

1.4. B.11 Withholding of Parole Eligibility Pursuant to SDCL § 24-15A-32.1

I Policy Index:



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Revision Number: 9
Office of Primary Responsibility: DOC Administration

II Policy:

An inmate's parole eligibility may be withheld pursuant to SDCL § 24-15A-32.1 and the procedures contained within this policy.

III Definitions:

Sex Offender Management Program (SOMP):

SOMP is the sex offender management program operated by the DOC. This includes Admissions and Orientation (A&O) psychosexual screens, STOP programming, psychosexual reports, assistance in community release planning and supervision, development and promotion of a community treatment provider network and sex offender community treatment and supervision standards.

SDCL 24-15A-32.1:

Upon recommendation of sex offender treatment program staff, and following a review of the inmate's history, treatment status, risk of re-offense and psycho-sexual assessment, the Warden may, at any time prior to the inmate's final discharge, recommend to the Board of Pardons and Paroles (Board) that parole eligibility pursuant to § 24-15A-32 be withheld on an inmate convicted of a felony sex offense as defined in § 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.

IV Procedures:

1. Applicability:

- A. Inmates who are parole eligible pursuant to SDCL § 24-15A-32, who have a past or current sex offense conviction as defined within SDCL § 22-24B-1 (See Attachment 1), may have their parole eligibility withheld pursuant to SDCL § 24-15A-32.1.
- B. Only an inmate whose date of qualifying offense(s) occurred on or after July 1, 2006 may have his/her parole eligibility withheld pursuant to SDCL § 24-15A-32.1.
- C. An inmate does not have to be serving a current sentence for a sex offense conviction (see Attachment 1).

- D. An inmate with multiple sentences may only have parole eligibility withheld on those sentences that meet the defined guidelines of SDCL § [24-15A-32.1](#) and this policy.
- E. Parole eligibility may be withheld on an inmate past his/her initial parole date, provided the inmate has not discharged the sentence(s) being considered for withholding (See Board of Pardons and Paroles policy 8.1.A.11 [Withholding Parole Eligibility](#)).
1. This includes non-compliant inmates who have appeared before the Board of Pardons and Paroles (Board) and have been subsequently denied parole by the Board (See DOC policy 1.4.B.1 [Individual Program Directives \(IPD\)](#)).
 2. This includes any inmate who had been released on parole/suspended sentence, and who subsequently violated the terms of parole/suspended sentence, and was returned to prison.
 3. The Board's decision to withhold parole eligibility is final (See SDCL § [24-15A-32.1](#)).

2. Recommendation to the Warden and Warden Review:

- A. Sex Offender Management Program (SOMP) staff will notify the respective Warden in writing if sufficient cause exists to support a reasonable belief the inmate may endanger the public if the inmate is released (See DOC policy 1.4.A. 3 [Sex Offender Management Program](#)).
1. SOMP staff's recommendation will be based on assessment(s) of the inmate, including but not limited to review of the inmate's psycho-sexual evaluation, mental health assessment (if available), pre-sentence investigation (PSI), LSI-R (Females =>40 Males =>37), P-Scan score (greater than 30), the inmate's response to treatment, if the inmate was assessed as not benefiting from group programming and perceived risk of the inmate to re-offend. Inmates scoring 5 or more on the SOMP Screening Instrument will be referred to the Board for possible withholding of parole (See [Attachment 2](#)).
 2. Staff's recommendation will include specific information and/or incidents that support the recommendation and show cause to support the inmate poses a danger to the public if he/she is released, The information may include the inmate's current or past behavior(s), PSI, psycho-sexual assessment and/or other assessments/scores and/or materials (see Section 2 A. 1).
 3. Staff's recommendation may be submitted at any time, but normally no later than ninety (90) days prior to an inmate's programmed parole date, term expires date or next parole date.
 4. The withholding of parole process will be initiated when the inmate is within 2 years of their parole eligibility date.
- B. Following receipt of SOMP staff's recommendation, the Warden will review the information included in the recommendation and any other pertinent information which he/she deems appropriate.
1. If the Warden finds no sufficient cause to recommend the withholding of the inmate's parole eligibility, the Warden will notify SOMP staff of his/her decision in writing.
 2. If the Warden finds sufficient cause to recommend the inmate's parole eligibility be withheld, the Warden will send notice in writing to the Executive Director of the Board of Pardons and Paroles.

