

**POLICY AND PROCEDURE**

**South Carolina Board of Pardons and Paroles**

**South Carolina Department of Probation, Parole and Pardon Services  
DIVISION OF PAROLES AND PARDONS**

**April 2015**

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# PREFACE

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## **The Parole System In South Carolina**

Parole is a form of early release from prison based on the prisoner's agreement to abide by certain conditions of supervision during the balance of the sentence. The South Carolina Board of Pardons and Paroles (hereinafter "Board") is a gubernatorial appointed, independent decision making body vested with sole authority in making discretionary parole decisions in the State of South Carolina. Upon release on parole, the parolee continues to serve the sentence outside the prison walls and remains under the legal jurisdiction of the Board, and must comply with the terms and conditions of release as set by the Board.

The South Carolina Department of Probation, Parole, and Pardon Services (hereinafter "Department") is a cabinet agency of the Governor, and through its Director (hereinafter "Department Director") is vested with supervision responsibilities for adult parolees.

While on parole, the parolee should show reasonable promise of being able to function in society as a responsible, self-reliant person. Subject to the conditions of parole, the parolee can be gainfully employed. The parolee can enter into contracts and go to court without a guardian ad litem. The parolee is free to be with family and friends and to form other attachments of normal life. Within the limits defined by the conditions of parole, the parolee is free to come and go as he/she pleases, to travel anywhere in the state that is supervising parole, on occasion, to travel out of that state, and even to reside in another state with proper authorization. The parolee's liberty is regarded as a "privilege." The United States Supreme Court has said it is valuable enough to deserve the protection of certain minimal requirements of procedural due process under the Constitution.

Any expectation or desire that a convicted prisoner may have to be released on parole, however, is not a constitutional right. In South Carolina, paroles are granted as a privilege. The Board retains absolute and exclusive discretion to grant or deny parole in all cases, except community supervision, once a prisoner has become eligible to be considered. Community supervision release is not reviewed by the Board. (Certain offenders, it must be noted, are disqualified by statute from eligibility for parole.) The parole release decisions of the Board are final. They are not reviewable in the courts of South Carolina.

The purpose of parole is universally recognized to be reformatory or rehabilitative. Parole is intended as a means of rehabilitating then restoring the offender to society as a law-abiding and productive member. Under the structured supervision that parole sets up, the parolee has the opportunity to participate in a wide array of health and human services programs designed to help him/her. As an

early-release mechanism, parole also serves to alleviate the high costs to the state, and ultimately to the taxpayer, of keeping offenders in prison, not to mention the costs of building and operating new prisons. Further, parolees are required to pay supervision fees to help defray the cost of administering the parole system.

Aside from the obvious economic benefit to the state of releasing offenders on parole and then requiring them to pay supervision fees, there is a certain element of moral instruction also at work. In being required to shoulder at least a part of the economic burden that would otherwise fall entirely to the state, parolees are encouraged to assume moral responsibility for their actions. Requiring parolees to pay restitution to their victims, as a condition of supervision, goes even further in this most worthwhile direction.

### **Pardons, Reprieves, and Commutations**

In addition to the clemency power to grant (and revoke) paroles, the Board also has the absolute and exclusive power to grant pardons. Like the grant of parole, the grant of a pardon is not a matter of right. Anyone who wants a pardon may apply through the Department, but the Board will consider only those applicants who are by statute eligible to be considered for a pardon. The Department is responsible for investigating all pardon applications, reporting its findings, and making recommendations to the Board.

Under South Carolina law, all pardons are full pardons. Thus, when a person receives a pardon from the Board, he/she is fully pardoned from all the legal consequences of the crime and the conviction, direct and collateral, including the punishment, whether of imprisonment, monetary penalty or whatever else the law has provided. A pardon fully restores all civil rights lost as a result of a criminal conviction. These rights are enumerated in the statute. A pardon also restores the pardoned person's ability to own and possess firearms.

Although in South Carolina a pardon does relieve the pardoned person of the consequences of the criminal conviction for which he received the pardon, a pardon does not establish the innocence of the person pardoned. Nor does a pardon expunge the criminal conviction for which the pardon was granted. The idea, often and widely expressed, is that a pardon forgives but it does not forget. The criminal record remains intact and preserved; the fact of the underlying criminal conviction survives the pardon. Anyone who receives a pardon and is on the Sex Offender Registry will remain on the Registry per statute. Indeed, state law requires that the record of that conviction, together with the pardon, be maintained by the clerks' offices. Similarly, under current law a pardoned person is barred from holding public office if the crime for which the pardon was granted involved embezzlement of public funds. Finally, even though a person has a pardon, he/she may be barred by the licensing authority from obtaining a professional license or certification where good moral character is required, because the criminal

conviction, though pardoned, will still be on the record and may be regarded as showing bad moral character.

The Governor of South Carolina, in whom the pardon power once resided, now retains only the power to grant reprieves and commutations. A reprieve is defined as the withdrawing of a sentence for an interval of time whereby the execution of the sentence is suspended to a certain day. The Governor's power to grant reprieves applies only in capital cases and is not subject to review in the courts. A commutation of sentence or punishment is simply a reduction in punishment to something less severe than was originally imposed. In South Carolina, the Governor's power to commute sentences is restricted by law to the commutation of death sentences to life imprisonment. The Governor may refer these matters to the Board, which must then consider them and make recommendations to the Governor. The Governor may or may not adopt the Board's recommendations. If the Governor chooses not to adopt the Board's recommendations, the reasons for the decision must be submitted to the General Assembly. The Governor may act without any reference to the Board.



**Effective Date**

This Manual shall become effective on the date of its adoption by the South Carolina Paroles and Pardons Board, with the signature of the Chair in the space below.



C. David Baxter, Chair

Date: April 29, 2015

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# MISSION

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The South Carolina Board of Pardons and Paroles, as part of the criminal justice system, makes independent, quality conditional release and pardon decisions and clemency recommendations. The Board contributes to the protection of society by facilitating, as appropriate, the timely integration of offenders as law-abiding citizens.

## **MAKING THE MISSION A REALITY**

In making quality decisions regarding conditional releases and pardons, as well as recommendations in clemency cases, the Board's primary objective is the long-term protection of society. The Board firmly believes that law-abiding behavior can best be achieved by timely and supervised conditional release and effective administration of sentences. In making its decisions, the Board is autonomous and independent, however, it is accountable for its actions, not only by virtue of its internal framework, but to the Governor of this state and ultimately, to all South Carolinians.

## **OBJECTIVES**

- To ensure that every Board decision is based on the risk presented by the offender and is consistent with the goal of protection of the public.
- To promote the safe integration of every offender who is conditionally released by imposing necessary release conditions and by responding, as appropriate, to significant changes in the risk presented.
- To ensure that Board members are provided with effective risk assessment tools and with complete and accurate information about each offender.
- To work in collaboration with the Department of Corrections and others in identifying better ways to attain the shared goals of preventing crime and protecting society.
- To ensure that victims who so wish are duly informed and treated fairly and their input is fully considered in the conditional release process.
- To recognize the rehabilitation of former offenders through the granting of pardons.
- To ensure that the Board's decisions are communicated clearly and distributed in a timely manner to those who are entitled to be notified of them.

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# PART I

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## ADMINISTRATIVE PROCEDURES

## **A. BOARD OF PAROLES AND PARDONS**

### **1. COMPOSITION OF THE BOARD**

The Board is composed of seven members, one from each of the state's seven Congressional districts. Members are appointed by the Governor, with the advice and consent of the senate, to a six-year term and serve until a successor is appointed and confirmed. Vacancies occurring before the expiration of a term are filled by the Governor.

### **2. STATUTORY POWERS**

The Board is vested with the following statutory powers:

- To grant or deny paroles and pardons;
- To revoke, modify, or re-hear paroles;
- To make recommendations on petitions for reprieves and commutations referred by the Governor;
- To preserve order at its meetings.

### **3. ELECTION OF OFFICERS**

The Chair, Vice-Chair and the Secretary are elected annually, between January 15th and 31st, each by majority vote of the Board.

### **4. TRAINING**

New members of the Board are required to complete a comprehensive training course developed by the Department using training components consistent with those offered by the National Institute of Corrections or the American Probation and Parole Association. The training hours will be tracked via the Agency's in-house automated training system.

**a. Board Orientation Training:** Within 90 days of a Board member's appointment by the Governor and confirmation by the Senate, the Board member will complete a comprehensive training course of at least sixteen (16) hours including (but not limited to ) the following components:

- National and State Crime Statistics and Trends
- Decision Making and evidence-Based Practices in the Justice System
- Offender Risk and Needs Assessment
- Offender Case Planning
- South Carolina Department of Corrections (SCDC) Classifications, Programming and Disciplinary Processes
- Violations
- Criminal Victimization
- Criminal Justice Collaboration, Offender Success and Public Safety
- PPP Organization and Functions

**b. Board Annual Training:** Each Board member is required to complete at least eight (8) hours of training annually including (but not limited to):

- Review of Policies and Procedures
- Review of Critical Programs within the Department
- Review of the Department Risk /Needs Assessment Tool
- Review of the Department Public Safety Goals
- Decision Making and Data
- Evidence-Based Practices/Corrections
- Evidence-Based Practices/Crime Victims

Members of the Board shall also participate in additional training as may be required by the Board's Chair and Department Director pursuant to accreditation standards.

