

8.1. A.7 Early Discharges; Partial Early Discharges; Return of Street Time for Offenders on Community Supervision

I Policy Index:

Date Signed: 08/18/2020

Distribution: Public

Replaces Policy: Supersedes 8/16/18 Version

Affected Units: Board of Pardons and Paroles, Parole Services

Effective Date: 08/18/2020

Scheduled Revision Date: August 2021

Revision Number: 12

Office of Primary Responsibility: Parole Board Office

II Purpose:

To establish guidelines for parole agents and the Parole Board regarding the recommendation and granting of the return of street time, a partial early discharge, and/or an early final discharge to offenders on community supervision. Through the application of these early discharge standards and procedures, offenders on community supervision representing a lower risk to public safety, having followed the rules of the Department of Corrections, and having followed the conditions of their community supervision agreement, may be afforded an opportunity to be considered for the return of street time, a partial early discharge and/or an early final discharge from community supervision.

Neither this policy, the sections of SDCL, nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any inmate.

III Definitions:

Early Final Discharge

As authorized by SDCL 24-5-2, 24-5-7, and 24-15A-8, the Board of Pardons and Paroles, upon recommendation of the supervising agent, may grant an early final discharge to an offender on community supervision, including those serving a suspended sentence under supervision of the board, if the board is satisfied that an early final discharge would be in the best interests of society and the inmate.

Neither this policy, the sections of SDCL, nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any inmate.

Street Time

New System Offenders – All time spent on supervision, including time spent on absconder status and suspended sentence, will be considered street time (see SDCL 24-15A-28).

Old System Offenders – All time spent serving the suspended portion of the sentence will be considered street time. As it applies to this policy only, street time will only encompass any time the Parole Board has previously denied the credit of or taken at prior revocations on current admissions.

Partial Early Discharge

A length of time to be credited to an offender's active sentence which would reduce the actual time an offender on community supervision must serve. Any time credited to the offender under a partial early discharge may be rescinded by the Parole Board during any subsequent parole revocation actions.

IV Procedures:

Eligibility Requirements

- A. The Board of Pardons and Parole has established the following eligibility criteria for an offender under the jurisdiction of the Board to be considered for the return of or credit for any qualifying time, or an early final/early partial discharge.
1. Return of Street Time
 - a. Offenders must have had a prior loss of street time on his/her current admission.
 - b. Offenders must have served a minimum of three (3) continuous months under community supervision.
 - c. If the return of street time or partial early discharge would result in the expiration of an offender's sentence, the offender shall have completed all assigned treatment requirements.
 - d. Applications for offenders identified as sex offenders must be accompanied by a positive recommendation from the Sex Offender Management Program (SOMP).
 - e. Offenders on supervision shall be current on payments with all financial obligations identified in the offender's Financial Obligation Agreement on the current admission (see Parole Services OM 7.3.E.5 *Collection of Financial Obligations*).
 - f. Offenders must have an adequate and stable residence/living environment. Halfway houses, shelters and temporary placements are not considered stable under this section.
 - g. Offenders on supervision shall not have used alcohol or any illegal substance, or abused over the counter medications, for the past three (3) months.
 - h. Offenders shall not have had recent adverse contact with law enforcement to include all felony and misdemeanor violations *except* parking tickets, fines, or civil processes unrelated to the current offense.
 2. Partial Early Discharge
 - a. Offenders must have served a minimum of three (3) continuous months under community supervision.
 - b. Applications for offenders identified as sex offenders must be accompanied by a positive recommendation from the Sex Offender Management Program (SOMP).
 - c. Offenders on supervision shall be current on payments with all financial obligations identified in the offender's Financial Obligation Agreement on the current admission (see Parole Services OM 7.3.E.5 *Collection of Financial Obligations*).
 - d. Offenders on supervision shall be participating in and in good standing with all assigned treatment requirements.
 - e. Offenders must have an adequate and stable residence/living environment. Halfway houses, shelters and temporary placements are not considered stable under this section.
 - f. Offenders on supervision shall not have used alcohol or any illegal substance, or abused over the counter medications, for the past three (3) months.
 - g. Offenders shall not have had recent adverse contact with law enforcement to include all felony and misdemeanor violations *except* parking tickets, fines, or civil processes unrelated to the current offense.

3. Early Final Discharge

- a. Offenders on supervision should be halfway to their most current TED to be eligible for an early discharge.
- b. Exceptions to this requirement may be allowed by the board in situations of specific hardship or in the best interest of public safety and justice.
- c. Offenders on supervision shall be current on payments with all financial obligations identified in the offender's Financial Obligation Agreement on the current admission (see Parole Services OM 7.3.E.5 *Collection of Financial Obligations*).
- d. Offenders on supervision shall complete all assigned treatment requirements (i.e. chemical dependency, halfway programming, 24/7, SCRAM, IMT, gambling, sex offender treatment) prior to being submitted for consideration.
- e. Offenders must have an adequate and stable residence/living environment. Halfway houses, shelters and temporary placements are not considered stable under this section.
- f. Offenders on supervision shall not have used alcohol or any illegal substance, or abused over the counter medications, for the past three (3) months.
- g. Offenders shall not have had recent adverse contact with law enforcement to include all felony and misdemeanor violations *except* parking tickets, fines, or civil processes unrelated to the current offense.

