

1.5.G.12 Inmate Compassionate Parole

I Policy Index:



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II Purpose:

The Department of Corrections and Board of Pardons and Paroles shall promulgate rules regarding the discretionary conditional release of offenders who meet specific criteria set by policy and statute from confinement pursuant to chapter 1-26.

III Definitions:

Compassionate Parole:

The discretionary conditional release from confinement of a geriatric or ill offender pursuant to chapter 24-15A.

IV Procedures:

1. Referral:

- A. The Secretary of Corrections may consider the referral of an inmate for compassionate parole from the inmate's health care provider or the Warden (See SDCL § 24-15A-56).
- B. Referrals from the health care provider will be forwarded to the Warden or designee for supplemental information and review. The Warden or his/her designee will ensure the referral is forwarded to the Secretary.
- C. A referral for compassionate parole consideration shall specify the provision of eligibility under which the inmate is referred (section 2), and include a release plan that includes provision and payment plan for medical care and the information outlined in the *Compassionate Parole Referral* form (See Attachment 1).
- D. If, after review of the referral, the Secretary determines the inmate meets the criteria for compassionate parole, as set forth in section 2 of this policy and SDCL § 24-15A-55 the Secretary will review other information about the inmate, such as the inmate's release plan, booking summary, dates, victim information, etc. to determine if the inmate is likely to pose a detriment to themselves, victims of the inmate's crime(s) or the community if the inmate is released to compassionate parole. After review of the information and referral, the Secretary may refer the inmate for a compassionate parole hearing (See SDCL § 24-15A-56).

1. A denial by the Secretary to refer an inmate to the Board for compassionate parole consideration is final and not subject to the Administrative Remedy process. Inmates are not entitled to compassionate parole or consideration for compassionate parole.
 2. The inmate's health care provider or the Warden may resubmit a referral for compassionate parole consideration to the Secretary once a year. If there is a significant deterioration of the inmate's health condition or a significant increase in the inmate's care requirements, a referral may be submitted to the Secretary more often than once a year.
- E. Upon referral of the inmate by the Secretary, the Executive Director of the Board of Pardons and Paroles shall schedule the inmate for a discretionary, compassionate parole hearing with the Board within three months of receipt of referral (See SDCL § [24-15A-56](#)).

2. Eligibility:

- A. Inmates who meet the following criteria are eligible for compassionate parole consideration (See SDCL § [24-15A-55](#)):
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 their 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 their sentence in custody; and
 6. Is not serving a capital punishment sentence.
- B. If the inmate meets the eligibility requirements of a medically indigent person under the provisions of chapter 28-13, the inmate is not eligible for release on compassionate parole (See SDCL § [24-15A-58](#)).
- C. The inmate's release plan must ensure 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 (See SDCL § [24-15A-58](#)).
- D. An inmate is ineligible for compassionate parole once he/she reaches their parole eligibility date, pursuant to SDCL § 24-15-5, or initial parole date, pursuant to SDCL § 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 2 of this policy, the factors listed in section 3 of this policy and SDCL § 24-15A-57 shall be considered in any subsequent discretionary parole release decision (See SDCL § [24-15A-60](#)).

3. Board Consideration:

- A. The following factors are considered by the Board in determining to grant or deny an inmate compassionate parole (See SDCL § [24-15A-57](#)):
1. The inmate's assessed risk level;
 2. The inmate's conduct in prison;
 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(s);
 10. If the care and supervision the inmate requires and is anticipated to require can be provided in a more medically appropriate or cost effective manner;
 11. Whether to allow a geriatric or terminally ill inmate to be housed at a location outside of prison prior to death; and
 12. The ability to adequately monitor the inmate after release to the community and to ensure public safety.
- B. If the Board denies an inmate's release to compassionate parole, the Board will 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 (See SDCL § [24-15A-59](#)).
- C. If, at any time, the inmate no longer meets the criteria for compassionate parole, as set forth in section 2 of this policy, the inmate's health care provider or the Warden shall notify the Secretary. The Secretary may remove the inmate from compassionate parole consideration by notifying the Executive Director of Parole (See SDCL § [24-15A-59](#)).
1. If the inmate is removed from compassionate parole consideration, any scheduled compassionate parole hearings will be canceled. The Board may not consider an inmate not recommended for compassionate parole.
 2. An inmate removed from compassionate parole consideration is subject to applicable parole provisions under chapters 24-13, 24-15, and 24-15A.
- D. Inmates released on compassionate parole, who are compliant with the terms of their supervision, as determined by Parole Services, who no longer meet the criteria for compassionate release, are not subject to revocation of their release to compassionate parole for no longer meeting the criteria (See SDCL § [24-15A-59](#)).

