

State Clemency Resources

Which form(s) of clemency does the state offer?

You may apply for clemency at any time following one year from the date of conviction. However, the Board generally looks more favorably on applications when more time has passed from the time you were sentenced or discharged from probation or parole. If you are denied, you will be eligible to re-apply after a year has passed since your denial.

Decisionmaker

While the Board of Pardons and Paroles reviews and recommends requests for clemency, only the governor has the authority to grant a pardon.

While the South Dakota Constitution provides only the Governor the authority to grant or deny pardons, the Governor will not consider a pardon unless it is first reviewed by and receives a favorable recommendation from the Board of Pardons and Paroles.

Resources:

<https://doc.sd.gov/pardon/default.aspx>

<https://doc.sd.gov/pardon/instructions.aspx>

Constitutional and statutory authority

■ Constitutional Authority:

According to the Supreme Court of South Dakota, there are two legally distinct types of pardons in South Dakota. See *Doe v. Nelson*, 680 N.W.2d 302, 313 (S.D. 2004). Under the first type of pardon, the governor may act independently and privately under article 4, section 3 of the South Dakota Constitution. S.D. Const. Article IV, § 3.

■ Statutory Authority:

Under the second type, the governor may pursue the public route recognized in the South Dakota Code and delegate, by executive order, authority to make pardon recommendations to the Board of Pardons and Paroles. S.D. Codified Laws § 24-14-1 et seq.

Only pardons granted by this second route result in sealing of the record of the conviction and, after an additional five years, the pardon itself. See § 24-14-11; see also *Doe*, 680 N.W.2d at 313.

The Board may also recommend to the governor first offender "exceptional pardons." § 24-14-8 Administrative Rule 17:60:05 South Dakota Legislature

Eligibility Criteria

- **Requirements for pardon or exceptional pardon:** Clearly identify each conviction for which you are seeking executive clemency. You must have paid all court costs, fines, and restitution before your application will be considered for a pardon or exceptional pardon.
- **Requirements for reprieve or remission of fine or forfeiture:** Provide complete documentation detailing why/ how this sentence that includes fine or forfeiture is an overwhelming burden or is excessive or constitutes a miscarriage of justice.

To expedite the application process, it is recommended that applicants complete:

- (1) notice to state's attorney's office,
- (2) affidavit of publication (if applicable), and
- (3) chemical dependency evaluation (if applicable) first as these sections of the application may take more time to complete.

Application Process

After your application has been received and processed, you will receive a written notice of the date and time of your hearing with the board. If any documentation is missing, you will receive notice of the documents required before your application can be processed.

You and the state's attorney, state's attorney general, sentencing judge, and sheriff/law enforcement where you were convicted will be notified of the time and date of the hearing.

After your application is presented to the South Dakota Board of Pardons and Paroles for review and recommendation, you will receive a written notice of the board's decision within 10 working days after the hearing. If you receive a favorable recommendation from the board, your application is forwarded to the governor for his review. The Governor makes the final decision of whether to grant or deny the request.

APPLICATION LINKS

🔗 <https://doc.sd.gov/pardon/pardonchoice.aspx>

The term "clemency" refers to either a pardon, commutation, reprieve, or remission of a fine or forfeiture. SDCL 24-14-2. This application is for all forms of clemency except commutation.