As of March 21, 2018, South Dakota provides compassionate release to eligible prisoners with serious or terminal illnesses, or who are elderly and have served a specified portion of their sentences, through Compassionate Parole.\(^1\) In addition, eligible prisoners with certain medical conditions may also be released under the Extension of Confinement rules.\(^2\)

**COMPASSIONATE PAROLE**

### I. ELIGIBILITY

**Medical Condition/Age** - A prisoner may be considered for Compassionate Parole if he or she:

- Is seriously ill and not likely to recover;\(^3\)
- Has a terminal illness;\(^4\)
- Requires extensive medical care or significant chronic medical care;\(^5\)
- Is age 65 or older and (1) has served at least 10 consecutive years of his or her sentence; (2) has a current sentence for conviction of a Class 3 felony or below; and (3) has medical care needs that are “at least double the average annual medical cost of the inmate population;”\(^6\) or
- Is age 70 or older and has served at least 30 consecutive years of his or her sentence.\(^7\)

**Exclusions** - Prisoners serving a “capital punishment sentence” are not eligible for Compassionate Parole.\(^8\)

**Additional Eligibility Criteria** - A prisoner may not be released on Compassionate Parole if he or she is a “medically indigent person,” defined as someone who requires “medically necessary hospital services” for which no public or private third-party coverage is available.\(^9\) To be released on Compassionate Parole, a prisoner’s release plan must ensure that his or her health care expenses will be paid either by the prisoner or third party payer, including “Medicare, Medicaid, Indian Health Service, veteran’s assistance, or private insurance.”\(^10\)

### II. APPLICATION/REFERRAL

A prisoner can be referred to the Secretary of the South Dakota Department of Corrections (Department) for Compassionate Parole consideration by (1) a health care provider or (2) the Warden.\(^11\)
III. DOCUMENTATION AND ASSESSMENT

If the Secretary decides that the prisoner meets the eligibility criteria for Compassionate Parole, he or she is referred to the South Dakota Board of Pardons and Paroles (Board) for a hearing.\(^{12}\)

IV. DECISION-MAKING PROCESS

Decision Maker - The Board of Pardons and Paroles makes all final decisions regarding Compassionate Parole requests.

Decision Process -

- **Hearings** - The Executive Director of the Board must schedule a “discretionary” Compassionate Parole hearing within three months of receiving a referral.\(^{13}\)

- **Decision Factors** - The Board must consider all of the following factors when deciding to grant or deny Compassionate Parole:\(^{14}\)
  - The prisoner’s assessed risk level;
  - Conduct in prison and, if applicable, conduct while on Extended Confinement;
  - Sentence served and the sentence still remaining;
  - Offense and “chronicity” of criminal behavior;
  - Medical prognosis and incapacitation level;
  - Compliance with “health care ordered by a health care provider;”
  - The prisoner’s release plan, including the provisions for health care;
  - Input, if any, of the sentencing judge, the prosecuting attorney, and the victim;
  - Whether or not the care and supervision required (and anticipated to require) can be provided in “a more medically appropriate or cost effective manner” than what the Department can provide;
  - “Allowing a geriatric or terminally ill person to live at a location outside of prison prior to death;”\(^{15}\) and
  - The ability to adequately monitor the prisoner after release “to ensure public safety.”
In addition, the Secretary and the Board must find that if released the prisoner is unlikely to “pose a detriment to the offender, victim, or community.”

**Conditions** - As a condition of supervision, any prisoner released on Compassionate Parole must comply with medical care and “maintain responsibility for health care expenses through self pay or third party payer.”

**V. POST-DECISION**

**Denial and Appeals** - The Board’s decisions regarding Compassionate Parole release are final. If the Board denies Compassionate Parole, it will set a date for the next time it will consider the request. The Board can choose to review the parolee sooner than one year but the date cannot be more than a year from the date of its decision.

**Effect on Other Parole and Release Eligibility** - After an application for Compassionate Parole has been submitted, the prisoner’s health care provider or the Warden must notify the Secretary of Corrections if the medical condition improves and he or she no longer meets the Compassionate Parole criteria. The Secretary may then remove the prisoner from Compassionate Parole consideration. Anyone removed from that consideration is subject to the applicable South Dakota general parole eligibility provisions.

**Supervision** - Prisoners released on Compassionate Parole are subject to the general parole provisions related to supervision.

**Revocation/Termination** - The general parole rules on revocation apply to former prisoners released on Compassionate Parole.

- Note that if a former prisoner released on Compassionate Parole is compliant with the terms of his or her supervision, an improved medical condition does not constitute grounds for revocation of the Compassionate Parole.

- When a parolee released under Compassionate Parole reaches their initial parole date or parole eligibility date, and is paroled subject to the relevant South Dakota laws, he or she is no longer subject to Compassionate Parole provisions.

**VI. REPORTING/STATISTICS**

The Board is not required to report how many Compassionate Parole requests are received and/or granted, as there are no reporting requirements in the new Compassionate Parole law.
EXTENSION OF CONFINEMENT

I. ELIGIBILITY

Medical Condition - Prisoners with treatment and service needs resulting from a medical and/or mental health condition may be eligible for an Extension of Confinement.27

Exclusions - Prisoners who do not meet all of the following “pre-release” requirements will not be considered for Extension of Confinement:28

- In minimum custody;29
- Within six months of initial parole date;30
- Currently serving time for a non-violent offense;31
- No time served for a hit and run with injury, vehicular homicide, or vehicular battery;32
- No more than three felonies;33
- No unresolved holds, detainers, or warrants;34
- Agreement with all program participation conditions, Extension of Confinement and GPS requirements, and terms of the “Escape Acknowledgement” form;35 and
- An approved release plan that says the prisoner will remain in South Dakota.36

II. APPLICATION/REFERRAL

Recommendations - A Warden can recommend to the Secretary of the Department of Corrections (Department) that a specific prisoner be released from custody and placed in the community under the Extension of Confinement rules.37

Identification - Department policy indicates two additional ways that potentially eligible prisoners can be identified:

- The Department is directed to generate a list of prisoners who meet the criteria on a monthly basis.38
- Department “admission and orientation” case managers can identify potentially eligible prisoners.39
III. DOCUMENTATION AND ASSESSMENT

Review/Warden and Department Secretary - The Warden and Secretary will review the documentation for any prisoner identified for possible release to Extension of Confinement. They can deny the release at this step, and “designated staff” note the denial.40

Contact/Unit Staff - If the Warden and Secretary decide a prisoner is eligible, unit staff will contact the prisoner to find out whether he or she wants to be considered for release under the Extension of Confinement rules.41

Review and Plan/Health and Behavioral Services - Health Services and Behavioral Health Services staff are notified of prisoners who have been identified as eligible for release. Staff reviews a prisoner’s medical and treatment needs and develop a plan for referral, necessary medical services, medications and/or medication management, and access to providers.42

Release Plan/Case Manager - Institutional case managers review proposed release plans for all prisoners being considered for release to Extension of Confinement. Department rules say that case managers will initiate review of the release plan and “other transition components” six months before the possible release.43

IV. DECISION-MAKING PROCESS

Decision Maker - The Warden appears to be the ultimate decision maker.44 Department rules do not reference the need for any additional approvals, although they mention consultation with the Secretary.

Process - Prisoners approved by the Warden for Extension of Confinement are added to the “Initial Release List” and processed according to those procedures.45

Conditions - Prisoners placed on Extension of Confinement are released to “specifically designated places” and can reside at either a private residence or a residential facility.46

- Prisoners released to a private home must be on Global Positioning System (GPS) monitoring.47

- Prisoners released to Extension of Confinement are responsible for all costs of health care, including treatment and medications.48

V. POST-DECISION

Supervision - All prisoners released to an Extension of Confinement are supervised by a parole agent.49 The Department assigns each prisoner a level of “community risk” based on medical and behavioral health issues, “special needs,” mobility, residential or institutional setting, and any other relevant factors.50 Note that the community risk assessment can be adjusted upon a recommendation by the parole agent, with approval from the agent’s supervisor.51
**Rescission/Termination** - Supervising parole agents have authority to issue violation reports for former prisoners who fail to follow their Extended Confinement agreements and to order their detention or return to custody. Note that the Department’s website includes a statement that an unauthorized absence from an Extension of Confinement placement is considered an escape, which is a felony punishable by an additional prison sentence.

**VI. REPORTING/STATISTICS**

The Department’s annual reports do not include information on how many prisoners were released on Extension of Confinement due to medical conditions or terminal illnesses.

**NOTES**

1. House Bill 1109, as signed by Gov. Dennis Daugaard on March 21, 2018, http://sdlegislature.gov/docs/legsession/2018/Bills/HB1109ENR.pdf. As of April 1, 2018, this bill does not have an official citation in the 2018 South Dakota Session Laws or South Dakota Codified Laws. The act gives the South Dakota Board of Pardons and Paroles the authority to promulgate procedural rules for the “effective enforcement” of the Compassionate Parole law. House Bill 1109, § 10.

2. S.D. Codified Laws § 24-2-25 (2016); South Dakota Department of Corrections Policy (DOC Policy) 1.4.G.7. There are also non-medical reasons for which the Extension of Confinement rules can be used, but for prisoners who are terminally ill they function as a form of compassionate release. See also South Dakota Department of Corrections, “Extension of Confinement Program,” Corrections Connection, https://doc.sd.gov/documents/CorrectionsConnectionExtensionofConfinementProgram.pdf.

3. House Bill 1109, § 1 (2).

4. Id. at § 1 (1).

5. Id. at § 1 (3).

6. Id. at § 1 (4).

7. Id. at § 1 (5).

8. Id. at § 1 (6). Note that prisoners sentenced to life imprisonment are not eligible for parole except as provided in the Compassionate Parole law. See House Bill 1109 at § 11.

9. House Bill 1109, § 4. Given how long these benefits can take to obtain, it’s not clear how this will actually work if a prisoner is terminally ill and requires expedited consideration.

10. Id.

11. Id. at § 2.

12. Id.

13. Id.

14. Id. at § 3.

15. This factor is repeated here verbatim; however, it is not clear what it means.


17. Id. at § 15.

18. Id. at § 8.

19. Id. at § 5.

20. Id.

21. Id.

22. Id., referencing S.D. Codified Laws §§ 24-13, 24-15, and 24-15A.


24. Id.

25. Id. at § 5.


27. DOC Policy 1.4.G.7, § III.

28. Id. at § IV.1.B.
Id. at § IV.2.A.1.
Id. at § IV.2.A.2.
Id. at § IV.2.A.3.
Id. at § IV.2.A.4.
Id. at § IV.2.A.8.
Id. at § IV.2.A.9.
Id. at §§ IV.2.A.6 and A.7.
Id. at § IV.2.A.5.
Id. at § IV.1.A.
Id. at § IV.2.B.
Id.
Id.
Id. at § IV.2.C.
Id. at §§ IV.2.D and IV.2.E.
Id. at § IV.2.G. Note that it seems unlikely that this time frame would work for a prisoner who is seriously or terminally ill.
S.D. Codified Laws § 24-2-25.
DOC Policy 1.4.G.7, § IV.1.D.
Id. at § IV.4.A. Note that individuals are generally responsible for all Extension of Confinement GPS fees.
Id. at § IV.2.E.1. Note that if the prisoner is still considered to be in Department custody, they may not be eligible for Medicaid.
Id. at § IV.3.A.
Id. at § IV.3.C.
Id.
Id. at § IV.3.H.
South Dakota Department of Corrections website publications page at https://doc.sd.gov/about/publications/.