

SOUTH DAKOTA  PAROLE BOARD POLICIES AND PROCEDURES		POLICY NUMBER 8.1.A.5	PAGE NUMBER 1 OF 6
		DISTRIBUTION:	Public
		SUBJECT:	Parole Decisions and the Setting of Next Review Dates
RELATED STANDARDS:	N/A	EFFECTIVE DATE:	8/15/2024
		SUPERSESSION:	08/2021
DESCRIPTION: Parole Board	REVIEW MONTH: February	 Myron Rau, Chair Board of Pardons and Parole	

I. POLICY

It is the policy of the South Dakota Department of Corrections, Board of Pardons and Paroles to establish guidelines in the setting of review dates following non-compliance, revocation and discretionary parole hearings.

II. PURPOSE

The purpose of this policy is to establish guidelines for parole hearing officers and hearing panels at panel and full board hearings and to establish guidelines in the setting of review dates following non-compliance, revocation and discretionary parole hearings.

III. DEFINITIONS

Quorum:

A majority of appointed members shall constitute a quorum for official administrative business (See SDCL 24-13-4.1).

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 a hearing panel.

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 in accordance with SDCL 24-13-4.6 (See SDCL - 24-15A-10).

Full Board Hearing:

For the purpose of this policy, a "Full Board Hearing" is a hearing scheduled before the nine members of the Board of Pardons and Paroles (full board) where, at a minimum, a quorum of the board members is present, in person or by teleconference/video conference.

Recusal:

Board members recognizing a conflict of interest with a specific case or action may recuse themselves from the decision-making portion of an official action. A recused member is not counted as a voting member, except as otherwise set by administrative rule or statute.

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Board Slip:

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

Board Order:

A directive to an offender from the Parole Board detailing specific conditions to be met 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 offender at a discretionary parole hearing, non-compliance or revocation hearing, subsequent hearing panels shall ensure that the order has been followed, as reasonably expected. If the order has not been followed, the hearing panel may deny parole. If the order has not been followed while on parole, this may constitute a violation of parole.

IV. PROCEDURES

Hearings Officer Duties:

- A. When conducting hearings, pursuant to this policy, individual hearing officers shall make a recommendation to a two-person panel that may adopt, modify, or reject the recommendation.

Hearing Panel Duties:

- A. Hearing panels, as designated by the chair of the board, may take final action regarding the granting, denial, revocation, or rescission of a parole (See SDCL 24-15A-10).
- B. Hearing panels shall make recommendations to the full board where the intent is to grant parole on offenders requiring a majority vote of the board (see procedural section Discretionary Decisions Requiring a Majority Vote).
- C. Hearing panels have full discretion to refer any matter, consideration, or hearing to the full board for additional discussion, to determine a final decision, and/or to schedule the offender for a hearing before the full board.

Recusal Protocol

- A. Board members may recuse themselves from any case or action on the grounds of a conflict of interest. The board member may recuse themselves at any time when they become aware of the conflict. A board member shall not deliberate or vote on a matter in which they have a conflict of interest.
- B. The responsibility for determining the appropriateness of recusal under the guidelines established by this policy shall be solely upon that board member. In establishing these guidelines for recusal, it is not the intent of the board to create a right or basis to challenge the actions of this board or any member of the board which is not otherwise provided by the laws or Constitution of this State or the United States.

General Discretionary Considerations for Granting or Denial of Parole:

- A. The board may consider information obtained from the offender's legal file, institutional records and parole documents, input from the public, victims, and criminal justice agencies, as well as from interviews with the offender, in making the determination to grant or deny parole. The board, in making a determination whether to grant or deny parole or to assist the offender in assessing his/her rehabilitative needs, may utilize information from the following:
 - 1. The offender's personal and family history;
 - 2. The offender's attitude, character, capabilities, and habits;
 - 3. The nature and circumstances of the offender's offense;
 - 4. The number, nature and circumstances of the offender's prior offenses;

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5. The successful completion or revocation of previous probation or parole granted to the offender;
6. The offender's conduct in the institution, including efforts directed towards self-improvement;
7. The offender's understanding of his or her own problems and the willingness to work towards overcoming them;
8. The offender's total personality as it reflects on the possibility that the offender will lead a law-abiding life without harm to society;
9. The offender's family and marital circumstances and the willingness of the family and others to help the offender upon release on parole from the institution;
10. The soundness of the parole program and whether it will promote the rehabilitation of the offender;
11. The offender's specific employment and plans for further formal education or training;
12. The offender's plan for additional treatment and rehabilitation while on parole;
13. The effect of the offender's release on the community;
14. The effect of the offender's release on the administration of justice; and
15. The effect of the offender's release on the victims of crimes committed by the offender.

