

## 8.1. A.5 Parole Board Decisions and the Setting of Next Review Dates

### I Policy Index:

**Date Signed:** 11/17/16  
**Distribution:** Public  
**Replaces Policy:** N/A This policy supersedes the 1/2015 version.  
**Affected Units:** SD Board of Pardons and Paroles  
**Effective Date:** Upon signature  
**Scheduled Revision Date:** 11/17  
**Revision Number:** 11  
**Office of Primary Responsibility:** Parole Board Office

### II Purpose:

To establish guidelines for Parole Board hearing officers and hearing panels on the granting of parole and develop procedures for the application of such guidelines.

To establish guidelines for hearing officers and hearing panels on the discretionary parole of violent or long sentences and in the setting of review dates after non-compliance, revocation and subsequent discretionary hearings.

### III Definitions:

#### **Quorum:**

A majority of the members shall constitute a quorum for official administrative business (See SDCL - 24-13-4.1).

#### **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.

#### **Designation of Hearing Panels:**

The chair of the board may designate panels of two or more board members to conduct hearings pursuant to SDCL chapters 24-13, 24-14, 24-15, and 24-15A, take testimony, and take final action, exclusive of a clemency recommendation to the Governor in accordance with SDCL 24-13-4.6 (See SDCL - 24-15A-10).

#### **Full Board Hearing:**

For the purpose of this policy a "Full Board Hearing" is a hearing scheduled before the nine members of the Board of Pardons and Paroles where, at a minimum, a quorum of the board members are present, in person or by teleconference/video conference.

#### **Recusal:**

Board members recognizing a conflict of interest with a specific case or action, or at the request of an offender, may recuse themselves from the decision-making portion of an official action. A recused member is not counted as a voting member, except as otherwise set by administrative rule or statute. See attachment 4.

**Board Slip:**

Document completed by hearing officer(s), hearing panels, or the full board, authorizing/recommending the granting or denying of discretionary parole to an offender. This document contains information transmitted to the inmate as to conditions of parole or board ordered conditions, and/or reasons for denial of discretionary parole.

**Board Order:**

A directive to an inmate from the Parole Board detailing specific conditions to be met in order for the granting of parole to be considered, or to be met while the offender is on community supervision. Once an order is placed on an individual inmate at a discretionary parole hearing, non-compliance or revocation hearing, subsequent hearing panels shall ensure that the order has been followed, as reasonably expected. If the order has not been followed, the hearing panel may deny parole.

**IV Procedures:****Hearings Officer Duties:**

- A. When conducting hearings, pursuant to this policy, individual hearing officers shall make a recommendation in writing to a two person panel that may adopt, modify or reject the recommendation.

**Hearing Panel Duties:**

- A. Hearing panels as designated by the chair of the board may take final action regarding the granting, denial, revocation, or rescission of a parole(See SDCL 24-15A-10).
- B. Hearing panels shall make recommendations to the full board where the intent is to grant parole on offenders requiring a majority vote of the Board (see procedural section Discretionary Decisions Requiring a Majority Vote).
- C. Hearing panels, at his/her discretion, may refer any hearing to the full board for discussion, decision and/or to schedule the offender for a hearing before the full board.

**Recusal Protocol**

- A. Board members will review the board hearing schedules to identify possible conflicts which would require a recusal and may ask to change the hearing schedule to avoid a possible conflict of interest.
- B. A board member with a confirmed conflict of interest will notify the offender and will recuse themselves from participating in a hearing.
- C. If the board member was previously involved in the case but does not explicitly remember the offender or the case, they may explain the scenario to the offender and give the offender the option to request they recuse themselves. If the offender requests a recusal under these conditions, the board member will not participate in the hearing.
- D. Offenders, at the time of his/her hearing, may explain why they feel there is a conflict of interest and may request that board member(s) assigned to the hearing panel recuse themselves. The board member(s) will consider the offender's request and will grant or deny the request. The Board member shall consider in his/her decision whether the request is reasonable and consistent with common judicial practice. Offenders who are aggrieved by the individual board member recusal decision, may appeal that decision to the chair of the board.