## **5. COMPENSATION**

Members of the Board are entitled to reasonable and necessary expenses incurred in the discharge of their official duties and consistent with state law governing the compensation of board or commission members. Members of the Board receive no salary. In addition to fees for hearings, members of the Board receive per diem compensation for the following activities directly associated with their service on the Board:

- Parole hearings, including revocations;
- Pardon hearings;
- Training required by the Board's Chair and Department Director;
- Review of paroles, parole revocations, and pardons prior to the actual hearing of the matter

## **6. QUORUM FOR CONDUCTING BUSINESS**

Five members of the Board constitutes a quorum for conducting business.

## **7. RULES AND REGULATIONS FOR CONDUCTING BUSINESS**

**a. Implied Powers.** In the exercise of its statutory powers, the Board may make such rules and regulations as are necessary and proper to conduct its business

**b. Attendance at Hearings.** Members are required to attend all hearings of the full Board or of their respective panel.

## **B. PANELS OF THE BOARD**

### **1. COMPOSITION OF PANELS**

Parole panels consist of any three members of the Board, as appointed by the Board Chair and the Board Liaison of the Department's Office of Board Support Services (hereinafter "Board Liaison").

### **2. STATUTORY POWERS**

A panel may grant, deny, revoke, or otherwise decide paroles in only those cases involving nonviolent offenders who become eligible for parole after having served one-fourth of their sentence. A panel may also revoke any offender released under EPA and any violent offender released by the full Board.

- a. **Vote.** In all cases properly decided before a three-member panel of the Board, a unanimous vote is required to grant parole or to revoke parole or EPA I. A unanimous vote of a panel constitutes the final decision of the Board. Any vote of a panel which is not unanimous must be referred to the full Board for a final decision.
- b. **Pardons.** Panels may not decide pardons. See Part IV.

### **3. MEETINGS OF THE PANELS**

Meetings of the panels are scheduled by the Board Liaison acting under the authority of the Director. Under routine procedure, panel members are assigned the cases for their review no less than two weeks before the date of the hearing.

### **4. DUAL PANELS**

Dual panels of the Board have the same statutory powers to hear cases as single panels. Dual panels are scheduled at the discretion of the Department Director when the need arises because of a backlog of cases. Members are appointed by the Chair and the Director of the Department's Office of Board Support Services Director (hereinafter "Board Support Services Director"), according to the usual procedure.

## **C. CHAIR OF THE BOARD**

### **1. ELECTION AND TERM OF OFFICE**

The Board's Chair is elected annually in January, by majority vote of the Board and serves a one year term. The Chair may not serve more than two consecutive terms in office.

### **2. GENERAL RESPONSIBILITIES**

The Chair manages and oversees the Board. The Chair meets at least monthly with the Board Support Services Director and/or Board Liaison. The following list enumerates the general responsibilities of the Chair in that capacity.

- a. **Policies and Procedures.** The Chair is responsible for seeing that the policies and procedures set forth in this manual are carried out.

- b. **Presiding Over Meetings.** The Chair is responsible for presiding over meetings and proceedings of the full Board and panels of the Board and for maintaining order and proper decorum during proceedings.
- c. **Assigning Members to Panels.** The Chair is responsible for assigning members of the Board to panels as often as is necessary and for appointing a member to serve as Chair on each of the various panels.
- d. **Overseeing Panels.** The Chair is responsible for overseeing the various panels by periodically serving on them.
- e. **Absence of a Panel Member.** The Chair is responsible for arranging a substitute member to serve on a panel whenever a member cannot be present.
- f. **Coordination of Scheduling.** The Chair is responsible for coordinating the scheduling of hearings with the Board Support Services Director.
- g. **Minutes.** The Director is responsible for ensuring that the Board Support Services Director keeps complete and accurate minutes of all public meetings and proceedings of the Board or of its panels.
- h. **New Member Training.** The Chair will participate in and promote appropriate training for new Board members.
- i. **Public Relations.** The Chair or designee is responsible for acting as the Board's spokesperson on matters relating to the work of the Board. Board members shall direct all inquiries from the media to the Department's Office of Public Information.
- j. **Appearances before Legislative Committees.** The Chair or designee is also responsible for appearing before legislative committees from time to time to report on the work of the Board.

## **D. RESPONSIBILITIES OF THE DEPARTMENT DIRECTOR AND STAFF**

### **1. MANAGING THE DEPARTMENT**

As part of the general restructuring of state government brought about by the Restructuring Act of 1993, the responsibility for overseeing and managing the Department has been transferred from the Board to the Department Director. The Department Director, however, still has most, if not all, of the same responsibilities to assist the Board that he/she had before the enactment of this legislation. These responsibilities are considered below.

### **2. SCHEDULING MEETINGS AND HEARINGS OF THE BOARD**

Acting under the Department Director's authority, the Board Support Services Director is responsible for the timely scheduling of meetings and hearings of the Board. See S.C. Code Ann. §24-21-220 (1993).

- a. **Number of cases.** The number of cases scheduled for hearing on any given day is set by the Department Director and Chair of the Board.
- b. **Violent versus non-violent.** Offenders convicted of a violent crime will be scheduled for parole hearings before the full Board only. Offenders convicted of a non-violent crime may be scheduled for parole hearings before either the full Board or a three-member panel.

### **3. INVESTIGATING AND PREPARING CASES FOR REVIEW**

The Department is responsible for investigating and preparing parole and pardon cases for the Board's review and for ensuring that these cases reach the members no less than two weeks before the date of the hearing.

- a. **Date of Eligibility for Parole.** The South Carolina Department of Corrections is responsible for determining the dates of parole eligibility for offenders who are eligible for parole.
- b. **Assigning Cases.** The Board Support Services Director is responsible for assigning cases for timely review to members of the Board, as may be necessary.
- c. **Preliminary Hearings.** The Department is responsible for scheduling and conducting such preliminary hearings as may be required by law.

### **4. PROVIDING NOTICE OF HEARINGS TO INTERESTED PARTIES**

The Department is responsible for providing timely notice of hearings. See Part II, A., Parole Hearings.

### **5. EXECUTING DECISIONS AND ORDERS OF THE BOARD**

The Department Director and his/her staff are responsible for seeing that the decisions and orders of the Board and its panels regarding paroles, pardons, and revocations are fully carried out.

### **6. INFORMING THE BOARD OF CURRENT PAROLE LAWS**

Through its Office of General Counsel, the Department is responsible for keeping the Board informed of current parole laws as they affect the Board's practices and procedures.

### **7. MAINTAINING THE OFFICIAL RECORDS OF THE BOARD**

The Board Support Services Director and Department's Office of Records Management Services are responsible for maintaining the official records of the Board. These records, including hard copy, electronic and audio, will be maintained until the inmate maxes out, is paroled, until death, or for five (5) years, whichever is sooner.



## **E. CONFIDENTIALITY AND THE DISCLOSURE OF INFORMATION**

### **1. STATE LAW IN GENERAL**

Both the Department and the Board are subject to certain state laws governing confidentiality and the disclosure of information. This section considers those laws and their effect.

**a. Confidentiality of the Department's Files.** Under S. C. Code 24-21-290, all information obtained by probation and parole agents in the discharge of their official duties is privileged information. It may not be received as evidence in any court, except, in probation cases, in the court with jurisdiction over the probation case. And it may not be disclosed, directly or indirectly to anyone other than the judge of that court or others entitled to receive reports under the law, unless ordered by a court with jurisdiction or by the Department's Director. The Board is therefore entitled to receive this information from the Department. But the Board is required to preserve the confidentiality of the files it receives for its review.

**b. The Freedom of Information Act.** Under the Freedom of Information Act, any part or all of a prisoner's in-prison disciplinary records are subject to disclosure. This applies to records involving all awards, honors, earned work credits and educational credits. Similarly, certain other matters are declared public information by the Act, and are subject to disclosure as such. These matters are listed below:

- The names, sex, race, title and dates of appointment of all members of the Board;
- Administrative manuals, including this manual, and instructions to staff that affect a member of the public;
- Final decisions and orders of the Board;
- Any statements of policy and interpretations of policy, statute, and the Constitution which are adopted by the Board;
- Written policies and goals;
- Information in or taken from any account, voucher or contract dealing with the receipt or expenditure of public funds by members of the Board;
- The minutes of all proceedings of the Board and all votes at those proceedings.