- a. If the inmate has multiple sentences subject to parole eligibility withholding, a list of these sentences will be included in the Warden's notice to the Board.
 - 1) This does not preclude the Warden from a subsequent recommendation to the Board if additional sentences subject to parole eligibility are identified or limit the Board's consideration if additional sentences are identified after the notice from the Warden is received.
- C. A new recommendation can be made by SOMP staff to the respective Warden if any of the following occurs:
 1. New information has developed or been discovered showing cause that the inmate is at risk of re-offending.
 2. The inmate has complied with required programming as set forth by SOMP staff and a thorough review of the inmate's PSI, psycho-sexual assessment and/or other assessments, shows there is cause to support the inmate's current risk of re-offending warrants review by the Parole Board. Parole eligibility may be reinstated.
 3. The inmate becomes eligible for release to parole supervision.
 - a. This recommendation must be made to the respective Warden thirty (30) days prior to the parole hearing.
 4. All recommendations from SOMP staff must be made by completing the [Notification for Warden Review](#) form (See [Attachment 2](#)).

3. Notice to the Executive Director and Hearing Results:

- A. If the Warden supports withholding the inmate's parole, the completed Notification for Warden Review form (See [Attachment 2](#)) will be sent to the Executive Director of the Board of Pardons and Paroles, SOMP staff, Risk Reduction Manager, Director of Prison Operations, and Office of Classification and Transfer.
- B. The inmate will be forwarded a copy of the Notice.
- C. The inmate will be notified in writing of the Board's decision within ten (10) working days of the scheduled hearing date.
- D. If the inmate's parole is withheld by the Board, staff will confirm the inmate is assessed as a Level 3 System Risk. The outcome of the Board's decision will be noted in the inmate's High Risk Release packet (see DOC policy 1.4.G.5 [System Risk Classification](#)).
- E. Staff listed in A. above will be notified of the Board's decision.

V Related Directives:

SDCL §§ [22-24B-1](#) and [24-15A-32.1](#).

DOC policy 1.4.A. 3 -- [Sex Offender Management Program](#)

DOC policy 1.4.B.1 -- [Individual Program Directives \(IPD\)](#)

DOC policy 1.4.G.5 -- [System Risk Classification](#)

Board of Pardons and Paroles policy 8.1.A.11 -- [Withholding Parole Eligibility](#)

VI Revision Log:

March 2009: New policy.

March 2010: Deleted SDCL 22.22.30.1 and 22-24-1 from Section V as they are repealed.

March 2011: No changes

July 2011: Deleted "sentence as a result of a conviction of a". Replaced with "convicted of a" in the Definition of SDCL 24-15A-32.1. Deleted "and whose sentence(s) is for a sex offense" Replaced with "with a past or current sex offense conviction as defined under 22-24B-1" in Section 1 A. Deleted "sex" in Section 1 B. Added C. "An inmate does not have to be serving a current sentence for a sex offense conviction." Deleted "for the sex offense(s)" from Section 2 E. Renumbered previous C. to D. and D. to E. in Section 1.

May 2012: Deleted "Notification of" and Replaced with "Recommendation to the" in title of Section 2. Added "and they recommend the withholding of parole eligibility" in Section 2 A. Added "including but not limited to" and Deleted "assessments (if available" and Replaced with "evaluation, mental health assessment, pre-sentence report, LSI-R (Females =>40, Males =>37, P-Scan score (greater than 30) and Added "if the inmate was assessed as someone who will not benefit from group programming" and Added "as this information is available" in Section 2 A. 1. Deleted "notification" and Replaced with "recommendation" throughout Section 2.

May 2013: Added D. and E to Section 3.

August 2013: Reviewed with no changes.

April 2014: Added "Inmates scoring 5 or more on the withholding parole screening instrument will be referred to the Board for possible withholding of parole" in Section 2 A. 1. Added "and show cause to support the inmate poses a danger to the public is she/she is released" in Section 2 A. 2. Added "information included in the recommendation and any other pertinent information which he/she deems appropriate" in Section 2 B. Added "or limit the Board's consideration if additional sentences are identified after the notice from the Warden is received" in Section 2 B. 2. a.1). Added Attachment 3.

April 2015: Added "Risk Reduction Manager, Director of Prison Operations, Classification and Transfer office" to Section 3 A. Added D. and E. to Section 3.

Denny Kaemingk (original signature on file)

Denny Kaemingk, Secretary of Corrections

05/14/2015

Date

Attachment 1: SDCL 22-24B-1

For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of the following crimes regardless of the date of the commission of the offense or the date of conviction:

- (1) Rape as set forth in § 22-22-1;
- (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by an adult;
- (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- (4) Incest if committed by an adult;
- (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-24A-3;
- (6) Sale of child pornography as set forth in § 22-24A-1;
- (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- (11) Felony indecent exposure as previously set forth in former § 22-24-1 or indecent exposure as set forth in § 22-24-1.2;
- (12) Solicitation of a minor as set forth in § 22-24A-5;
- (13) Felony indecent exposure as set forth in § 22-24-1.3;
- (14) Bestiality as set forth in § 22-22-42;
- (15) An attempt to commit any of the crimes listed in this section;
- (16) Any crime committed in a place other than this state which would constitute a sex crime under this section if committed in this state;
- (17) Any federal crime or court martial offense that would constitute a sex crime under federal law;
- (18) Any crime committed in another state if that state also requires that anyone convicted of that crime register as a sex offender in that state; or
- (19) If the victim is a minor:
 - (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-7.6;
 - (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
 - (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31.

Attachment 2: Notification For Warden Review Form

The **Notification For Warden Review Form** is located on the state's WAN.

A copy may be printed using **Microsoft Word 97** as follows:

1. Click [here](#) to access the **Notification For Warden Review Form** by:
 - a. Placing mouse on the word "here" above
 - b. Press and hold the "Ctrl" key on the keyboard
 - c. Click the left button of mouse.
- 2.. Or Select **File/New** from the Menu Bar / Select the **DOC** tab / Select **Notification For Warden Review Form**.

The gray areas indicate the information that is to be entered.

<p>South Dakota Department of Corrections Policy Distribution: Public</p>	<p>Attachment: Notification for Warden Review Form Please refer to DOC policy 1.4.B.11 Withholding of Parole Eligibility Pursuant to SDCL § 24-15A-32-1</p>	
NOTIFICATION FOR WARDEN REVIEW FORM		
Sex Offender Management Program Recommendation:		
<input type="text"/>	<input type="text"/>	<input type="text"/>
Inmate's Name	Number(s)- List All	Next Parole Date
Please check if available and indicate status:		
<input type="checkbox"/> STOP Program Status	<input type="checkbox"/> Pre Release Evaluation (attach copy if available)	<input type="checkbox"/> Pre Sentence Psychosexual Available (attach copy if available)
<input type="checkbox"/> Polygraph Report (attach if available)	<input type="checkbox"/> MnSOST-R	<input type="checkbox"/> Static 99
Recommendation (attach additional sheet(s) if needed):		
<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		
<input type="text"/>	<input type="text"/>	
SOMP Staff's Signature	Date	
Warden's Review:		
Based upon the following (attach additional sheet(s) if needed):		
<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		
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Attachment 3: Offender Assessment Questionnaire-SOMP Screening Instrument (located in COMS):

The screenshot displays the 'OFFENDER ASSESSMENT QUESTIONNAIRE - (OCMNOQUE)' interface. On the left is a navigation tree with 'Assessments' and 'Assessment' highlighted. The main area shows offender details for DOC# 2001-012604, including personal information and a table of past assessments. A modal window titled 'Assessment Types (main= OCMNOQUE)' is open, listing various assessment types with 'SOMP Screening Instrument' selected. The table below shows the following data:

Date	Type	Authority	Score	Calculated Result	Override Result	Approved Result	Next Date
04/25/2014	SOMP Screening Instrum	Somp Team	1	Did not meet thresh		Did not meet thres	
04/09/2014	P-Scan	Risk Reduction Ma	18	18		18	
04/07/2014	PREA Risk Screen	Unit Case Manage	104	AP		AP	01/01/2015
06/26/2013	SOMP Victim Age	Somp Team	0	Adult Victim		Adult Victim	

The 'Assessment Types' dropdown menu includes the following items:

- Maintenance Polygraph (MPOLY)
- Minnesota Sex Offender Screening Tool (MSOST)
- FRAPOR (FRAPOR)
- SOMP Screening Instrument (SCT)**
- SOMP Victim Age (SOVA)
- Sex Offender Code (SOC)
- Somp Program Refusal (SOM-R)
- Static 99 Revised (STATIC-99R)