Discharging Deported Offenders

- A. Offenders on supervision who have been deported from the United States by the Department of Homeland Security may be submitted for an early final discharge.
- B. Supervising agents of deported offenders will not be required to ensure the previous outlined criteria for submission are met.
- C. Prior to the submission of an application for early final discharge of a deported offender, the supervising agent will verify with the Department of Homeland Security and/or Immigration and Customs Enforcement Agency (ICE) that the offender has been deported from the United States and will include such verification in the submitted application.

Submission of Application

- A. When the supervising agent has an offender that meets the conditions outlined in this policy or exceptional circumstances exist, an application may be submitted to the regional supervisor for a review. If the regional supervisor feels the application has merit, he/she will send the application to the parole board office. Any exceptions to the eligibility criteria outlined in this policy will be identified, and the supervising agent, with approval from their regional supervisor, will provide supporting information and explanation for the board's consideration along with the application.
 1. The supervising agent and regional supervisor will complete the application and submit a signed copy to the parole board office. (See Attachment #1)
 2. The parole board office must receive notice of the submitted application by the application deadline date established each month.
 3. All applications will be reviewed by the parole board operations supervisor (or designee) prior to their submission to the board.

Board Office Procedures

- A. Board office staff will schedule all return of street time, partial early discharge and early discharge application hearings in COMS.
 - 1. All hearings will be scheduled at least five (5) business days prior to the board's review and final decision for the purposes of victim notification through SAVIN.
- B. Board office staff will prepare the following to accompany the application for the board's review:
 - 1. The signed application;
 - 2. Applicable orders/decision documents;
 - 3. Identification of all applications in accordance with Board Policy 8.1.A.5 Parole Board Decisions and the Setting of Next Review Dates – any case meeting established “full board” criteria will be scheduled for a review by the full board unless denied by the hearing officers/panel.
 - 4. SDMF Investigative Summary Report from COMS.
- C. Board office staff shall present the completed schedule, application/packet and orders to the designated panel for review and consideration.
- D. A panel will conduct a paper review, typically without the offender present, and make a final decision to grant or deny the request.
 - 1. A hearing may be continued for more information, additional assessments, or to request input from a victim.
 - 2. The panel / full board are not bound by the agent's recommendation and may choose to grant a partial discharge if a final discharge was requested or a final discharge if a partial was requested.
 - 3. Board office staff will enter all results into COMS immediately following the hearing.
- E. Granted Applications:
 - 1. Board office staff will notify the supervising agent of the board's decision through email.
 - 2. Board office staff will organize and send the completed documents and legal file to Central Records.
 - 3. The supervising agent may submit subsequent applications for a return of street time / partial early discharge in three (3) months for additional consideration.
- F. Denied Applications:
 - 1. The panel or hearing officer will complete the Reasons for Denial forms (Attachment #2).
 - 2. Board office staff will communicate the reasons for denial to the supervising agent.
 - 3. The supervising agent may submit a subsequent application in three (3) months for the board's consideration.

Rescindment of Partial Early Discharge

- A. The granting of a partial early discharge may be rescinded by the board upon a subsequent finding that the offender is in violation of his/her community supervision agreement.

V Related Directives:

SDCL 24-5-2; 24-5-7; and 24-15A-8; and chapters 24-15 and 24-15A.
 Board Policy 8.1.A.5 *Parole Board Decisions and the Setting of Next Review Dates*

VI Attachments:

- Attachment 1: Early Discharge Application
- Attachment 2: Order Granting Early Discharge
- Attachment 3: Order Denying Early Discharge

VII Revision Log:

July 2006: New

January 2008 – **Add** Class C felony to Prodedures and ACA Standards Identified. **Remove** reference to AA/NA/GA.

January 2009 - Grammar and language throughout. **Update** to DOC format for policies. **Add** section on civil process, clarification added to applications, clarifications added to exceptions. **Revise** “For Board Policy Board Policy 8.1.A.5 Changes”.

March 2010: **Revise** Policy Index, Purpose, Definitions, eliminating SDCL recite and creating “Early Discharge” definition. **Revise** procedural sections. Added procedures for the discharge of deported parolees. Revised Board Office procedures for processing of early discharges. Added section D of Board Office procedures regarding hearing held without offender present. Specified related directives. Revised and Added attachments to the WAN. Added procedures and definitions for the return of street time and Partial Early Discharge throughout the policy.

February 2011: **Add** page 2, section C-*Offenders currently serving a sentence for DWI must serve one (1) year in the community before requesting an early final discharge.*

3) *All other offenders must have served a minimum of six (6) continuous months in the community before requesting an early final discharge.*

September 2012 – **Revise** “will” with “may” on page 6, section A, a few format and spelling corrections.

