

## 8.1. A.16 Compassionate Parole

### I Policy Index:

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**Affected Units:** South Dakota Board of Pardons and Paroles

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**Revision Number:** 2

**Office of Primary Responsibility:** Office of the SD Board of Pardons and Paroles

### II Purpose:

To provide procedural process to comply with Compassionate Parole (SDCL 24-15A (55-68))

### III Definitions:

#### **Compassionate Parole:**

The conditional release from confinement of an offender pursuant to SDCL 24-15A (55-68). The secretary of corrections may consider referrals for compassionate parole consideration from the inmate's health care provider or the warden. If the secretary determines the inmate meets the criteria for compassionate parole consideration as set forth in SDCL 24-15A-55 (See Attachment 1), the secretary may refer the inmate for compassionate parole hearing. The executive director of the Board of Pardons and Paroles shall schedule a discretionary, compassionate parole hearing with the board within three months of receipt of referral.

### IV Procedures:

#### **Eligibility for Compassionate Parole**

- A. Inmates who meet the following criteria are eligible for compassionate parole consideration:
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 the 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 the inmate's sentence incarcerated; and
  6. Is not serving a capital punishment sentence.
- B. The Board may not order the release of an inmate to compassionate parole if the inmate meets the eligibility requirements of a medically indigent person under the provisions of chapter 28-13.

- C. The Board may not order the release of an inmate to compassionate parole unless the inmate's release plan ensures 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.
- D. An inmate is ineligible for compassionate parole once the inmate reaches the parole eligibility date pursuant to § 24-15-5 or the inmate's initial parole date pursuant to § 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 SDCL 24-15A-55, the factors listed in SDCL 24-15A-57 shall be considered in any subsequent discretionary parole release decision.
- E. Compassionate Parole hearings will be scheduled as full Board hearings and a decision to grant or deny will require a majority vote of all appointed board members.
  - 1. An auxiliary board member may substitute for an absent board member.
  - 2. A recused board member is not counted as a "present" board member for voting requirements.

### **Board Consideration**

- A. The Board of Pardons and Paroles shall consider the following factors in determining the grant or denial of a compassionate parole:
  - 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;
  - 10. If the care and supervision that the inmate requires and is anticipated to require can be provided in a more medically appropriate or cost-effective manner than the Department of Corrections;
  - 11. Allowing a geriatric or terminally ill person to live at a location outside of prison prior to death; and
  - 12. The ability to adequately monitor the inmate, after release, to ensure public safety.
- B. The board may grant or deny a compassionate parole.
  - 1. If the Board denies an inmate release to compassionate parole, the board shall 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.
- C. If the inmate no longer meets the criteria for compassionate parole as set forth in SDCL 24-15A-55, the inmate's health care provider or the warden shall notify the secretary of corrections. The secretary may remove the inmate from compassionate parole consideration.

- D. If the secretary of corrections removes the inmate from compassionate parole consideration, any previously scheduled compassionate parole hearings will be canceled, and the board may not consider the inmate for compassionate parole.
  - 1. An inmate removed from compassionate parole consideration is subject to applicable parole provisions under chapters 24-13, 24-15, and 24-15A notwithstanding the provisions of SDCL 24-15A (55-68).
- E. If an inmate no longer meets the criteria for compassionate parole under SDCL 24-15A-55 after having been released on compassionate parole, such fact shall not constitute the basis for revocation of supervision.
- F. Nothing in this policy, or SDCL §§ 24-15A-55 to 24-15A-68, inclusive or their application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any prisoner. 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 pursuant to SDCL 24-15A-55 and a compassionate parole release is unlikely to pose a detriment to the offender, victim, or community. The decision of the board regarding compassionate parole release is final.

### Supervision and Revocation of Compassionate Parolees

- 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.
- B. A condition of supervision pursuant to § 24-15A-37, 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.
- C. An inmate on parole through a compassionate parole release is ineligible for earned discharge credits until the inmate reaches an initial parole date pursuant § 24-15A-32 or an initial parole eligibility date pursuant to § 24-15-5.
- D. If an inmate on parole through a compassionate parole release has his/her parole revoked, a subsequent consideration of compassionate parole on the same sentence requires a new referral for consideration pursuant to 24-15A-56.
- E. When a parolee released under compassionate parole reaches their initial parole date pursuant to § 24-15A-32 or their parole eligibility date pursuant to § 24-15-5 and is paroled subject to the provisions of chapters 24-15 and 24-15A, they are no longer subject to the provisions of this policy or SDCL §§ 24-15A-55 to 24-15A-68, inclusive.

### V Related Directives:

SDCL Chs. 24-13, 24-15, and 24-15A

### VI Revision Log:

October 2018: New

September 2020: **Update** formatting/language (minor changes). **Remove** Attachment 1 (Compassionate parole eligibility) and Attachment 2 (Factors Board shall consider in compassionate parole). **Add** statutory references throughout.

<i>Myron Rau (Original Signature on File)</i>	09/17/2020
Myron Rau, Board Chair	Date