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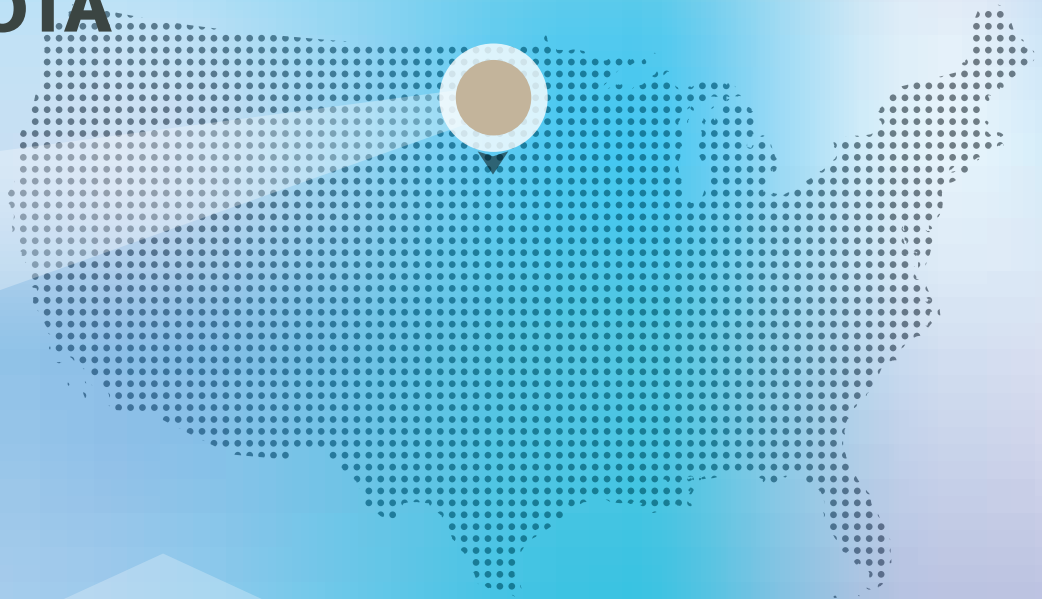
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# PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

A publication by the Robina Institute of Criminal Law and Criminal Justice

**SOUTH DAKOTA**



**ROBINA INSTITUTE**  
OF CRIMINAL LAW AND CRIMINAL JUSTICE

# PROFILES IN PAROLE RELEASE AND REVOCATION:

## Examining the Legal Framework in the United States

### South Dakota

By

Alexis Lee Watts, Brendan Delaney, Kevin R. Reitz

The authors would like to thank Mark Smith, Chairman, South Dakota Board of Pardons and Paroles, Doug Clark, Director of Parole with the South Dakota Department of Corrections, and Traci Fredrikson, Corrections Specialist, South Dakota Board of Pardons and Paroles, for comments on an earlier draft of this report.

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### 1. Background; Sentencing System

#### a. Sentencing Framework

South Dakota has an indeterminate sentencing system without a sentencing commission or guidelines. The parole system in South Dakota is somewhat unusual in that many inmates are released automatically without a hearing if they meet certain criteria. However, some inmates are also released through discretionary parole.

#### b. Does the State Have a Parole Board or Other Agency with Discretionary Prison Release Authority?

Yes, the South Dakota Board of Pardons and Paroles.<sup>1</sup>

<https://doc.sd.gov/parole/>

#### c. Which Agencies Are Responsible for the Supervision of Released Prisoners?

The Department of Corrections' Parole Services division is responsible for the supervision of released prisoners.<sup>2</sup>

<https://doc.sd.gov/parole/services/>

#### d. Which Agency Has Authority Over Parole Revocation?

The Board of Pardons and Paroles.

### 2. Parole Release and Other Prison-Release Mechanisms

#### a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System

In South Dakota, felonies are divided into nine classes. The maximum penalty an offender may receive is determined by the class of felony; conviction for a Class A or B felony will result in a life sentence; a death penalty is also possible for Class A felony convictions.<sup>3</sup>

Felony Class	Minimum Term	Maximum Term	Maximum fine
A	Life/Death	Life/Death	\$50,000
B	Life	Life	\$50,000
C	-	Life	\$50,000
1	-	50	\$50,000
2	-	25	\$50,000
3	-	15	\$30,000
4	-	10	\$20,000
5	-	5	\$10,000
6	-	2	\$4,000 <sup>4</sup>

*General rules of release eligibility.* Individuals are eligible for parole release when they have served a certain percentage of their sentence based on the felony class, felony count, and whether or not their crime was a crime of violence.<sup>5</sup> If serving a consecutive sentence, the time to parole will be added together to determine a parole eligibility date.<sup>6</sup> As will be discussed further below, individuals who committed crimes after July 1, 1996 must be released when eligible unless they have failed to substantially comply with their individual program directive while incarcerated.<sup>7</sup> Experts within the state estimate that around 80% of individuals are released at their presumptive date.<sup>8</sup>

The parole date is calculated on admission. Inmates may request review of their established parole date. The Board must provide the inmate an opportunity to present their factual and legal arguments in order to determine the true parole date.<sup>9</sup>

*Violent/habitual offenders.* If an offender has been previously convicted of other felonies, they may face sentencing enhancements under South Dakota law. If a person has been convicted of multiple past felonies and one of the convictions is for a violent crime, they may receive up to a Class C felony sentence (a potential life sentence).<sup>10</sup> In addition, parole release eligibility is delayed for crimes of violence, as shown in the chart above.<sup>11</sup>

*Sex offenders.* If an adult has any previous conviction for a felony sex crime, any subsequent conviction for that same type of crime may result in a minimum sentence of imprisonment equal to the maximum term allowable for the class of felony, up to 25 years. However, a portion of the prison sentence may be suspended.<sup>12</sup> In addition, sex offender treatment program staff with the Department of Corrections can recommend that the Board withhold parole eligibility based on history, treatment status, risk of re-offense, and the results of psycho-sexual assessments.<sup>13</sup>