### **General Discretionary Considerations for Granting or Denial of Parole:**

- A. The Board of Pardons and Paroles may consider information obtained from the inmate's legal file, institutional records and parole documents, input from the public, victims, and criminal justice agencies, as well as from interviews with the inmate, in making the determination of granting or denying parole. The board, in making a determination of granting or denying or in assisting the inmate in assessing his/her rehabilitative needs, may utilize the following:
1. The inmate's personal and family history;
  2. The inmate's attitude, character, capabilities, and habits;
  3. The nature and circumstances of the inmate's offense;
  4. The number, nature and circumstances of the inmate's prior offenses;
  5. The successful completion or revocation of previous probation or parole granted to the inmate;
  6. The inmate's conduct in the institution, including efforts directed towards self-improvement;
  7. The inmate's understanding of his or her own problems and the willingness to work towards overcoming them;
  8. The inmate's total personality as it reflects on the possibility that the inmate will lead a law-abiding life without harm to society;
  9. The inmate's family and marital circumstances and the willingness of the family and others to help the inmate upon release on parole from the institution;
  10. The soundness of the parole program and whether it will promote the rehabilitation of the inmate;
  11. The inmate's specific employment and plans for further formal education or training;
  12. The inmate's plan for additional treatment and rehabilitation while on parole;
  13. The effect of the inmate's release on the community;
  14. The effect of the inmate's release on the administration of justice; and
  15. The effect of the inmate's release on the victims of crimes committed by the inmate.

### **Parole Decision-making:**

- A. Decision to continue a discretionary parole hearing:
1. A hearing panel may continue an applicant for less than eight (8) months, under the Old System.

2. A hearing panel may continue an applicant for one (1) month to twenty-four (24) months under the New System.
- B. Decision to deny parole at a discretionary parole hearing:
1. A hearing panel may deny an applicant parole; the time to the next parole review date shall be established at eight (8) months under the Old System (See SDCL 24-15-10).
  2. A hearing panel may deny an applicant parole; the time to the next parole review date may be established at one (1) month up to twenty-four (24) months (See SDCL 24-15A-29).
- C. Decisions at non-compliance and revocation hearings:
1. A hearing panel at a non-compliance hearing shall establish a next review date when finding an inmate non-compliant. That date may be set for an immediate hearing or any time in the future, up to twenty-four (24) months (See SDCL 24-15A-39).
  2. A hearing panel at a revocation hearing shall set the next review date at eight (8) months under the Old System (See SD Admin. Rule 17:60:02:05).
  3. A hearing panel at a revocation hearing shall set the next review from one (1) month up to twenty-four (24) months when revoking parole (See SDCL 24-15A-29).
- D. Board slip (see Attachment #):
1. Hearing officer(s), panels or the full board shall complete a board slip at all discretionary parole hearings.
  2. The hearing panels or full board may impose Board orders, special conditions or recommendations that are directly related to the individual offender's rehabilitation.
  3. The hearing panels or full board may impose special conditions or recommendations that are indicated as a "Board Order." These board orders shall be a requirement of parole. If the inmate rejects the board order, the unexecuted parole shall be rescinded (see Parole Board Policy 8.1.A.13 *Rescission of Parole*). If the inmate violates the conditions of the board order, the parole agent shall submit a violation report to the parole board office.
- E. The Continuance of a hearing:
1. In cases under the Old System, the board may continue any hearing on an application for parole for a period of time not to exceed seven (7) months, and may make recommendations to the inmate on rehabilitation needs. The inmate shall be advised of any such continuance. (See ARSD 17:60:02:03).
  2. In cases under the New System and for cause, the board may continue a hearing for discretionary parole. The inmates shall be advised of any continuance (See ARSD 17:60:09:03).
- F. Discretionary parole hearings following a revocation action:
1. In cases under the Old System, an inmate whose parole has been revoked may reapply for parole eight (8) months after the date of revocation. If the revocation is at the parolee's own request, this provision does not apply (See ARSD 17:60:02:05).
  2. In cases under the New System, if an offender's parole is revoked, the board shall establish a discretionary parole date of not more than two (2) years from the date of revocation. Subsequent

