

# South Dakota Board of Pardons And Paroles Executive Clemency Application Information and Instructions

## Definition of Clemency

- The term “clemency” refers to either a pardon, commutation, reprieve, or remission of a fine or forfeiture. [SDCL 24-14-2](#). This application is for all forms of clemency except commutation.
- Additional information on clemency can be found in [SDCL Chapter 24-14 Executive Clemency](#) and [ARSD Chapter 17:60:05 - Executive Clemency](#).
- The South Dakota Board of Pardons and Paroles hears executive clemency applications and makes a recommendation to the governor. The board does not have the authority to grant executive clemency.

## Application Instructions

Please complete all fields or mark as not applicable (N/A).

- Requirements for Pardon or Exceptional Pardon: Clearly identify each conviction for which you are seeking executive clemency. You must have paid all court costs, fines, and restitution before your application will be considered for a pardon or exceptional pardon.
- Requirements for Reprieve or Remission of Fine or Forfeiture: Provide complete documentation detailing why/ how this sentence that includes fine or forfeiture is an overwhelming burden or is excessive or constitutes a miscarriage of justice.
- A checklist is provided for your use and personal records. Please ensure all items are included in your application prior to submission. If you are unsure of whether your application is complete, please call (605) 367-5040 prior to submitting the application.
- To expedite the application process, it is recommended that applicants complete the 1) notice to state's attorney's office, 2) affidavit of publication (if applicable), and 3) chemical dependency evaluation (if applicable) first as these sections of the application may take more time to complete.
- Once complete, make a copy of all documents for your records and mail originals to:

South Dakota Board of Pardons and Paroles  
PO Box 5911  
Sioux Falls, SD 57117-5911

The application and all attached documents become the property of the Board of Pardons and Paroles once submitted and will not be returned to the applicant.

## Exceptional Pardon

You can apply for exceptional pardon if you meet one of the following criteria ([SDCL 24-14-8](#)):

1. If you served time in prison, you were convicted of only one felony, which was not punishable by life imprisonment, and it has been more than five years since your release from a Department of Corrections facility, or
2. If you did not serve time in prison, you were convicted of only one felony, which was not punishable by life imprisonment, and it has been more than five years since the date of the offense, or
3. You were convicted of a misdemeanor(s) or petty offense(s) and it has been more than five years since the offense(s) was committed.

If applying for an exceptional pardon, the requirement for publication in the newspaper (Form SDPA-2) does not apply.

## Records Inquiry

A record search of your criminal history will provide conviction information such as sentencing date and crime class (felony / misdemeanor 1 or 2). You can obtain a copy of your criminal record by visiting your local courthouse and requesting a record search at no cost. This information can also be obtained online with a \$20.00 processing fee for any search submitted. Electronic records date back to 1989; any convictions prior to 1989 will need to be obtained from the courthouse in the county in which you were convicted.

For more information regarding your statewide criminal history or to conduct an online search, please visit: [http://ujs.sd.gov/Self\\_Help\\_Center/recordsearch.aspx](http://ujs.sd.gov/Self_Help_Center/recordsearch.aspx)

### Alcohol or Drug Abuse

- **Special Board Requirements: If the offense for which you are seeking executive clemency involved drugs or alcohol or you were under the influence of drugs or alcohol at the time the offense was committed, or you currently or in the past have abused drugs or alcohol, the Board will likely require that you complete a chemical dependency evaluation to be included with your application.**
  - Chemical Dependency Evaluation: The chemical dependency evaluation should include a detailed review of your chemical use history. This should include any treatment that was completed in prison and/or the community and the discharge summary from the treatment facility. It should also include any aftercare or 12 step meetings attended and any progress or regress. It should also include any relapses if applicable and the events that lead up to the relapse and what actions were taken if a relapse occurred.
  - Chemical Dependency Counselor: A chemical dependency evaluation must be completed by a certified chemical dependency counselor or counselor with trainee status within the state of residence and be licensed within their state as either a CCDC I/II/III or CDCT under the supervision of a certified counselor.
  - Board Evaluation: The board may seek an additional professional review of the chemical dependency evaluation.
  - Cost of Evaluation: Costs for the evaluation are the responsibility of the applicant.

