

## 8.1. A.5 Parole Board Decisions and the Setting of Next Review Dates

### I Policy Index:

**Date Signed:** 09/17/2020

**Distribution:** Public

**Replaces Policy:** 10/2018 version

**Affected Units:** SD Board of Pardons and Paroles

**Effective Date:** 09/17/2020

**Scheduled Revision Date:** September 2021

**Revision Number:** 15

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

### II Purpose:

To establish guidelines for parole hearing officers and hearing panels on the granting of parole at a panel and Full Board hearings. 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 (board) where, at a minimum, a quorum of the board members are present, in person or by teleconference/video conference.

#### **Recusal:**

Board members recognizing a conflict of interest with a specific case or action, or at the request of an offender, 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 (See attachment 4).

#### **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 inmate 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 inmate 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 constitutes 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 will review the board hearing schedules to identify possible conflicts which would require a recusal and may ask to change the hearing schedule to avoid a possible conflict of interest.
- B. A board member with a confirmed conflict of interest will notify the offender and recuse themselves from participating in a hearing.
- C. If the board member was previously involved in the case but does not explicitly remember the offender or the case, he/she may explain the scenario to the offender and give the offender the option to request he/she recuse themselves. If the offender requests a recusal under these conditions, the board member will not participate in the hearing.
- D. Offenders, at the time of his/her hearing, may explain why they feel there is a conflict of interest and may request that board member(s) assigned to the hearing panel recuse themselves. The board member(s) will consider the offender's request and will make the final determination to grant or deny the request. The board member shall consider whether the request is reasonable and consistent with common judicial practice. Offenders who are aggrieved by the individual board member recusal decision may appeal that decision to the chair of the board.

**General Discretionary Considerations for Granting or Denial of Parole:**

- A. The board may consider information obtained from the inmate's legal file, institutional records and parole documents, input from the public, victims, and criminal justice agencies, as well as from interviews with the inmate, 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 inmate in assessing his/her rehabilitative needs, may utilize information from the following:

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

### **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 less than eight (8) months under the Old System. The panel may make recommendations to the inmate of rehabilitation needs.
  2. A hearing panel may continue an application for less than 24 (twenty-four) months under the New System. The panel may make recommendations to the inmate 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.
  2. The hearing panels or full board may impose special conditions or recommendations related to the offender's rehabilitation.
    - 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 inmate violates the conditions of the board order, the parole agent shall submit a violation report to the parole board office.
- C. Discretionary parole hearings following a revocation action:
1. In cases under the Old System, if an inmate'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 inmate for a discretionary parole hearing at two (2) year intervals following a revocation if the inmate 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 inmate 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 inmate 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 inmate's discretionary parole hearing.
- D. Inmates in disciplinary segregation (not required a discretionary hearing)

1. An inmate serving time in disciplinary segregation on the date of his/her discretionary parole date will have his/her hearing continued to the following month unless it has been two years since the inmate's noncompliance hearing, parole revocation hearing, or last discretionary parole hearing, whichever is later, in which case the inmate will have his/her hearing before the board as scheduled. This will continue until the inmate is no longer serving time in disciplinary segregation.
  2. The directives in this section apply to inmates 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.
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 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 shall make a recommendation to the full board where the intent is to return street time, dead time, good time or to grant parole under the below criteria.
- 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.

C. Parole Hearings requiring the majority vote of the board members present:

1. 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 Related Directives:

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*

## VI Attachments

Attachment 1: Board Slip  
Attachment 2: Hearing scripts  
Attachment 3: Recusal Form  
Attachment 4: Parole Eligibility Notice  
Attachment 5: Notice of Hearing  
Attachment 6: Hearing Results Form

## VII Revision Log:

April 2006: - New

June 2006: - **Revise** - Remove SDCL 24-13-4.5 and replaced with SDCL 24-15A-10

June 2007: - **Revise** - Added standards for Granting or Denial of parole, Granting parole to Sex Offenders, expanded policy statement, added Class C Crimes.

September 2007: - **Revise** - Added clarification on continuations and denials.

December 2007: - **Revise** - Amended non-compliance and revocations, (omit the conditions on "continued". **Add**: Definitions, clarifications on continued paroles. **Add**: updated board slips.

December 2008: - **Revise** - Grammar and language throughout, updated to DOC format for policies, **Add**: definitions on Board Slips. **Remove**: Reference to SDCL 24-13-7 to Discretionary Considerations. **Revise** - Class A,B,C or 1 from 2/3 majority to majority of all board members of the board of pardons and paroles. **Revise**- Other than Class A, B, C or 1 and non-violent to majority of board members present. **Add**: Parole Decisions, A #3. June 2009 **Add**: Definition on Recusal by Board Member.

March 2010: **Revise** the policy title. **Revise** the policy index. **Change** the office of responsibility to the Board office. **Clarify** the Policy purpose. **Revise** grammar and formatting throughout. **Update** the definitions, including recusal. **Move** the "Majority Vote Required" definitions to the policy body, under procedures. **Move** the following definitions to procedures – continuance of hearing, discretionary hearing after revocation, and discretionary decision after n/c. **Change** procedural titles to read Hearing Officer duties and Hearing Panel duties. **Update** Parole Decisions to Parole Decision-making. **Update** attachments and **add** attachment #4. **Add** Attachment 5

January 2013: **Amend** language to establish a single board member only has the authority to recommend to the full board or hearing panel. **Add** attachment 5. **Change** their to his/her.