*Life sentences.* Individuals under a life sentence are not eligible for parole.<sup>14</sup>

*Recurring eligibility after denial of release.* If an inmate is denied release at the time of their first parole date, they may be subsequently paroled at the discretion of the Board after a hearing.<sup>15</sup> Hearings must occur at least every two years for individuals who committed crimes after July 1, 1996 or at least every 8 months under the old system.<sup>16</sup>

## b. Good Time, Earned Time, and Other Discounts

Eligible individuals who committed crimes before July 1, 1996 may earn a deduction from their sentence for good conduct at a rate of four months from their sentence for each year and pro rata for any part of a year for the first year to the tenth, and six months for the tenth year and each subsequent year until the expiration of the sentence.<sup>17</sup> However, disciplinary issues or rule infractions may result in a recommendation by the warden that statutory good time be withheld in full or in part.<sup>18</sup> Those who committed crimes after July 1, 1996 do not earn good conduct deductions. Instead, parolees can accrue earned discharge credits while on supervision that can shorten that portion of their sentence.<sup>19</sup>

## c. Principles and Criteria for Parole Release Decisions

*General statutory standard for release decisions.* The initial parole release in South Dakota is presumptive, unless an inmate has not substantially complied with their individual program directive. Program directives are individualized plans that include requirements for work, school, or program participation as well as behavioral standards (i.e. following institutional rules).<sup>20</sup> The warden of an institution may initially allege that an individual has not complied with a directive, but the Board makes the final evaluation regarding compliance.<sup>21</sup>

*Statutory factors the board must consider.* If the Board lacks information about the inmate's program directive, or the hearing is discretionary (i.e. not an initial parole release hearing), the Board must use the available evidence

	1st felony conviction		2nd felony conviction		3rd felony conviction	
Felony Class	non-violent	violent	non-violent	violent	non-violent	violent
A	-	1	-	1	-	1
B	-	1	-	1	-	1
C	.35	.50	.40	.65	.50	.75
1	.35	.50	.40	.65	.50	.75
2	.30	.50	.40	.65	.50	.75
3	.30	.50	.40	.60	.50	.70
4	.25	.40	.35	.50	.40	.65
5	.25	.40	.35	.50	.40	.60
6	.25	.35	.30	.45	.40	.55

to determine whether parole release is appropriate. If the hearing is held due to lack of information about the inmate's individual program directive, this may be because the warden has made a finding of undetermined compliance with the directive, or because there was no directive.<sup>22</sup> In these cases, the Board will consider parole release based on the following factors:

1. The inmate's compliance with work, school, and program directives;
2. The inmate's compliance with the rules and policies of the department;
3. Conduct by the inmate evincing an intent to reoffend; and
4. Mitigating factors impacting the warden's determination of substantive noncompliance.<sup>23</sup>

For individuals who committed crimes before July 1, 1996, the Board utilizes the following standards in granting or denying paroles or in assisting inmates in an assessment of their rehabilitation needs:

1. The inmate's personal and family history;
2. The inmate's attitude, character, capabilities, and habits;
3. The nature and circumstances of the inmate's offense;
4. The number, nature, and circumstances of the inmate's prior offenses;
5. The successful completion or revocation of previous probation or parole granted to the inmate;
6. The inmate's conduct in the institution, including efforts directed towards self-improvement;
7. The inmate's understanding of his or her own problems and the willingness to work towards overcoming them;
8. The inmate's total personality as it reflects on the possibility that the inmate will lead a law-abiding life without harm to society;
9. The inmate's family and marital circumstances and the willingness of the family and others to help the inmate upon release on parole from the institution;
10. The soundness of the parole program and whether it will promote the rehabilitation of the inmate;
11. The inmate's specific employment and plans for further formal education or training;
12. The inmate's plan for additional treatment and rehabilitation while on parole;
13. The effect of the inmate's release on the community;
14. The effect of the inmate's release on the administration of justice; and
15. The effect of the inmate's release on the victims of crimes committed by the inmate.

#### d. Parole Release Guidelines

The Board utilizes a validated, empirically-based, structured, decision-making tool in all discretionary cases. This tool was developed by Dr. Serin (Carlton University, Canada) and implemented in South Dakota in 2016 through technical assistance with the National Institute of Corrections. They consider the following areas in granting or denying paroles or in assisting inmates in an assessment of their rehabilitation needs:

- Statistical risk assessments (LSI-R, MnSOST, etc.);
- Ability to control behavior (anti-social attitude/ peers, anger/ jealousy, impulsivity, drug/ alcohol/ sexual/ mental diagnoses);
- Programming participation/ offender change/ level of engagement & motivation/ acquired coping skills/ identification of risk factors and triggers;
- Institutional and community behaviors (institutional disciplinary, violation of parole);
- Release plan; and
- Other relevant information not covered above.

Board members code each section described above as an aggravating, mitigating or neutral factor for each offender prior to making a decision.<sup>24</sup>

#### e. Risk and Needs Assessment Tools

*Statutory mandate.* There is no statutory mandate to perform a risk assessment as part of the release process. However, all inmates admitted to the Department of Corrections with a new sentence, except those with a capital punishment sentence, are assessed to determine the inmate's level of risk and individual programming needs.<sup>25</sup>

*Risk assessments utilized.* The Department of Corrections utilizes the LSI-R as the primary risk assessment for most offenders. This information is shared with the Board and can be considered during release proceedings. At times, the Board may also utilize a community supervision-oriented risk assessment developed in South Dakota that can capture dynamic risk factors and is administered closer to the date of the release hearing.<sup>26</sup>

*Transparency.* While a limited amount of information is available online about risk assessments in South Dakota, state experts were forthcoming in sharing such information.<sup>27</sup>



