


<p style="text-align: center;">SOUTH DAKOTA</p>  <p style="text-align: center;">PAROLE BOARD POLICIES AND PROCEDURES</p>		POLICY NUMBER 8.1.A.8	PAGE NUMBER 1 OF 7
		DISTRIBUTION: Public	
		SUBJECT: Withholding Parole, Restitution Hearing, Compassionate Parole	
RELATED STANDARDS:	N/A	EFFECTIVE DATE: 8 / 1 7 / 2 0 2 3	
		SUPERSESSON: 10/2021	
DESCRIPTION: Parole Board	REVIEW MONTH: August	Myron Rau, Chair Board of Pardons and Paroles	

I. POLICY:

It is the policy of the South Dakota Department of Corrections. Board of Pardons and Paroles to establish guidelines in regard to withholding parole and to maintain compliance with SDCL 24-15-32.1. Restitution hearings and compassionate parole SDCL 24-15A (55-68).

II. PURPOSE:

To provide standards and procedures for conducting due process hearings in the matter of setting or modifying restitution and financial obligation agreements.

III. DEFINITIONS:

Compassionate Parole:

The conditional release from confinement of an offender pursuant to SDCL § 24-15A (55-68). The secretary of corrections (SOC) may consider referrals for compassionate parole consideration from the offender's health care provider or the warden. If the secretary determines the offender meets the criteria for compassionate parole consideration as set forth in SDCL § 24-15A-55 (see attachment #1), the secretary may refer the offender for a 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.

Interstate Parole Supervision:

This chapter applies to all South Dakota offenders applying for and transferring supervision to another state. Interstate compact rule 4.108 – *Collection of restitution and other costs*: A sending state is responsible for collecting all fines, family support, restitution, court costs, or other financial obligations imposed by the sending state on the offender. Upon notice by the sending state that the offender is not complying with family support and restitution obligations, financial obligations as set forth in subsection (a), the receiving state shall notify the offender that the offender is in violation of the conditions of supervision and must comply. The receiving state shall inform the offender of the address to which payments are to be sent (see SDCL § 24-16-1). All persons under supervision of parole services, either paroled in state, released on suspended sentence, or accepted through interstate compact, are responsible, if ordered by a court or paroling authority that has jurisdiction, for paying court costs, restitution, fines, fees, support obligations, and supervision fees and shall provide documentation of payment to the supervising agent (see ARSD 17:61:01:10).

Notification for Warden Review Form:

DOC Policy (1.4.B.11 - *Withholding of Parole Eligibility Pursuant to SDCL § 24-15A-32.1*) Notification for Warden Review Form generated by the SOMP staff and sent to the respective institutional Warden or designee.

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Parole Eligibility:

Other than offenders with a life or death sentence, each offender will have either a parole eligibility date (old system) or an initial parole date (new system) calculated by Offender Services/SDDOC (See SDCL § 24-15-3).

Restrictions on Parole - Implementation of Child Support and Restitution Plans – Acceptance by Parolee:

The board may place reasonable restrictions upon a parolee designed to aid in the parolee's rehabilitation. The board, upon granting parole, shall require the implementation of a restitution plan and payment of supervision fees if reasonably possible. The board may order financial obligations in amounts meant to significantly reduce outstanding financial obligations prior to the discharge of a sentence. The prior obligations of child support and restitution payments take precedence over collection of supervision fees. All restrictions shall be in writing and the agreement shall be signed by the parolee (See SDCL § 24-15-11).

Victim Notification:

Victims registered in SAVIN will receive notice upon the scheduling of the hearing. The victim may contact the Parole Board Office and choose to provide written testimony ahead of the hearing or oral testimony at the hearing (See SD Constitution Article 6-29).