### **2. MATTERS EXEMPT FROM DISCLOSURE UNDER THE FOIA**

Although the reach of the Freedom of Information Act is far and wide, the following matters are exempt from disclosure under its terms:

- The Department's files on offenders;
- Medical and psychological reports on the offender which, if disclosed to the offender, could reasonably be thought to disrupt his treatment and rehabilitation;
- Facts which, if disclosed, could reasonably be thought to reveal a source of information who had been promised confidentiality;
- Any information which, if disclosed, could reasonably be thought to result in physical or emotional harm to someone.
- Any information regarding the victims including address and input regarding an inmate's parole.

- Parole case summary.

### **3. INFORMATION RELEASABLE ON REQUEST**

The following information must be made available to any person who requests it:

- The offender's name, identification number, and date of birth;
- The offense upon which the offender was convicted or pleaded guilty;
- The county in which the offense was committed;
- The date of parole eligibility or reconsideration for parole following a rejection;
- The sentencing judge;
- The disposition of the hearing (parole granted, parole denied, parole revoked, parole rescinded, hearing postponed, pardon granted, pardon denied, and so on);
- Any transcripts of hearings and meetings;
- Information about detainees;
- The date of the offender's release;
- The vote of the Board;
- Any order of parole signed by the members of the Board.

### **4. INFORMATION NOT LISTED AS RELEASABLE ON REQUEST**

Any other information not listed as releasable upon request, or required to be released under the FOIA, may be released only by express permission of the Department Director.

**Exceptions.** Information not listed as releasable upon request, or otherwise required to be released under the FOIA, may be released to the S. C. Department of Corrections, the United States Department of Probation, and any federal, state, or local law enforcement agency, insofar as the release serves the best interests of the Department, and the broader interests of cooperation among these various agencies. When any agency receives information from the Board under this exception, that agency must be notified that the information is exclusively for the use of law enforcement and corrections, that it is confidential information, and that it may not be released outside of the agency that has received it.

### **5. ASSESSMENT OF COSTS**

The Department may assess reasonable costs for producing documents, audio recordings and other material.

### **6. SECURITY AND OTHER MATTERS OF ORDER AT HEARINGS**

The Chair or designee is responsible for preserving order at parole and pardon hearings.

- Addressing the Board.** No person may address the Board unless called by the Board to be heard. The Chair may order any or all visitors to leave the hearing room if their presence becomes disruptive.

- b. Visitor Conduct.** Visitors, including the news media, are not permitted to enter or leave the hearing room while proceedings are in progress, except in case of emergency.
- c. During Deliberations.** No visitor appearing for or against parole or pardon may remain in the hearing room during the Board's deliberations.
- d. The News Media.** The Chair may limit the presence of the media to a reasonable number. The Chair may regulate the activities of the media during hearings to limit disruption of the proceedings. The media may be allowed to film or record hearings. Before members of the media may attend a hearing they are asked to notify the Department's Office of Public Information. Depending on considerations of space and security, the media are subject to being pooled at the discretion of the Department's Office of Public Information and the Board Support Services Director. Members of the media are asked to seek consent from victims and witnesses appearing before the Board prior to filming that portion of any hearing.
- e. Preserving Order.** The Chair is responsible for maintaining order and decorum in the hearing room, and may punish any disrespect or disruption by the removal from the hearing room and/or by imposing a fine of no more than fifty (\$50.00) dollars.

## **7. LOCATION OF HEARINGS**

The Board or any of its panels will convene for parole and pardon hearings at the Department's Central Office in Columbia at 2221 Devine Street, Suite 400.

- Parole eligible offenders make their presentations to the Board from prisons throughout the state via video conferencing.
- Pardon applicants may appear at the Columbia location
- Victims may appear at the Columbia location or have the option of appearing at other video conferencing locations.

## **8. RECUSAL OF A BOARD MEMBER**

Board members must recuse themselves if they have any personal involvement in the case which would affect or give the appearance of affecting the fairness and impartiality of their decisions.

### **a. Reasons for Recusal.**

- The Board member is a family member of the offender, the offender's attorney, or the victim. "Family member" includes the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild; or a member of the individual's immediate family; or
- The Board member has a personal or business relationship with the offender, the offender's family, the offender's attorney, the victim, or the victim's family; or
- The Board member has served as counsel for the offender or the victim in legal proceedings; or

- The Board member has any other interest in the proceeding that he/she knows would affect or reasonably give the appearance of affecting his/her judgment in the matter.
- b. Determining Recusal.** Each Board member is responsible for determining the appropriateness of their own recusal under the guidelines established by this policy.
- c. Guidelines for Recusal.** Pursuant to S.C. Code 8-13-700(B), a Board member who, in the discharge of his/her official responsibilities, is required to take an action or make a decision which affects an economic interest of himself/herself, a member of their immediate family, an individual with whom he/she is associated, or a business with which he/she is associated shall:
- Prepare a written statement describing the matter requiring action or decisions and the nature of the potential conflict of interest with respect to the action or decision;
  - Furnish a copy of the statement to the Chair who shall cause the statement to be made a part of the record of the matter; the Chair's statements should be furnished to the Vice-Chair and the Director; and
  - The Board member shall be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the record of the matter.

In establishing these guidelines for recusal for members of the Board, it is not the intent of the Board to create a right or basis to challenge the actions of this Board, or any member of the Board, which is not otherwise provided by the laws or the Constitution of this State or the United States. In the event a Board member abstains or recuses from a vote for parole, revocation or pardon, this action is final and cannot be changed.

## **9. ELECTRONIC INFORMATION AT HEARINGS**

This may include information submitted by film, videotape or other electronic media that is both visual and aural. The Board will consider, prior to making a determination, any information submitted pursuant to its policies.

In lieu of a personal appearance, a presentation may be made by film, videotape or other electronic media may be submitted.

The submission must be received one week prior to the scheduled hearing date by the Department's Office of Board Support Services and must identify the voice of each person heard and each person seen; contain a visual or aural statement of the date the information was recorded and contain a visual or aural statement of the name of the person whose parole is being considered.

The Board will not retain any information submitted. The presenter can take the information after its presentation. If the presenter provides an adequate postage prepaid mailer, with the addressee and the addressor the same, the information will be returned. Any information not taken at the hearing, or for which a mailer with postage prepaid is not provided, will be destroyed following the hearing.

The Board is only equipped to receive electronic media in VHS or DVD format.

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## **PART II**

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### **PAROLE PROCESS**

## **A. PAROLE HEARINGS**

### **1. PROCEDURAL REQUIREMENTS UNDER THE CONSTITUTION**

Because there is no federal constitutional right to parole, and because South Carolina's parole laws leave the decision to grant or deny parole entirely in the discretion of the Board, very little is required in the way of procedural due process at parole hearings. For prisoners eligible to be considered for parole on their sentence the law requires the following:

- The right to be heard for parole if eligible and the right to waive such hearing;
- Fair written notice of the specific parole criteria, which are required to be established by the Board under South Carolina law and which must be made available to all prisoners at the time of their incarceration;
- Fair written notice of the date, time, and place of the parole hearing;
- The opportunity to be heard by a fair and impartial Board or panel;
- The opportunity to present evidence and to have up to three witnesses to speak on their behalf, and to have the Board or panel carefully consider the complete record before, during, and after imprisonment;
- At the offender's own expense, to have an attorney present at the hearing;
- When parole is denied, written notice of the Board's reasons for denying parole.

### **2. NOTICE REQUIREMENTS**

All notices pertaining to parole hearings that are required by law to be given by the Board are given on its behalf by the Department. For the Board's information, these notices are briefly considered below.

- a. **Notice to the Offender.** The Board Support Services Director is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the offender.
- b. **Notice to Other Interested Parties.** The Department's Director of Victims Services is responsible for giving adequate and timely notice of hearings at least 30 days before the date of the hearing to the following parties:
  - The victim or the victim's immediate family if the victim is deceased;
  - The solicitor or his successor in office in the jurisdiction in which the offender was prosecuted;
  - The law enforcement agency that made the arrest;
  - The judge of the court in which the offender was convicted and sentenced.
- c. **Notice of Rejection.** The Board Support Services Director is responsible for providing to offenders who are denied parole a written notice of rejection stating the reasons for that decision and giving the date of the offender's next parole hearing.

**d. Notice of Release.** In certain cases, the Department's Director of Victims' Services is required by law to provide notice to victims and witnesses of the release of an offender on parole.

### **3. PREPARATION OF CASES FOR THE BOARD'S REVIEW**

The Department, through its Division of Field Operations and Office of Board Support Services, prepares cases for the Board's review. Before every hearing of the Board or a panel of the Board, all members receive a list of offenders who will be appearing for a parole hearing, together with the respective parole file on each prisoner. Board Members will receive these files no less than two weeks before the actual date of the hearing.