*Sex offenders.* Sex offender release can be withheld based on risk of recidivism.<sup>28</sup> The Department of Corrections utilizes the Minnesota Sex Offender screening tool to predict sex offender recidivism potential.<sup>29</sup> The STATIC-99 is also sometimes utilized in this jurisdiction.<sup>30</sup>

#### **f. Medical or Compassionate Release**

HB 1109, an act to provide parole eligibility for certain inmates, passed during the 2018 legislative session. It is effective July 1, 2018 and is entirely discretionary. It allows parole for seriously ill, infirm, or elderly inmates before their normal parole date. The Warden or medical provider refers inmates to the Secretary of Corrections. At the Secretary's discretion, an inmate can be referred to the Board of Pardons and Paroles for a hearing. An inmate's release plan and conditions of parole will include provisions for medical care and payment of the medical care. These parolees are subject to the supervision and revocation laws that currently exist for inmates on regular parole.<sup>31</sup>

#### **g. Executive Clemency Power**

The governor may grant or deny any request for clemency, and has the right to grant a pardon, commutation, reprieve, or remission of a fine or forfeiture. The governor has the statutory power to delegate the initial review of these requests to the Board of Pardons and Paroles. Currently, the Board reviews applications for clemency and passes recommendations on to the governor.<sup>32</sup>

#### **h. Emergency Release for Prison Crowding**

There do not appear to be any statutes providing for emergency release because of prison crowding.

### **3. Parole Release Hearing Process**

#### **a. Format of Release Hearings**

As noted above, parole release is automatic for many inmates. However, inmates who do not qualify for automatic release due to noncompliance with their individual program directive or insufficient information may still be considered for release through the parole hearing process.<sup>33</sup> The Board typically conducts hearings in panels of two. Per policy, some release decisions require a full board decision to be granted.<sup>34</sup> While hearings may be conducted by a single board member or by a panel, no person may be paroled without the concurrence of two board members.<sup>35</sup>

If the Board is reasonably satisfied that the inmate has violated conditions of the individual program directive, the Board may find noncompliance. The Board must consider any mitigating circumstances shown by the inmate in reaching this decision.<sup>36</sup>

#### **b. Information Before the Board; Factors the Board May Consider**

Prior to a parole hearing, the Department of Corrections prepares a record of inmate conduct while in prison including infractions and subsequent disciplinary action taken, noncompliance with programming, and any conduct "evincing an intent to reoffend."<sup>37</sup> Along with institutional records, per policy, the Board may consider other information from the inmate's file, parole documents, input from the public, victims, and criminal justice systems as well as the content of oral interviews with the inmate.<sup>38</sup> Note that "[t]he Board may consider at the hearing testimony, affidavits, letters, or other material not ordinarily admissible in a civil or criminal proceeding."<sup>39</sup>

#### **c. Prisoners' Procedural Rights**

Inmates must be notified of the date, time, place, and statutory basis for the noncompliance hearing. The notification must also include the reasons asserted for noncompliance or undetermined compliance with the individual program directive. Inmates have the right to a hearing in which they can present favorable witnesses and evidence. They also have the right to cross-examine opposing witnesses, unless the Board finds cause to limit or deny their ability to do so. They have the right to be represented by retained counsel.<sup>40</sup>

Inmates have access to their risk assessment information at the time of the release hearing. The Board states that they actively work with individuals to better understand their risk assessment score and to find ways of lowering their risk.<sup>41</sup>

#### **d. Victims and Other Participants**

South Dakota's SAVIN ("statewide automated victim information and notification") system allows victims and interested parties to sign up to receive notifications about an inmate's parole/hearing status and changes in release/custody status.<sup>42</sup> Through the SAVIN system, the Department of Corrections must notify victims of the inmate's parole eligibility date and the parole hearing date; it must also notify victims that they can be present at the hearing and state an opinion regarding the possible parole of the



inmate. Notice must also be given for certain changes in the offender's incarceration, including parole and return to custody.<sup>43</sup> Victims may submit confidential statements to the Board in writing and they are incorporated into the inmate's file. However, victim testimony in a parole hearing is not confidential due to South Dakota's open meeting laws. Victims are therefore advised that if they choose to speak, the content of their comments may be available to the inmate and others.<sup>44</sup>

Any member of the public may be present at hearings, including victims, inmate's family and friends, and members of the justice community. Any member of the public may present their views about the potential release to parole of the offender through oral or written testimony.<sup>45</sup>

#### **e. Burden of Proof or Standards of Persuasion**

There is no specific standard associated with discretionary parole release; it is entirely at the Board's discretion.<sup>46</sup>

#### **f. Possible Outcomes at Noncompliance Hearings; Form of Decisions**

The Board may determine that the inmate has substantively complied with their individual program directive and release them to parole at their initial parole date, or soon after. Alternatively, the Board may determine that the inmate has not met the elements of the individual program directive, deny release, and set a time for the next hearing, which must be held at intervals of no more than two years.<sup>47</sup> The Board also has the power to find an offender noncompliant but still release them to parole without an additional hearing.<sup>48</sup>

#### **g. Administrative or Judicial Review of Parole Denial**

Inmates have the right to appeal noncompliance decisions to the circuit court and then to the state Supreme Court.<sup>49</sup> On judicial review of a Board decision, the courts review questions of fact under a clearly erroneous standard. However, mixed questions of law and fact are reviewed de novo. Issues of discretion are reviewed for abuse of that discretion.<sup>50</sup>

#### **h. Rescission of Parole Release Dates**

"The reasons for rescinding the granting of discretionary parole may include, but are not limited to, major disciplinary action by the institution, receipt of a new sentence or information that the board may not have had at

the time of the hearing granting parole, modification of a Board Ordered parole plan or other Order, or removal from institutional programming, or the receipt of new information from victims, law enforcement, prison special security staff or the public, refusal to sign a supervision agreement, or in the interest of justice, or protection of society."<sup>51</sup>

Rescission can only occur after a hearing at which members of the Board can rescind parole, continue parole, refer the matter to the full Board for a final decision, or rescind the previous non-compliance action and order a new discretionary parole date.<sup>52</sup>

### **4. Supervision Practices**

*Parole supervision rate.* In 2015, there were 410 parolees under supervision per 100,000 adult residents in South Dakota. This is higher than the 50-state average of 303 parolees per 100,000 adults.<sup>53</sup>

#### **a. Purposes of Supervision**

Parole Services is part of the Department of Corrections. Part of the Department's stated mission is to "provide effective community supervision to offenders upon their release and to utilize evidence-based practices to maximize opportunities for rehabilitation."<sup>54</sup>

#### **b. Are All or Only Some Releasees Placed on Supervision?**

All inmates released to parole are initially placed on supervision.<sup>55</sup>

#### **c. Length of Supervision Term**

*Maximum supervision terms.* The maximum supervision term is the total remaining length of the imposed sentence and any suspended time minus any earned discharge credits.<sup>56</sup>

*Early termination.* The Board can grant early discharge at any time if they determine that it is in the best interest of society and the inmate. This is a full discharge from parole, and restores the full rights of citizenship to the inmate.<sup>57</sup> The Board can also choose to grant a partial early final discharge, which reduces the sentence term "in an amount less than the amount to discharge the inmate from supervision."<sup>58</sup> The parolee must initiate the process and request discharge.<sup>59</sup>

In addition to the early final discharge provision above, parolees who have committed certain Class 5 or Class 6 felonies listed in S.D. Codified Laws § 22-6-11 must be granted “compliant discharge” after serving at least twelve full calendar months on parole and completing all required treatment programs. In addition, parolees must:<sup>60</sup>

1. Not have a record of sanctions for violation of parole conditions;
2. Not have absconded from supervision;
3. Not have been placed in jail or prison;
4. Not have a parole violation report either already submitted or pending or a criminal offense; and
5. Have complied with all conditions of parole.

*Extension of supervision term.* The Board cannot extend the term of supervision beyond the length of the maximum imposed sentence.<sup>61</sup>

*Incentives; “goal parole.”* Parolees can earn discharge credits while they are on supervision at the rate of one day of credit per day served on a monthly basis. No credit may be earned during the first month of supervision, or for partial months. Parolees may not earn credit during any month where a violation of conditions occurs that warrants a formal response, in which an officer has submitted a violation report, or in which the parolee is being detained or is not in the community. Parolees may not earn this type of discharge credit at all if their crime of conviction was a sex offense, failure to register as a sex offender, or a community safety zone violation.<sup>62</sup> When the total time served plus earned discharge credits equals the term of the imposed sentence, the sentence must be discharged.<sup>63</sup>

#### **d. Conditions of Supervision**

Standard conditions of parole include “obeying all laws, maintaining contact with the assigned parole agent, submitting to search and seizure at any time, and working diligently at a lawful occupation.” Parolees are also subject to random drug and alcohol testing.<sup>64</sup>

The Board has discretion to place “reasonable restrictions upon a parolee which are designed to continue the parolee’s rehabilitation, including limited areas of residence or community access, required participation in treatment, enhanced reporting requirements, and use of electronic monitoring and global positioning units.”<sup>65</sup>

*Sex offenders.* An additional condition is added to the supervision agreement – “I will not use, view, purchase or have in my possession any form of pornography or erotica including, but not limited to, books, magazines, photographs, films, video tapes, live entertainment or computer Internet.” Sex offenders assessed as needing treatment services are required to participate in sex offender programming in the community while on supervision. Contact with minors is determined by the treatment provider/group, the sex offender management program staff (SOMP), and the agent.<sup>66</sup>

*Modification of conditions.* If the parolee, their supervising agent, or the Department of Corrections wishes to modify Board-ordered conditions, the request must be forwarded to the executive director for submission to a panel of the Board. No board-ordered parole conditions may be modified without the concurrence of two board members.<sup>67</sup> A parole violation may also result in modified parole conditions.<sup>68</sup>

*Incentives; lighter conditions.* Offenders assessed as medium, maximum, and intensive supervision level are eligible to receive incentives for treatment attendance or completion, employment, and negative substance tests. Incentives may include hygiene items, hats/gloves, gift cards, letters of recognition/praise, movie tickets, pop/candy, coloring items, curfew/travel restriction passes, and transportation passes.<sup>69</sup>

#### **e. Fees and Other Financial Sanctions**

*Parole supervision fees.* The Board must require payment of supervision fees “if reasonably possible.”<sup>70</sup> Fees are \$20 per month for regular parole, or \$25 per month for intensive supervision and are collected by parole agents.<sup>71</sup> Supervision fees can also be “paid” by means of community service work (1 hour of work equals \$5 towards supervision fees). The Board does not charge or collect supervision fees for parolees who still owe restitution, because restitution payments are a higher priority.<sup>72</sup>

*Payments for drug and alcohol testing and treatment.* Testing can be an added expense if it is a sanction imposed on the offender. There may also be a copay for chemical dependency treatment, including South Dakota’s 24/7 sobriety program.<sup>73</sup>

*Restitution.* The Board must require payment of restitution “if reasonably possible.”<sup>74</sup>

*Child support.* Payment of support obligations is a requirement of parole.<sup>75</sup> Prior obligations of child support and restitution take precedence over supervision fees.<sup>76</sup>

*Other financial obligations.* The Board may require a parolee to post a bond to assure their appearance and compliance with the conditions and restrictions of parole; however, this is a rare occurrence.<sup>77</sup> In addition, parolees are responsible for all court-ordered fines and court costs.<sup>78</sup> Parolees generally have a copay for any other treatment in the community (i.e. sex offender programming), and this expense varies based on the frequency or intensity of the treatment.<sup>79</sup>

*Incentives; reduction of economic sanctions.* The supervising parole agent may elect to waive supervision fees due to extenuating circumstances (e.g. medical issues, financial issues, etc.).