Withholding Eligibility:

Upon recommendation of sex offender treatment program staff and following a review of the offender's history, treatment status, risk of reoffending, and a psychosexual assessment, the warden of the penitentiary may, at any time prior to the offender's final discharge, recommend to the Board of Pardons and Paroles (board) that the parole eligibility pursuant to SDCL 24-15A-32 be withheld on an offender sentence as a result of a conviction of a felony sex offense as defined in SDCL 22-24B-1. The board may, after a hearing, determine if parole eligibility is to be withheld. The decision of the board to withhold parole eligibility is final (See SDCL 24-15A-32.1).

IV. PROCEDURES:

1. Withholding Parole:

- A. Offenders who are eligible for parole pursuant to SDCL § 24-15A-32 and whose sentence(s) is for a sex offense (22-24B-1) may have their parole eligibility withheld as defined in SDCL § 24-15A-32.1.
- B. Only offenders whose date of sex offense(s) occurred on or after July 1, 2006 may have their parole eligibility withheld under § 24-1A-32.1.
- C. An offender with multiple sentences may only have parole eligibility withheld on those sentences that meet the guidelines of SDCL § 24-15A-32.1 and DOC Policy 1.4.B.11 - Withholding of Parole Eligibility.
- D. Parole eligibility may be withheld on an offender who is past his/her initial parole date, as long as the offender has not discharged the sentence(s) for the sex offense(s) for which the offender is being recommended to have parole eligibility withheld. This may include:
 1. Non-compliant offenders as determined by the board and have been subsequently denied parole by the board (See DOC policy 1.4.B.1 - *Individual Program Directives (IPD)*).
 2. Any offender released on parole or suspended sentence that subsequently violates the terms of his/her parole/suspended sentence and is returned to prison.
- E. Parole Administration staff will schedule a hearing before a panel that conducts parole/suspended sentence revocation hearings (see Parole Board Policy 8.1.A.2).

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F. Parole Admin staff will schedule a hearing before the board at the next appropriate board hearing date. This hearing will be scheduled with contested revocation/non-compliance hearings.

1. This hearing requires a court reporter to record the hearing or a recording device/cloud recording.

G. Board staff will complete the following attachments:

1. Notice of hearing, describing the time and place for a hearing before a hearing panel/officer (see attachment #1).
2. Constitutional rights, will be read to the offender with date of reading recorded on document (offender is required to sign, witnessed by staff) (see attachment #2).
 - a. If the offender refuses to sign the document, staff will indicate such on the document.
3. Certificate of service (to be served on offender with Notice of hearing), a list of all documents served upon the offender (see attachment #3).
4. Continuances may be granted by the board at the request of the offender, offender's counsel, or the DOC staff attorney. Continuances will be noted in the audio recording or through an email trail between the staff attorney and the chair of the board.

2. Restitution Hearing:

- A. Board staff will schedule a hearing upon receiving a request in writing from a parolee (Attachment #5).
- B. Notice of hearing will be sent to the parolee with the date, time, and location of hearing.
 1. If the parolee has obtained counsel for this hearing, the attorney will also be given notice.
- C. Victims will be notified through SAVIN (if registered) upon a hearing being scheduled in COMS.
- D. Hearings will be recorded.
- E. Upon completion of hearing, Findings, Conclusions, and a Board Order will be written and sent to the parolee. Copies will be sent to the parolee's counsel and filed in the legal file.

3. Compassionate Parole:

- A. Offenders 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 offender'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 offender population, or
 5. Is at least seventy years of age and has served at least thirty consecutive years of the offender's sentence incarcerated, and
 6. Is not serving a capital punishment sentence.

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- B. The Board may not order the release of an offender to compassionate parole if the offender 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 offender to compassionate parole unless the offender's release plan ensures the offender's health care expenses will be paid either by the offender or a third-party payer including Medicare, Medicaid, Indian Health Service, veteran's assistance, or private insurance.
- D. An offender is ineligible for compassionate parole once the offender reaches the parole eligibility date pursuant to § 24-15-5 or the offender's initial parole date pursuant to § 24-15A-32. However, if an offender 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.