### **4. CONTENTS OF THE PAROLE CASE SUMMARY REPORT**

Every file that the Department prepares for the Board's review includes, though it is not limited to, the following information:

- The criminal offense and a description of it;
- The sentencing date, the "max-out" date, the parole eligibility date, the date of any previous parole hearings, the names of any co-defendants;
- The offender's criminal record;
- The offender's prison and disciplinary records;
- Risk classification reports;
- A medical history and psychological reports, if any;
- A history of the offender's supervision on probation or parole, if any;
- A proposed place of residence and employment;
- The parole examiner's recommendation(s);
- Any statements from law enforcement;
- Any statement from the prosecuting witness or the prosecuting witness's next of kin, if the witness is deceased;
- Any statement from the solicitor or his successor;
- Any statement from the sentencing judge;
- The offender's social history;
- The offender's employment experience.

### **5. STANDARD PROCEDURE FOR CONDUCTING HEARINGS**

Parole hearings are informal proceedings, and the Board or its panels may properly conduct them within its discretion. Hearings may be conducted as follows:

- The Department, through its Office of Board Support Services, schedules hearings. The names and case numbers of offenders who have been scheduled for a parole hearing are then

published at the respective prisons where they are confined, so that they can begin preparing themselves for their hearing.

- The Department, through its parole examiners, then interviews these offenders, investigates their cases, and submits a recommendation for or against parole.
- At the hearing, the offender or offender's counsel, if any, appears first and presents to the Board or panel. The Department of Corrections sets the limit for family members or other supporters appearing on behalf of the offender, however, the Board may limit the number of speakers.
- Members of the Board or the panel may ask questions of the offender and his witnesses. The Chair or the member presiding over the panel leads the questioning.
- Once the case has been presented, the offender is excused from the hearing room, and those appearing in opposition to parole are given their opportunity to be heard.
- After the witnesses in opposition are heard, they are excused from the hearing room, and the Board or the panel then deliberates.
- After deliberations, a voice and/or electronic vote is cast and documented.
- The offender and the other interested parties are informed of the decision by Department staff. If the offender is rejected for parole, the Department gives a written notice of the reasons for rejection.

## 6. THE PRESENCE OF THE OFFENDER AND HIS/HER ATTORNEY

Offenders scheduled for a parole hearing must be allowed to appear via videoconferencing. If they are represented by counsel, their counsel must also be allowed to be present. Counsel must appear at the location of the offender. Request for exceptions must be submitted to the Chair two weeks in advance of the hearing date. The Chair has discretion regarding requests for exceptions.

### a. **Exceptions.** Exceptions to this rule are given below:

- The offender is prevented because of illness from attending the hearing, or is confined at a state hospital.
- The offender has been placed in punitive segregation by the Department of Corrections.
- The offender has been transferred to prison outside South Carolina, or is otherwise serving a sentence in another state, in which case the Board may decide the case in the offender's absence. If the offender in this case wishes to be present at the hearing, he/she must make arrangements with South Carolina Department of Corrections.
- The offender has waived appearance at the hearing.

### b. **Absence from hearing.** If the offender is unable to be present at his hearing either because of illness or because he is in punitive segregation, the hearing may be postponed until such time as he is able to be present.

### c. **Waivers.** In the event that the offender waives his appearance, such waiver shall form the basis for denying parole on an automatic vote of the Board or the panel. In these cases, the parole examiner is responsible for seeing that the signed waiver of the offender is delivered to the Board or the panel. If the offender refuses to sign the waiver and refuses to attend the hearing, the Board



or the panel may deny parole on this basis. These offenders will then be considered for parole one year or two years from the date of this denial, as would normally occur after an offender has been rejected for parole.

## **7. THE PRESENCE OF OTHER INTERESTED PARTIES**

Parole hearings are public hearings. As such, they are open to victims, witnesses, the media and any other members of the general public who may wish to attend.

**a. Victims and witnesses.** Although victims and witnesses are members of the public and must be allowed to attend parole hearings, they are given priority under the South Carolina victims' and witnesses' bill of rights because of their special relation to the offense. The following procedures are designed specifically to accommodate their presence at parole hearings.

- Cases in which victims and witnesses are present should be heard first whenever possible;
- The Board may allow up to three victims and witnesses to be heard in any given parole or pardon case. The Chair has the discretion to allow additional victims and witnesses to be heard if in his/her judgment it is believed the case warrants it;
- Victims and witnesses will be given a reasonable amount of time by the Chair in which to be heard.

**b. The public and other interested parties.** Although parole are open to the public, the number of visitors is limited by the space available and security concerns. To ensure that all hearings proceed in an orderly fashion, the Board has limited the number of persons who may attend parole hearings as follows:

- Administrative staff from the Department who are needed to support the Board or panel;
- An interpreter or translator for any offender or victim;
- Up to three supporters (family, employers, ministers counselors, and so forth as allowed by the Department of Corrections;
- The offender's attorney;
- A representative from the arresting law enforcement agency;
- Victims and witnesses;
- News media;
- Other people, as determined by the Board.

## **B. ELIGIBILITY FOR PAROLE AND DISQUALIFICATION FROM ELIGIBILITY**

### **1. GENERAL RULES OF ELIGIBILITY**

**a. Crimes Committed Prior to June 15, 1981.** The offender has to serve one-third of the sentence before being eligible for parole.

- b. Crimes Committed Between June 15, 1981 and June 3, 1986.** The offender has to serve one-fourth of the sentence before being eligible for parole except burglary first degree and second degree.
- Between June 15, 1981 and June 20, 1985, offenders with burglary first and burglary second degree convictions must serve one-fourth of the sentence before being eligible for parole.
  - Between June 20, 1985 and June 3, 1986, offenders with burglary first and burglary second degree convictions must serve one-third of the sentence before being eligible for parole.
- c. Crimes Committed on and after June 3, 1986.** A parolable violent crime requires service of one-third of the sentence before being eligible for parole and non-violent crimes requires service of one-fourth of the sentence before being eligible for parole except for crimes with specific eligibility requirements and certain specific rules.

## 2. CRIMES WITH SPECIFIC PAROLE ELIGIBILITY RULES

As set forth in the following S. C. Code sections, there is no parole consideration, on the following crimes, until parole eligibility is satisfied. (Note the effect of consecutive sentencing.)

- a.** First degree sexual exploitation of a minor has a minimum three (3) year parole eligibility. Sentences to be consecutive. §16-15-395. After April 26, 2004, this offense is a no parole offense.
- b.** Second degree sexual exploitation of a minor has a two (2) year parole eligibility. §16-15-405.
- c.** Promoting prostitution of a minor has a three (3) year parole eligibility. Sentences to be consecutive. §16-15-415. After April 26, 2004, this offense is a no parole offense.
- d.** Participating in prostitution of a minor has a two (2) year parole eligibility. Sentences to be consecutive. §16-15-425.
- e.** Additional Punishment. There is a five year additional punishment for possession of a firearm or knife during the commission or attempt to commit a violent crime. These five (5) years are to be served without parole and without good time or work credits. Sentences may be consecutive or concurrent. §16-23-490. (Effective after June 3, 1986.)
- f.** Armed Robbery. Must serve at least seven (7) years to be eligible for parole if crime committed prior to January 1, 1996. After January 1, 1996, no parole crime. §16-11-330(A).
- g.** Manufacturing, Distribution, or PWID under §44-53-370(b) or §44-53-375(b) are parole eligible for first or second offenses. Third offenses are only parole eligible if all prior drug offenses are for possession.
- h.** Trafficking in drugs under §44-53-370(e) or §44-53-375(c).

- (1) Trafficking in drugs under §44-53-370(e) and sentenced to: “a mandatory minimum term of imprisonment of twenty-five years.” The no parole provision applies if the crime was committed on or after June 19, 1984, and before January 1, 1994, or on or after January 12, 1995.
  - (2) Trafficking in drugs under §44-53-370(e) and sentenced to: “a mandatory term of imprisonment of twenty-five years.” The no parole provision applies if the crime was committed on or after July 1, 1998, and before January 1, 1994, or on or after January 12, 1995. See *Kerr v. State*, 345 S.C. 183.547 S. E.2d 494 (2001).
  - (3) Trafficking in drugs under §44-53-370(e) and sentenced to: “a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years.” The no parole provision applies if the crime was committed on or after January 12, 1995.
  - (4) Trafficking in drugs under §44-53-375(c) and sentenced to: (1) “a mandatory minimum term of imprisonment of twenty-five years;” (2) “a mandatory term of imprisonment of twenty-five years;” or (3) “a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years.” The no parole provision applies if the crime was committed on or after January 12, 1995.
- i. Murder. For murder convictions after January 1, 1996, the offender is sentenced either to death, life without parole, or a thirty (30) year mandatory minimum without credits or parole eligibility.
  - j. No Parole Crimes. A no-parole crime is an A, B or C felony or a crime with a penalty of twenty (20) years or more. (Effective date: January 1, 1996.)
  - k. Most Serious Crimes. Upon a second conviction for a most serious crime, the offender must receive life without parole. §17-25-45(A). (Effective date: January 1, 1996.)
  - l. Serious Crimes. Upon a third conviction, the offender may, at the solicitor’s discretion, receive life without parole. §17-25-45(B). (Effective date: January 1, 1996.) Parole is possible on a life sentence for a serious or most serious crime if SCDC requests the Board to consider the case and the inmate:
    - is sixty-five (65) years of age;
    - has served thirty (30) years;
    - is seventy (70) years of age and has served at least twenty (20) years; or
    - has an illness where life expectancy is one year or less.