## 5. Parole Revocation

*Parole revocation proceedings.* In 2017, there were 679 parolees returned to incarceration based on violations of parole conditions.<sup>80</sup>

*Absconders.* In 2017, there were 578 absconders (this includes possible canceled warrants).<sup>81</sup>

### a. Principles and Criteria of “When to Revoke”

*Policy considerations.* South Dakota has worked with several national organizations to reduce the number of parole revocations resulting in incarceration in their justice system. In 2013, the state passed justice reinvestment legislation called the “Public Safety Improvement Act.”<sup>82</sup>

*Legal predicates.* The executive director of the Board may issue a revocation order if they believe that the parolee has violated any condition of supervision, failed to report to a parole officer, or failed to answer inquiries from a parole officer.<sup>83</sup>

*Statutorily enumerated factors.* Revocation is also potentially appropriate whenever “the purposes or objects of parole are not being served.”<sup>84</sup>

### b. Revocation Guidelines

Parole agents utilize a response matrix when a parolee violates a condition(s) of the supervision agreement. The matrix is a graduated sanctioning scale based upon the offenders’ risk to the community, as determined by their assigned supervision level, and the severity of the behavior that violated the supervision agreement. Sanctions/responses may include verbal/written reprimand, day reporting, 24/7 substance testing, book reports, apology letters, daily logs, curfew/travel restrictions, increased contacts with agent, loss of driving privileges, increased AA/NA meetings, case transfer, increased programming, electronic monitoring, house arrest, or detention.<sup>85</sup>

### c. Risk and Needs Assessment Tools

A risk and needs assessment is not utilized at revocation. However, the parole staff involved and Board members hearing the revocation case have all prior risk and needs assessment information previously completed on that offender available to them during the decision process.<sup>86</sup>

### d. Preliminary and Final Revocation Procedures

*Arrest or summons.* If a parolee is suspected of committing a violation, the director of the Board may issue an arrest warrant.<sup>87</sup> The Department of Corrections may also use “any necessary means” to establish parolee discipline, including arrest pending the issuance of a warrant.<sup>88</sup>

*Preliminary hearing.* The preliminary hearing must be held within ten working days of the parolee’s return to a DOC facility. This hearing must be held before an independent hearing officer and must determine whether there is probable cause to believe that a parole violation has occurred. If probable cause is found, the parolee must be held until a hearing before the Board to determine whether parole should be revoked. The parolee has a right to waive the preliminary hearing.<sup>89</sup>

A preliminary hearing is not required if the parolee is under arrest and being held by another entity outside the jurisdiction of the Board, if the parolee left the state without permission and was placed into custody outside the state, or if the parolee was convicted of a felony or misdemeanor in any state or federal court.<sup>90</sup>

*Final hearing.* A final hearing with a board member or panel must be held within 90 days of the return of the parolee to a South Dakota Department of Corrections facility. This hearing must determine whether the parolee has violated a condition, special limitation, or rule of supervision, and, if so, what penalty should be imposed.<sup>91</sup>

#### **e. Offenders' Procedural Rights**

The Board must notify parolees and their counsel of the date, time, and place of the final hearing. The notification must also contain the charges against the parolee, specifying which condition(s) have been violated and how so. Parolees have the right to a hearing and have the right to present witnesses and evidence on their behalf. Parolees also have a limited right to cross-examination, but, the Board can deny this right due to concerns for a witness' safety or well-being.<sup>92</sup>

Parolees have a right to representation at a final revocation hearing. A parolee can request court appointed counsel. If the parolee does not request court appointed counsel but the parolee is indigent and "raises any substantial reason which justifies or mitigates the inmate's action or if the reason is complex and otherwise difficult to develop or present," the Board may request from the sentencing court that the parolee be appointed counsel.<sup>93</sup>

#### **f. Victims and Other Participants**

As stated above, all hearings that are held in front of the South Dakota Board of Pardons and Paroles are open to the public.<sup>94</sup> The SAVIN system notifies those who have registered of such hearings at the time they are scheduled.<sup>95</sup>

#### **g. Burden of Proof or Standards of Persuasion**

The Board may revoke supervision if it is reasonably satisfied that the parolee has violated conditions of parole. As with release decisions, the Board must give full consideration to any mitigating circumstances presented by the parolee.<sup>96</sup>

#### **h. Revocation and Other Sanctions**

If the Board is satisfied that any parole conditions have been violated, it may revoke parole and re-incarcerate the parolee at the terms of the original sentence, or it may modify conditions of parole and re-release the parolee onto supervision.<sup>97</sup>

At revocation, the Board can also deny some, or all, of the credit for time served on parole. However, an inmate re-incarcerated due to a parole violation may request that the time be reinstated when they subsequently apply for parole consideration.<sup>98</sup>

The 2013 justice reinvestment legislation discussed above directed parole agents and the Department of Corrections to discipline parolees who commit lower-level felonies/violations of parole without requesting a warrant or submitting a violation report to the Board. Sanctions may include a written reprimand, referral to community-based programming, added drug testing/monitoring, community service work without pay, house arrest or (shorter term) jail custody/detainment/extended detainment, or participation in an alcohol/drug accountability program.<sup>99</sup>

#### **i. Issuing Parole Revocation Decisions**

The Board must order revocation in writing. It must state the findings of fact and the conclusions of law that led to its decision.<sup>100</sup> The Board must transmit the decision to the parolee and their counsel after the hearing.<sup>101</sup>

#### **j. Administrative or Judicial Review of Parole Revocation Decisions**

Parolees can seek judicial review of parole revocation decisions. The Board's revocation decisions are reviewed for abuse of discretion. Questions of fact are reviewed under the clearly erroneous standard, and mixed questions of law and fact are reviewed de novo.<sup>102</sup>

