

8.1. A.7 Early Discharges; Partial Early Discharges; Return of Street Time for Offenders on Community Supervision

I Policy Index:

Date Signed: 8/16/18

Distribution:

Replaces Policy:

Affected Units:

Effective Date:

Scheduled Revision Date:

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Office of Primary Responsibility:

Public

Supersedes the 5/18/17 version.

South Dakota Board of Pardons and Paroles; Parole Services

Upon signature

Parole Board Office

II Purpose:

To establish guidelines for Parole Agents and the Parole Board regarding the recommendation and granting of the return of street time, a partial early discharge, and/or an early final discharge to offenders on community supervision. Through the application of these early discharge standards and procedures, offenders on community supervision representing a lower risk to public safety, having followed the rules of the Department of Corrections and having followed the conditions of their community supervision agreement, may be afforded an opportunity to be considered for the return of street time, a partial early discharge and/or an early final discharge from community supervision.

III Definitions:

Early Final Discharge

As authorized by SDCL 24-5-2, 24-5-7, and 24-15A-8, the Board of Pardons and Paroles, upon recommendation of the supervising agent, may grant an early final discharge to an offender on community supervision, including those serving a suspended sentence under supervision of the board, if the board is satisfied that an early final discharge would be in the best interests of society and the inmate.

Neither this policy, the sections of SDCL, nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any inmate.

Street Time

New System Offenders – All time spent on supervision, including time spent on absconder status and suspended sentence will be considered street time (see SDCL 24-15A-28).

Old System Offenders – All time spent serving the suspended portion of the sentence will be considered street time.

As it applies to this policy only, street time will only encompass any time the Parole Board has previously denied the credit of or “taken” at prior revocations on current admissions.

Partial Early Discharge

A length of time to be credited to an offender’s active sentence which would reduce the actual time an offender on community supervision must serve. Any time credited to the offender under a partial early discharge may be rescinded by the Parole Board during any subsequent parole revocation actions.

IV Procedures:

Eligibility Requirements

- A. The Board of Pardons and Parole has established the following eligibility criteria in order for an offender on supervision to be considered for the return of or credit for any qualifying time, or an early final discharge. Unless specifically noted, the below eligibility requirements apply to the return of street time, the granting of a partial early discharge, and an early final discharge:
1. Time served requirement:
 - a. Return of Street Time
 - 1) Offenders must have had a prior loss of street time on his/her current admission.
 - 2) Offenders must have served a minimum of six (6) continuous months under community supervision
 - b. Partial Early Discharge
 - 1) Offenders must have served a minimum of six (6) continuous months under community supervision
 - c. Early Final Discharge
 - 1) Offenders on supervision will be required to serve a minimum of two-thirds (2/3) of his/her current total sentence, or three (3) years under community supervision, (whichever is less) to be eligible for an early discharge.
 - 2) Offenders currently serving a sentence for DWI must serve one (1) year in the community before requesting an early final discharge.
 - 3) All other offenders must have served a minimum of six (6) continuous months in the community before requesting an early final discharge.
 - 4) Exceptions to this requirement may be allowed by the board in situations of specific hardship or in the best interest of public safety and justice.
 - d. Offenders on supervision may not be submitted for any of the above credits if he/she are within ninety (90) days of their established term expires date.
 2. Stable Residence/Living Environment:
 - a. Offenders on supervision must have an adequate and stable residence/living environment for the past six (6) months.
 - 1) Residence/living environments including halfway houses, missions, or other temporary placements are not considered stable under this section.
 3. Law Enforcement Contact:
 - a. Offenders on supervision shall not have had adverse contact with law enforcement for the past six (6) months.

- 1) Adverse contact may include all felony and misdemeanor violations.
- 2) For the purposes of this policy, parking tickets, fines, or civil processes unrelated to the current offense will not be included.

4. Drug and Alcohol Violations:

- a. Offenders on supervision shall not have made any admissions to nor had positive tests for using alcohol or any illegal substance, or for abusing over the counter medications, for the past six (6) months.

5. Programming and Treatment Completion:

a. Early Final Discharge

- 1) Offenders on supervision shall complete all assigned treatment requirements (i.e. chemical dependency, halfway programming, 24/7, SCRAM, IMT, gambling, sex offender treatment) prior to being submitted for consideration

6.

b. Return of Street Time/Partial Early Discharge

- 1) Offenders on supervision shall be participating in and in good standing with all assigned treatment requirements.
 - i. If the return of street time or partial early discharge would result in the expiration of an offender's sentence, the offender shall have completed all assigned treatment requirements
 - ii. Applications for offenders identified as sex offenders must be accompanied by a positive recommendation from the Sex Offender Management Program (SOMP).

