

8.1. A.13 Rescission of Parole

I Policy Index:

Date Signed: November 19, 2020

Distribution: Public

Replaces Policy: October 2017 version

Affected Units: SD Board of Pardons and Paroles

Effective Date: November 19, 2020

Scheduled Revision: November 2021

Revision Number: 8

Office of Primary Responsibility: Parole Board Office

II Purpose:

The purpose of the policy is to effectively provide standard procedures for the rescission of parole.

III Definitions:

Designation of Hearing Officers:

The chair of the board may designate individual board members as hearing officers who may conduct hearings pursuant to SDCL chapters 24-13, 24-14, 24-15, and 24-15A, take testimony and make recommendations to the board.

Designation of Hearing Panels:

The chair of the board may designate panels of two or more board members to conduct hearings pursuant to SDCL chapters 24-13, 24-14, 24-15, and 24-15A, take testimony, and take final action, exclusive of a clemency recommendation to the Governor in accordance with SDCL 24-13-4.6 (See SDCL - 24-15A-10).

Rescission of Parole:

The board, at its discretion, may repeal an unexecuted parole that was previously granted by the board (see *Winters v. Solem*).

Unexecuted Parole:

Any parole granted by the parole board remains unexecuted until such time as the release date established by the executive director or designee is reached and the offender is released to parole supervision.

Board Slip:

Document completed by hearing officer(s), hearing panels, or the full board, authorizing the granting or denying of discretionary parole to an offender. This document contains information transmitted to the inmate as to conditions of parole or board ordered conditions, and/or reasons for denial of discretionary parole.

Board Order:

A directive to an inmate from the parole board detailing specific conditions to be met in order for the granting of parole to be considered or to be met while the offender is on community supervision. Once an order is placed on an individual inmate at a discretionary parole hearing, non-compliance or revocation hearing, subsequent hearing officers or panels shall ensure that the order has been followed, as reasonably expected. If the order has not been followed, the hearing officer or panel may deny parole.

IV Procedures:

Rescission Hearing:

- A. The following parole board actions may be rescinded, at the discretion of the board:
 1. Granting of discretionary parole
 - a. The reasons for rescinding the granting of discretionary parole may include, but are not limited to: major disciplinary action in an institution, receipt of a new sentence or information that the board may not have had at the time of the hearing granting parole, modification of a board ordered parole plan or other order, removal from institutional programming, the receipt of new information from victims, law enforcement, prison special security staff or the public, refusal to sign a supervision agreement, or in the interest of justice or protection of society.
 2. Finding of non-compliance (when an inmate receives a subsequent felony sentence and receives a new, later initial parole date).
- B. Upon notification from institutional unit staff, parole staff, or other Department of Corrections officials, parole board staff will:
 1. Prepare the hearing packet, including documentation supporting rescindment and a board slip.
 2. Schedule the hearing with other parole hearings, noting "Rescindment" in COMS.
 3. Send a notice to the inmate of the time and place of the hearing.
- C. At the hearing, the board, at its discretion, may complete one of the following actions:
 1. Rescind (deny) the discretionary parole and establish a next review date (See Parole Board Policy 8.1.A.5 *Parole Board Decisions and the setting of Next Review Dates*).
 2. Continue (grant) with the parole, with or without additional special conditions or board orders.
 3. Refer the matter to the full board for a final decision.
 4. Rescind the previous non-compliance action and order the following of the new established initial parole date.
 - a. The rescindment of a previous non-compliance action does not, in any way, rescind future non-compliance actions on any inmate sentence or DOC admissions.
 - b. Inmates may still be found non-compliant at the new established initial parole date.

Documentation of Decision and Notification to Inmate

- A. Board members will complete a board slip indicating grant or denial and the reason for their decision
- B. Board staff will: enter hearing information in COMS, note grant/denial, note in comments "rescindment hearing" and send written notification to the inmate within ten (10) working days following the board's decision (See Board Office OM 9.1.A.13).

V Related Directives:

SDCL Chapters 24-13, 24-15, 24-15A

Parole Board Policy 8.1.A.5

Parole Board Office OM 9.1.A.13.

Case Law: Winters v. Solem, 444 N.W.2d 722, 734 (SD 1989); Jago v. Van Curen, 454 US 14, 17-18, 102 S Ct 31, 70 Led2d 13 (1981)- "A parole may be rescinded without due process, notice or a hearing."

VI Revision Log:

May 2009: New.

March 2010: **Revise** Policy Index. **Update** office of primary responsibility to Parole Board Office. **Revise** related directives. **Add** designation of hearing panels and board order to definitions. **Revise** rescission hearing procedures. **Add** language throughout regarding rescindment of non-compliance actions. **Change** last procedural section to documentation of decision and notification to inmate.

October 2012: **Add** to Designation of Hearing Officers "The chair of the board may designate individual board members as hearing officers who may conduct hearings pursuant to SDCL chapters 24-13, 24-14, 24-15, and 24-15A, take testimony and make recommendations to the board." **Revise** after Unexecuted Parole: section **Add** "Board Slips: Documents completed by hearing officer(s), hearing panels, or the full board, authorizing the granting or denying of discretionary parole to an offender. These documents contain information transmitted to the inmate as to conditions of parole or board ordered conditions, and/or reasons for denial of discretionary parole." **Revise** IV Procedures: Rescission Hearing: B.1. **Delete** "order and findings and schedule a rescission" **Add** "documentation supporting rescindment and both a grant and a denial board slip."

Revise Documentation of Decision and notification to inmate A. **Add** "a board slip indication the reason for their decision in the Board order section." **Delete** "all necessary document at the conclusion of the hearing, including the necessary Order and Findings of Facts." **Update** to simplify paperwork and eliminating confusion on statistical data. Hearing will be entered as a parole hearing to determine the granting or denial of parole and reason for hearing.

December 2013: No changes

March 2015: **Delete** Page 2, B.1. "and both a grant" and "denial." **Add** Page B.2 language and 3. **Add** page 2 C. 1. and 2 "(grant)" "(deny)". **Add** page 2 Documentation of Decision and Notification to Inmate: B "record as parole hearing in COMs, note in comments "rescindment hearing."

July 2016: No changes

October 2017: No changes

November 2020: **Amend** IV Procedures/Rescission/B.1 from file to hearing packets. Minor formatting/grammar changes.

Myron Rau (Original Signature on File)

Myron Rau, Chair

11/19/2020

Date