

8.1. A.4 Parole Date Review

I Policy Index:

Date Signed: 4/14/16
Distribution: Public
Replaces Policy: This policy supersedes the 2/2015 version.
Affected Units: Parole Board
Effective Date: Upon Signature
Scheduled Revision Date: 4/17
Revision Number: 5
Office of Primary Responsibility: South Dakota Board of Pardons and Paroles

II Purpose:

To establish the process and procedures for the review and establishment of a true and correct parole date when challenged by an inmate.

III Definitions:

Establishment of date of parole consideration eligibility:

Whenever any person becomes an inmate of the penitentiary, the director shall immediately establish in the record the date when the inmate will be eligible for consideration for parole. Such consideration for parole eligibility date is subject to change upon receipt of information regarding a change in the number of prior felony convictions or any subsequent felony convictions. (See SDCL 24-15-3)

Aggrieved Parole Date:

Any inmate who is aggrieved by the established parole consideration eligibility date may apply for a hearing before the Board of Pardons and Paroles for a final determination of the true and correct parole consideration eligibility date. (See SDCL 24-15-3)

Completion of History and Findings:

Between the date a person becomes an inmate of the penitentiary and the date on which such person becomes eligible for consideration for parole, the director shall complete the history of the inmate and shall study the life, habits, previous environment, and nature of the inmate to determine the advisability of recommending the inmate for parole when the inmate becomes eligible to be considered. At least ten days before the date of eligibility the director shall submit to the board the findings regarding the inmate. (See SDCL 24-15-3)

Victim Notification:

If the victim of the inmate's crime requests in writing to be notified by the Board of Pardons and Paroles when the inmate will appear for a parole date review, the director shall send a notice at least ten days before the date of the hearing, by first class mail to the address provided by the victim. The victim may be present at the hearing and may state his or her factual summary and legal argument concerning the establishment of the inmate's initial parole date.

Change in Initial Parole Date:

An inmate's initial parole date is subject to change upon receipt of information regarding a change in the number of prior felony convictions or any subsequent felony convictions. Any inmate who is aggrieved by the established parole date may apply for a review of the date with the board for a determination of the true and correct parole date. (See SDCL 24-15A-33)

Application for Board Review of Established Parole Date:

An inmate who is aggrieved by the parole date established by the Department of Corrections may apply to the board for a review by the board and a determination of the true parole date. The application must be in writing and must specify the inmate's legal contentions concerning the application. (See SDAR 17:60:07:01).

Hearing on Application:

Before determining the inmate's true parole date, the board shall provide the inmate with an opportunity to present the inmate's factual and legal arguments at a hearing. Notice of the hearing before the board shall be given to the inmate at least ten days before the hearing. (See SDAR 17:60:07:02).

Hearing Panel:

Hearing panels - Final action. The chair of the board may designate panels of two or more board members to conduct hearings, hear applications, take testimony, and take final action regarding the granting, denial, revocation, rescission or an administrative continuance of parole. (See SDCL 24-15A-10).

Designation of Hearing Officers:

The chair of the board may designate individual board members as hearing officers who may conduct hearings pursuant to SDCL chapters 24-13, 24-14, 24-15, and 24-15A, take testimony and make recommendations to a hearing panel.

IV Procedures:

Steps inmate should follow:

1. Inmates with questions on their parole date should contact their case manager and/or central records staff for an explanation of how the parole date was established.
2. If the inmate has questions that cannot be resolved by corrections staff, he/she should contact the Parole Board office with an explanation as to why he/she feel the date is not correct and a request for additional information.
3. The inmate will be sent a copy of relevant statutes, date calculations from central records, date computation policy and an application for a Parole Board review of his/her established initial parole eligibility date.
4. If the inmate is still aggrieved by the parole date established by the Department of Corrections he/she may apply to the Board for a review by the Board to determine a true parole date. The application must be in writing and must specify the inmate's legal contentions concerning the application.

Hearing Notice:

- A. Notice of the hearing before the Board shall be given to the inmate at least ten days before the hearing, stating the date, time and place of the hearing.

Hearing Officer/Hearing Panel - Hearing:

- A. The hearing officer/panel shall review the inmate's file, date calculation worksheet(s) and take testimony and evidence from the inmate.
- B. A hearing officer shall make a recommendation in writing to a two person panel that may adopt, modify or reject the recommendation.
- C.. A hearing panel will issue finding and facts and conclusions of law with-in forty five days after the hearing or such other time as the panel may direct.

Record of Hearing:

- A. The Board will establish a record by recording or transcript for each hearing.

