

1.4.B.11 Withholding of Parole Eligibility Pursuant to SDCL § 24-15A-32.1

I Policy Index:



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Office of Primary Responsibility: DOC Administration

II Policy:

An inmate's parole eligibility may be withheld pursuant to SDCL § 24-15A-32.1, in accordance with the procedures contained within this policy.

III Definitions:

Sex Offender Management Program (SOMP):

SOMP is the sex offender management program operated by the DOC. This includes Admissions and Orientation (A&O) psychosexual screens, STOP programming, psychosexual reports, assistance in community release planning and supervision, development and promotion of a community treatment provider network and sex offender community treatment and supervision standards.

SDCL § 24-15A-32.1:

Upon recommendation of sex offender treatment program staff, and following a review of the inmate's history, treatment status, risk of re-offense and psycho-sexual assessment, the Warden may, at any time prior to the inmate's final discharge, recommend to the Board of Pardons and Paroles (Board), that parole eligibility pursuant to § 24-15A-32, be withheld on an inmate convicted of a felony sex offense, as defined in § 22-24B-1. The Board may, after a hearing, determine if an inmate's parole eligibility is to be withheld. The decision of the Board to withhold an inmate's parole eligibility is final.

IV Procedures:

1. Applicability:

- A. Inmates who are parole eligible, pursuant to SDCL § 24-15A-32, who have a past or current sex offense conviction, as defined within SDCL § 22-24B-1 (See Attachment 1), may have their parole eligibility withheld, pursuant to SDCL § 24-15A-32.1.
- B. Only an inmate whose date of qualifying offense(s) occurred on or after July 1, 2006, may have his/her parole eligibility withheld, pursuant to SDCL § 24-15A-32.1.
- C. An inmate is not required to be serving a current sentence for a sex offense conviction (see Attachment 1) to be subject to these provisions.

- D. An inmate with multiple sentences may only have parole eligibility withheld on those sentences that meet the defined guidelines of SDCL § [24-15A-32.1](#) and this policy.
- E. An inmate's parole eligibility may be withheld even if the inmate is past his/her initial parole date, provided the inmate has not discharged the sentence(s) being considered for withholding (See Board of Pardons and Paroles policy 8.1.A.11 [Withholding Parole Eligibility](#)).
1. This includes non-compliant inmates who have appeared before the Board of Pardons and Paroles (Board) and have been subsequently denied parole by the Board (See DOC policy 1.4.B.1 [Individual Program Directives \(IPD\)](#)).
 2. This includes any inmate released on parole/suspended sentence, who subsequently violated the terms of parole/suspended sentence, and was returned to prison.

2. Recommendation to the Warden and Warden's Review:

- A. Sex Offender Management Program (SOMP) staff will notify the respective Warden in writing if sufficient cause exists to support the inmate is at risk of re-offending if released (See DOC policy 1.4.A.3 [Sex Offender Management Program](#)).
1. SOMP staff's recommendation will be based on assessment(s) of the inmate, including but not limited to review of the inmate's psycho-sexual evaluation, mental health assessment (if available), pre-sentence investigation (PSI), LSI-R score (Females =>40 Males =>37), P-Scan score (greater than 30), the inmate's response to treatment/treatment status, treatment history/compliance/participation and whether the inmate was assessed as not benefiting from group programming. Inmates scoring 5 or more on the SOMP Screening Instrument will be referred by staff to the Board for possible withholding of parole (See [Attachment 3](#)).
 2. The recommendation will include specific information and/or incidents supporting the recommendation, including evidence that shows the inmate's risk of re-offending if released from custody.
 3. The recommendation may be submitted to the Warden at any time, but normally no later than ninety (90) days prior to an inmate's programmed parole date, term expires date or next parole date.
- B. Following receipt of SOMP staff's recommendation, the Warden will review the inmate's institutional history, current treatment status, psycho-sexual assessment and evidence supporting the inmate's risk of re-offending and danger to the public and victims.
1. If the Warden finds no sufficient cause to recommend the withholding of the inmate's parole eligibility, the Warden will notify SOMP staff of his/her decision in writing.
 2. If the Warden finds there is not sufficient cause to recommend the inmate's parole eligibility be withheld, the Warden will provide notice of his/her recommendation to the Executive Director of the Board of Pardons and Paroles.
 - a. If the inmate has multiple sentences subject to parole eligibility withholding, a list of these sentences will be included in the Warden's notice.
 - 1) This does not preclude the Warden from a subsequent recommendation to the Board if additional sentences subject to parole eligibility are identified, or limit the Board's consideration of additional sentences identified after the recommendation was received.

- C. A new or revised recommendation can be made by SOMP staff to the respective Warden if any of the following occurs:
1. New information has developed or been discovered showing cause that the inmate is likely to re-offend, or significant changes in the inmate's treatment status have occurred/developed; or
 2. The inmate has complied with required programming/treatment, as set forth by SOMP staff, and/or the inmate is no longer at risk of re-offending; or
 3. The inmate has become eligible for release to parole supervision.
 - a. SOMP staff's recommendation to withhold the inmate's parole must be made to the Warden at least thirty (30) days prior to the inmates scheduled parole hearing.
 4. All recommendations from SOMP staff must include the *Notification for Warden Review* form (See [Attachment 2](#)).

3. Notice to the Executive Director and Hearing Results:

- A. If the Warden supports withholding the inmate's parole, the completed *Notification for Warden Review* form (See [Attachment 2](#)) will be sent to the Executive Director of the Board of Pardons and Paroles, SOMP staff, Risk Reduction Manager and Office of Classification and Transfer.
- B. The inmate will be forwarded a copy.
- C. The Board will schedule a hearing to consider the facts and recommendation. The inmate, Warden, SOMP staff, Risk Reduction Manager and Classification office will be provided notice of the Board's decision.
- D. If the inmate's parole is withheld by the Board, the Risk Reduction Manager will confirm the inmate is assigned to Level 3 System Risk. The outcome of the Board's decision will be noted in the inmate's High Risk Release packet (see DOC policy 1.4.G.5 [System Risk](#)).

V Related Directives:

SDCL §§ [22-24B-1](#) and [24-15A-32.1](#).

DOC policy 1.4.A. 3 -- [Sex Offender Management Program](#)

DOC policy 1.4.B.1 -- [Individual Program Directives \(IPD\)](#)

DOC policy 1.4.G.5 -- [System Risk](#)

Board of Pardons and Paroles policy 8.1.A.11 -- [Withholding Parole Eligibility](#)

VI Revision Log:

March 2009: New policy.

March 2010: Deleted SDCL 22.22.30.1 and 22-24-1 from Section V as they are repealed.

March 2011: No changes

July 2011: Deleted "sentence as a result of a conviction of a". Replaced with "convicted of a" in the Definition of SDCL 24-15A-32.1. Deleted "and whose sentence(s) is for a sex offense" Replaced with "with a past or current sex offense conviction as defined under 22-24B-1" in Section 1 A. Deleted "sex" in Section 1 B. Added C. "An inmate does not have to be serving a current sentence for a sex offense conviction." Deleted "for the sex offense(s)" from Section 2 E. Renumbered previous C. to D. and D. to E. in Section 1.

May 2012: Deleted "Notification of" and Replaced with "Recommendation to the" in title of Section 2. Added "and they recommend the withholding of parole eligibility" in Section 2 A. Added "including but not limited to" and Deleted "assessments (if available" and Replaced with "evaluation, mental health assessment, pre-sentence report, LSI-R (Females =>40, Males =>37, P-Scan score (greater than 30) and Added "if the inmate was assessed as someone who will not benefit from group programming" and Added "as this information is available" in Section 2 A. 1. Deleted "notification" and Replaced with "recommendation" throughout Section 2.

May 2013: Added D. and E to Section 3.

August 2013: Reviewed with no changes.

April 2014: Added "Inmates scoring 5 or more on the withholding parole screening instrument will be referred to the Board for possible withholding of parole" in Section 2 A. 1. Added "and show cause to support the inmate poses a danger to the public is she/she is released" in Section 2 A. 2. Added "information included in the recommendation and any other pertinent information which he/she deems appropriate" in Section 2 B. Added "or limit the Board's consideration if additional sentences are identified after the notice from the Warden is received" in Section 2 B. 2. a.1). Added Attachment 3.

April 2015: Added "Risk Reduction Manager, Director of Prison Operations, Classification and Transfer office" to Section 3 A. Added D. and E. to Section 3.

April 2016: Revised language and conditions consistent with the Screening Instrument.

April 2017: Added 21. and 22. to Attachment 1.

May 2018: Reviewed with no changes.

Denny Kaemingk (original signature on file)

Denny Kaemingk, Secretary of Corrections

07/10/2018

Date

Attachment 1: SDCL 22-24B-1

For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of the following crimes regardless of the date of the commission of the offense or the date of conviction:

- (1) Rape as set forth in § 22-22-1;
- (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by an adult;
- (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- (4) Incest if committed by an adult;
- (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-24A-3;
- (6) Sale of child pornography as set forth in § 22-24A-1;
- (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- (11) Felony indecent exposure as previously set forth in former § 22-24-1 or indecent exposure as set forth in § 22-24-1.2;
- (12) Solicitation of a minor as set forth in § 22-24A-5;
- (13) Felony indecent exposure as set forth in § 22-24-1.3;
- (14) Bestiality as set forth in § 22-22-42;
- (15) An attempt to commit any of the crimes listed in this section;
- (16) Any crime committed in a place other than this state which would constitute a sex crime under this section if committed in this state;
- (17) Any federal crime or court martial offense that would constitute a sex crime under federal law;
- (18) Any crime committed in another state if that state also requires that anyone convicted of that crime register as a sex offender in that state; or
- (19) If the victim is a minor:
 - (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-7.6;
 - (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
 - (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31.
- (21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor.
- (22) Second degree human trafficking as set forth in § 22-49-3 involving the prostitution of a minor.

Attachment 2: Notification For Warden Review Form

The **Notification for Warden Review Form** is located on the state's WAN.

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

1. Click [here](#) to access the **Notification for Warden Review Form** 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 **Notification For Warden Review Form**.

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

| | | |
|--|---|---|
| <p>South Dakota Department of Corrections Policy Distribution: Public</p> | <p>Attachment: Notification for Warden Review Form Please refer to DOC policy 1.4.B.11 Withholding of Parole Eligibility Pursuant to SDCL § 24-15A-32-1</p> | |
| NOTIFICATION FOR WARDEN REVIEW FORM | | |
| Sex Offender Management Program Recommendation: | | |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Inmate's Name | Number(s)- List All | Next Parole Date |
| Please check if available and indicate status: | | |
| <input type="checkbox"/> STOP Program Status | <input type="checkbox"/> Pre Release Evaluation (attach copy if available) | <input type="checkbox"/> Pre Sentence Psychosexual Available (attach copy if available) |
| <input type="checkbox"/> Polygraph Report (attach if available) | <input type="checkbox"/> MnSOST-R | <input type="checkbox"/> Static 99 |
| Recommendation (attach additional sheet(s) if needed): | | |
| <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> | | |
| <input type="text"/> | <input type="text"/> | |
| SOMP Staff's Signature | Date | |
| Warden's Review: | | |
| Based upon the following (attach additional sheet(s) if needed): | | |
| <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> | | |
| Revised: 04/21/2015 | Page 1 of 2 | Page 2 of 2 |

Attachment 3: Offender Assessment Questionnaire-SOMP Screening Instrument (located in COMS):

The screenshot displays the 'OFFENDER ASSESSMENT QUESTIONNAIRE - (OCMNOQUE)' interface. On the left is a navigation tree with 'Assessments' and 'Assessment' highlighted. The main area shows offender details for DOC# 2001-012604, including personal information and a table of past assessments. A dropdown menu for 'Assessment Type' is open, listing various assessment types with their codes. The 'SOMP Screening Instrument' (SCT) is selected.

| Date | Type | Authority | Score | Calculated Result | Override Result | Approved Result | Next Date |
|------------|-------------------------|-------------------|-------|---------------------|-----------------|--------------------|------------|
| 04/25/2014 | SOMP Screening Instrurr | Somp Team | 1 | Did not meet thresh | | Did not meet thres | |
| 04/09/2014 | P-Scan | Risk Reduction Ma | 18 | 18 | | 18 | |
| 04/07/2014 | PREA Risk Screen | Unit Case Manage | 104 | AP | | AP | 01/01/2015 |
| 06/26/2013 | SOMP Victim Age | Somp Team | 0 | Adult Victim | | Adult Victim | |

| Assessment Type | Authority | Facility | Assessor | Assessment Date | Re-Assessment Date |
|---------------------------|-----------|----------|----------|-----------------|--------------------|
| SOMP Screening Instrument | | | | 04/25/2014 | |