

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

400T0295

## HOUSE BILL NO. 1022

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to revise certain parole hearing provisions regarding inmate  
2 compliance, waivers, and teleconferencing.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 24-15A-35 be amended to read as follows:

5 24-15A-35. At least thirty days prior to an inmate's initial parole date, the warden shall  
6 notify the board in writing of the inmate's substantive compliance or noncompliance with the  
7 inmate's individual program directive. If there is insufficient information for the warden to  
8 determine substantive compliance or noncompliance, the warden shall report a finding of  
9 undetermined compliance to the board. The warden shall also notify the inmate in writing of the  
10 warden's report of substantive compliance ~~or, noncompliance,~~ or undetermined compliance. At  
11 least thirty days prior to an inmate's subsequent, discretionary parole hearing, the warden shall  
12 submit to the board an updated report of the inmate's conduct and progress since the last  
13 hearing.

14 Section 2. That § 24-15A-39 be amended to read as follows:

15 24-15A-39. Any inmate whom the warden reports has not substantively complied with the



1 individual program directive or for whom there is insufficient information for the warden to  
2 determine substantive compliance or noncompliance shall have a hearing with the board to  
3 determine the inmate's compliance with the individual program directive. However, if the  
4 inmate wishes to admit to noncompliance with the individual program directive, the inmate may  
5 waive a ~~personal~~ an appearance at this hearing.

6 The board may determine the inmate has substantively complied with the individual  
7 program directive and release the inmate at the inmate's initial parole date or as soon as  
8 reasonably possible following the initial parole date and hearing. The board may also determine  
9 the inmate has not substantively met the requirements of the individual program directive, deny  
10 release at the initial parole date and set the time for a subsequent discretionary parole hearing.  
11 If an inmate does not have an individual program directive, the board shall utilize the standards  
12 contained in § 24-15A-42 in making its determination. Any inmate appeal of a finding of  
13 noncompliance by the board shall be filed pursuant to chapter 1-26 in the county in which the  
14 inmate is confined or in Minnehaha County if the inmate is housed outside the state of South  
15 Dakota.

16 Any inmate not released at the time of the inmate's initial parole date shall have a  
17 discretionary parole hearing at least every two years.

18 Section 3. That § 24-15A-21 be repealed.

19 ~~— 24-15A-21. If an inmate is housed in an institution outside this state at the time of a parole~~  
20 ~~hearing pursuant to this chapter, the board shall request that the paroling authority in the~~  
21 ~~receiving state hold a courtesy hearing and submit to the board their findings regarding the~~  
22 ~~inmate.~~

23 Section 4. That § 24-13-11 be amended to read as follows:

24 24-13-11. The Board of Pardons and Paroles may conduct hearings by ~~telephone~~

1 ~~conferencing or interactive video conferencing~~ teleconference during a regularly scheduled  
2 hearing. ~~If the hearing concerns the revocation of the prisoner's parole or is the prisoner's initial~~  
3 ~~parole hearing pursuant to § 24-15A-39, at least one member of the board shall be physically~~  
4 ~~present with the prisoner.~~ The board may receive documentary evidence via facsimile machines  
5 or other electronic means of document transfer.

6 Section 5. That § 24-15-8 be amended to read as follows:

7 24-15-8. When an inmate becomes eligible for consideration for parole, the inmate ~~shall be~~  
8 ~~called before~~ is entitled to a hearing with the Board of Pardons and Paroles to ~~personally~~ present  
9 the inmate's application for parole. ~~If the inmate is housed in an institution outside of this state,~~  
10 ~~the board may request that the paroling authority in the receiving state hold a courtesy hearing~~  
11 ~~pursuant to the rules and regulations of the receiving state and submit to the board their findings~~  
12 ~~regarding the inmate.~~ An inmate may decline parole consideration and waive the right to a  
13 hearing. The board may issue an order to the Department of Corrections that the inmate shall  
14 be paroled if it is satisfied that:

- 15 (1) The inmate has been confined in the penitentiary for a sufficient length of time to  
16 accomplish the inmate's rehabilitation;
- 17 (2) The inmate will be paroled under the supervision and restrictions provided by law for  
18 parolees, without danger to society; and
- 19 (3) The inmate has secured suitable employment or beneficial occupation of the inmate's  
20 time likely to continue until the end of the period of the inmate's parole in some  
21 suitable place within or without the state where the inmate will be free from criminal  
22 influences.

23 Neither this section nor its application may be the basis for establishing a constitutionally  
24 protected liberty, property, or due process interest in any prisoner.

1 Section 6. That § 24-15-23 be amended to read as follows:

2 24-15-23. Subject to the provisions of §§ 24-15-23.1 and 24-15-23.2, within ten working  
3 days of the arrest of the parolee, a preliminary hearing shall be held. The preliminary hearing  
4 shall be held before an independent hearing officer to determine if there is probable cause to  
5 believe that the parolee has violated the terms and conditions of the parolee's parole status. The  
6 parolee has the right to waive this preliminary hearing at any time after the order for arrest has  
7 been issued by the executive director of the Board of Pardons and Paroles. If probable cause is  
8 found to exist, the parolee is to be returned to the penitentiary, there to be held, for a hearing to  
9 be held before the Board of Pardons and Paroles to determine whether the parole should be  
10 revoked. If the parolee wishes to admit to an alleged violation of conditions of parole, the  
11 parolee may waive a ~~personal~~ an appearance at the revocation hearing with the board.

12 Section 7. That § 24-15-30 be amended to read as follows:

13 24-15-30. A request for waiver of a right to a parole hearing or ~~of a personal~~ an appearance  
14 at a parole hearing pursuant to § 24-15-8, 25-15-23, 24-15A-39, or 24-15A-41 shall be  
15 submitted in writing to the Board of Pardons and Paroles by the inmate or parolee.

16 Section 8. That chapter 24-15A be amended by adding thereto a NEW SECTION to read  
17 as follows:

18 Notwithstanding an inmate's statutory right to refuse parole or waive parole consideration,  
19 the Board of Pardons and Paroles may parole an inmate to the custody of another state or federal  
20 jurisdiction for the purpose of confinement and or deportation if it is in the best interest of the  
21 citizens of South Dakota.

22 Section 9. That § 24-15A-1 be amended to read as follows:

23 24-15A-1. The provisions of this chapter do not apply to persons sentenced to prison for  
24 crimes committed prior to July 1, 1996, except the provisions in §§ 24-15A-18 and 24-15A-19

1 involving multiple sentences occurring both prior and subsequent to the enactment of this  
2 chapter and the provisions of §§ 24-15A-8.1, 24-15A-9, 24-15A-10, 24-15A-11, 24-15A-11.1,  
3 24-15A-31, 24-15A-37, ~~and~~ 24-15A-40, and section 8 of this Act.