4. Board Consideration (Compassionate Parole):

- A. The Board of Pardons and Paroles shall consider the following factors in determining the grant or denial of a compassionate parole:
 - 1. The offender's assessed risk level.
 - 2. The offender's conduct in prison.
 - 3. The offender'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 offender'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 offender 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 offender, after release, to ensure public safety.

B. HEARING OUTCOMES:

1. Withholding Parole:

- A. In all cases, the board may withhold parole eligibility and allow the offender to continue to expiration of sentence with the exception of split sentences.
- B. Where the offender is serving a split sentence, the board may withhold the parole eligibility but not impose the suspended sentence under this policy or pursuant to SDCL § 24-15A-32.1.
- C. The board may, in all cases, set a next review date and impose conditions (see: Board Policy 8.1.A.5).
- D. The offender will be notified in writing of the board's decision as soon as practicable.

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- E. Board staff will enter results in COMS and ensure that the hearing results are distributed to the offender and counsel (if applicable)
- F. Upon conclusion of the hearing, parole administration staff will notify in writing the decision to the warden.
- G. Findings of Fact and Conclusion of Law will be drafted by the DOC staff attorney and submitted to the board office for distribution.
- H. A board order will be drafted by the board and provided to the offender.

2. **Compassionate Parole:**

- A. The board may grant or deny a compassionate parole.
 - 1. If the Board denies an offender 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 offender sooner than one year.
- B. If the offender no longer meets the criteria for compassionate parole as set forth in SDCL § 24-15A-55, the offender's health care provider or the warden shall notify the secretary of corrections. The secretary may remove the offender from compassionate parole consideration.
- C. If the secretary of corrections removes the offender from compassionate parole consideration, any previously scheduled compassionate parole hearings will be canceled, and the board may not consider the offender for compassionate parole.
 - 1. An offender 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).
- D. If an offender 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.
- E. 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 offender 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 offender 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.

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3. Supervision and Revocation of Compassionate Parolees:

- A. An offender 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 offender 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 offender on parole through a compassionate parole release is ineligible for earned discharge credits until the offender reaches an initial parole date pursuant § 24-15A-32 or an initial parole eligibility date pursuant to § 24-15-5.
- D. If an offender 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.

VI. RESPONSIBILITY:

The Chair and/or Vice Chair of the Board of Pardons and Paroles along with applicable board staff are responsible for annual review and maintenance of this policy.

VII. AUTHORITY:

SDCL Chapters 24-15A, 24-13, 24-14, SDCL 22-24B-1 (Withholding Parole)
DOC Policy 1.4.B.11 (Withholding Parole)
Board Policies 8.1.A.5 (Withholding Parole)
SDCL Chapters 22-24 B-1 and 24-15A-32.1 (Withholding Parole)
SDCL Chapters 24-13, 24-15, 24-15A, 24-16 and 1-26 (Restitution Hearing)
Administrative Rules Chapters 17:60 and 17:61 (Restitution Hearing)
SDCL Chs. 24-13, 24-15, and 24-15A (Compassionate Parole)
SDCL Chs. 24-13, 24-15, and 24-15A (Compassionate Parole)

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VIII. HISTORY:

August 2007
 September 2007
 October 2008
 January 2012
 January 2013
 February 2015
 March 2016
 October 2018
 September 2020
 November 2021

Attachments:

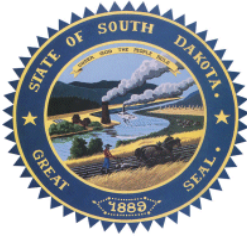
#1-3 (Withholding Parole)

Attachment 1: Notice of Contested Hearing
 Attachment 2: Constitutional Rights
 Attachment 3: Certificate of Service

#4-5 (Restitution Hearing)

Attachment 4: Notice of Hearing
 Attachment 5: Parolee Financial Statement

Distribution: Public



**NOTICE OF CONTESTED HEARING
IN THE MATTER OF THE WITHHOLDING OF PAROLE
ELIGIBILITY OF:**

Transaction(s):

You are hereby notified that the Board of Pardons and Paroles (Board) has scheduled a contested hearing in the above referenced matter to be heard at the South Dakota State Penitentiary at Sioux Falls, SD on _____ at _____ AM/PM, or as soon thereafter as the board can hear you.

The hearing will be held pursuant to the authority and jurisdiction granted to the board by SDCL chs. 1-26, 24-15, and 24-15A, and any applicable administrative rule of South Dakota, specifically including ARSD ch. 17:60. The purpose of this hearing is to determine whether your parole eligibility date should be withheld pursuant to SDCL 24-15A-32.1. The Board can determine to withhold your parole eligibility date, or it can determine that parole eligibility should not be withheld.

This is an adversarial proceeding; you have the right to be present at the hearing and to be represented by legal counsel. If any party does not exercise these and other due process rights, they will be forfeited.

Any final decision entered by the Board may be appealed to the circuit court and the State Supreme Court as provided by law.

Dated at Sioux Falls, South Dakota this _____ day of _____, 20_____.

BOARD OF PARDONS AND PAROLES

Office of the South Dakota Board of Pardons and Paroles

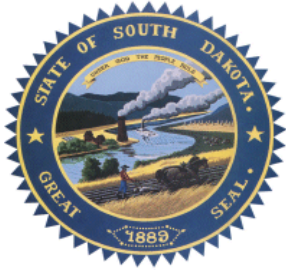
Personal service of the above notice and receipt of true and correct copy thereof is hereby admitted at

1600 North Drive, Sioux Falls, South Dakota 57104 on the _____ day of _____,
20_____.

Offender Signature

Date

CC: File/Offender



**STATE OF SOUTH DAKOTA
BOARD OF PARDONS AND PAROLES**
Constitutional Rights for Withholding Parole
[SDCL chs. 1-26, 24-15 and 24-15A]

CONSTITUTIONAL RIGHTS FOR WITHHOLDING PAROLE

I, _____, was informed of my constitutional rights. They were read and explained to me and I understand them completely:

- 1) You have the absolute right to remain silent. You need not put on any evidence in your defense and may rely upon the State's burden to prove its case for withholding of parole eligibility.
- 2) You have the right to testify on your own behalf if you so desire, call witnesses on your own behalf, and place before the board any documentary evidence you wish to consider. If you choose to testify on your own behalf, you are subject to cross-examination by the state and counsel.
- 3) You have the right to confront any witnesses called to testify against you and cross-examine them. Additionally, the State may place in evidence against you certain documentary evidence which would normally be termed hearsay – these may be letters, affidavits, police reports, depositions, etc.
- 4) You have the right to be represented by an attorney. If you cannot afford an attorney, one may be appointed for you.
- 5) You have a right to know the charges or allegations against you.

Offender Signature

Date

Distribution: Public



**STATE OF SOUTH DAKOTA
BOARD OF PARDONS AND PAROLES
CERTIFICATE OF SERVICE
WITHHOLDING PAROLE**

The undersigned hereby certifies that a true and correct copy of the following was served upon the following individual:

Name: **DOC Number:**

- Notification for Warden Review Form**
- Other:**
- Other:**
- Other:**

Dated this:

Office of the South Dakota Board of Pardons and Paroles

Distribution: Public

South Dakota Board of Pardons and Paroles

NOTICE OF HEARING

In the Matter of the Determination of Financial Obligations/Restitution Payments of []:

To: []

You are hereby notified pursuant to SDCL 24-15-11, 24-15A-24, and 24-16A-1, that a request for a hearing before the South Dakota Board of Pardons and Paroles to review your financial ability to provide restitution payments will be held at the State Penitentiary in Sioux Falls, South Dakota, on [], at [], or as soon thereafter as the matter may be heard by the Board.

At this time the board will review your financial status, Financial Obligations Agreement, restitution obligations, and other financial obligations to review your payment schedule. **Please complete the Financial Statement enclosed with this notice and return to the Board office at least one week prior to the hearing.**

This is an adversarial proceeding, and you have a right to be present at the hearing, to be represented by an attorney, and to request an attorney at public expense. The decision of whether to appoint an attorney at public expense is a matter for your sentencing judge and not the board to determine. At your hearing, you have the right to be heard in person or by counsel, or both, to present witnesses and documentary evidence, and to confront and cross-examine adverse witnesses. These and other due process rights will be waived if you do not exercise them at the hearing.

The board's decision in this matter may be appealed to the circuit court and the State Supreme Court.

Dated at Sioux Falls, South Dakota, this [] day of [], 20 [].

Office of the SD Board of Pardons and Paroles

Personal service of the notice within and receipt of true and correct copy thereof is hereby admitted at Sioux Falls, SD, this [] day of [], 20 [].

Parolee

Witness: _____

Date: _____

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FINANCIAL STATEMENT

Please answer every question or state not applicable (N/A) if the question does not pertain to your financial situation. If you need more space to answer a question, please attach an additional sheet if necessary to fully answer any item. Be sure to attach a copy of you most recent paycheck stub and your last filed Federal Income Tax Return. Include your W-2 if you file jointly. Be sure to date and sign the financial statement after completion.

Personal Information:

Name: _____ Phone: _____

Address: _____

Current Marital Status: _____ Number of Dependents: _____

Bank Name: _____ Checking Account #: _____

Savings Account #: _____

Bank Address: _____

Other Accounts #: _____

Employment Information:

Employer: _____ Dates Employed:

From: _____

Address: _____ To: _____

Phone #: _____ Occupation: _____

Rate of Pay: \$ _____ Per: _____ Hours Worked Per Week: _____ Other Income: _____

Gross Monthly Income:

1. \$ _____ Salary, Wages, Tips, Commissions, Bonus or Other Designations
2. \$ _____ Gain or profit from a business or professions (self-employment)
3. \$ _____ Pension, retirement, disability, veterans, social security or insurance payments
4. \$ _____ Interest, dividends, rentals, royalties or other gain
5. \$ _____ Gain from sale, trade or conversion of capital assets
6. \$ _____ Unemployment insurance and workers compensation benefits
7. \$ _____ Benefit in lieu of compensation including, but not limited to, military pay allowances.
8. \$ _____ Other income (including Spousal Support Received) Explain: _____
9. \$ _____ **TOTAL GROSS MONTHLY INCOME** (Add lines 1 through 8).

Withholding:

10. \$ _____ Income tax withholding.
11. \$ _____ Social Security and Medicare taxes withheld from wages or salary

Distribution: Public

- 12. \$ _____ Contributions to an IRS qualified retirement plan not exceeding 10% of gross income
- 13. \$ _____ Unreimbursed employee business expenses (Attach IRS form 2106)
- 14. \$ _____ Payments made on support orders
- 15. \$ _____ Payments made for Spousal Support
- 16. \$ _____ TOTAL WITHHOLDING (Add lines 10 through 15)

Asset Information:

List assets, value, and location (Include vehicles, boats, hunting/fishing gear, sporting goods, real estate, depository accounts (with name, address, and account number of each, cash value of insurance policies, jewelry, securities, and any other property of any kind. If any property has a balanced owed against it, show full value of property without regard to this balance; list dept/balance separately).

Description & Location of Item:	Market Value:	Debt/Balance Owed:

I declare and affirm that the information contained herein has been examined by me, and to the best of my knowledge and belief, is in all things true and correct. I further understand that knowing the information to be false for untrue, in whole or in part, or failing to disclose information requested may place you in violation of your parole.

Signature of person completing this Financial Statement is required:

Signature Date

