

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

283Z0625

SENATE ENGROSSED NO. **HB 1109** - 3/6/2018

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Brunner, Ahlers, Campbell, Jensen (Kevin), Lesmeister, Marty, May, Rhoden, Rozum, and Turbiville and Senators Peters, Cronin, Curd, Kennedy, Maher, Partridge, Rusch, Tidemann, and Wiik

1 FOR AN ACT ENTITLED, An Act to provide for parole eligibility for certain inmates.

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

3 Section 1. That the code be amended by adding a NEW SECTION to read:

4 Notwithstanding any contrary provision in chapter 24-13, 24-15, or 24-15A, an inmate who:

5 (1) Has a terminal illness;

6 (2) Is seriously ill and not likely to recover;

7 (3) Requires extensive medical care or significant chronic medical care;

8 (4) Is at least sixty-five years of age, has served at least ten consecutive years of the

9 inmate's sentence incarcerated, whose current sentences are for convictions of a Class

10 3 felony or below and whose medical care needs are at least double the average

11 annual medical cost of the inmate population; or

12 (5) Is at least seventy years of age and has served at least thirty consecutive years of the

13 inmate's sentence incarcerated; and

14 (6) Is not serving a capital punishment sentence;



1 is eligible for compassionate parole consideration.

2 Section 2. That the code be amended by adding a NEW SECTION to read:

3 The secretary of corrections may consider referrals for compassionate parole consideration
4 from the inmate's health care provider or the warden. If the secretary determines the inmate
5 meets the criteria for compassionate parole consideration as set forth in section 1 of this Act,
6 the secretary may refer the inmate for a compassionate parole hearing. The executive director
7 of the Board of Pardons and Paroles shall schedule a discretionary, compassionate parole
8 hearing with the board within three months of receipt of the referral.

9 Section 3. That the code be amended by adding a NEW SECTION to read:

10 The Board of Pardons and Paroles shall consider the following factors in determining the
11 grant or denial of a compassionate parole:

- 12 (1) The inmate's assessed risk level;
- 13 (2) The inmate's conduct in prison;
- 14 (3) The inmate's conduct while on extended confinement, if applicable;
- 15 (4) Sentence served and sentence remaining;
- 16 (5) Offense and chronicity of criminal behavior;
- 17 (6) Prognosis and incapacitation level;
- 18 (7) The inmate's compliance with health care ordered by a health care provider;
- 19 (8) Release plan including provisions for health care;
- 20 (9) Input, if any, of the sentencing judge, the prosecuting attorney, and the victim;
- 21 (10) If the care and supervision that the inmate requires and is anticipated to require can
22 be provided in a more medically appropriate or cost effective manner than the
23 Department of Corrections;
- 24 (11) Allowing a geriatric or terminally ill person to live at a location outside of prison

1 prior to death; and

2 (12) The ability to adequately monitor the inmate, after release, to ensure public safety.

3 Section 4. That the code be amended by adding a NEW SECTION to read:

4 An inmate may not be released on compassionate parole if the inmate meets the eligibility
5 requirements of a medically indigent person under the provisions of chapter 28-13. An inmate
6 may not be released on compassionate parole, unless the inmate's release plan ensures the
7 inmate's health care expenses will be paid either by the inmate or a third party payer including
8 Medicare, Medicaid, Indian Health Service, veteran's assistance, or private insurance.

9 Section 5. That the code be amended by adding a NEW SECTION to read:

10 The board may grant or deny a compassionate parole. If denied the board shall set the date
11 for the next consideration of compassionate parole not to exceed one year. The board may elect
12 to review the inmate sooner than one year. If the inmate no longer meets the criteria for
13 compassionate parole as set forth in section 1 of this Act, the inmate's health care provider or
14 the warden shall notify the secretary of corrections. The secretary may remove the inmate from
15 compassionate parole consideration. An inmate removed from compassionate parole
16 consideration is subject to applicable parole provisions under chapters 24-13, 24-15, and
17 24-15A notwithstanding the provisions of this Act or a pending compassionate parole hearing.
18 If an inmate is released on compassionate parole and is compliant with the terms of the inmate's
19 supervision, no longer meeting the criteria for compassionate parole in section 1 of this Act does
20 not constitute grounds for parole revocation.

21 Section 6. That the code be amended by adding a NEW SECTION to read:

22 An inmate is ineligible for compassionate parole once the inmate reaches the parole
23 eligibility date pursuant to § 24-15-5 or the inmate's initial parole date pursuant to § 24-15A-32.
24 However, if an inmate previously referred by the secretary for compassionate parole continues

1 to meet the criteria for compassionate parole consideration as outlined in section 1 of this Act
2 the factors listed in section 3 of this Act shall be considered in any subsequent discretionary
3 parole release decision.

4 Section 7. That the code be amended by adding a NEW SECTION to read:

5 An inmate granted compassionate parole is subject to the provisions of chapters 24-13,
6 24-15, and 24-15A, including the provisions related to supervision, early final discharge, and
7 revocation of parole, so far as those provisions are consistent with this Act.

8 Section 8. That the code be amended by adding a NEW SECTION to read:

9 Nothing in this Act or its application may be the basis for establishing a constitutionally
10 protected liberty, property, or due process interest in any prisoner. An inmate is not entitled to
11 compassionate parole or to be considered for compassionate parole. Compassionate parole may
12 be recommended by the secretary and granted by the board if, in the judgement of the secretary
13 and the board, the inmate meets the eligibility criteria for compassionate parole pursuant to
14 section 1 of this Act and a compassionate parole release is unlikely to pose a detriment to the
15 offender, victim, or community. The decision of the board regarding compassionate parole
16 release is final.

17 Section 9. That the code be amended by adding a NEW SECTION to read:

18 Nothing in this Act or its application impacts the ability of the warden and the secretary of
19 corrections to place an inmate on extended confinement pursuant §§ 24-2-25 and 24-2-27 or to
20 place the inmate on extended confinement pending compassionate parole consideration.

21 Section 10. That the code be amended by adding a NEW SECTION to read:

22 Pursuant to chapter 1-26, the board may promulgate procedural rules for the effective
23 enforcement of this Act and for the exercise of the powers and duties conferred upon it.

24 Section 11. That § 24-15-4 be amended to read:

1 24-15-4. No inmate sentenced to life imprisonment is eligible for parole by the Board of
2 Pardons and Paroles except as provided in this Act.

3 Section 12. That § 24-15A-32 be amended to read:

4 24-15A-32. Each inmate sentenced to a penitentiary term, except those under a sentence of
5 life or death, or determined to be ineligible for parole as authorized in § 24-15A-32.1, shall have
6 an initial parole date set by the department. This date shall be calculated by applying the
7 percentage indicated in the following grid to the full term of the inmate's sentence pursuant to
8 § 22-6-1. The following crimes or an attempt to commit, or a conspiracy to commit, or a
9 solicitation to commit, any of the following crimes shall be considered a violent crime for
10 purposes of setting an initial parole date: murder, manslaughter, rape, aggravated assault, riot,
11 robbery, burglary in the first degree, or burglary in the second degree if committed before July
12 1, 2006, arson, kidnapping, felony sexual contact as defined in §§ 22-22-7 and ~~22-22-19.1~~, child
13 abuse, felony sexual contact as defined in § 22-22-7.2, felony stalking as defined in §§ 22-19A-2
14 and 22-19A-3, photographing a child in an obscene act, felony assault as defined in § 22-18-26,
15 felony simple assault as defined in § 22-18-1, commission of a felony while armed as defined
16 in §§ 22-14-12 and ~~22-14-13.1~~, discharging a firearm at an occupied structure or motor vehicle
17 as defined in § 22-14-20, discharging a firearm from a moving vehicle as defined in § 22-14-21,
18 criminal pedophilia ~~as defined in § 22-22-30.1~~, threatening to commit a sexual offense as
19 defined in § 22-22-45, abuse or neglect of a disabled adult as defined in § 22-46-2, and
20 aggravated incest as defined in §§ 22-22A-3 and 22-22A-3.1:

21 Felony Convictions			
22 Felony Class	First	Second	Third
23 Nonviolent			
24 Class 6	.25	.30	.40

1	Class 5	.25	.35	.40
2	Class 4	.25	.35	.40
3	Class 3	.30	.40	.50
4	Class 2	.30	.40	.50
5	Class 1	.35	.40	.50
6	Class C	.35	.40	.50
7	Violent			
8	Class 6	.35	.45	.55
9	Class 5	.40	.50	.60
10	Class 4	.40	.50	.65
11	Class 3	.50	.60	.70
12	Class 2	.50	.65	.75
13	Class 1	.50	.65	.75
14	Class C	.50	.65	.75
15	Class B	1.0	1.0	1.0
16	Class A	1.0	1.0	1.0

17 Each inmate shall serve at least sixty days prior to parole release. Inmates with life sentences
18 are not eligible for parole except as provided in this Act. An initial parole date through the
19 application of this grid may be applied to a life sentence only after the sentence is commuted
20 to a term of years. A Class A or B felony commuted to a number of years shall be applied to the
21 Class C violent column of the grid. An inmate convicted of a Class A or B felony who was a
22 juvenile at the time of the offense and receives a sentence of less than life shall be applied to the
23 Class C violent column of the grid.

24 Section 13. That chapter 24-15A be amended by adding a NEW SECTION to read:

25 An inmate on parole through a compassionate parole release is ineligible for earned
26 discharge credits until the inmate reaches an initial parole date pursuant § 24-15A-32 or an
27 initial parole eligibility date pursuant to § 24-15-5.

1 Section 14. That chapter 24-15A be amended by adding a NEW SECTION to read:

2 If an inmate on parole through a compassionate parole release has the inmate's parole
3 revoked, a subsequent consideration of compassionate parole on the same sentence requires a
4 new referral for consideration pursuant to section 2 of this Act.

5 Section 15. That the code be amended by adding a NEW SECTION to read:

6 As a condition of supervision pursuant to § 24-15A-37, any inmate released on
7 compassionate parole shall be compliant with medical care and maintain responsibility for
8 health care expenses through self pay or third party payer.

9 Section 16. That the code be amended by adding a NEW SECTION to read:

10 When a parolee released under compassionate parole reaches their initial parole date
11 pursuant to § 24-15A-32 or their parole eligibility date pursuant to § 24-15-5 and is paroled
12 subject to the provisions of chapters 24-15 and 24-15A they are no longer subject to the
13 provisions of this Act.