#### **k. Re-Release Following Revocation**

If the Board revokes parole, they must establish a discretionary parole date of not more than two years from the date of revocation for new system inmates and not more than eight months from the date of revocation for old system inmates.<sup>103</sup>

## 6. Parole Board; Institutional Attributes

### a. Source of Authority and Jurisdiction

The Board of Pardons and Paroles has statutory authority to grant discretionary parole and to revoke parole supervision.<sup>104</sup>

### b. Location in Government

“The Board of Pardons and Paroles shall be administered under the direction and supervision of the Department of Corrections but shall retain the quasi-judicial, quasi-legislative, advisory, and other non-administrative functions otherwise vested in it” and is independent for those purposes.<sup>105</sup>

### c. Purpose (Vision/Principles/Rationale)

The DOC has a mission statement but the Board of Pardons and Paroles does not.

### d. Appointment and Qualifications of Board Members

The Board consists of nine members. Three are appointed by the governor, three by the attorney general, and three by the state Supreme Court. All members are appointed with the advice and consent of the Senate.<sup>106</sup> The Board selects one member as chair at the first meeting each calendar year.<sup>107</sup> The Board must meet in open session at least once every three months.<sup>108</sup>

As of 2015, the Board chair may appoint a former member of the Board to serve as an auxiliary member for the four years following their service on the Board. No more than one auxiliary member can serve on a hearing panel. Auxiliary members may not be sole hearing officers in a matter or serve as the chair of the Board.<sup>109</sup>

*Qualifications?* Board members must be residents of South Dakota, and at least one of the appointees from each group of three named above must be an attorney.<sup>110</sup>

### e. Tenure of Board Members, Ease of Removal

Board members serve four year terms and are eligible for reappointment.<sup>111</sup>

### f. Training and Continuing Education

Each member of the Board must complete first-time member training as well as ongoing training that is developed in consideration of the expertise of the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association.<sup>112</sup> Currently, new board member training focuses on use of validated risk and needs assessments, an overview of the Board’s policies, procedures and the mission, goals, and objectives of the Department of Corrections, 16 hours of mentoring with existing board members, and attendance at the National Institute of Corrections’ Orientation for New Parole Board Members (encouraged).<sup>113</sup>

### g. Workload

Below are the Board’s workload statistics for 2016 and 2017.<sup>114</sup>

	2016	2017
Parole Hearings Held (All Types)	2,703	<b>2,703</b>
Discretionary Parole Hearings Held	1,427	<b>1,441</b>
Discretionary Paroles Granted	547	<b>608</b>
Total Revocations	636	<b>690</b>
Commutations Processed	48	<b>43</b>
Commutations Recommended	0	<b>0</b>
Pardons Processed	71	<b>95</b>
Pardons Recommended	65	<b>76</b>

### h. Reporting and Accountability of Parole Board

The Board is not required to submit an annual report. All Parole Board actions, hearings, decisions, and results are public record.<sup>115</sup>