Structured Decision-Making Framework

- A. Board members will use the Structured Decision-Making Framework (SDMF) to guide their decision making in discretionary cases.
 1. An offender's risk assessment scores and information from all domains will be considered before a final decision is reached.
 2. Domains will be coded as "Aggravating (A)", "Mitigating (M)", or "No impact (N)" and a decision summary/reason will be included on the board slip.
 3. Board members will utilize one coding sheet and one decision summary per hearing panel. Domains and proper coding may be discussed before, during, or after the hearing until an agreement between the panel members is reached.
 4. Domains of the SDMF include risk assessments, criminal history, ability to control behavior, responsivity, institutional/community behavior, offender change, release plan, case specific factors, and conflicting information.

Parole Decision-Making:

- A. Decisions to continue a discretionary parole hearing:
 1. A hearing panel may continue an applicant for no more than eight (8) months under the Old System. The panel may make recommendations to the offender of rehabilitation needs.
 2. A hearing panel may continue an application for no more than 24 (twenty-four) months under the New System. The panel may make recommendations to the offender of rehabilitation needs.
- B. Board slip (see Attachment #1):
 1. Hearing officer(s), panels or the full board shall complete a board slip at all discretionary parole hearings, including reasons for granting or denials.
 2. The hearing panels or full board may impose special conditions or recommendations related to the offender's rehabilitation.

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- a. If these conditions or recommendations are indicated as a "Board Order," these orders shall be a requirement of parole. If the offender rejects the board order, the unexecuted parole shall be rescinded (see Parole Board Policy 8.1.A.13 *Rescission of Parole*).
- b. If the offender violates the conditions of the board order, the parole agent shall submit a violation report to the Parole Administration Office. If there are special circumstances that arise the parole agent may reach out to the Parole Board's administrative staff for further direction. The administrative staff shall consult with the initial deciding board members to determine an appropriate course of action.

C. Discretionary parole hearings following a revocation action:

1. In cases under the Old System, if an offender's parole has been revoked, the board shall establish a discretionary parole date of not more than eight (8) months after the date of revocation. If the revocation is at the parolee's own request, this provision does not apply (See ARSD 17:60:02:05).
 - a. At subsequent discretionary parole hearings, a hearing panel may deny an applicant parole. If the applicant is denied parole, the next parole review date shall be established at eight (8) months (See SDCL 24-15-10).
2. In cases under the New System, if an offender's parole is revoked, the board shall establish a discretionary parole date of not more than two (2) years from the date of revocation. Subsequent discretionary hearings shall be held at intervals of not more than two (2) years. The board is not required to see an offender for a discretionary parole hearing at two (2) year intervals following a revocation if the offender receives an additional felony sentence which carries a first parole date more than two (2) years from revocation (See ARSD Chapter 17:60:09 and SDCL 24-15A-29).
3. In cases under the New System where an offender has been determined to be non-compliant by the board, the board shall establish a discretionary parole date of not more than two (2) years from the date of non-compliance (See SDCL 24-15A-39). Subsequent discretionary hearings shall be held at least every two (2) years.
4. Except as provided in SDCL 24-15A-29, each offender who is eligible for discretionary parole following revocation of parole or following initial denial shall be afforded a hearing during the month designated by the board for the offender's discretionary parole hearing.

D. Offenders in disciplinary segregation or IP (investigative purposes) are not required a discretionary hearing:

1. An offender serving time in disciplinary segregation/ IP on the date of his/her discretionary parole date will have his/her hearing continued unless it has been two years since the offender's noncompliance hearing, parole revocation hearing, or last discretionary parole hearing, whichever is later, in which case the offender will have his/her hearing before the board as scheduled. This will continue until the offender is no longer serving time in disciplinary segregation.
2. The directives in this section apply to offenders who committed their offense(s) on or after July 1, 1996.

E. Offenders with multiple next review dates

1. A mixed-system offender (multiple sentences with different types of release) may have multiple next review dates. The board must grant parole on all transactions in order for the offender to release on parole.

F. Offenders will be notified by their case managers that they must complete and bring their Parole Success Plan with them to discretionary hearings and that failure to do so may result in a denial or continuance of parole.

G. All offenders eligible for a discretionary hearing (old system and new system) are sent a parole eligibility notice approximately forty-five (45) days prior to their scheduled hearing. Unless this notice is sent back indicating the offender wishes to waive said hearing, they will be scheduled to appear in front of the board during their month of eligibility.

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1. Offenders may waive a future parole hearing at any time by sending a waiver form or kite to the board office. Board staff will make necessary updates to the offender's next review date in COMS and future hearings will not be scheduled.
2. Offenders may later decide to have a hearing and "come out of no action" by sending a wavier form or kite to the board office. Offenders may choose a month/date any time on or after the date originally set by the board. Board staff will make necessary updates to the offender's next review date in COMS and future hearings will be scheduled.

Decisions Requiring a Majority Vote of the Board of Pardons and Paroles

A. General provisions for all discretionary parole hearings

1. Hearing panels have full discretion to refer any matter for additional consideration or hearing to the full board.
2. A hearing panel may deny parole to any offender without the majority vote of the board.
3. An auxiliary board member may substitute for an absent board member. An auxiliary member has the same statutory powers and privileges, unless otherwise excluded by law, as current members of the board. A recused board member is not counted as a "present" board member for voting requirements.
4. A hearing officer or panel may make a recommendation to the full board where the intent is to return street time, dead time, good time or to grant parole.