Attachments:

- Attachment 1: Notice of Board Hearing
- Attachment 2: Parole Date Review Script
- Attachment 3: Parole Date Review Application
- Attachment 4: Letter from Director to inmate

V Related Directives:

ARSD - 17:60:07:01, ARSD - 17:60:07:02
SDCL 24-15-3, 24-15A-33

ACA Standard - Adult Parole Authorities: Standards, Parole Release Hearings [2-1090] Standards 2-1091 through 2-1092, and 2-1094 through 2-1098 are met. Standards 2-1090 not met due to Admin. Rule 17:60:07:02 and 2-1093 need policy to meet standard.

VI Revision Log:

February 2008: **Added** review of ACA Standards as applicable to this policy in Section V.

Added Admin Rules requires 10 day notice and ACA Standards requires 14 day notice.

January 2009: **Revised** statute citations, updated format. Expanded procedure to include director review and clarified hearing officer and panel hearings.

February 2012: **Revised:** Victim Notification: Deleted: ~~If the victim of the inmate's crime requests in writing to be notified by the Board of Pardons and Parole when the inmate will be eligible for consideration for parole, the director shall send a notice at least ten days before the date of eligibility, of the inmates' parole consideration eligibility by first class mail to the address provided by the victim. The notice shall provide the inmate's parole consideration eligibility date and the parole hearing date, and the board shall advise the victim that he or she may be present at the hearing and may state his or her opinion regarding the possible parole of the inmate. (See SDCL 24-15-3)~~ Deleted: **Hearing Officer:** ~~The chair of the board may designate individual parole board members as hearing officers who may conduct hearings pursuant to this chapter and chapters 24-13, 24-14 and 25-15, take testimony, and make recommendations to the board. The recommendation shall be in writing and reviewed by the board or a panel of the board who may adopt, modify, or reject the recommendations. (See SDCL 24-15A-9).~~ Notification to the Board Office: Deleted: ~~The application must be in writing and must specify the inmate's legal contentions concerning the application. Central records will be notified and requested to review the inmates date calculations with explanations and forwarded to the inmate. If the inmate is still aggrieved, the board staff will schedule a hearing before a hearing officer or panel for further review.~~ Added: *The application must be in writing and must specify the inmate's legal contentions concerning the application. Central records will be notified and requested to review the inmates date calculations with explanations and forwarded to the inmate and the Board. A Parole Date Review Application (attachment 3) will also be sent to the inmate.* Hearing Notice: Deleted: ~~4. The Board office staff shall serve a written notice to the inmate indicating the time and place for the hearing.~~ Added: *stating the date, time and place of the hearing.* Hearing Officer/Hearing Panel -

~~Hearing: Deleted: A hearing officer or Hearing officers shall bring the issue to the Board for consideration, final decision or recommend a hearing before the full board. A can resolve the issue or bring the issue to the Board for consideration or recommend the inmate be brought before th full board for review and final decision.~~ Added: *will issue finding and facts and conclusions of law with-in forty five days of the hearing.* Deleted: ~~Hearing before the Full Board: A. Any inmate appearing before the Board will be served notice, at a minimum of ten (10) days prior to the hearing. The board office staff shall serve a written notice to the inmate and counsel if known, indicating the time and place for the hearing. The Board may call on staff from central records to explain date calculations, felony order, and provide other rolevant information. The Board will review the case, take testimony and render a decision. a. The decision will be in writing and be provided to the inmate and counsel if known, within ten (10) days of the Board's final decision.~~ V Related Directives: Deleted: ~~43 4.2 and 24 13 4.3 (repealed)~~ Added: *Attachment 1: NOTICE OF BOARD HEARING Attachment 2: Parole Date Review Script Attachment 3: Parole Date Review Application Attachment 4: Letter from Director to inmate*

3/2012: revised and added page one *Victim Notification:*

If the victim of the inmate's crime requests in writing to be notified by the Board of Pardons and Paroles when the inmate will appear for a parole date review, the director shall send a notice at least ten days before the date of the hearing, by first class mail to the address provided by the victim. The victim may be present at the hearing and may state his or her factual summary and legal argument concerning the establishment of the inmate's initial parole date.