7. Financial Obligations and Responsibilities:

a. Return of Street Time

- 1) Offenders on supervision shall be current on payments with all financial obligations identified in the offender's Financial Obligation Agreement on the current admission (see Parole Services OM 7.3.E.5 *Collection of Financial Obligations*).
- 2) If the return of street time would result in the expiration of an offender's sentence, the offender shall have all fines, fees, and restitution paid in full prior to the submission of the request for the return of street time

b. Partial Early Discharge

- 1) Offenders on supervision shall be current on payments with all financial obligations identified in the offender's Financial Obligation Agreement on the current admission (see Parole Services OM 7.3.E.5 *Collection of Financial Obligations*).

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c. Early Final Discharge

- 1) Offenders on supervision shall have all fines, fees, and restitution paid in full on the current admission prior to the submission of an application for early final discharge to the board.

8. Exceptions to these eligibility rules may be granted for hardships, medical problems, or in the best interest of justice.
 - a. All exceptions to these eligibility criteria will be staffed with the Parole Services Director and Parole Board Office Manager prior to their submission to the Parole Board.
 - b. Applications for all approved exceptions to these eligibility criteria submitted to the Parole Board for consideration will be identified and accompanied by supporting information and explanation.

Discharging Deported Offenders

- A. Offenders on supervision who have been deported from the United States by the Department of Homeland Security may be submitted for an early final discharge.
- B. Supervising agents of deported offenders will not be required to ensure the previous outlined criteria for submission are met.
- C. Prior to the submission of an application for early final discharge of a deported offender, the supervising agent will verify with the Department of Homeland Security and/or Immigration and Customs Enforcement Agency (ICE) that the offender has been deported from the United States and will include such verification in the submitted application.

Submission of Application

- A. When the supervising agent has an offender that meets the conditions outlined in this policy or exceptional circumstances exist, an application for the return of street time, a partial early discharge, or early final discharge may be submitted to the regional supervisor for a review. If the regional supervisor feels the application has merit, they will send the application to the parole board office. Any exceptions to the eligibility criteria outlined in this policy will be identified, and the supervising agent, with approval from their regional supervisor, will provide supporting information and explanation for the board's consideration on/along with the application.
 1. The supervising agent and regional supervisor will complete the application and submit a signed copy to the parole board office. (See Attachment #1)
 2. The parole board office must receive notice of the submitted application by the application deadline date established each month.
 - a) Late applications will be held until the following month.
 3. Submissions after the deadline date must have prior approval by the parole board office manager.

Board Office Procedures

- A. The parole board office staff will schedule all return of street time, partial early discharge and early discharge application hearings in the Hearings Database.
 1. All hearings will be scheduled in COMS at least ten (10) days prior to the board's review and final decision to grant or deny the application for the purposes of victim notification through the SAVIN system.

- B. The parole board office staff will prepare the following (to accompany the application) for the board's review each month:
1. The offender's legal file;
 2. The signed application;
 3. Applicable orders/decision sheets;
 4. Identification of all applications in accordance with Board Policy 8.1.A.5 Parole Board Decisions and the Setting of Next Review Dates. Any case meeting established "full board" criteria will be scheduled for a review by the full board unless denied by the hearing officers/panel.
 5. Investigative Summary.
- C. Board office staff shall present the completed schedule, files and orders to the designated hearing officers or panel for review and consideration.
1. Board office staff will enter all results into the COMS database immediately following the hearing.
- D. The board's decision is final.
1. The board will normally hold hearings without the offender present and will make a final decision as to whether to grant or deny the application.
 2. The board decision to grant or deny is final and decisions may not be reconsidered, except as allowed for in this policy.
- E. Granted Applications:
1. Parole board office staff will notify the supervising agent of the board's final decision.
 2. Parole board office staff will properly organize and send the completed documents and the legal file to central records.
 3. The supervising agent may submit subsequent applications for the return of street time and a partial early discharge again in six (6) months for additional consideration.
- F. Denied Applications:
1. Hearing officers or panels will complete the Reasons for Denial forms (Attachment #2).
 2. Parole board office staff will communicate the reasons for denial to the supervising agent.
 3. When the board's decision is to deny the application, the supervising agent may submit the application again in six (6) months for the board's consideration.
 - 4.

Rescindment of Partial Early Discharge

- A. The granting of a partial early discharge may be rescinded by the board upon a subsequent finding that the offender is in violation of community supervision.