### Sex Offenders

- Special Board Requirements: The board may request you complete a psychosexual evaluation in addition to the completed application (you may provide a psychosexual evaluation if you wish at the hearing).
- Psychosexual Evaluation: A psychosexual evaluation should include a detailed review of your history if available. This should include contact with former probation or parole officers, criminal history, a significant other, and treatment provider/therapist. As part of the comprehensive interview the offender's employment, relationships, financial and residency information should be specifically documented.  
Psychosexual testing should include multiple personality assessment(s), actuarial (i.e. MnSOST-R, RRASOR or STATIC-99) and sexual interest testing with the ABEL assessment or polythymograph. A comprehensive and detailed history polygraph should be included as part of the psychosexual report or as a separate document.
- Psychosexual Evaluator: A psychosexual evaluation must be completed by a recognized sex offender specialist within the state of residence and licensed in their respective field, PhD or master's level. The board requires that the evaluator have a professional membership with ATSA (Association for the Treatment of Sexual Abusers).

- Board Evaluation: The board may seek an additional professional review of the psychosexual evaluation by a local ATSA member.
- Cost of Evaluation: Costs for the evaluation are the responsibility of the applicant.

### **Mental Health**

- Special Board Requirements: The board may request you complete a mental health assessment (psychological evaluation) in addition to the completed application (you may provide if you wish at the hearing).
- Psychological Evaluation: A psychological evaluation should include a detailed review of your mental health history; past and current diagnoses, past and current psychotropic medications, past/recent suicide attempts, current mental health status, and prognosis. The history should include contact with former probation or parole officers, criminal history, a significant other, and treatment provider/therapist information. As part of the comprehensive interview your employment, relationships, financial, and residency information should be included in the report.

Psychological testing should include personality assessment, psychopathy assessment, and other test measures considered appropriate by the testing psychologist.

A comprehensive clinical summary including current diagnosis and medications, current medical conditions affecting mental health status and current level-of-functioning should be included in the report.

- Psychological Evaluator: A psychological evaluation must be completed by a psychologist within the state of residence and licensed in their respective field, PhD or Ed.D.
- Board Evaluation: The board may seek professional review of all documents received by the evaluating psychologist.
- Cost of Evaluation: Costs for the evaluation are the responsibility of the applicant.

### **Notification of Hearing**

After your application has been received and processed, you will receive a written notice of the date and time of your hearing with the board. If any documentation is missing, you will receive notice of the documents required before your application can be processed.

### **Hearing Process**

You and the state's attorney, state's attorney general, sentencing judge, and sheriff/law enforcement where you were convicted will be notified of the time and date of the hearing. A personal appearance or telephonic hearing will take place with the board on the campus of the South Dakota State Penitentiary (1600 N North Drive, Sioux Falls, SD 57104).

The board may ask you to describe the offense for which you are seeking clemency, what your life has been like since your conviction, why you are requesting a pardon, and how a pardon might benefit not only you (personally or professionally) but society as a whole. The board will review all relevant information submitted by interested parties and will take testimony from those who wish to speak in support of or in opposition to your request. The board will either recommend or not recommend your application to the governor for executive clemency.

- Board dates are published on the parole board office website: (<http://www.state.sd.us/corrections/parole.htm>).

### **Notice of Board Decision**

After your application is presented to the South Dakota Board of Pardons and Paroles for review and recommendation, you will receive a written notice of the board's decision within 10 working days after the hearing. If you receive a favorable recommendation from the board, your application is forwarded to the governor for his review. The governor makes the final decision of whether to grant or deny the request.