3/2012: *added to page 2 B. and attachment 2, II 3, "or such other time as the panel may direct."*

Revised: IV Procedures: Steps inmate should follow: Inmates with questions on their parole date should contact their case manager and/or central records staff for an explanation of how the parole date was established. If the inmate has questions that cannot be resolved by corrections staff, he/she should contact the Parole Board office with an explanation as to why they feel the date is not correct and a request for additional information. The inmate will be sent a copy of relevant statutes, date calculations from central records, date computation policy and an application for a Parole Board review of their established initial parole eligibility date. If the inmate is still aggrieved by the parole date established by the Department of Corrections he/she may apply to the Board for a review by the Board to determine a true parole date. The application must be in writing and must specify the inmate's legal contentions concerning the application. (Various grammar errors)

03/2013: Add- **Designation of Hearing Officers:**

The chair of the board may designate individual board members as hearing officers who may conduct hearings pursuant to SDCL chapters 24-13, 24-14, 24-15, and 24-15A, take testimony and make recommendations to a hearing panel. A hearing officer shall make a recommendation in writing to a two person panel that may adopt, modify or reject the recommendation. **1/2015: Minor format corrections, delete from attachment 2; I. 4. The hearing officer/panel shall review the inmates file, date calculation worksheet/s and take testimony and evidence from the inmate.**

3/2016: Minor Changes

<i>Kay Nikolas</i>	<i>4/14/16</i>
_____ Kay Nikolas, Chair	_____ Date

(Attachment 1) 8.1.A.4 Parole Date Review

NOTICE OF BOARD HEARING

I, _____, _____ have been duly notified that the Board of Pardons and Paroles pursuant to SDCL 24-15-3 and SDCL 24-15A-33 that a hearing will be held before the Board of Pardons and Paroles at the _____ in _____ South Dakota, on the _____ day of _____, _____ at _____ or as soon thereafter as the Board can hear you.

Dated at _____, South Dakota on the _____ day of _____, _____.

BOARD OF PARDONS AND PAROLES

Program Assistant

Personal service of the above notice and receipt of true and correct copy thereof is hereby admitted at _____, South Dakota on the _____ day of _____, _____.

Inmate's signature

Date

(Attachment 2) 8.1.A.4 Parole Date Review

Parole Date Review Script

I. Preparations for hearing:

1. The application must be in writing and must specify the inmate's legal contentions concerning the application.
2. Central records will submit a review of the inmates date calculations and forward those calculations to Board staff to be submitted at time of the hearing.
3. Notice of the hearing before the Board shall be given to the inmate at least ten days before the hearing. The Board office staff shall serve a written notice to the inmate indicating the time and palce for the hearing.
4. The Board will establish a record by recording or transcript for each hearing.

II. Conducting the hearing:

1. For the record indicate
 - a. Date
 - b. Inmate name and number
 - c. Reason for hearing
 - d. Board members present
 - e. Attorney/s present
 - f. Staff present
 - g. Other parties present
2. The hearing officer/panel shall review the inmates file, date calculation worksheet/s and take testimony and evidence from the inmate.
3. A hearing officer shall make a recommendation in writing to a two person panel that may adopt, modify or reject the recommendation.
4. The hearing panel will issue findings and conclusions of law, and an order setting the inmates parole date with-in forty five days from the hearing or such time as the panel may direct.

(Attachment 3) 8.1.A.4 Parole Date Review

Parole Date Review Application

(Inmate Printed Name: Last, First)

(Primary Number)

(Date)

17:60:07:01- Application for board review of established parole date. An inmate who is aggrieved by the parole date established by the Department of Corrections may apply to the board for a review by the board and a determination of the true parole date. **The application must be in writing and must specify the inmate's factual and legal contentions** concerning the application. SDCL 24-15-3, SDCL 24-15A-33

Factual Summary:

Legal Argument:

(You may use additional paper if more room is needed)

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(Date)

INMATE NAME #00000
Inmate Location

Dear Inmate,

I have received your letter requesting a review of the establishment of your initial parole date.

Enclosed is the documentation from the Central Records office detailing the original calculation of your dates according to state law. Also included are copies of some of the relevant statutes and administrative rules, as well as the DOC date calculation policy. Please review these documents carefully, as you may find they sufficiently address the concerns you have raised.

Steps inmate should follow:

1. Inmates with questions on their parole date should contact their case manager and/or central records staff for an explanation of how the parole date was established.
2. If the inmate has questions that cannot be resolved by corrections staff, he/she should contact the Parole Board office with an explanation as to why they feel the date is not correct and a request for additional information.
3. The inmate will be sent a copy of relevant statutes, date calculations from central records, date computation policy and an application for a Parole Board review of their established initial parole eligibility date.
4. If the inmate is still aggrieved by the parole date established by the Department of Corrections he/she may apply to the Board for a review by the Board to determine a true parole date. The application must be in writing and must specify the inmate's legal contentions concerning the application.

An application has also been included with this letter. In order for a hearing to be scheduled, you must complete the application and send it to the Parole Board office at: PO Box 5911, Sioux Falls, SD 57117.

Regards,

Doug Clark Director of Parole

EAL:tlf
Cc:file

Enc. (3)