January 2015: **Revise** due to combining all board sheets into one board sheet, Recusal PROTOCOL. **Add** total years of consecutive numbers or counts, March: minor changes

November 2016: **Add** language to address not having a parole hearing if inmate is in the SHU. **Replace** old board sheet with new, language added to address multiple next review dates.

May 2017: **Add** Structured Decision-Making Framework language, **Add** Offenders with multiple next review dates language. **Delete** old system notice attachment. **Add** attachment 4 and 5 notices. **Add** to page 6 B and C. " An auxiliary board member may substitute for a absent board member."

October 2017- **Moew** DOC System Risk Level 3 was under Sex Offender section. It has been re written in a bullet point configuration. Attachment 1 Board Slip replaces with new one.

October 2018- **Change** Full Board cases not to include nonviolent offenders, move violent to 20-year sentence for vote of majority of members present. Vote of majority of all member remains unchanged.

September 2020: **Remove** references to clemency recommendations from Sections III Definitions and IV Procedures.

**Remove** Parole Decision-Making Section D: The Continuance of a Hearing (duplication) and several other duplications. Language/formatting changes. **Add** Procedures-Parole Decision Making – F – Inmates will be given Parole Success Plan by

Case Manager. **Add** Procedures – Parole Decision Making – G.1 and G.2. **Clarify** Procedures-Decisions Requiring a Majority Vote A.3.**Add** Section VI Attachments. **Add** Attachment 6-Hearing Results Form.

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

**Attachment 1: Discretionary Parole Board Slip (Generated in COMS)**

**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 inmate.

**DECISION:** \_\_\_\_\_ **GRANT PAROLE -** \_\_\_\_\_

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

**DENY PAROLE – NEXT REVIEW DATE:** \_\_\_\_\_

BOARD RECOMMENDATION(S): \_\_\_\_\_

\_\_\_\_\_ **CONTINUE HEARING TO:** \_\_\_\_\_

\_\_\_\_\_ Return: \_\_\_\_\_ Street Time / Good Time / Dead Time  
*RETURN ENOUGH TIME to make release effective:* \_\_\_\_\_

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

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

\_\_\_\_\_  
PAROLE BOARD MEMBER

\_\_\_\_\_  
PAROLE BOARD MEMBER

## **Attachment 2: Parole Board Hearing Scripts**

The Parole Board Hearing Scripts are located in Policy Tech/Parole Division/Parole Board

The Parole Board Hearing Scripts are as follows:

1. Discretionary Parole Hearing Script
2. Non-Compliance Hearing Script
3. Reading of Rights – Revocation Hearing
4. Revocation Hearing (Initial Appearance) Script
5. Revocation Hearing (Contested) Script
6. Revocation Hearing (Mitigation Only) Script
7. Revocation Hearing (Rejected Waiver) Script
8. Executive Clemency (Full Board) Hearing Script
9. Financial Obligation Hearing Script

**Attachment 3 – Recusal Form**

**STATE OF SOUTH DAKOTA            )**  
**)SS**  
**COUNTY OF MINNEHAHA            )**                   **SOUTH DAKOTA**  
**)**                   **BOARD OF PARDONS AND PAROLES**

-----  
IN THE MATTER OF \_\_\_\_\_ )  
\_\_\_\_\_)                   **RECUSAL**  
\_\_\_\_\_) )  
-----

COMES NOW \_\_\_\_\_, a duly appointed and acting member of the Board of Pardons and Paroles recuses himself/herself from consideration or action on the matter before the Board on \_\_\_\_\_, 20\_\_\_\_, relating to the above-named person.

DATED:

\_\_\_\_\_  
Board Member

**Attachment 4 – Parole Eligibility Notice**

**STATE OF SOUTH DAKOTA  
BOARD OF PARDONS AND  
PAROLES**

Box 5911  
Sioux Falls, S.D. 57117-5911  
PHONE: (605) 367-5040

**PAROLE ELIGIBILITY NOTICE**

**To:**                      **DOC#:**                      **Location:**                      **Date:** \_\_\_\_\_

You are eligible to appear for a parole hearing on the \_\_\_\_\_  
meeting of the Parole Board.

When you come to the hearing, bring your **Parole Success Plan (i.e. Discretionary Parole Application)** with you for the board to review. If you do not bring your completed application to your hearing, you will more than likely be continued to a next review date set at the discretion of the board.

**You do not need to return this notice UNLESS one of the following applies:**

- I do not wish to appear for parole consideration - **WAIVE TO NO ACTION**
- WAIVE parole and set next review date to \_\_\_\_\_ (month/year)**

Please Note: To better accommodate you and any guests that may attend, **please have guests confirm their appearance at your hearing with parole board staff** by calling our office at (605) 367-5040

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NOTICE: Any inmate serving time in disciplinary segregation on the date of his/her discretionary parole hearing will have his/her hearing continued to the following month unless it has been two years since the inmate's last non-compliance/revocation/parole hearing (whichever is later), in which case the inmate will have his/her hearing before the Board as scheduled. Hearing continuances will remain in place until the inmate is no longer serving time in disciplinary segregation. This directive applies only to inmates who committed their offense on or after July 1, 1996 (New System).



## Attachment 6 – Hearing Results Form

STATE OF SOUTH DAKOTA  
BOARD OF PARDONS AND PAROLES

### **\*NOTICE OF PAROLE HEARING RESULTS\***

*For All Inmates: This document does not constitute the basis for an appeal.*

*FOR Inmates 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: