

AN ACT

ENTITLED, An Act to revise certain parole hearing provisions regarding inmate compliance, waivers, and teleconferencing.

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

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

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

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

24-15A-39. Any inmate whom the warden reports has not substantively complied with the individual program directive or for whom there is insufficient information for the warden to determine substantive compliance or noncompliance shall have a hearing with the board to determine the inmate's compliance with the individual program directive. However, if the inmate wishes to admit to noncompliance with the individual program directive, the inmate may waive an appearance at this hearing.

The board may determine the inmate has substantively complied with the individual program directive and release the inmate at the inmate's initial parole date or as soon as reasonably possible following the initial parole date and hearing. The board may also determine the inmate has not substantively met the requirements of the individual program directive, deny release at the initial

parole date and set the time for a subsequent discretionary parole hearing. If an inmate does not have an individual program directive, the board shall utilize the standards contained in § 24-15A-42 in making its determination. Any inmate appeal of a finding of noncompliance by the board shall be filed pursuant to chapter 1-26 in the county in which the inmate is confined or in Minnehaha County if the inmate is housed outside the state of South Dakota.

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

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

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

24-13-11. The Board of Pardons and Paroles may conduct hearings by teleconference during a regularly scheduled hearing. The board may receive documentary evidence via facsimile machines or other electronic means of document transfer.

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

24-15-8. When an inmate becomes eligible for consideration for parole, the inmate is entitled to a hearing with the Board of Pardons and Paroles to present the inmate's application for parole. An inmate may decline parole consideration and waive the right to a hearing. The board may issue an order to the Department of Corrections that the inmate shall be paroled if it is satisfied that:

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

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

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

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

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

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

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

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

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

24-15A-1. The provisions of this chapter do not apply to persons sentenced to prison for crimes committed prior to July 1, 1996, except the provisions in §§ 24-15A-18 and 24-15A-19 involving multiple sentences occurring both prior and subsequent to the enactment of this chapter and the provisions of §§ 24-15A-8.1, 24-15A-9, 24-15A-10, 24-15A-11, 24-15A-11.1, 24-15A-31, 24-15A-37, 24-15A-40, and section 8 of this Act.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1022

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1022
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State