

8.1. A.7 Early Discharges

I Policy Index:

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Distribution: Public
Replaces Policy: ; Supersedes the **4/2016 version.**
Affected Units: South Dakota Board of Pardons and Paroles; Parole Services
Effective Date: Upon signature
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Revision Number: 9
Office of Primary Responsibility: Parole Board Office

II Purpose:

To establish guidelines for Parole Agents and the Parole Board on the recommendation and granting of the return of street time, a partial early discharge, and/or an Early Final Discharges 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 may grant an Early Final Discharge to an offender on community supervision, including those serving a suspended sentence under supervision of the board.

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 Any time credited to the offender under a partial early discharge may be rescinded by the Parole Board during any subsequent parole revocation actions.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 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 any and 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. 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. Sex Offender Program Participation and Completion:
 - a. Return of Street Time
 - 1) Offenders on supervision shall be participating in and in good standing with all assigned treatment requirements and have a positive recommendation from the Sex Offender Management Program (SOMP).
 - 2) If the return of street time would result in the expiration of an offender's sentence, the offender shall have completed all assigned treatment requirements and have a positive recommendation from SOMP.
 - b. Partial Early Discharge
 - 1) Offenders on supervision shall be participating in and in good standing with all assigned treatment requirements and have a positive recommendation from the Sex Offender Management Program (SOMP).
 - 2) Offenders on supervision shall successfully complete the history polygraph and, at a minimum, one (1) maintenance polygraph.
 - 3) If the granting of a partial early discharge would result in the expiration of an offender's sentence, the offender shall have completed all assigned treatment requirements and have a positive recommendation from SOMP.
 - c. Early Final Discharge
 - 1) Offenders on supervision shall complete all assigned treatment requirements and have a positive recommendation from the Sex Offender Management Program (SOMP).
 - 2) Offenders on supervision will obtain and provide a current or updated psychosexual evaluation for the board's review.
 - 3) Offenders on supervision shall successfully complete the history polygraph and, at a minimum, one (1) maintenance polygraph.
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*).
- 2) Prior to submission of an application for a partial early discharge, the supervising parole agent and offender shall complete a new *Financial Obligation Agreement* (see Parole Services OM 7.3.E.5 *Collection of Financial Obligations*) to be attached to the submitted application. The new *Financial Obligation Agreement* shall outline the offender's new plan to have all financial obligations paid in full prior to any new term expires date, which would result from a partial early discharge.

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 rules will be staffed with the Parole Board Office Manager prior to their submission to the Parole Board.

9. Inmates that are not eligible to Earned Discharge Credit will not be eligible for an early discharge.

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 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, an application for the return of street time, a partial early discharge, or early final discharge will be completed and 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. If the conditions outlined in this policy are not fully met, the supervising agent, with signed approval from their regional supervisor, must also submit a written justification for the submission of the application to the Parole Board Office Manager.
 1. The supervising agent and regional supervisor shall 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. Exceptions must be approved by the Parole Board Office Manager prior to submission for submission after the deadline date.

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. A printed schedule of all applications will be provided to Central Records for the purposes of confidential notifications at least ten (10) days prior to the board's final decision to grant or deny the application.
- 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 from the hearings database;
 4. Identify all applications in accordance with Board Policy 8.1.A.5 Parole Board Decisions and the Setting of Next Review Dates.
 5. Investigative Summary.
- C. Board office staff shall present the completed schedule, files and orders to the designated hearing officers or panel for the hearings.
 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 hold hearings without the offender present and will make a final decision on the granting or denying of the application.
 2. The board decision on the granting or denying 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 from the board's consideration.

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.

Original copy on file in Parole Board office

5/18/17

Mark Smith, Chair

Date

Attachment 1: Early Discharge Application

Applying For (Check One):

- Return of Street Time
 Partial Earned Discharge
 Earned Final Discharge

Offender: _____ **DOC ID:** _____

Offense: _____ **Sentence:** _____

Current Community Risk Level: _____ **Date Released to Supervision** _____

Term Expires Date: _____ **Restitution Completed:** Yes No

Number of Felonies: _____ **Fines Paid:** Yes No

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

Current 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 Earned Discharge in the Amount of: _____ Years _____ Months

(Must have new financial Obligation Agreement Attached)

Earned Final Discharge from Supervision.

Agent Signature _____ Agent Name

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

ORDER GRANTING EARNED / PARTIAL FINAL DISCHARGE

In Re: _____

ORDER GRANTING FINAL / PARTIAL EARNED DISCHARGE

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 earned discharge would be in the best interest of society and the offender, attests it is hereby ORDERED that the application for earned discharge from supervision for _____ is: **GRANTED.**

Earned **final** discharge

Partial earned 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 EARNED 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 earned discharge would *not* be in the best interest of society and the offender, attests it is hereby ORDERED that the application for earned 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.