discretionary hearings shall be held at intervals of not more than two (2) years. The board is not required to see an inmate for a discretionary parole hearing at two (2) year intervals following a revocation if the inmate receives an additional felony sentence which carries a first parole date more than two (2) years from revocation (See ARSD Chapter 17:60:09 and SDCL 25-15A-29).

3. Except as provided in SDCL 24-15A-29, each inmate who is eligible for discretionary parole following revocation of parole or following initial denial shall be afforded a hearing during the month designated by the board for the inmate's discretionary parole hearing.

G. Discretionary parole hearings following a non-compliance action:

1. An inmate not released at the time of his/her initial parole date shall have a discretionary parole hearing at least every two (2) years (See SDCL 24-15A-39).
2. If an inmate is determined to be non-compliant by the board, the board shall establish a discretionary parole date of not more than two (2) years from the date of non-compliance.

H. Inmates in disciplinary segregation (not required a discretionary hearing)

1. An inmate serving time in disciplinary segregation on the date of his/her discretionary parole date will have his/her hearing moved to the following month unless it has been two years since the inmate's noncompliance hearing, parole revocation hearing, or last discretionary parole hearing, whichever is later, in which case the inmate will have his/her hearing before the Board as scheduled. This will continue until the inmate is no longer serving time in disciplinary segregation. The directives in this section apply to inmates who committed their offense on or after July 1, 1996.

I. Offenders with multiple next review dates

1. A Mixed system offender may have multiple next review dates in which the board must grant parole on all transactions in order for the offender to release on parole.

## Discretionary Decisions Requiring a Majority Vote

A. Executive Clemency Hearings

1. No recommendation to the Governor for the commutation of sentence or for the pardon of an offense, including an exceptional pardon authorized by SDCL 24-14-8, may be made by less than the majority vote of all board members of the Board of Pardons and Paroles (See SDCL 24-13-4.6).

B. Parole Hearings requiring the majority vote of all appointed board members

1. Class A, B, C, or 1 Violent Crime:

- a. Where the underlying sentence is for a Class A, B, C, or 1 violent crime, a hearing officer or panel shall make a recommendation to the full board where the intent is to grant parole, return ST, DT or GT. The board shall render a final decision by a majority vote of all appointed board members of the Board of Pardons and Paroles.
- b. A hearing panel may deny parole to any offender meeting these sentence criteria without the majority vote of the board.

2. Sex Offenders:

- a. Where, through assessment, a sex offender is determined to be of high risk (MnSOST - Level 3 or 3R, or SD DOC Level 3) or has refused treatment (and may now be waiting for treatment), the hearing officer or panel shall make a recommendation to the full board where the intent is to grant parole, return ST, DT or GT. The board shall render a final decision by a majority vote of all appointed board members of the Board of Pardons and Paroles.
  - b. A hearing panel may deny parole to any offender meeting these sentence criteria without the majority vote of the board.
- C. Parole Hearings requiring the majority vote of the board members present
- 1. Violent Crimes other than Class A, B, C or 1:
    - a. Where the underlying sentence is for a violent crime other than a Class A, B, C or 1 and the sentence length, regardless of any portion that maybe suspended is ten (10) years or more / total years of consecutive numbers or counts, a hearing officer or panel shall make a recommendation to the full board where the intent is to grant parole, return ST, DT or GT. The board shall render a final decision by a majority vote of the board members present.
      - 1) A recused board member is not counted as a "present" board member for voting requirements.
    - b. A hearing panel may deny parole at the panel hearing to any offender meeting these sentence criteria without the majority vote of the board.
  - 2. All Non-Violent Offenders:
    - a. Where the underlying sentence is for a non-violent crime and the sentence length, regardless of any portion that may be suspended is fifteen (15) years or more / total years of consecutive numbers or counts,, a hearing officer or panel shall make a recommendation to the full board where the intent is to grant parole, return ST, DT or GT. The board shall render a final decision by a majority vote of the board members present.
      - 1) A recused board member is not counted as a "present" board member for voting requirements.
    - b. A hearing panel may deny parole at the panel hearing to any offender meeting these sentence criteria without the majority vote of the board.

