

8.1. A.4 Parole Date Review

I Policy Index:

Date Signed: 10/21/2021

Distribution: Public

Replaces: 09/2020 version

Affected Units: Parole Board

Effective Date: 10/21/2021

Scheduled Revision Date: 09/2022

Revision Number: 9

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

II Purpose:

To establish the process and procedures for the review and establishment of a true and correct parole date when challenged by an offender.

III Definitions:

Parole Eligibility

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

Appeal of Parole Date:

Any inmate who is aggrieved by his/her established parole date may apply for a review of the date with the Board of Pardons and Paroles for a determination of the true and correct parole date (See SDCL 24-15-3 and 24-15A-33).

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).

Change in Initial Parole Date:

An offender's parole date is subject to change upon receipt of information regarding a change in the number of prior felony convictions or any subsequent felony convictions. Any inmate who is aggrieved by the established parole date may apply for a review of the date with the board for a determination of the true and correct parole date. (See SDCL 24-15A-33)

Application for Board Review of Established Parole Date:

An offender who is aggrieved by the parole date established by the Department of Corrections may apply to the board for a review by the board and a determination of the true parole date. The application must be in writing and must specify the inmate's legal contentions concerning the application (See ARSD 17:60:07:01).

Hearing on Application:

Before determining the inmate's true parole date, the board shall provide the inmate with an opportunity to present the inmate's factual and legal arguments at a hearing. Notice of the hearing before the board shall be given to the inmate at least ten days before the hearing (See ARSD 17:60:07:02).

Hearing Panels:

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 (See SDCL 24-15A-10).

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.

IV Procedures:**Requesting a Hearing:**

- A. Before an offender can request a hearing with the Board of Pardons and Paroles for a determination of the offender's true and correct parole date, the offender must first contact the DOC Central Records Office and request an explanation of how the parole date was established.
- B. If an offender is still aggrieved by the established parole date following a response from Central Records, he/she may request a hearing before the Board of Pardons and Paroles for a final determination of the true and correct parole date.
 1. The offender shall send his/her request to board office staff. Upon receipt of the request, board staff shall verify with Central Records that the offender has requested an explanation of how the parole date was established. If it is determined that the offender has not yet contacted Central Records, the offender shall be instructed to do so.
- C. Upon receipt of an offender's request for a review of their parole date, board office staff will send him/her a document to be used to make a legal argument for the review (See Attachment 3). The offender shall return the document making his/her legal argument to board staff. The offender may also include a copy of the documents he/she received from Central Records which explain how their parole date was calculated.

Hearing Notice:

- A. Notice of the hearing before the board shall be given to the offender at least ten days before the hearing stating the date, time and place of the hearing.
- B. The offender will be transferred to the State Penitentiary in Sioux Falls for an in-person hearing. A transfer to Sioux Falls will not be required if prior approval is given by the board for a hearing over video conferencing.

Hearing Officer/Hearing Panel:

- A. The hearing officer/panel shall review the offender's file, date calculation worksheet(s) and take testimony and evidence from the inmate and the Department.
- B. A hearing officer shall make a recommendation in writing to a two-person panel that may adopt, modify or reject the recommendation.
- C. A hearing panel will issue findings and facts and conclusions of law within forty five (45) days after the hearing or such other time as the panel may direct.

Record of Hearing:

- A. The Board will establish a record by recording or transcript for each hearing.

V. Attachments:

- Attachment 1: Notice of Board Hearing
Attachment 2: Parole Date Review Script
Attachment 3: Parole Date Review Application

VI. Related Directives:

ARSD - 17:60:07:01, ARSD - 17:60:07:02
SDCL 24-15-3, 24-15A-33

ACA Standard - Adult Parole Authorities: Standards, Parole Release Hearings [2-1090] Standards 2-1091 through 2-1092, and 2-1094 through 2-1098 are met. Standards 2-1090 not met due to AR 17:60:07:02 and 2-1093 need policy to meet standard.

VII. Revision Log:

February 2008: **Add** review of ACA Standards as applicable to this policy in Section V.

Add Admin Rules requires 10 day notice and ACA Standards requires 14 day notice.

January 2009: **Revise** statute citations, updated format. Expanded procedure to include director review and clarified hearing officer and panel hearings.

February 2012: **Revise** Victim Notification: **Delete:** *If the victim of the inmate's crime requests in writing to be notified by the Board of Pardons and Parole when the inmate will be eligible for consideration for parole, the director shall send a notice at least ten days before the date of eligibility, of the inmates' parole consideration eligibility by first class mail to the address provided by the victim. The notice shall provide the inmate's parole consideration eligibility date and the parole hearing date, and the board shall advise the victim that he or she may be present at the hearing and may state his or her opinion regarding the possible parole of the inmate. (See SDCL 24-15-3) Deleted: Hearing Officer: 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 25-15, 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, modify, or reject the recommendations. (See SDCL 24-15A-9).* Notification to the Board Office: **Delete:** *The application must be in writing and must specify the inmate's legal contentions concerning the application. Central records will be notified and requested to review the inmates date calculations with explanations and forwarded to the inmate. If the inmate is still aggrieved, the board staff will schedule a hearing before a hearing officer or panel for further review. -Add: The application must be in writing and must specify the inmate's legal contentions concerning the application. Central records will be notified and requested to review the inmates date calculations with explanations and forwarded to the inmate and the Board. A Parole Date Review Application (attachment 3) will also be sent to the inmate. Hearing Notice: **Delete:** 1. The Board office staff shall serve a written notice to the inmate indicating the time and place for the hearing. Added: stating the date, time and place of the hearing. Hearing Officer/Hearing Panel - Hearing: Deleted: A hearing officer or Hearing officers shall bring the issue to the Board for consideration, final decision or recommend a hearing before the full board. A can resolve the issue or bring the issue to the Board for consideration or recommend the inmate be brought before th full board for review and final decision. -Add: will issue finding and facts and conclusions of law with-in forty five days of the hearing. **Delete:** Hearing before the Full Board: A. Any inmate appearing before the Board will be served notice, at a minimum of ten (10) days prior to the hearing. The board office staff shall serve a written notice to the inmate and counsel if known, indicating the time and place for the hearing. The Board may call on staff from central records to explain date calculations, felony order, and provide other relevant information. The Board will review the case, take testimony and render a decision. a. The decision will be in writing and be provided to the inmate and counsel if known, within ten (10) days of the Board's final decision. V Related Directives: **Delete:** ~~13-4-2 and 24-13-4.3 (repealed)~~ **Add:** Attachment 1: NOTICE OF BOARD HEARING Attachment 2: Parole Date Review Script Attachment 3: Parole Date Review Application Attachment 4: Letter from Director to inmate*