## END NOTES

- <sup>1</sup> S.D. Codified Laws § 24-15A-39 (2018).
- <sup>2</sup> See, e.g., S.D. Codified Laws § 24-15-14 (2018).
- <sup>3</sup> S.D. Codified Laws § 22-6-1 (2018).
- <sup>4</sup> *Id.* (for Class 6 felonies, a defendant can be sentenced to both 2 years imprisonment and the \$4,000 fee).
- <sup>5</sup> S.D. Codified Laws § 24-15A-32 (2018) (this applies to all prisoners “except those under a sentence of life or death, or determined to be ineligible for parole as authorized in § 24-15A-32.1”).
- <sup>6</sup> S.D. Codified Laws § 24-15A-19 (2018).
- <sup>7</sup> S.D. Codified Laws § 24-15A-39 (2018).
- <sup>8</sup> Interview with Mark Smith, Doug Clark, and Traci Fredrikson (Jun. 28, 2018). Note that this does not mean that 80% of all people eligible for parole are released. The Board holds discretionary release hearings for those who have not complied with their program directive or who have returned to incarceration due to parole revocation and releases these individuals at a different rate.
- <sup>9</sup> S.D. Admin. R. 17:60:07:01–02 (2018).
- <sup>10</sup> See S.D. Codified Laws §§ 22-7-7 through -12 (2018) (Habitual Offenders).
- <sup>11</sup> S.D. Codified Laws § 24-15A-32 (2018).
- <sup>12</sup> S.D. Codified Laws § 22-6-1.2 (2018).
- <sup>13</sup> S.D. Codified Laws § 24-15A-32.1 (2018).
- <sup>14</sup> S.D. Codified Laws § 24-15-4 (2018).
- <sup>15</sup> S.D. Codified Laws § 24-15A-41 (2018).
- <sup>16</sup> S.D. Codified Laws §§ 24-15-10; 24-15A-39; 24-15A-3 (2018).
- <sup>17</sup> S.D. Codified Laws §§ 24-5-1 (2018) (does not apply to inmates sentenced to life, inmates with an indeterminate sentence not set at a term of years, or those who did not have a life sentence commuted to a term of years); 24-15A-3 (2018).
- <sup>18</sup> S.D. Codified Laws §§ 24-2-17; 24-2-18 (2018).
- <sup>19</sup> S.D. Codified Laws § 24-15A-50 (2018).
- <sup>20</sup> S.D. Codified Laws § 24-15A-34 (2018).
- <sup>21</sup> Interview, *supra* note 8.
- <sup>22</sup> S.D. Admin. R. 17:60:08:06 (2018); S.D. Codified Laws § 24-15A-35 (2018) (“[T]he warden shall notify the Board in writing of the inmate’s substantive compliance or noncompliance with the inmate’s individual program directive.”). Note that in-state experts we spoke with do not recall any case in which no program directive was created. Interview, *supra* note 8.
- <sup>23</sup> S.D. Codified Laws § 24-15A-42 (2018).
- <sup>24</sup> Correspondence with Traci Fredrikson (May 3, 2018). Ms. Fredrikson, Mark Smith (the Chairman of the Board of Pardons and Paroles), and the Department of Corrections administrative and parole staff commented on an earlier draft of this report.
- <sup>25</sup> *Id.*
- <sup>26</sup> Interview, *supra* note 8.
- <sup>27</sup> *Id.*
- <sup>28</sup> S.D. Codified Laws § 24-15A-32.1 (2018).
- <sup>29</sup> S.D. Dep’t of Corr. Policy 1.4.B.10(III), *Parole-GPS Monitoring Program* (Nov. 17, 2014), <https://doc.sd.gov/documents/about/policies/Parole%20Services%20GPS%20Monitoring%20Program.pdf>.
- <sup>30</sup> Interview, *supra* note 8.
- <sup>31</sup> H.B. 1109, Reg. Sess. 2017-2018. (S.D. 2018). Retrieved May 29, 2019 from <http://sdlegislature.gov/docs/legsession/2018/Bills/HB1109ENR.pdf>.
- <sup>32</sup> See S.D. Codified Laws §§ 24-14-1 through 12 (2018); See also S.D. Dep’t of Corr., *South Dakota Board of Pardons and Paroles Executive Clemency Application* (2009), [http://doc.sd.gov/documents/executiveclemencypardonapplication\\_3\\_.pdf](http://doc.sd.gov/documents/executiveclemencypardonapplication_3_.pdf).
- <sup>33</sup> S.D. Codified Laws § 24-15A-39 (2018); see also S.D. Admin. R. 17:60:08:01 (2018).
- <sup>34</sup> Correspondence with Tracy Fredrikson, *supra* note 24 (this is the case with serious crimes, lengthy sentences, or high-risk offenders).
- <sup>35</sup> S.D. Codified Laws §§ 24-15A-9 through 11 (2018).
- <sup>36</sup> S.D. Admin. R. 17:60:08:05 (2018).
- <sup>37</sup> S.D. Codified Laws § 24-15A-17 (2018).
- <sup>38</sup> Correspondence with Tracy Fredrikson, *supra* note 24.
- <sup>39</sup> S.D. Admin. R. 17:60:08:04.
- <sup>40</sup> S.D. Admin. R. 17:60:08:02 (2018).
- <sup>41</sup> Interview, *supra* note 8.
- <sup>42</sup> See S.D. Codified Laws §§ 23A-28C-1 through 14 (2018).
- <sup>43</sup> S.D. Codified Laws §§ 23A-28C-5, 23A-28C-12, 23A-28C-13 (2018).
- <sup>44</sup> Interview, *supra* note 8.
- <sup>45</sup> S.D. Codified Laws § 24-15A-12 (2018); see also S.D. Dep’t of Corr., *Frequently Asked Questions: Parole*, <https://doc.sd.gov/about/faq/parole2.aspx> (“Parole hearings are public. Anyone can attend.”) (last visited Jul. 24, 2018); see also S.D. Codified Laws § 23A-28C-12 (2018).
- <sup>46</sup> Interview, *supra* note 8.
- <sup>47</sup> S.D. Codified Laws § 24-15A-39 (2018).
- <sup>48</sup> Correspondence with Tracy Fredrikson, *supra* note 24.
- <sup>49</sup> S.D. Admin. R. 17:60:08:02 (2018).
- <sup>50</sup> *Rowley v. S.D. Bd. of Pardons & Paroles*, 826 N.W. 2d 360, 363 (S.D. 2013) (citing *Acevedo v. S.D. Bd. of Pardons & Paroles*, 768 N.W. 2d 155, 158 (S.D. 2009)); *Austad v. S.D. Bd. of Pardons & Paroles*, 719 N.W.2d 760, 764 (S.D. 2008).
- <sup>51</sup> S.D. Bd. of Pardons & Parole, Policy 8.1.A.13(IV)(A), *Rescission of Parole* (Oct. 19, 2017), <https://doc.sd.gov/documents/Board-8.1.A.13%20Rescission%20of%20Parole.pdf>.
- <sup>52</sup> *Id.*
- <sup>53</sup> Danielle Kaebler, Bureau of Justice Statistics, *Probation and Parole in the United States*, 2016, 19 (Appx. Table 5) (Apr. 2018), <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>.
- <sup>54</sup> S.D. Dep’t of Corr., *Our Mission*, <http://doc.sd.gov/> (last visited Jul. 24, 2018).
- <sup>55</sup> See, e.g., S.D. Admin. R. 17:61:02:01; 17:61:02:05 (2018).
- <sup>56</sup> S.D. Codified Laws § 24-15A-6 (2018).
- <sup>57</sup> S.D. Codified Laws §§ 24-15A-7 through 8 (2018).
- <sup>58</sup> S.D. Codified Laws § 24-15A-8.1 (2018).
- <sup>59</sup> Interview, *supra* note 8.
- <sup>60</sup> S.D. Codified Laws § 16-22-29 (2018) (the felonies listed in S.D. Codified Laws § 22-6-11 are those that carry a presumptive sentence of probation at sentencing).
- <sup>61</sup> See S.D. Codified Laws 24-15A-6 (2018). However, as is also the case in many other states, the Board can deny credit for time spent on supervision as part of a parole or suspended sentence revocation process. The effect of any such denial of credit would result in a new term which expires at a date that is later than previously established.
- <sup>62</sup> S.D. Codified Laws § 24-15A-50 (2018).
- <sup>63</sup> S.D. Codified Laws § 24-15A-6 (2018).
- <sup>64</sup> S.D. Dep’t of Corr., *Frequently Asked Questions: Parole*, <https://doc.sd.gov/about/faq/parole2.aspx> (last visited Jul. 24, 2018).
- <sup>65</sup> S.D. Codified Laws § 24-15A-24 (2018); see, e.g., *State v. Means*, 257 N.W.2d 595 (S.D. 1977).
- <sup>66</sup> Correspondence with Tracy Fredrikson, *supra* note 24.
- <sup>67</sup> S.D. Codified Laws § 24-15-27 (2018).
- <sup>68</sup> S.D. Codified Laws § 24-15A-28 (2018).
- <sup>69</sup> Correspondence with Tracy Fredrikson, *supra* note 24.
- <sup>70</sup> S.D. Codified Laws § 24-15A-24 (2018).
- <sup>71</sup> S.D. Dep’t of Corr., Policy 1.5.G.1(IV)(1)(A), (IV)(4)(B)(2), *Parole Supervision Fees* (May 8, 2017), <https://doc.sd.gov/documents/Parole%20Services%20Supervision%20Fees.pdf>.
- <sup>72</sup> Correspondence with Tracy Fredrikson, *supra* note 24.
- <sup>73</sup> *Id.* (explaining that, if enrolled in the 24/7 sobriety program, there are standard testing fees of \$1 for a breath test or \$5 for urinalysis); see also Ass’n of Prosecuting Attorneys, *South Dakota 24/7 Sobriety Program*, <http://www.apainc.org/wp-content/uploads/SD-24-7-Sobriety-Program-Implementation-Guide-1.pdf>.
- <sup>74</sup> S.D. Codified Laws § 24-15A-24 (2018).
- <sup>75</sup> S.D. Admin. R. 17:61:01:10 (2018).
- <sup>76</sup> S.D. Codified Laws § 24-15A-24 (2018).
- <sup>77</sup> *Id.*; Correspondence with Tracy Fredrikson, *supra* note 24.
- <sup>78</sup> S.D. Admin. R. 17:61:01:10 (2018).
- <sup>79</sup> Correspondence with Tracy Fredrikson, *supra* note 24.
- <sup>80</sup> *Id.*
- <sup>81</sup> *Id.*