**V Related Directives:**

SDCL Chapters: 24-13, 24-14, 24-15, 24-15A and 24-16

ARSD Chapter 17:60

Parole Board Policy 8.1.A.13 *Rescission of Parole***VI Revision Log:**

April 2006: - New

June 2006: - **Revised** - Remove SDCL 24-13-4.5 and replaced with SDCL 24-15A-10June 2007: - **Revised** - Added standards for Granting or Denial of parole, Granting parole to Sex Offenders, expanded policy statement, added Class C Crimes.September 2007: - **Revised** - Added clarification on continuations and denials.December 2007: - **Revised** - Amended non-compliance and revocations, (omit the conditions on "continued".**Added:** Definitions, clarifications on continued paroles. **Added:** updated board slips.December 2008: - **Revised** - Grammar and language throughout, updated to DOC format for policies, **Added:** definitions on Board Slips. **Removed:** Reference to SDCL 24-13-7 to Discretionary Considerations. **Revised** - Class A,B,C or 1 from 2/3 majority to majority of all board members of the board of pardons and paroles. **Revised**

- Other than Class A, B, C or 1 and non-violent to majority of board members present. **Added:** Parole Decisions, A #3. June 2009 **Added:** Definition on Recusal by Board Member.

**March 2010: Revised** the policy title. **Revised** the policy index. **Changed** the office of responsibility to the Board office. **Clarified** the Policy purpose. **Revised** grammar and formatting throughout. **Updated** the definitions, including recusal. **Moved** the "Majority Vote Required" definitions to the policy body, under procedures. **Moved** the following definitions to procedures – continuance of hearing, discretionary hearing after revocation, and discretionary decision after n/c. **Changed** procedural titles to read Hearing Officer duties and Hearing Panel duties. **Updated** Parole Decisions to Parole Decision-making. **Updated** attachments and **added** attachment #4..

**Add Attachment 5**

January 2013: Correcting language to establish a single board member only has the authority to recommend to the full board or hearing panel. Add attachment 5. Change their to his/her.

September: 2014- 1/2015: Revised due to combining all board sheets into one board sheet. Recusal PROTOCOL add-/ total years of consecutive numbers or counts,

March: minor changes

November 2017: added language to address not having a parole hearing if inmate is in the SHU, replace old board sheet with new, language added to address multiple next review dates..

<i>Kay Nikolas</i>	<i>11/17/16</i>
Kay Nikolas, Chair	Date

**Attachment 1: Discretionary Parole Board Slip - Board sheet is generated in COMS**

**South Dakota Board of Pardons and Paroles**

**Name:** \_\_\_\_\_ **DOC ID:** \_\_\_\_\_ **Transaction(s):** \_\_\_\_\_

**Dated this:** \_\_\_\_\_ **Type:** \_\_\_\_\_ **Location:** \_\_\_\_\_

*Being eligible to be considered for parole, came before the Board of Pardons and Paroles for a regularly scheduled hearing, and the matter of his/her application for parole was fully heard and considered. Pursuant to the standards set forth in Parole Board Policy 8.1.A.5, Parole Decision - Setting of Next Parole Review Dates, IT IS ORDERED that the application for parole of the above named inmate is hereby:*

**DENIED** Next Review Date: \_\_\_\_\_

*The following assessment standards are solely to assist the offender in assessing his/her rehabilitation needs; neither this document nor the statutes or rules upon which they are based are to be used to establish a constitutionally protected liberty, property or due process interest in any inmate (SDCL 24-13-7, SDCL 24-15-1.1 and 24-15A-42).*