### **3. PAROLE ELIGIBILITY AND DOMESTIC VIOLENCE**

- S. C. Code 16-25-90 allows the Board to hear an inmate for parole after serving one-fourth of the sentence if the Board finds evidence in the transcript of the guilty plea, nolo contendere or conviction, of a history of domestic abuse against the inmate by the household member. This history can also be taken from a transcript of a post-conviction relief hearing. “Household member” is defined as spouses, former spouses. Prior to January 1, 2004, Household member included persons who have a child in common, and a male and female who are cohabiting or formerly have cohabited.
- If the Board makes a favorable ruling, the inmate gets a one-fourth eligibility calculation, annual parole consideration and a two-thirds vote is required to be granted parole.

- Allows an inmate to obtain a parole hearing after being convicted of a no parole crime.

#### **4. SUBSEQUENT VIOLENT OFFENDER ANALYSIS**

- a. The following are general rules governing subsequent violent offender analysis:
  - The Board must not grant parole to an offender serving a sentence for a second or subsequent violent conviction, following a separate sentencing event for a prior conviction of a violent crime. S. C. Code 24-21-640.
  - Crimes committed within one 24-hour period are treated as one offense.
  - Crimes committed as one continuous course of conduct are treated as one offense.
- b. Determination of continuous course of conduct falls under the Board's jurisdiction, not the Court's. State v. McKay, 386 S.E.2d 623 (1989).
- c. The subsequent crime must have been committed after June 3, 1986 and have been defined as violent at the time of commission of the crime.
- d. The prior crime can be committed at any time including after the offense date of the subsequent crime because the focus is on the date of conviction.
- e. For only the period of January 1, 1994 - January 12, 1995, the prior crime must have been defined as violent at the time the prior crime was committed.
- f. Crimes from other jurisdictions are not considered to determine SVO status.
- g. Manufacturing Methamphetamine (44-53-375(B)) cannot be a Subsequent Violent Offense.

### **C. STANDARDS FOR GRANTING PAROLE**

#### **1. THE ABSOLUTE DISCRETION OF THE BOARD**

Under South Carolina law the Board has the sole and exclusive power to grant or deny paroles.

#### **2. PAROLE CRITERIA CONSIDERED BY THE BOARD**

In making its parole decisions, the Board is required by law to carefully consider the record of the prisoner before, during and after imprisonment. In addition, the law also requires the Board to establish written, specific criteria for the granting of paroles. These criteria must be made available to all prisoners at the time of their incarceration, as well as to the general public. The Board will not parole a prisoner unless it determines, based on the following criteria, as well as any other factors the Board may consider relevant, that the conduct of the offender merits a lessening of the rigors of imprisonment; that the interests of society will not be impaired by granting parole; and that the offender has secured, or will be able to secure, suitable employment and residence. The publishing of these

criteria in no way binds the Board to grant a parole in any given case. The Board's specific parole criteria are set out below:

- The risk that the offender poses to the community;
- The nature and seriousness of the offender's offense, the circumstances surrounding that offense, and the prisoner's attitude toward it;
- The offender's prior criminal record and adjustment under any previous programs of supervision;
- The offender's attitude toward family members, the victim, and authority in general;
- The offender's adjustment while in confinement, including his progress in counseling, therapy, and other similar programs designed to encourage the prisoner to improve himself;
- The offender's employment history, including his job training and skills and his stability in the workplace;
- The offender's physical, mental, and emotional health;
- The offender's understanding of the causes of his past criminal conduct;
- The offender's efforts to solve his problems;
- The adequacy of the offender's overall parole plan, including his proposed residence and employment;
- The willingness of the community into which the offender will be paroled to receive that offender;
- The willingness of the offender's family to allow the offender, if he is paroled, to return to the family circle;
- The opinion of the sentencing judge, the solicitor, and local law enforcement on the offender's parole;
- The feelings of the victim or the victim's family, about the offender's release;
- Any other factors that the Board may consider relevant, including the recommendation of the parole examiner.

### **3. PAROLE FOR NON U.S. CITIZENS**

In considering paroles in the case of non-U.S. citizens, the Board gives the same consideration as it gives to U.S. citizens. When the Board receives requests to parole non-U.S. citizens to their native countries or to the Immigration and Customs Enforcement (ICE) for deportation, the Board considers this factor, along with all the other criteria it normally considers, in making its decision to grant or deny parole.

### **4. PSYCHOLOGICAL EXAMINATION OF CERTAIN OFFENDERS**

The law requires two classes of offenders who are eligible for parole to undergo a psychological examination by a duly qualified licensed psychologist or psychiatrist before the Board may consider them for parole (S. C. Code 24-21-610). The examination itself assesses the offender's current mental condition and his ability to adjust to life outside prison. The two classes of offenders for whom such an examination is required are:

- Any offender who has served a total of ten (10) consecutive years or more in prison; or
- Any offender who is serving a sentence for a sexual offense.

## 5. THE EFFECT OF UNRESOLVED DETAINERS AND DEFAULTS

The existence of an outstanding detainer or default against an offender who is eligible for parole does not operate as an automatic bar to parole. The Board may in its discretion parole such offenders in any of the following circumstances:

- An offender who has certain minor defaults (such as minor violations of prison rules) may still be paroled, on the special condition that any such defaults are cleared before release. In these cases, the grant of parole may be particularly desirable when the offender's incarceration on the current sentence has caused the minor defaults to occur. The Board may define what constitutes a "minor" default as it sees fit.
- An offender may be paroled to an in-state detainer or another state's detainer and be allowed to serve out the remainder of his/her sentence concurrently in that state.

### D. PAROLE DECISIONS

In addition to the decision to grant or deny parole, the Board or its panels may order a number of other actions as their decision. This section considers not only the decision to grant parole and the various forms that grant of parole may take, but it also considers those other decisions that the Board may make when it wants to do something other than grant parole outright.

#### 1. PAROLE

The full Board or one of its panels votes to grant parole and orders that a Certificate of Parole be prepared and issued by the Department. Voting by proxy or absentee ballot violates due process and is therefore not allowed. The order of parole must include the conditions to be met by the offender during parole. The Board or one of its panels may grant parole on the condition of the occurrence of some future event. For example, parole may be granted on the condition that the offender is accepted into a particular treatment program, or on condition that the offender obtain suitable employment or an approved residence. Whatever the condition upon which parole is contingent, the Board or the panel should indicate that condition in its vote. The case will be referred to the Board if the offender does not meet the conditions for parole.

- a. **Vote in the Case of Violent Offenders after 1986.** In the case of violent offenders whose offenses occurred after January 1, 1986, the vote to grant parole must be by at least two-thirds of the members of the Board members present; however, only a quorum must be present to conduct business.
- b. **Vote in the Case of Violent Offenders prior to 1986.** In the case of violent offenders whose offenses occurred before January 1, 1986, the vote to grant parole must be by a majority of members of the Board members present. These offenders cannot be considered by a three-member panel.
- c. **Vote in the Case of Non-violent Offenders.** In the case of non-violent offenders, the vote to grant parole must be by at least a majority of the members of the Board members present, or by a unanimous vote of a three-member panel.

- d. **Case Referred to the Full Board.** If a three-member panel fails to arrive at a unanimous vote, the case is then referred to the full Board for a final decision.

## 2. PROVISIONAL PAROLE

- a. This form of parole may be granted not more than ninety (90) days prior to the initial date of parole eligibility, nor after the initial parole eligibility date. An order of provisional parole must include the conditions to be met by the offender during the provisional parole, as well as the conditions to be met by the offender while on parole.
- b. **Administrative Review for Non-violent Offenders.** In the case of non-violent offenders, the Director may appoint an administrative hearing officer to review cases for parole. In this event, the hearing officer must submit to the full Board written findings of fact and recommendations, which shall then form the basis for the Board's decision.

## 3. PAROLE FOR MEDICAL REASONS

- a. Not sooner than one year before the date of any prisoner's parole eligibility, the Board is authorized by law to grant parole for medical reasons. In order to grant such a parole, the Board must first determine on the record the following facts:
  - The offender is terminally ill; and
  - Because of his illness, the offender cannot be reasonably expected to live for more than one year.
- b. As a matter of policy, the Board requires the medical opinion of two licensed physicians, whose prognosis states that the offender is terminally ill and to a reasonable degree of medical certainty cannot be expected to live for more than one year. One of these medical opinions must come from a physician attached to the Department of Corrections; the other may come from any other licensed physician. In no case is the Board ever required to grant a parole for medical reasons.