## END NOTES

<sup>82</sup> S.B. 70, Reg. Sess. (or 1st Special Sess., etc.), 2013-2014 (S.D. 2013).

<sup>83</sup> S.D. Codified Laws § 24-15-24 (2018); *see also* S.D. Codified Laws 24-15-20 (2018).

<sup>84</sup> *See* S.D. Codified Laws § 24-15-19 (2018).

<sup>85</sup> S.D. Dep't of Corr., Policy 1.5.G.6 (Attachment 3) (Mar. 14, 2017), <https://doc.sd.gov/documents/Parole%20Services-Response%20to%20Violations.pdf>.

<sup>86</sup> Correspondence with Tracy Fredrikson, *supra* note 24.

<sup>87</sup> S.D. Codified Laws § 24-15-21 (2018).

<sup>88</sup> S.D. Codified Laws § 24-15-19 (2018).

<sup>89</sup> S.D. Codified Laws § 24-15-23 (2018).

<sup>90</sup> S.D. Codified Laws § 24-15-23.1 (2018).

<sup>91</sup> S.D. Admin. R. 17:60:11:07 (2018).

<sup>92</sup> S.D. Admin. R. 17:60:11:04 (2018).

<sup>93</sup> *See* S.D. Admin. R. 17:60:11:05 (2018).

<sup>94</sup> S.D. Codified Laws § 24-15A-12 (2018).

<sup>95</sup> Correspondence with Tracy Fredrikson, *supra* note 24; S.D. Codified Laws §§ 23A-28C-5; 23A-28C-12; 23A-28C-13 (2018).

<sup>96</sup> S.D. Admin. R. 17:60:11:09 (2018).

<sup>97</sup> S.D. Codified Laws § 24-15A-28 (2018).

<sup>98</sup> S.D. Codified Laws § 24-15A-28 (2018); S.D. Admin. R. 17:60:11:13 (2018).

<sup>99</sup> S.D. Codified Laws § 24-15A-48 (2018).

<sup>100</sup> S.D. Admin. R. 17:60:11:11 (2018).

<sup>101</sup> S.D. Admin. R. 17:60:11:12 (2018).

<sup>102</sup> *Acevedo v. S.D. Bd. of Pardons & Parole*, 768 N.W.2d 155, 158 (S.D. 2009).

<sup>103</sup> S.D. Codified Laws §§ 24-15A-29 (2018) (note that this may vary if the inmate has been convicted of a new felony crime or whose actions result in imposition of a suspended sentence); 24-15-10 (2018).

<sup>104</sup> *See, e.g.*, S.D. Codified Laws § 24-15A-29 (2018).

<sup>105</sup> S.D. Codified Laws § 24-13-3 (2018).

<sup>106</sup> S.D. Codified Laws § 24-13-1 (2018).

<sup>107</sup> S.D. Codified Laws § 24-13-4 (2018).

<sup>108</sup> S.D. Codified Laws § 24-13-6 (2018).

<sup>109</sup> S.D. Codified Laws §§ 24-13-13; 24-13-14 (2018).

<sup>110</sup> S.D. Codified Laws § 24-13-1 (2018).

<sup>111</sup> S.D. Codified Laws § 24-13-2 (2018); *cf.* interview, *supra* note 8 (it is unclear what the process for board member removal would be if it became necessary.).

<sup>112</sup> S.D. Codified Laws § 24-13-2 (2018).

<sup>113</sup> S.D. Bd. of Pardons & Paroles, Policy 8.1.A.14(IV), *Evidence-Based Practices Training* (Feb. 16, 2017), <https://doc.sd.gov/documents/Board-8.1.A.14%20Evidence-Based%20Practices%20Training.pdf>.

<sup>114</sup> Correspondence with Tracy Fredrikson, *supra* note 24.

<sup>115</sup> *Id.*