- E. Nothing in SDCL §§ 24-15A-55 to 24-15A-68, inclusive, or its application may be the basis for establishing a constitutionally protected liberty, property or due process interest in any inmate. 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 and their release is unlikely to pose a detriment to the inmate, victim(s) or the community. The decision of the Board is final and not subject to appeal by the inmate (See SDCL § [24-15A-62](#)).
- F. Nothing in this policy or SDCL §§ 24-15A-55 to 24-15A-68, inclusive, or its application, impacts the ability of the Warden and Secretary of Corrections to place an inmate on extended confinement pursuant to SDCL §§ 24-2-25 and 24-32-27 or to place an inmate on extended confinement pending release to compassionate parole or consideration for compassionate parole (See SDCL § [24-15A-63](#)).

4. Supervision and Revocation:

- A. 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 SDCL §§ 24-15A-55 to 24-15A-68, inclusive (See SDCL § [24-15A-61](#)).
- B. 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 (See SDCL § [24-15A-67](#)).
- C. An inmate on parole through a compassionate parole release is ineligible for earned discharge credits until the inmate reaches their initial parole date, pursuant SDCL § 24-15A-32 or their parole eligibility date, pursuant to SDCL § 24-15-5 (See SDCL § [24-15A-65](#)).
- D. If an inmate on compassionate parole release has their parole revoked, a subsequent consideration of compassionate parole by the Board on the inmate's same sentence requires a new referral from the Secretary (See SDCL § [24-15A-66](#)).
- E. When a parolee on compassionate parole release reaches their initial parole date, pursuant to SDCL § 24-15A-32 or their parole eligibility date, pursuant to SDCL § 24-15-5 and is paroled subject to the provisions of chapters 24-15 and 24-15A, the inmate is subject to all conditions of their parole, as set by their supervising parole agent.

V Related Directives:

Chapter 24-15A.

VI Revision Log:

June 2018: New Policy

Denny Kaemingk (original signature on file)

Denny Kaemingk, Secretary of Corrections

08/09/2018

Date

Attachment 1: South Dakota DOC Compassionate Parole Referral

The **South Dakota DOC Compassionate Parole Referral** is located on the state's WAN and COMS. The actual paper copy is in carbon format.

A copy may be printed using **Microsoft Word 97** as follows:

1. Click [here](#) to access the **South Dakota DOC Compassionate Parole Referral** by:
 - a. Placing mouse on the word "here" above
 - b. Press and hold the "Ctrl" key on the keyboard
 - c. Click the left button of mouse.
2. Or Select **File/New** from the Menu Bar / Select the **DOC** tab / Select **South Dakota DOC Compassionate Parole Referral**.

The gray areas indicate the information that is to be entered.

| SOUTH DAKOTA DEPARTMENT OF CORRECTIONS COMPASSIONATE PAROLE REFERRAL | |
|--|-----------------------|
| INMATE NAME: | INMATE NUMBER: |
| DATE OF BIRTH & AGE: | |
| REFERRAL INITIATED BY: <input type="checkbox"/> Department of Health Staff <input type="checkbox"/> Warden | |
| REASON(S) FOR REFERRAL: <input type="checkbox"/> TERMINAL ILLNESS <input type="checkbox"/> SERIOUSLY ILL/NOT LIKELY TO RECOVER | |
| <input type="checkbox"/> REQUIRES EXTENSIVE MEDICAL CARE/CHRONIC CARE SERVICES | |
| <input type="checkbox"/> 65 YEARS OF AGE OR OLDER, HAS SERVED AT LEAST 10 CONSECUTIVE YEARS OF SENTENCE INCARCERATED – CURRENT SENTENCES ARE CLASS 3 FELONY OR BELOW AND MEDICAL CARE NEEDS ARE AT LEAST DOUBLE THE AVERAGE ANNUAL MEDICAL COSTS OF INMATE POPULATION. CONVICTION(S): ADMISSION DATE & CONSECUTIVE YEARS SERVED: CURRENT AVERAGE COST FOR INMATE MEDICAL CARE: | |
| <input checked="" type="checkbox"/> IS NOT SERVING A CAPITAL PUNISHMENT SENTENCE. | |
| MEDICAL CONSIDERATIONS: | |
| CONDITION(S)/DIAGNOSIS: | |
| COST: | |
| INCAPACITATION: | |
| PROGNOSIS: | |
| CARE NEEDS: | |
| WARDEN'S REFERRAL/SUPPLEMENTAL INFORMATION: | |
| INMATE CRIME(S) & CLASS OF CRIME(S): | |
| SENTENCE: | |
| INMATE ADMISSION DATE: | |
| CONSECUTIVE YEARS INCARCERATED: | |
| WARDEN/ (OR DESIGNEE) REFERRAL COMMENTS: | |
| INFORMATION SUBMITTED BY: | |
| DOH STAFF: | |
| DATE: | |
| WARDEN: | |
| DATE: | |