## 4. PAROLE FOR TERMINALLY ILL, GERIATRIC, OR PERMANENTLY DISABLED INMATES

S. C. Code 24-21-715 (A) (1) 'Terminally ill' means an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing or, since the time of sentencing, has progressed to render the inmate terminally ill, and that will likely produce death within two years, and that is so debilitating that the inmate does not pose a public safety risk. (2) 'Geriatric' means an inmate who is seventy years of age or older and suffers from chronic infirmity, illness, or disease related to aging, which has progressed so the inmate is incapacitated as determined by a licensed physician to the extent that the inmate does not pose a public safety risk. (3) 'Permanently incapacitated' means an inmate who no longer poses a public safety risk because of a medical condition that is not terminal but that renders him permanently and irreversibly incapacitated as determined by a license physician and which requires immediate and long term residential care. (B) Notwithstanding another provision of law, only the full Board, upon a petition filed by the Director of the Department of corrections, may order the release of an inmate who is terminally ill, geriatric, permanently incapacitated, or a combination of these conditions. (C) The parole order issued by the Board pursuant to this section must include findings of fact that substantiate a legal and medical conclusion that the inmate is terminally ill, geriatric, permanently incapacitated, or

a combination of these conditions, and does not pose a threat to society or himself. It also must contain the requirements for the inmate's supervision and conditions for his participation and removal. (D) An inmate granted a parole pursuant to this section is under the supervision of the Department of Probation, Parole and Pardon Services. The inmate must reside in an approved residence and abide by all conditions ordered by the Board. The department is responsible for supervising an inmate's compliance with the conditions of the Board's order as well as monitoring the inmate in accordance with the department's policies. (E) The department shall retain jurisdiction for all matters relating to the parole granted pursuant to this section and conduct an annual review of the inmate's status to ensure that he remains eligible for parole pursuant to this section. If the department determines that the inmate is no longer eligible to participate in the parole set forth in this section, a probation agent must issue a warrant or citation charging a violation of parole and the Board shall proceed pursuant to the provisions of Section 24-21-680.

## **5. SPECIAL PAROLE OF VETERANS FOR PSYCHIATRIC TREATMENT**

Any offender who is a veteran and who is otherwise eligible for parole, except that the offender's mental condition is deemed by the Board to be such that he or she should not be released from confinement, may be released on special parole to the custody of the Veterans Administration for psychiatric treatment, subject to its approval. Or, the offender may be released on parole to the custody of a committee appointed to commit such offenders to a Veterans Administration Hospital.

- The Board retains sole discretion to grant this kind of special parole.
- When the Board, in its sole discretion, grants special parole, the offender must be transferred directly from the place of confinement to a Veterans Administration Hospital which provides psychiatric care.
- When any offender who has been paroled to the Veterans Administration for psychiatric treatment is determined to be in suitable mental condition to be released from confinement, he/she may be released to continue their parole under community supervision of the Department, subject to all standard and any special conditions of parole.

## **6. PAROLE TO DETAINER**

The Board or a panel may parole an offender to a detainer in this state or in another state for confinement or otherwise to answer the charges set forth in the detainer. The Board may further order that the parole on the South Carolina sentence run concurrently with any sentence to be served in the state where the detainer originated.

## **7. PAROLE TO ANOTHER AUTHORITY**

The Board or a panel may parole an offender directly to another state for supervision under that state's parole authority.

## **8. CONTINUED OR DEFERRED CASES**

The Board or panel may continue or defer any case to allow for further investigation to be conducted and additional relevant information to be gathered when the interests of fairness and justice seem to require it. Whenever any case is continued or deferred, the Board or the panel must inform the



offender of its reasons for taking that action, and it must also schedule a date when the offender can next be heard. The date on which the hearing is re-scheduled must be fixed on the day the continuance or deferral is ordered, and it should be set on the first available date after the date of the continuance or deferral.

## **9. POSTPONED CASES**

After hearing any parole case, the Board or panel may, where it seems appropriate under the circumstances to do so, postpone giving its final decision for up to one year in order to allow an offender to complete a treatment program, vocational training course, or other similar worthwhile endeavor.

## **10. BARTON HEARINGS**

The South Carolina Supreme Court decision in Barton v. SCDPPPS held that the Board is to consider a majority and two-thirds majority to be based on the number of Board members present, rather than based on the full Board membership. If evidence showing that an offender may have had the required number of votes at a past hearing is brought to the Department's attention, the Office of Parole Support Services staff will investigate to verify that the offender did receive the proper number of votes, and the Department's Office of General Counsel will verify it qualifies under Barton. The Department's Office of Victim Services will contact the victim and explain the Barton decision and the Board's vote. During a full Board day, the Board will hold a Barton hearing on the offender. This hearing will not require the presence of the victim or the offender.

At the Barton Hearing, the Board may impose any conditions on the offender as it feels necessary, including all statutory conditions. The Board will then sign a special Barton Order of Parole, which ratifies the votes of the previous Board members which would have granted conditional parole. The offender is then treated as any other offender granted conditional parole, and will have to comply with the conditions in order to receive parole.

# **E. THE DENIAL OF PAROLE AND ITS EFFECT**

## **1. REASONS FOR DENIAL OF PAROLE**

A denial of parole continues the status quo: the offender remains in prison until his next parole hearing or until he maxes out of his sentence.

Taking these standards and criteria of parole into account in its deliberations, the Board will not as a general rule grant parole when it is reasonably satisfied that the offender does not deserve a lessening of the rigors of imprisonment and that the interests of society will not be best served by granting parole. When the Board or a panel decides to deny parole, due process of law requires it to express its reasons for rejection in writing. To do this, the Board or panel should begin by making some such general introductory statement as the following:

"The Board (or the panel) is reasonably satisfied that (Offender's Name) does not at this time deserve a lessening of the rigors of imprisonment and that the interests of society will not be best served by granting parole now."

After this general statement, the Board or the panel should then enumerate its reasons for denying parole. Due process requires that these reasons be sufficient to explain to the offender why he was denied parole. Further, due process also requires that the reasons for denying parole be rationally

related to the written standards and criteria of parole which the Board has adopted and published. The following reasons for denying parole are rationally related to the Board's published parole criteria:

- Nature and seriousness of the current offense
- Indication of violence in this or a previous offense
- Use of a deadly weapon in this or a previous offense
- Prior criminal record indicates poor community adjustment
- Failure to successfully complete a community supervision program
- Institutional record is unfavorable

## **2. SUBSEQUENT HEARING FOLLOWING A DENIAL**

- a. **A denial of parole continues the status quo.** The offender remains in prison until his next parole hearing or until he maxes out of his sentence, whichever occurs first.
- b. **Subsequent Hearing of non-violent offenders.** Following a denial of parole, offenders serving a sentence for a non-violent crime will have a parole hearing one year after the date of the last hearing in which parole was denied.
- c. **Subsequent Hearing of violent offenders.** Following a denial of parole, offenders serving a sentence for a violent crime will have a parole hearing two years after the date of the last hearing in which parole was denied, unless the law provides for annual review.

## **F. CONDITIONS OF PAROLE**

Underlying every parole is the contractual agreement between the State and the parolee. In exchange for the privilege of receiving a parole, the parolee agrees to abide by the terms and conditions of supervision. If the parolee refuses the offer, in whole or in part, then parole is not granted. If the offer is accepted, with all standard and special conditions, then parole is granted.

### **1. THE STANDARD CONDITIONS**

Attached to every grant of parole is a set of ten standard conditions of parole which is always reduced to writing on the formal Certificate of Parole issued by the Department. These are set forth below:

- I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my release or not later than 8:30 a.m. on the next business day, and as instructed by the Department; and I shall make complete and truthful reports to the Agent.
- I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
- I shall not use controlled substances, except when properly prescribed by a licensed physician, not consume alcoholic beverages to excess nor visit establishments whose primary business is the sale and drinking of alcoholic beverages. Furthermore, I shall submit to a urinalysis or a blood test when requested by an Agent of the Department, and I agree that any of these test results may be used as evidence in any hearing.

- I shall not possess or purchase any firearms, knives, or other dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
- I shall work diligently at a lawful occupation, furthermore, I shall notify my Agent if I become unemployed.
- I shall not violate any federal, state, or local laws, and shall contact my supervising agent if I am ever arrested or questioned by a law enforcement officer for any reason whatsoever.
- I shall pay supervision fees as determined by the department.
- I shall not leave the state without permission from my agent. Furthermore, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise have been entitled to and agree to return to South Carolina when directed by my Agent, the Court, Board or by a warrant.
- I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
- I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its Agent.
- Unless I was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year, I shall be subject to search or seizure, without a search warrant, with or without cause, of my person, any vehicle I own or am driving, and any of my possessions by: (1) any probation agent employed by the Department; or (2) any other law enforcement officer.

## 2. SPECIAL CONDITIONS

The Board has discretion to impose additional, special conditions of parole in addition to the standard conditions. These special conditions of parole must be reasonably related to the offender's crime, necessary to further some rehabilitative purpose, and not violate of any state or federal law or public policy. Conditions may not be punitive in nature.