December 2013 - Review-No changes

February 2015 - **Add** supervisors will review

February 2016 – **Update** attachment 1-3.

April 2017 - **Add** 9. *Inmates that are not eligible for Earned Discharge Credits will not be eligible for an early discharge.* Update attachment 2 and 3.

July 2017 - **Delete** 1. B and C on page 3. Reference sex offenders and early discharge.

August 2018 - **Revise** all references from earned discharge to early discharge. Various other minor changes.

August 2020 – **Revise** various language and placement of directives in Section 4 – Procedures. **Revise** placement of eligibility requirements under headings Return of Street Time, Partial Early Discharge, and Early Final Discharge. **Revise** all eligibility requirements pertaining to six (6) month time periods to three (3) months or “recent”. **Revise** early final eligibility from 2/3 of sentence or three years on parole to halfway to TED. **Remove** requirement for DUI offenders to be on supervision for one year before being eligible. **Remove** ineligibility requirement if offender is within 90 days of TED. **Remove** language of late applications being scheduled for the following month. **Revise** Section 4 – Board Office Procedures: Hearings will be scheduled in the Hearings Database to hearings will be scheduled in COMS. **Revise** Section 4 – Board Office Procedures: Hearings will be scheduled at least ten (10) days prior to Hearings will be scheduled five (5) days prior to the board’s review... **Remove** Section 4 – Board Office Procedures reference to the legal file being presented as part of hearing packet. **Remove** various duplicate phrases.

<i>Myron Rau (Original Signature in File)</i>	08/18/2020
Myron Rau, Chair	Date

Attachment 1: Early Discharge Application

Applying For (Check One):

Return of Street Time
 Partial Earned Discharge
 Earned Final Discharge

Offender: _____ **DOC ID:** _____

Offense: _____ **Sentence:** _____

Current Community Risk

Level: _____ **Date Released to Supervision** _____

Term Expires _____ **Restitution** _____

Date: _____ **Completed:** Yes No

Number of _____ **Fines Paid:** Yes No

Felonies: _____ **Supervision Fees** _____

Release Status: _____ **Current:** Yes No

Current _____

Status: _____

Interstate Compact To: _____ **From:** _____

Maintaining Employment:

Type of Employment: _____

Months Employed with Same Employer: _____

Housing Status:

Months at current residence: _____

Housing situation: _____

Adjustments Under Minimal Supervision:

Agent Attachments:

Agent Recommendation:

Return of: _____ years _____ Months _____ Days of Street Time.

Partial Early Discharge in the Amount of: _____ Years _____ Months

(Must have new financial Obligation Agreement Attached)

Early Final Discharge from Supervision.

Agent Signature _____ Agent Name _____

Attachment 2: Early Discharge Order Granting Early / Partial Early Discharge

ORDER GRANTING EARLY / PARTIAL EARLY DISCHARGE

In Re: _____

The above-entitled matter came before the SD Board of Pardons and Paroles on the recommendation of the Supervising Parole Agent, _____ pursuant to SDCL 24-5-7 or 24-15A-8.

The Board, being satisfied that an early discharge would be in the best interest of society and the offender, attests it is hereby ORDERED that the application for early discharge from supervision for _____ is: **GRANTED.**

Early **final** discharge

Partial early discharge in the amount of _____

Dated: Date of Hearing _____
Recommending Hearing Officer / Board Chair (if Full Board Required)

Board Member

Board Member

Attachment 3: Early Discharge Denial Reason

ORDER DENYING EARLY FINAL / PARTIAL DISCHARGE

In Re: _____

The above-entitled matter came before the SD Board of Pardons and Paroles on the recommendation of the Supervising Parole Agent, _____, pursuant to SDCL 24-5-7 or 24-15A-8.

The Board, being satisfied that an early discharge would *not* be in the best interest of society and the offender, attests it is hereby ORDERED that the application for early discharge from supervision for _____ is: **DENIED.**

Dated: Date of Hearing

Compelling Reasons for Board Denial of Early Discharge from Community Supervision:

- The Board is not satisfied that society will be protected if the parolee would be discharged early.
- The Board is not satisfied that the parolee has secured suitable employment, other beneficial occupation of his/her time, or suitable place to live.
- The Board is not satisfied, given the nature and circumstances of the offense for which the parolee was convicted that he/she has been confined and supervised in the community for sufficient length of time.
- The Board is not satisfied, given the parolee's attitude, character, capabilities and habits, as exhibited by his/her conduct in the institution, or in the community, or both, that he/she has accomplished rehabilitation.
- The Board is not satisfied, given the nature and circumstances of previous probation or parole history, that the parolee has recognized his/her problems and has made sufficient efforts towards self-improvement.
- The Board is not satisfied, given a review of the standards set forth in SDCL 24-13-7, as amended, that the parolee is willing to lead a law-abiding life without harm to society.
- Other:

Board Member

Board Member

This document is for internal use only - not to be shared with the parolee / inmate.