

# **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 Forms of Clemency](#). (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.
- [SDCL 24-14-11](#)-Any person who has been granted a pardon shall be released from all disabilities consequent on such person's conviction. Upon the granting of a pardon, the Governor shall order that all official records relating to the pardoned person's arrest, indictment or information, trial, finding of guilt and receipt of a pardon shall be sealed. The effect of such order is to restore such person, in the contemplation of the law, to the status the person occupied before arrest, indictment or information. No person as to whom such order has been entered may be held thereafter under any provision of any law to be guilty of perjury or of giving a false statement by reason of such person's failure to recite or acknowledge such arrest, indictment, information or trial in response to any inquiry made of such person for any purpose.
- [SDCL 24-14-11](#)– Prior conviction for habitual offender law. “For the sole purpose of consideration of the sentence of a defendant for subsequent offenses or the determination of whether the defendant is a habitual offender under chapter 22-7 or whether the defendant has prior driving under the influence convictions pursuant to chapter 32-23, the pardoned offense shall be considered a prior conviction.”

### **Application Instructions**

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

- Requirements for Pardon or Exceptional Pardon: You must clearly define each conviction you are applying for Executive Clemency on. 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.

### **Release of Information**

Please complete, sign, and date the Executive Clemency Application Release of Information.

### **Certified copy of Sentence and Judgment**

Please attach a certified copy of Sentence and Judgment for each conviction you are requesting clemency on. 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 Discharge Certificate for each conviction you are requesting clemency on. 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 a clemency hearing has to be published in a newspaper from where the crime was committed. Complete the SDPA-2 form and send it to the newspaper in the county where the offense was committed (one for each county of conviction). 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](#) - Publication of notice of application. 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.

[ARSD 17:60:05:16](#) - Applicant name change. 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.

## Exceptional Pardon

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

1. you were convicted of a misdemeanor, misdemeanors or petty offense(s) and it has been more than five years since your conviction(s).
2. you have only been convicted of one felony and that felony was not punishable by life imprisonment, and it has been five years since your release from a Department of Corrections facility.

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

## 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 (one for each application/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

Please 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](#))

## **Personal Statement**

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

## **Current Photo Identification card**

Please attach a copy of your current photo identification card (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 (Daytime and evening phone numbers are required for verification.):

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.

## **Sex Offenders**

- **Special Board Requirements:** In addition to completing the application, the hearing panel may request you complete a psychosexual evaluation: (You may provide a psychosexual evaluation if you wish at the initial 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 polythsmograph. 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 Masters 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:** All costs incurred are the responsibility of the applicant.

## Alcohol or Drug Abuse

- **Special Board Requirements:** The hearing panel may request you to complete a chemical dependency evaluation in addition to the completed application. (You may provide a chemical dependency evaluation if you wish at the initial hearing.)
- **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 within the prison and/or the community and the discharge summary from the treatment facility. As part of the evaluation 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 by a local community agency.
- **Cost of Evaluation:** All costs incurred are the responsibility of the applicant.

## Mental Health

- **Special Board Requirements:** The hearing panel may request you to complete a mental health assessment (psychological evaluation) in addition to the completed application. (You may provide if you wish at the initial 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, pscopathy 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, Ph.D or Ed.D.
- **Board Evaluation:** The Board may seek professional review of all documents received by the evaluating psychologist.
- **Cost of Evaluation:** All costs incurred are the responsibility of the applicant.

## Submission of Application

After you have completed the application and compiled all of the documentation in the check list, forward all documents to:

South Dakota Board of Pardons and Paroles  
P.O. Box 5911  
Sioux Falls, SD 57117-5911

## Notification of Hearing

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

## Hearing Process

- Initial Hearing: Hearing Panel

A date will be set for an initial hearing before a hearing panel after your completed application is received. You will be notified of the time and location for the initial hearing. The hearing panel will either deny your application or recommend your application for a final hearing before the Full Board.

- Final Hearing: Full Board

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 final hearing. The Full 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 final hearing. If you receive a favorable recommendation from the Board of Pardons and Paroles, your application is forwarded from the South Dakota Board of Pardons and Paroles 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 receive a phone call advising 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.