Within these limitations, the Board has a fairly broad power to impose any special conditions that might reasonably serve to further the general purposes of supervision on parole. The special conditions which the Board most commonly imposes are selected from the list of special conditions given below. This list is not exhaustive. Within the limitations referred to above, the Board may impose other special conditions of parole.

- The offender must attend and successfully complete a substance-abuse rehabilitation program for as long as may be necessary to receive treatment, and he must submit to drug tests whenever asked to do so.
- The offender is to be placed on intensive supervision for an indeterminate period not to exceed six (6) months, as determined by the Department.
- The offender must attend a mental-health care program for as long as may be necessary to receive adequate treatment.
- The offender must avoid any contact with the victim or the victim's family while on parole.
- The offender must attend and successfully complete substances abuse program as determined by the Addictions Treatment Unit and attend aftercare program.

- The offender must attend the Parole Employment Program (PEP).
- The offender must be placed under home detention for an indeterminate period not to exceed ninety (90) days, as determined by the Department.
- The offender must be placed on electronic monitoring for an indeterminate period not to exceed six (6) months, as determined by the Department.
- The offender shall be ordered to pay restitution to the victims.
- The offender must pay court ordered fines.
- The offender must secure acceptable residence and employment
- The offender is granted parole, subject to his having undergone a psychological examination and received an acceptable evaluation from a duly qualified psychologist. (This is required for offenders who have served 10 consecutive years and sex offenders.)
- The offender may be paroled to a detainer only.
- The offender must attend and successfully complete the Self Paced In-Class Education Program (SPICE).
- The offender may be paroled to another state for supervision provided approval by receiving state. The offender is exempt from having to pay South Carolina supervision fees while being supervised on parole in another state. The offender may request to return to South Carolina through the SCDPPPS Interstate Compact Office.
- For Provisional Parole. The offender must diligently seek and obtain acceptable employment within 90 days of the grant of his provisional parole or have that parole revoked. Further, the offender must comply with all other conditions of his provisional parole. The offender is exempt from having to pay supervision fees while he is actively and diligently seeking acceptable employment while under provisional parole.
- The offender must participate in the Department of Corrections' Pre-Release Program.
- Exempt supervision fees
- The offender must be placed in a Restitution Center and must comply with the rules and regulations. Recommend 90 days, however, may be extended to 6 months.
- The offender is to complete \_hours of Public Service Employment while on parole (up to 100 hours), excepting violent offenders and sex offenders.
- The offender must reimburse the Department for the cost of the psychological evaluation.

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## **PART III**

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### **REVOCATIONS, MODIFICATIONS AND RECONSIDERATIONS**

## A. REVOCAION OF PAROLE CASES

If a parolee willfully violates any of the conditions of parole, a final determination must be made by the Board as to whether the offender's parole should be revoked and whether he/she should be required to serve any remaining unserved part of his sentence.

### 1. CONSTITUTIONAL REQUIREMENTS OF PROCEDURAL DUE PROCESS

Parolees are entitled to both a preliminary and a final revocation hearing before parole may be revoked.

- a. Preliminary Hearing.** Preliminary hearings are conducted by hearing officers employed by the Department, who must be neutral, detached, fair and impartial. At the preliminary hearing, the hearing officer must make a determination that reasonable grounds exist to warrant going forward with the revocation process. A finding by the hearing officer that probable cause exists to believe that the parolee did willfully violate parole is sufficient to bind over the parolee and return him/her to the detention facility until the final hearing if the parolee has not been released on bond. The Hearing Officer will prepare a written summary of their findings for the Parole Board's consideration at a final hearing.

In cases where a criminal conviction forms the basis of the violation for which the revocation of parole is sought, and the parolee has received a sentence of six months or more to serve, he/she is not entitled to a preliminary hearing. This is because the criminal trial that results in the conviction adequately protects the offender's due-process rights.

- b. The Final Hearing.** If, after an unfavorable decision at the preliminary hearing, the parolee desires a final hearing, due process requires that this be granted within a reasonable time after being taken into custody. The final hearing must go beyond the inquiry made at the preliminary hearing. It must lead to a final evaluation of any contested relevant facts, and it must consider whether the facts, as they are found, warrant full revocation, or something less severe. The parolees are entitled to the following procedural rights:

- Have a final hearing conducted reasonably promptly after the preliminary hearing;
- Receive written notice of the alleged violations upon which revocation is sought;
- Receive a fair and impartial hearing, at both the preliminary and the final hearing;
- Be present at the preliminary and final hearings, to offer evidence in their own defense, and to show that they did not violate the conditions of parole, or that, if they did, the violation was not willful;
- Obtain an attorney at his or her own expense;
- Have a bond set by a circuit court judge pending the outcome of the preliminary and the final hearing;
- Have the evidence against them disclosed;
- Cross examine witnesses to the violation who testify, unless there is good cause for not allowing it;

- Receive a written statement by the Board or the panel of the evidence relied on and the reasons for revoking parole (if the Board or the panel finds by a preponderance of the evidence that the parolee willfully violated parole and decides to revoke the parole).

## 2. PROCEDURES FOR THE FINAL HEARING

In parole violation hearings, the rules of evidence do not need to be strictly observed. Hearsay is admissible, but may be challenged by the parolee. The Fourth Amendment's Exclusionary Rule does not apply. The standard to support revocation is proof by a preponderance of the evidence that the parolee willfully violated the conditions of parole.

The procedures adopted by the Board, in its discretion to administer this part of its business, should not be confused with the procedural requirements mandated by constitutional due process. Although these procedures conform with those requirements, nothing in them should be construed in such a way as to give parolees any more than their limited due process rights.

- a. **Revocation by the Board or a Panel.** The full Board may revoke parolee by a majority vote. A three-member panel may revoke parole by unanimous vote.
- b. **Call to Order.** The Chair or designee, is responsible for calling hearings to order, identifying by name the members of the Board who are present, and opening and closing the proceedings.
- c. **Presenting the Cases.** The Board Support Services Director or designee will assist the Board or the panel by presenting the cases for review and provide technical assistance. Cases are presented according to the following protocol:
  - The parolee is identified by name and SCDC number.
  - If the parolee has an attorney, the attorney is identified by name.
  - The case against the parolee is presented. This includes all violations alleged in the warrant or citation, the facts surrounding those allegations, and evidence in support of those facts.
- d. **Parolee's Opportunity to be Heard.** Once the case against the parolee has been presented, the Chair must give the parolee or his/her attorney an opportunity to be heard and present any relevant evidence. This may include evidence that tends to show either that the parolee did not violate the conditions of supervision as alleged, or that, if he/she did violate, he/she did not do so willfully, or if he/she did willfully violate them, why parole should not be revoked. The parolee may present either documentary evidence or the testimonial evidence of witnesses at the hearing.
- e. **Examination by the Board or Panel.** After the parolee has had an opportunity to be heard, the Chair may give the members of the Board or panel the chance to ask either party, or any of the witnesses any questions. The Chair presides over the examination and maintains order.
- f. **The Record.** All violation hearings shall be recorded.

## 3. THE FINAL DECISION

After the Board or the panel has heard all the evidence from both sides, it then deliberates and makes its final decision. The Board is the sole judge as to whether parole has been violated, and no appeal

is allowed. See S. C. Code 24-21-680. Insofar as the Board or the panel is reasonably satisfied that its decision is supported by the evidence, the decision may take any of the following forms.

- a. **Revocation of Parole.** If the evidence is sufficient to show that the parolee willfully violated the conditions of parole, the Board may determine these violations warrant revocation of parole and enter such an order.
- b. **Continued on Parole.** There are two possible bases upon which parole may properly be continued:
  - The evidence is insufficient to show that the parolee willfully violated the conditions of parole.
  - Although the evidence is sufficient to show that the parolee willfully violated parole, evidence presented in mitigation supports continuing the parolee on parole.
- c. **In Addition to a Continuation.** In addition to continuing the parolee on parole, the Board or panel may decide to do any of the following:
  - Reprimand the parolee for his/her conduct and issue a written warning citing the specific misconduct;
  - Order that the parolee's supervision be enhanced;
  - Impose any special condition that may be appropriate;
  - Remove any condition no longer deemed appropriate.
- d. **The Order of Continuation.** At the conclusion of the hearing, the Board or the panel should issue and sign its Order of Continuation. The Order itself should accurately reflect the action taken at the hearing, and should include any further conditions of supervision that were imposed by the Board or the panel. The parolee should be given a copy of this Order.

#### 4. THE EFFECT OF REVOCATION

The offender is remanded to the custody of the Department of Corrections to serve the remaining unserved part of his/her sentence, less any credit for time served on parole before the revocation.

The Board's policy is offenders will be eligible for parole consideration one year following revocation. If the offender is paroled again and then revoked, the Board's policy is that parole eligibility will be two years after the second or subsequent revocation. When the basis of the revocation is a new conviction, then as a matter of law the offender will not be considered for parole until the new sentence becomes parole eligible. The Board may never consider an offender for parole before the eligibility date, except where the law specifically allows it.