**DECISION SUMMARY (to be shared with Parole Board):**

[ ] 1. Return: \_\_\_\_\_ Street Time / Good Time / Dead Time

*RETURN ENOUGH TIME to make release effective:*

\_\_\_\_\_ [ ] 2. Board Recommendation(s) (shared with offender):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**GRANTED**

**Pursuant to Board Policy: 8.1.A.5 – Parole Board Decision...- Granting of Parole may require Full Board action**

*Pursuant to SDCL 24-15-11 and 25-15A-42, IT IS FURTHER ORDERED that parole be conditional upon his/her agreement to the standard parole agreement and the special restrictions indicated below: (i.e. Complete treatment / GED, Obtain counseling, 24/7, SCRAM or GPS, No contact orders, Curfew, Medication management, etc.)*

**DECISION SUMMARY (to be shared with Parole Board):**

[ ] 1. Return: \_\_\_\_\_ Street Time / Good Time / Dead Time

*RETURN ENOUGH TIME to make release effective:*

\_\_\_\_\_



[  ] 2. Board Recommendation(s) (shared with  
offender): \_\_\_\_\_

\_\_\_\_\_

—

[  ] 3. **BOARD ORDER** (shared w/  
offender): \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_  
Recommending Hearing Officer / Board Chair (if Full Board required)

\_\_\_\_\_  
Board Member

\_\_\_\_\_  
Board Member

## **Attachment 2: Parole Board Hearing Scripts**

The Parole Board Hearing Scripts are located on the state's M Drive, Parole Board Policy folder location.

The Parole Board Hearing Scripts are as follows:

1. Discretionary Parole Hearing Script
2. Non-Compliance Hearing Script
3. Reading of Rights – Revocation Hearing
4. Revocation Hearing (Initial Appearance) Script
5. Revocation Hearing (Contested) Script
6. Revocation Hearing (Mitigation Only) Script
7. Revocation Hearing (Rejected Waiver) Script
8. Executive Clemency (Full Board) Hearing Script
9. Financial Obligation Hearing Script

### Attachment 3: Old System Discretionary Parole Notice:

# NOTICE

**From: Office of the South Dakota Board of Pardons and Paroles**

**To: Old system discretionary parole eligible inmates** (Currently serving a South Dakota sentence with an offense date prior to 7/1/1996, not a life or death sentence, having passed his/her initial parole eligibility date)

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**Effective December 2012:**

**If you are an inmate with an old system discretionary parole date** and your next discretionary parole eligibility month was set for 8 months, you will not receive a notice and will not be scheduled for a hearing automatically. If you wish to make application, you will have to submit a kite to the parole office requesting to appear. Kites must be received in the parole office between the 1<sup>st</sup> and the 15<sup>th</sup> of the month prior to the month you wish to appear. (Example: If your parole month was December your kite would have to be in our office between November 1<sup>st</sup> and November 15<sup>th</sup>) If your kite is late, you will be scheduled to appear the following month. (Example: If your parole month was December and your kite is late you will be scheduled in January)

**Requests will not be accepted earlier than the 1<sup>st</sup> of the month you are eligible to apply.**

**If your case was continued by the Board for a period less than 8 month** you will be scheduled and notified of your hearing. You have to return the notice in the time period listed on the notice.

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**SDCL 24-15-10. Waiting period for new application after denial of parole or clemency. If an inmate's application for parole is denied, the inmate may not again present an application before the board for a period of eight months.** A continuance of an application for parole is not a denial. An application for clemency may not be heard for one year after the date of the judgment. If an application for clemency is denied, an inmate may not again present an application for clemency for a period of one year.

**Source:** SL 1978, ch 186, § 25; SL 1985, ch 205, § 5; SL 2004, ch 168, § 59.

Parole Board Office  
10/26/12