B. Neither this policy, the sections of SDCL, nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any inmate.

V Related Directives:

SDCL 24-5-2; 24-5-7; and 24-15A-8; and chapters 24-15 and 24-15A.
 Board Policy 8.1.A.5 *Parole Board Decisions and the Setting of Next Review Dates*

VI Revision Log:

- July 2006: New
- January 2008 - Added Class C felony to Prodedures. Added ACA Standards Identified, removed reference to AA/NA/Ga.
- January 2009 - Grammar and language throughout, updated to DOC format for policies, added section on civil process, clarification added to applications, clarifications added to exceptions; **Revised** For Board Policy Board Policy 8.1.A.5 Changes.
- March 2010: Revised** Policy Index. **Revised** Purpose. **Revised** definitions, eliminating SDCL recite and creating "Early Discharge" definition. **Reformatted** procedural sections. **Added** procedures for the discharge of deported parolees. **Revised** Board Office procedures for processing of early discharges. **Added** section D of Board Office procedures regarding hearing held without offender present. **Specified** related directives. **Revised and Added** attachments to the WAN. **Added** procedures and definitions for the return of street time and Partial Early Discharge throughout the policy.
 - 2) February 2011: Revised added page2 section C; Offenders currently serving a sentence for DWI must serve one (1) year in the community before requesting an early final discharge.
 - 3)All other offenders must have served a minimum of six (6) continuous months in the community before requesting an early final discharge.
- C. September 2012: Review: Replace "will" with "may" on page 6, section A, a few format and spelling corrections.
- December 2013 –Review-No changes
- 2/2015- minor changes, regional supervisors will review
- 2/2016 – minor changes, updated attachment 1-3
- 4/2017: Added 9. Inmates that are not eligible to Earned Discharge Credit will not be eligible for an early discharge. Update attachment 2 and 3.
- 7/2017: Delete 1. B and C on page 3. reference sex offenders and early discharge.
- August 2018 Change all references from earned discharge to early discharge. Various other minor changes.

<i>Original on file in the Parole Board office</i>	<i>8/16/18</i>
Mark Smith, Chair	Date

Attachment 1: Early Discharge Application

Applying For (Check One):

- Return of Street Time Partial Earned Discharge Earned Final Discharge
(replace "Earned" with "Early")

Offender: _____ DOC ID: _____

Offense: _____ Sentence: _____

Current Community Risk

Level: _____ Date Released to Supervision _____

Term Expires _____ Restitution Yes
Date: _____ Completed: No

Number of _____ Fines Paid: Yes
Felonies: _____ No

Release Status: _____ Supervision Fees Yes
Current _____ Current: No
Status: _____

Interstate Compact To: _____ From: _____

Maintaining Employment:

Type of Employment: _____

Months Employed with Same Employer: _____

Housing Status:

Months at current residence: _____

Housing situation: _____

Adjustments Under Minimal Supervision:

Agent Attachments:

Agent Recommendation:

Return of: _____ years _____ Months _____ Days of Street Time.

Partial Early Discharge in the Amount of: _____ **Years** _____ **Months**
(Must have new financial Obligation Agreement Attached)

Early Final Discharge from Supervision.

Agent Signature _____ Agent Name

Attachment 2: Early Discharge Order Granting Early / Partial Early Discharge

ORDER GRANTING EARLY / PARTIAL EARLY DISCHARGE

In Re: _____

The above-entitled matter came before the SD Board of Pardons and Paroles on the recommendation of the Supervising Parole Agent, _____ pursuant to SDCL 24-5-7 or 24-15A-8.

The Board, being satisfied that an early discharge would be in the best interest of society and the offender, attests it is hereby ORDERED that the application for early discharge from supervision for _____ is: **GRANTED.**

Early **final** discharge

Partial early discharge in the amount of _____

Dated: Date of Hearing _____
Recommending Hearing Officer / Board Chair (if Full Board Required)

Board Member

Board Member

Attachment 3: Early Discharge Denial Reason

ORDER DENYING EARLY FINAL / PARTIAL DISCHARGE

In Re: _____

The above-entitled matter came before the SD Board of Pardons and Paroles on the recommendation of the Supervising Parole Agent, _____, pursuant to SDCL 24-5-7 or 24-15A-8.

The Board, being satisfied that an early discharge would *not* be in the best interest of society and the offender, attests it is hereby ORDERED that the application for early discharge from supervision for _____ is: **DENIED.**

Dated: Date of Hearing

Compelling Reasons for Board Denial of Early Discharge from Community Supervision:

- The Board is not satisfied that society will be protected if the parolee would be discharged early.
- The Board is not satisfied that the parolee has secured suitable employment, other beneficial occupation of his/her time, or suitable place to live.
- The Board is not satisfied, given the nature and circumstances of the offense for which the parolee was convicted that he/she has been confined and supervised in the community for sufficient length of time.
- The Board is not satisfied, given the parolee's attitude, character, capabilities and habits, as exhibited by his/her conduct in the institution, or in the community, or both, that he/she has accomplished rehabilitation.
- The Board is not satisfied, given the nature and circumstances of previous probation or parole history, that the parolee has recognized his/her problems and has made sufficient efforts towards self-improvement.
- The Board is not satisfied, given a review of the standards set forth in SDCL 24-13-7, as amended, that the parolee is willing to lead a law-abiding life without harm to society.
- Other:

Board Member

Board Member

This document is for internal use only - not to be shared with the parolee / inmate.