## **B. MODIFICATIONS OF PAROLE CASES**

### **1. IN GENERAL**

Violations of parole do not always result in revocation. Revocation of parole is generally reserved for the most serious violations, including but not limited to: new criminal convictions; absconding from supervision; and other violations that threaten the safety of the community.

In such cases, modification of the conditions of parole may be the best solution. Modifications of parole serve two purposes: they respond to the parolee's individual rehabilitative needs as those needs change over time and allow for parole to continue in a way that reasonably ensures the safety of the community, while saving the state the cost of incarcerating the offender. Where modification of parole seems to offer the best course, the law allows the supervising parole agent to issue a citation, instead of an arrest warrant, to bring the parolee before an administrative hearing officer, so that appropriate modification can be made.

As a matter of policy, the Department prefers to continue cases on parole by modifying the conditions of supervision where appropriate and reasonably likely to lead to successful completion of supervision rather than resorting to revocation.

### **2. PROCEDURE**

The Board has delegated the authority to the Department's Administrative Hearings Section to hear and decide all parole cases where a modification of parole is being sought, except with the Board continues parole after a revocation hearing and modifies conditions, the Board has left the matter of modifications to the Department's Hearing Officers.

In addition to being able to modify parole by imposing any additional condition of supervision that an agent could impose, Administrative Hearing Officers may also:

- Place the offender on Home Detention;
- Place the offender in a Halfway House;
- Order the offender to complete Public Service Employment;
- Order the offender to pay restitution (actual damages only) for violations committed while under supervision;
- Place the offender on a higher, or a lower level of supervision, including placement on intensive supervision;
- Restructure the offender's payment schedule;
- Restructure the restitution payment schedule, with Board approval, on which the offender pays restitution;
- Recommend placement at a Restitution Center;
- Exempt or defer the offender's supervision fees;
- Modify any other special conditions of parole as may be appropriate.

## **C. RECONSIDERATIONS OF PAROLE CASES**

After the Board or the panel has decided a parole case, the Board or panel may want to re-consider its decision.

Requests for reconsideration after a parole rejection will not be accepted for routine parole denials. However, if within fifteen (15) days of the date of the notice of rejection letter, the inmate or the inmate's attorney submits a letter to the Director of Board Support Services requesting a reconsideration hearing, and provides information that the Board may have based its decision on erroneous information or can provide additional information that the Board did not have during the hearing, the Board may decide to grant a reconsideration hearing. The Director of the Office of Board Support Services will make a determination as to whether or not the information provided is sufficient to grant a rehearing. If the Director of Board Support Services agrees, this information will be forwarded to the Board's Chair for a final determination. A letter will be sent to the inmate or the inmate's attorney notifying them of the decision. There is no appeal of the final decision.

### **1. REASONS FOR CONDUCTING A RECONSIDERATION**

- a. Subsequent Misconduct by the Inmate.** In cases where the Board has granted parole conditioned on the satisfaction of some pre-release requirement, and the inmate has committed some violation of prison rules before the actual release from prison, the case will be presented to the Board or panel in order to deal with the subsequent misconduct.
- b. New Criminal Charges Against the Inmate.** The inmate received a new conviction after conditional parole but prior to release.
- c. After-Acquired Information About the Inmate.** If the Board or panel acquires new information after it has made its final decision and in the Board's or panel's judgment is so important as to require an immediate reconsideration of the case, the case will be presented to the Board or panel to review its decision.
- d. Failure of the Inmate to Meet Conditions of Release.** The Board will review cases in which the inmate has failed to meet the conditions of release.

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## **PART IV**

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### **PARDONS, REPRIEVES, AND COMMUTATIONS**

## **A. PARDON PROCESS**

A pardon is an executive act of grace or clemency releasing an offender from all the legal consequences of a criminal conviction. The Board's decision to grant or deny a pardon is discretionary. The Board may only consider a pardon for those offenders who are eligible to receive pardons under S. C. Code 24-21-950. The Board Support Services Director is responsible for determining which applicants are eligible to be considered for a pardon, with the exception of those applicants whose eligibility is based on the assertion of extraordinary circumstances. Pursuant to S. C. Code 17-25-322(E), the Board may not grant a pardon to an applicant until the restitution and collection fees required by the restitution order have been paid in full.

The Board has complete discretion in all aspects of a pardon consideration. Applicants do not have a right under the due process clause of the constitution to a statement of the reasons for the Board's decision, and the decision may not be appealed.

### **1. PERSONS ELIGIBLE TO BE CONSIDERED FOR A PARDON\***

Anyone may apply for a pardon, but the Board will only consider the applications of those persons who have been determined to be eligible under the law for a pardon. The law also allows the victims of the crime, as well as any member of the offender's family living in South Carolina, to petition for a pardon.

- a. Persons Discharged from Supervision.** Probationers, parolees, and all other individuals under supervision are eligible to apply for a pardon at any time after their discharge from supervision.
- b. Persons Discharged from Prison.** Offenders who are discharged from their sentence without supervision are eligible to be considered for a pardon at any time after their discharge.
- c. Parolees Under Supervision.** Parolees are eligible to apply for a pardon after successfully completing five (5) years of supervision.
- d. Inmates Serving Sentences.** Inmates who have not reached their parole eligibility date may be considered for a pardon only if they can produce evidence showing the most extraordinary circumstances why they should be considered.

The Office of Board Support Services will follow the procedures outlined below for these requests:

- Written requests are received by the Office of Board Support and forwarded to the Office of General Counsel for review.
- The Office of General Counsel will review the inmate's request and submit a recommendation to the Board Chair at the next available parole or pardon hearings.
- If the Board's Chair concurs with the recommendation, either a letter is written to the inmate informing him/her of the decision to deny the request or a pardon application is sent back to the inmate to continue the pardon process.
- If the Board's Chair does not concur with the recommendation, the request will be reviewed by the full Board to make a determination.
- The Board's decision is final.

**e. Inmates With Terminal Illness**

The Board may also consider the pardon application of any prisoner who is suffering from a terminal illness where the prisoner is not expected to live longer than one year as verified by the Department of Corrections.

\*The Board may not grant a pardon to an applicant until the restitution and collection fees required by the restitution order have been paid in full. (S. C. Code 17-25-322(E))

**2. FILING OF APPLICATION**

Applications may be obtained from the county offices, the Department's Office of Board Support Services, and the Department's website. The non-refundable fee for filing an application is one hundred dollars (\$100.00).

**3. PARDON INVESTIGATIONS**

The Department's Office of Field Operations thoroughly investigates pardon applications and the Department's Office of Board Support Services prepares cases for the Board's review.

**4. REVIEW BY THE BOARD**

The Office of Board Support Services will send the pardon applications and the Department's investigation reports to each member of the Board not less than two weeks before the pardon hearing. In preparation for the pardon hearing, the Board carefully reviews all applications.

Pardon hearings are held at the Central Office location. The Department will provide notice of the hearing to the applicant and other interested parties. Pardon applicants are not required to be present at the hearing. The Board may decide pardon cases in the absence of the applicant, so long as the applicant has been given notice of the hearing. The Board hears all scheduled cases and decides each case on its individual merits.

**5. THE ORDER OF PARDON**

The grant of a pardon requires a two-thirds vote of the Board. When the Board votes to grant a pardon an Order of Pardon is issued.

**6. THE CERTIFICATE OF PARDON**

After the Order of Pardon has been issued, the applicant will receive a Certificate of Pardon. The certificate states that the person is pardoned from all legal consequences of the crime. However, a pardon will not remove an individual from the Sex Offender Registry. (S.C. Code 23-3-430(F)).

**7. RIGHTS RESTORED**

Under South Carolina law, a pardon fully restores all civil rights lost as a result of the conviction and sentence. These rights include:

- The right to serve on a jury;
- The right to hold public office, except in the case where the crime was embezzlement of public funds;
- The right to testify at a trial without having the fact of conviction introduced for impeachment purposes, unless the crime indicates a lack of veracity;
- The right to have one's testimony included in a legal proceeding if the crime was perjury;
- The right to be licensed for any occupation requiring a license; and
- The right to own and possess firearms under state law.

## **8. IRREVOCABLE UNLESS OBTAINED THROUGH FRAUD**

Once the Certificate of Pardon is issued, it cannot be revoked or rescinded unless it was obtained through fraud. Pardons obtained through fraud are void.

## **9. RE-APPLICATION AFTER A DENIAL OF PARDON**

Anyone whose application for a pardon is considered but denied must wait one year from the date of the denial to re-apply. The filing fee to re-apply is one hundred dollars (\$100.00).

## **B. REPRIEVES AND COMMUTATIONS**

The Governor has the power to grant reprieves in capital cases only and to commute death sentences to life imprisonment. The Governor may refer these matters to the Board for consideration and recommendations. The Governor may or may not adopt the Board's recommendations; but if he/she does not, he/she must submit the reasons to the General Assembly (See S.C. Code 24-21-910; S.C. Constitution Article 4, Section 14).