March 2012: **Revise / add** page one Victim Notification: *If the victim of the inmate's crime requests in writing to be notified by the Board of Pardons and Paroles when the inmate will appear for a parole date review, the director shall send a notice at least ten days before the date of the hearing, by first class mail to the address provided by the victim. The victim may be present at the hearing and may state his or her factual summary and legal argument concerning the establishment of the inmate's initial parole date. **Add** to page 2 B. and attachment 2, II 3, "or such other time as the panel may direct."*

Revise: IV Procedures: Steps inmate should follow: Inmates with questions on their parole date should contact their case manager and/or central records staff for an explanation of how the parole date was established. If the inmate has questions that cannot be resolved by corrections staff, he/she should contact the Parole Board office with an explanation as to why they

feel the date is not correct and a request for additional information. The inmate will be sent a copy of relevant statutes, date calculations from central records, date computation policy and an application for a Parole Board review of their established initial parole eligibility date. If the inmate is still aggrieved by the parole date established by the Department of Corrections, he/she may apply to the Board for a review by the Board to determine a true parole date. The application must be in writing and must specify the inmate's legal contentions concerning the application. (Various grammar errors)

March 2013: **Add** 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. A hearing officer shall make a recommendation in writing to a two-person panel that may adopt, modify or reject the recommendation.

January 2015: Minor format corrections. **Delete** from attachment 2; I. 4. The hearing officer/panel shall review the inmates file, date calculation worksheet/s and take testimony and evidence from the inmate.

March 2016: Minor changes

April 2017: Language changed to streamline the process for the staff and inmate to follow. Language changed in attachment 1. **Delete** attachment 4.

December 2018: No Changes

September 2020: Minor language changes. **Revise** victim definition. **Update** Attachment 1-Notice of Hearing. **Add** – IV Procedures – Requesting a Hearing – B – 1. **Update** IV Procedures – Hearing Notice – B.

October 2021: Minor formatting changes.

Original Signature on File

Myron Rau, Chair

10/21/2021

Date

Attachment 1

**NOTICE OF CONTESTED HEARING
IN THE MATTER OF THE PAROLE ELIGIBILITY DATE OF [INMATE NAME]**

[INMATE NAME AND NUMBER], 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 [location] on [date] at [time], 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 will be to determine the true and correct parole date for the above referenced inmate. The Board can determine your parole eligibility date is correctly calculated, or it can determine a different parole eligibility date.

This is an adversarial proceeding; you have the right to be present and 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 [city], South Dakota this [day] day of [month], year].

BOARD OF PARDONS AND PAROLES

Program Assistant

Personal service of the above notice and receipt of true and correct copy thereof is hereby admitted at [city], South Dakota on the [day] day of [month], year].

Inmate's Signature

Date _____

Attachment 2

Parole Date Review Script

I. Preparations for hearing:

1. The application must be in writing and must specify the inmate's legal contentions concerning the application.
2. Central records will submit a review of the inmate's date calculations and forward those calculations to Board staff to be submitted at time of the hearing.
3. Notice of the hearing before the Board shall be given to the inmate at least ten days before the hearing. Board staff shall serve a written notice to the inmate indicating the time and place for the hearing.
4. The Board will establish a record by recording or transcript for each hearing.

II. Conducting the hearing:

1. For the record, indicate:
 - a. Date
 - b. Inmate name and number
 - c. Reason for hearing
 - d. Board members present
 - e. Attorney(s) present
 - f. Staff present
 - g. Other parties present
2. The hearing officer/panel shall review the inmate's file, date calculation worksheet/s and take testimony and evidence from the inmate.
3. A hearing officer shall make a recommendation in writing to a two-person panel that may adopt, modify or reject the recommendation.
4. The hearing panel will issue findings and conclusions of law, and an order setting the inmates parole date with-in forty five days from the hearing or such time as the panel may direct.

Attachment 3

Parole Date Review Application

(Inmate Printed Name: Last, First)

(DOC Number)

(Date)

17:60:07:01- Application for board review of established parole date. An inmate who is aggrieved by the parole date established by the Department of Corrections may apply to the board for a review by the board and a determination of the true parole date. ***The application must be in writing and must specify the inmate's factual and legal contentions*** concerning the application. SDCL 24-15-3, SDCL 24-15A-33

Factual Summary:

Legal Argument:

(You may use additional paper if more room is needed)