Section Three:
Factors the Board of Pardons and Paroles shall consider in determining grant or denial of compassionate parole:**

1. The inmate's assessed risk level;
2. The inmate's conduct while on extended confinement, if applicable;
3. The inmate's conduct while on extended confinement, if applicable;
4. Sentence served and sentence remaining;
5. Offense and chronicity of criminal behavior;
6. Prognosis and incapacitation level;
7. The inmate's compliance with health care ordered by a health care provider;
8. Release plan including provisions for health care;
9. Input, if any, of the sentencing judge, the prosecuting attorney, and the victim;
10. If the care and supervision that the inmate requires and is anticipated to require can be provided in a more medically appropriate or cost effective manner than the Department of Corrections;
11. Allowing a geriatric or terminally ill person to live at a location outside of prison prior to death; and
12. The ability to adequately monitor the inmate, after release, to ensure public safety.