B. Parole Hearings requiring the majority vote of all appointed board members:

1. Offenders with an underlying sentence of a Class A, B, C or 1 violent crime in their current booking.
2. High risk sex offenders assessed by SOMP as a MnSOST Level 3 or R.
3. Sex offenders currently refusing treatment.
4. DOC System Risk Level 3 offenders.
5. Offenders with an underlying sentence of a violent crime other than Class A, B, C or 1 on their current booking with a sentence length (regardless of any portion that may be suspended) of twenty (20) years or more including total years of any consecutive sentences on offender's current booking.

V. RESPONSIBILITY

The Parole Board's administrative staff is responsible for the annual review and maintenance of this policy.

VI. AUTHORITY

SDCL Chapters: 24-13, 24-14, 24-15, 24-15A and 24-16

ARSD Chapter 17:60

Parole Board Policy 8.1.A.13 *Rescission of Parole*

VII. HISTORY

June 2024

August 2021

September 2020

October 2018

October 2017

May 2017

November 2016

January 2015

July 2013

March 2010

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December 2008

December 2007

September 2007

June 2007

June 2006

April 2006

ATTACHMENTS

Attachment 1: Board Slip

Attachment 2: Recusal Form

Attachment 3: Parole Eligibility Notice

Attachment 4: Notice of Hearing

Attachment 5: Hearing Results Form

South Dakota Board of Pardons and Paroles
Parole Decision *(to be shared with offender)*

Name: _____ **DOC ID:** _____ **Applicable Transaction(s):** _____
Dated this _____ **Type:** _____ **Location:** _____

The following decision is made after considering: (1) all factors listed in SDCL 24-13-7; (2) Structured Decision Making Framework considerations, including: statistical risk assessment, offender criminal history, offender ability to control his/her behavior, responsivity (appropriate programming related to risk and need), offender’s institutional and community behavior, level of change exhibited by offender as related to institutional programming, offender release plan, and other case specific factors brought out during the parole hearing; and (3) the standards set forth in Parole Board Policy 8.1.A.5 Parole Decision – Setting of Next Parole Review Dates. The following is meant to assist the offender in his/her rehabilitation and neither this document nor the statutes or rules upon which they are based are to be used to establish a constitutionally protected liberty, property or due process interest in any offender.

DECISION: _____ **GRANT PAROLE -** _____

BOARD ORDER - _____
(SCRAM, GPS, no contact, travel restriction, halfway house)

_____ **DENY PAROLE – NEXT REVIEW DATE:** _____
 (Month, Year)

BOARD RECOMMENDATION(S): _____

_____ **CONTINUE HEARING TO:** _____
 (Reason, month, year)

_____ Return: _____ Street Time / Good Time / Dead Time
RETURN ENOUGH TIME to make release effective: _____

Reason(s) for granting of parole	
<input type="checkbox"/>	You have maintained a satisfactory disciplinary record.
<input type="checkbox"/>	You have either completed programming or have a plan to complete programming while on parole.
<input type="checkbox"/>	There is a short time remaining on your sentence, and you need to be out and under supervision before the end of your sentence.
<input type="checkbox"/>	You have developed a viable parole plan
<input type="checkbox"/>	Other:

Reason(s) for denial of parole	
<input type="checkbox"/>	You have had a poor supervision record on previous releases
<input type="checkbox"/>	You have not maintained a satisfactory disciplinary record.
<input type="checkbox"/>	You have failed to complete programming, or you have refused core programming.
<input type="checkbox"/>	You have not developed a viable parole plan.
<input type="checkbox"/>	Not enough time has elapsed since your return to the institution on a violation.
<input type="checkbox"/>	Given the nature and circumstances of your offense(s), you have not been incarcerated for a sufficient length of time.
<input type="checkbox"/>	Other:
<input type="checkbox"/>	What you need to address before the next parole hearing:

 PAROLE BOARD MEMBER

 PAROLE BOARD MEMBER

STATE OF SOUTH DAKOTA
BOARD OF PARDONS AND PAROLES

NOTICE OF PAROLE HEARING RESULTS

*For All Offenders: This document does not constitute the basis for an appeal.
FOR Offenders Denied Discretionary Parole: When parole is denied under SDCL 24-15-8 or 24-15A-41, the denial is not a contested case and is therefore not subject to appeal. Based upon the precedent of Bergee v. SD Bd. of Pardons and Paroles, 2000 SD 35, a denial or discretionary parole is not an appealable order. According to SDCL 24-15-8 and 24-15A-41, "Neither this section or its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any prisoner."*

Date Printed:

Name: ID: Location:

Board Member Present:

Hearing Date:

Decision:

Hearing Type:

Next Review Date:

Details:

Reasons: