

## 8.1.A.10 Executive Clemency – Commutation of Sentence

### I Policy Index:

**Date Signed:** September 16, 2021

**Distribution:** Public

**Replaces Policy:** September 2018 version

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

**Effective Date:** September 16, 2021

**Scheduled Revision Date:** August 2022

**Revision Number:** 8

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

### II Purpose:

To provide procedural guidance to the public, board staff and the Board of Pardons and Paroles on the process of executive clemency - commutation of sentence.

### III Definitions:

#### **Delegation of Authority by Governor:**

The governor may, by executive order, delegate to the Board of Pardons and Paroles the authority to hear applications for pardon, commutation, reprieve, or remission of fines and forfeitures, and to make its recommendations to the governor (See SDCL 24-14-1).

#### **Board of Pardons and Paroles' Recommendation of Commutation of Sentence:**

A recommendation made to the governor by the Board of Pardons and Paroles to reduce an offender's sentence.

#### **Governor's Commutation: SDCL 24-2-15**

Diminution of period of confinement for good behavior, failing health, or other reasons in the interest of justice. If any offender, convicted under the laws of this state, has demonstrated continued exceptional good behavior, or is in failing health, or for some other good and sufficient reason in the interest of justice, the governor, upon the recommendation of the Secretary of Corrections, may diminish the offender's period of confinement.

#### **Eligibility for Clemency: SDCL 24-15A-23**

Application for Clemency: An application for clemency may not be heard by the board for two (2) years after the date of the judgment. If an application for clemency is denied, an offender may not again present an application for clemency for a period of one (1) year.

#### **Eligibility for Clemency (New System Offenders): SDCL 24-15A-23.1**

An offender is ineligible to apply for clemency if the offender reaches the initial parole date set pursuant to SDCL 24-15A-32. If an offender is released on parole or the offender's sentence has been discharged pursuant to SDCL 24-15A-7, the offender may apply for clemency pursuant to SDCL 24-15A-23.

#### **Designation of Hearing Officers - Written Recommendation:**

The chair of the board may designate individual parole board members as hearing officers who may conduct hearings pursuant to this chapter and chapters 24-13, 24-14, and 24-15, to take testimony and make recommendations to the board. The recommendation shall be in writing and reviewed by the board or a panel of the board who may adopt the recommendations.

**Hearing Panel: SDCL 24-13-4.3**

Hearing panels – Final action. The chair of the board may designate panels of two or more board members to conduct hearings, hear applications, take testimony, and take final action regarding the granting, denial, revocation, rescission or an administrative continuance of parole.

**Publication of Notice of Application for Clemency:**

All applicants recommended for a personal appearance full board hearing shall publish once each week for three consecutive weeks in the official newspaper of the city closest to where the offense was committed. The notice shall include the current name of the applicant and any additional name(s) used when convicted, the public offense for which the applicant was convicted, the date of conviction, and the term of imprisonment. The last publication shall be published at least twenty (20) days before the hearing. The affidavit of the publisher of the paper showing the notice has been published shall accompany the application (See SDCL 24-14-4).

**Notice to Prosecuting Attorney, Sentencing Judge, Attorney General, and Law Enforcement of Hearing for Clemency:**

For all applicants recommended for a personal appearance full board hearing, the executive director/designee shall notify the attorney who prosecuted the person (by email) applying for clemency or the attorney's successor in office, the sentencing (or presiding) judge, the attorney general, and the sheriff or local law enforcement agency where the offense was committed at least thirty (30) days prior to a hearing by the board (See SDCL 24-14-3).

**Victim Notification - Content:**

Upon the scheduling of a clemency hearing, the Board of Pardons and Paroles shall notify the victim pursuant to SD Constitution Article 6 Section 29. The victim holds the right, upon request, to be informed in a timely manner of clemency and expungement procedures, to provide information to the Governor, the court, any clemency board and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made, and to be notified of such decision in advance of any release of the offender.

**Recommendation for Clemency to be in Writing - Record of Finding and Reasons:**

Whenever the Board of Pardons and Paroles recommends clemency to the governor, the recommendation shall be in writing. The board shall keep a record of its findings and the reasons for its recommendation (See SDCL 24-14-7).

**Majority Vote Required for Certain Recommendations:**

No person seen by a panel may be paroled or denied parole, recommended for clemency, nor may a person's parole be revoked or rescinded without the concurrence of two board members. No person seen by the full board may be paroled or denied parole or recommended for clemency without the concurrence of the majority of the full board (See SDCL 24-15A-11).

**IV Procedures:****Notification of Executive Clemency Hearings:**

The Board of Pardons and Paroles will approve a yearly schedule of hearing dates and publish by posting on the State web site and posting at each institution in a public place.

**Application for Commutation of Sentence:**

- A. A standard application (Commutation of Sentence Application – SDCS-1, Part I and Part II) is available from the board office. The application, forms, and instructions can be located within

State databases through 9.1.A.9 – *Executive Clemency – Pardons, Commutations, Reprieve or Remission of Fines and Forfeitures.*

- B. Offenders wishing to apply for commutation will be required to send a kite to the board office requesting an application for commutation of sentence. Application instructions are provided with the application, and offenders may kite board staff for assistance with answering questions.
- C. Board staff will enter the application information into COMS (Comprehensive Offender Management System) to determine if the offender requesting an application meets the minimum eligibility requirements for a commutation of sentence. Once it is determined that eligibility requirements are met, board staff will send an application to the offender.
- D. To be eligible for a commutation, the applicant must meet the following minimum requirements:
  - 1. A minimum of two (2) years since the sentencing date
  - 2. One (1) year since the last application for commutation of sentence
  - 3. If the date of the offense was on or after July 1, 1999, the applicant may not apply for a commutation of sentence if they are parole eligible (SDCL 24-15A-23.1).
- E. It is the practice of the Board to not recommend a commutation of sentence in the following scenarios:
  - 1. If the applicant is a recent parole/suspended sentence violator
  - 2. If the applicant is a recent parole/suspended sentence violator with an imposed sentence
  - 3. If an applicant has a parole date within two years
  - 4. If an applicant has been denied parole.

### **Completed Applications: Part I**

- A. Upon receiving an application, board staff will date stamp the document and check for completeness, ensuring the application is completed and signed and a letter of personal plea and statement of offense are attached.
  - 1. All incomplete commutation packets will be returned to the applicant with an explanation. The applicant may provide the missing information and resubmit the application.
  - 2. When a packet is complete, staff will enter pertinent information and schedule the hearing panel review by a hearing panel of the board in COMS.
  - 3. When a packet is complete, board staff will notify the warden of the respective institution and the director of prison operations of the upcoming two-panel commutation hearing, requesting input, recommendations or opinions regarding the offender and the merit of the request. The warden, director of prison operations, or any designee they identify can provide any such information in any format or form they determine appropriate.

**Hearing Panel Review:**

- A. The hearing officer or panel will review the application (Part I) as a paper review and decide to: deny the application, continue the application to another panel review, or make a recommendation to the full board for a personal appearance hearing.
1. Recommendation to full board: Board staff will notify the inmate of the results in writing and send Part II of the application.
  2. Denial: Board staff will notify the offender of the results in writing and that he/she may apply again in one (1) year providing they meet the eligibility requirements. Pertinent information will be updated in COMS and this will conclude the process.

**Personal Appearance Hearing:**

- A. Notification and Publication Process: Commutation of Sentence Application: Part II
1. For those recommended for a full board, personal appearance hearing, board staff will send Part II of the application to the applicant:
    - a. Applicants are responsible for completing and sending form SDCS-3 to the State's Attorney in the county of conviction). Applicants are responsible to return the completed form (signed by the state's attorney) to the South Dakota Board of Pardons and Paroles prior to a scheduled personal appearance hearing.
    - b. Applicants are responsible for completing and sending the Notice of Publication to a newspaper in the county of conviction (Application Form SDCS-2). Applicants are responsible to return the newspaper's affidavit of publication to the South Dakota Board of Pardons and Paroles prior to a scheduled personal appearance hearing.
- B. Once it has been determined that the commutation of sentence packet is complete (Parts I and II), board staff will schedule a personal appearance full board hearing in COMS and notify the applicant of the date, time and place of the hearing.
1. Board staff will also notify the warden of the penitentiary and the Central Records office (DOC policy 1.1.E.4) regarding the date, time and place of personal appearance hearing.
- C. Board staff will mail notifications that include the date, time and place of the hearing and a request for relevant law enforcement reports and recommendations for clemency to the following:
1. State's attorney (County of offense/conviction, certified)
  2. Sentencing or presiding judge
  3. Sheriff (county of offense/conviction)
  4. Clerk of courts
  5. Attorney general.
    - a. SDCL 24-14-3 requires a thirty (30) day notice to the prosecuting attorney, sentencing/presiding judge, attorney general, and law enforcement of hearing for clemency.

- b. SDCL 24-14-4 requires twenty (20) days between last publication and hearing.
- D. Board staff will prepare an executive summary, provide the board with various reports, and request several date calculation scenarios from the Central Records office prior to the offender's full board hearing. All information will be made available to the board for review prior to/during the personal appearance hearing.

**Board Recommendations:**

- A. At the time of the full board hearing, the board will review the application and other supporting documents provided in SharePoint and conduct a personal interview with the applicant, taking testimony from them and other interested parties.
- B. The full board may deny an application. The applicant may be informed as to the board's reasoning and that they may present a new application in one (1) year, or the board may offer a recommendation as to a time for reapplication. Board staff will notify the applicant in writing and update pertinent information in COMS, thus concluding the process.
- C. The board may continue a clemency hearing for cause up to six (6) months. This may be at the board's discretion, seeking additional information, or at the request of the applicant.
- D. The full board may recommend a commutation of sentence to the governor. The board will announce their decision at the hearing and board staff will notify the applicant in writing of the decision.
- E. Recommendations to the governor will include the following:
  - 1. The commutation of sentence application packet and all supporting documents including letters of support, letters against clemency, the executive summary, and a recording of the full board hearing.
  - 2. Recommendation from the board
  - 3. A copy of all relevant documents in the offender's legal file, including the PSI, law enforcement reports, etc.
    - a. Files will be submitted electronically through the SD clemency website.

**Governor's Decision - Notifications:**

- A. Upon notification from the governor's office of a clemency decision, board staff will update pertinent information in COMS, notify the applicant of the decision in writing/in person within ten (10) business days of receipt, and mail or hand deliver any Order granting commutation to him/her.
- B. Copies of all documents will be placed in the applicant's legal file.
- C. In all decisions that result in a granted commutation, board staff will notify the following of the commutation and include a certified copy of the order:
  - 1. South Dakota Division of Criminal Investigation (DCI)
  - 2. Clerk of Courts in the county(ies) where the offense was committed

- 3. DOC Central Records Office (second original)
- 4. If granted, a permanent clemency file will be created and stored in a secure locked filing system in the board office spaces (See BOA Records Retention and Destruction for Parole Services).

**Related Directives:**

SDCL Chapters: 24-14, 24-15, 25-15A, 1-26 & 24-2  
Administrative Rules Chapter 17:60:05, Executive Clemency

**Revision Log:**

November 2003: New

March 2008: Revised to Board Policy from Board Office OM. Clarified notification to inmate. Clarified procedures.

August 2012: If any inmate, convicted under the laws of this state, ~~who, by~~ has demonstrated continued exceptional good behavior, or is in failing health, or for some other good and sufficient reason in the interest of justice, ~~my be compensated therefore in the discretion of~~ the Governor, upon the recommendation of the secretary of corrections, ~~by~~ may ~~diminishing~~ diminish his the inmate's period of confinement. ~~Hearing Panel Review~~ Boards decision and ~~let the inmate know~~ that he/she may apply again in one year providing they meeat not sooner than 30 days after receipt of the application and not sooner thatn Board staff shall inform Central Records for notification purposes. (DOC policy 1.1.E.4.) Denied/Recommended applicants; Board staff shall inform Central Records for notification purposes. (DOC policy 1.1.E.4) Denied/Recommended applicants; Board staff shall inform Central Records for notification purposes. (DOC policy 1.1.E.4)

December 2013: No changes

December 2014: Several grammar, formatting and language changes, addition of COMS language.

**Add:** Definitions – Delegation of Authority by Governor, Designation of Hearing Officers – Written Recommendations, Publication of Notice..., Notice to Prosecuting Attorney..., Victim Notification – Content, Recommendation for Clemency to be in Writing..., Majority Vote Required...

Procedures – Wishing to apply...a minimum of two (2) years, will date stamp the document..., the applicant may provide the missing information..., as a paper review...continue the application to another..., applicants are responsible..., recommendations for clemency to the following, SDCL 24-14-3 requires a thirty (30) day notice..., Board staff will prepare an executive summary..., at the time of the full board hearing..., the applicant may be informed as to the board's reasoning..., the board may continue a clemency hearing..., the board will announce their decision...the executive summary and a DVD...a copy of all documents in the inmate's legal file..., files will be sent certified...in writing within ten (10) business days..., if granted, a permanent clemency file...

**Delete:** Definitions – Eligibility for Clemency: SDCL 24-15-10 Procedures - AR 17:60:05:08 requires thirty days from receipt of application to hearing

December 2016: Formatting changes

September 2018: Various Changes delete IV E 5 *If the current sentence was an indeterminate sentence set by the Board.*

September 2021: **Add** IV Procedures – Application for Commutation of Sentence Section A – Reference to OM, instructions for accessing application, forms and instructions. **Change** inmate language to offender. **Update** voting requirements section due to statutory change. **Update** Application for Commutation section E.3 from “in the near future” to “within two years”. **Remove** Personal Appearance Hearing Section D – personal appearance is not required; **Remove** reference to legal file; change to various reports in SharePoint. **Change** Board Recommendations Section E.3. from file sent certified to through clemency website.

<i>Original Signature on File</i>	<i>09/16/2021</i>
<b>Myron Rau, Chair</b>	<b>Date</b>