### **Notice of Governor Decision**

Once your application has been received, the governor will review your application (which will take an undetermined amount of time) and make the decision to grant or deny your application. The governor makes the final decision of whether to grant or deny the request. After the decision is made, the governor will advise the board office of the decision and you will be notified by the board office of the governor's decision. Written documentation of the decision will also be sent to you.

### **Denial of Application**

[ARSD 17:60:05:10](#) If your application was denied, you may apply again in one year from the date of the denial.

## **Required Documents**

### **Release of Information**

Please complete, sign, and date the release of information. Failure to do so may result in your application being returned to you.

### **Certified Copy of Sentence and Judgment**

Please attach a **certified** (raised stamp or seal) copy of the sentence and judgment for each conviction for which you are requesting clemency. This can be obtained by contacting the Clerk of Courts in the county of conviction.

### **Proof of Payment**

Please provide proof of payment of court costs, fines, and restitution. Receipts verifying payment of costs, fines, and restitution ordered by the court must accompany the application. Proof of payment may be obtained from the Clerk of Courts in the county in which it was paid.

### **Discharge Certificate**

If applicable, please attach a copy of the Department of Corrections discharge certificate for each conviction for which you are requesting clemency. If you have misplaced your copy, you can obtain a copy by contacting the Clerk of Courts in the county of conviction.

### **Affidavit of Publication (Form SDPA-2: [SDCL 24-14-4](#))**

State law requires that a notice of application for clemency be published in one of the official newspapers designated by the county in which the crime was committed. Complete the SDPA-2 form and send it to the newspaper in the county where the offense was committed. This must be done for each county in which a crime for which an applicant is seeking clemency was committed. After the notice has been published for the required time period, the newspaper will send an affidavit of publication to you. It is your responsibility to attach the affidavit

of publication to the application before mailing it to the parole board office. You are responsible for any expenses incurred during this process.

- [SDCL 24-14-4](#) requires that applicants publish in official newspapers designated by the county where the offense was committed the name of the person on whose behalf the application is being made, the public offense for which the person was convicted, the time of the person's conviction, and the term of imprisonment. This must be published once a week for three consecutive weeks. The last publication date shall be at a minimum of twenty days before the hearing.
- [ARSD 17:60:05:15](#) specifies that the publication required by SDCL 24-14-4 shall be made in the official newspaper of the city closest to where the offense was committed. The notice shall include the applicant's current name and any additional name used when convicted.
- If an applicant has had a name change since the date of conviction, [ARSD 17:60:05:16](#) provides that an application for executive clemency shall be filed under the name the applicant used when convicted. Any name change shall be noted on the application by placing the currently used name in parenthesis following the name used when convicted. The applicant's name when convicted shall be used on all attachments to the application, including the affidavit of publication and notice to the state's attorney.

#### **Notice to State's Attorney's Office (Form SDPA-3)**

You will need to complete and send a notice to the state's attorney in the county where you were convicted. If you are applying for clemency on more than one conviction, you must send a notice to the state's attorney in each county of conviction. When the form is returned to you from the state's attorney's office, send it along with your completed application to the parole board office.

#### **Personal Plea**

Attach a letter of personal plea stating why you are asking for clemency. The letter should describe what debilitating effects the conviction is causing, such as limiting employment, and how clemency will benefit you and society (See [ARSD 17:60:05:01](#)).

#### **Statement of Offense**

Attach a written statement, in your own words, describing the crime/incident.

#### **Current Photo Identification Card**

Attach a copy of your current photo identification card (i.e. driver's license).

#### **Letters of Recommendation**

You are strongly encouraged to provide letters of recommendation. If possible, talk to each letter writer personally. Letters of recommendation must reference that the letter writer is aware the applicant is seeking executive clemency. Letters should be signed and notarized. The following are suggestions:

1. Clergy (if applicable)
2. Present and/or former employer(s)
3. Reputable community members who can testify to your moral character and good behavior
4. Family and friends

If you are unable to obtain letters of recommendation, please include an explanation in the application.