

1.5.G.9 Preliminary Hearings

I Policy Index:



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Office of Primary Responsibility: Executive Director of Parole

II Policy:

A parolee has the right to a timely preliminary hearing before an impartial hearing officer in or near the community where a supervision agreement violation is alleged to have occurred. However, a preliminary hearing is not required if: 1. The parolee was arrested and is being held on an order issued by a jurisdiction other than the Board of Pardons and Paroles, 2. The parolee left the state or other approved jurisdiction without authorization and was apprehended outside of that jurisdiction, or 3. The parolee was convicted of a felony or Class I misdemeanor in a South Dakota court or a court of another state or a federal court.

III Definitions:

Parolee:

An individual who has been conditionally released to parole or suspended sentence from a South Dakota Department of Corrections (DOC) facility prior to the expiration of the individual's sentence under the supervision of the DOC (See ARSD § 17:60:01:00(6)). This also includes an offender received from another state under interstate compact supervision (See SDCL chapter 24-16).

Supervision Agreement:

A document setting forth the general and special limitations, restrictions, and conditions that are imposed by the Board of Pardons and Paroles, the Executive Director of the Board of Pardons and Paroles, a parole supervisor and a parole agent (See ARSD § 17:60:02:09).

Notice of Preliminary Hearing:

A written notification provided to the parolee that indicates the date, time and place of the preliminary hearing, along with a notification of the parolee's rights at the preliminary hearing. Copies of the violation report and supervision agreement are attached to the Notice of Preliminary Hearing and provided to the parolee (generated from Parole Revocations Database).

Waiver of Preliminary Hearing:

A document signed by the parolee and the parole agent, in which the parolee agrees to waive his/her right to a preliminary hearing (this document is generated from the Parole Revocations Database).

Hearing Officer's Report:

A summary report of the preliminary hearing that is submitted to the Board of Pardons and Paroles by the hearing officer (this document is generated from the Parole Revocations Database).

Dispositional Meeting:

An informal meeting between a parolee and the Executive Director of Parole or designee to assist the parolee in determining the options available in proceeding with the matter of his/her parole and/or suspended sentence revocation. The parolee and Executive Director or designee, may come to a resolution and determination of sanction or may elect to proceed to a revocation hearing before the Board of Pardons and Paroles.

Revocation Hearing:

The final dispositional hearing before the Board of Pardons and Paroles on an alleged parole or suspended sentence violation. In the event the Board of Pardons and Paroles determines a parolee violated the terms of his/her supervision agreement, the findings may include sanctions such as the loss of good time (where applicable) and/or the loss of street time.

Working Day:

A standard workweek day, Monday through Friday, except for recognized state holidays, recognized national holidays and any other special holidays declared by the Governor of South Dakota or the President of the United States.

IV Procedures:

1. Procedural Rights Regarding the Preliminary Hearing:

- A. Subject to the provisions of §§ [24-15-23.1](#) and [24-15-23.2](#), a preliminary hearing will be held within ten (10) working days of the arrest of the parolee (See SDCL § [24-15-23](#)).
- B. The parolee will receive advance written notice of the time and place of the preliminary hearing at least forty-eight (48) hours prior to the scheduled hearing, along with a copy of the violation report and the supervision agreement.
 1. The preliminary hearing will take place in or near the community where a supervision agreement violation is alleged to have occurred.
 - a. "In or near the community" means the preliminary hearing will typically take place at the location where the parolee is currently being held on arrest.
- C. A parolee accused of violating the conditions of his/her supervision agreement has the following rights at the preliminary hearing:
 1. Evidence of the alleged supervision agreement violation will be disclosed to the parolee.
 2. The parolee may present evidence and witnesses in his/her defense.
 3. The parolee may confront adverse witnesses, unless such actions would subject the witnesses to a risk of harm.
 4. The parolee may have counsel of his/her choice present in cases where the facts are complex or the parolee disputes the facts of the violation. The parolee's counsel of choice will be retained at the parolee's expense.
- D. The preliminary hearing officer can order and/or recommend the parolee's return to prison only when probable cause is found to exist that the parolee did violate the terms or conditions of the supervision agreement at the preliminary hearing.

- E. Parolees accused of absconding from supervision will be provided a preliminary hearing when apprehended and returned to local custody, except as provided under ASDR [17:60:03:04](#) or ASDR [17:60:11:03](#) (See [Attachment 1](#)).
- F. When the preliminary hearing officer and the parolee agree, the hearing may be postponed for good cause. Postponement will normally not exceed ten (10) working days.
 - 1. An agreement for the postponement of the hearing, along with a proposed time and date of the new hearing, will be signed by the hearing officer and parolee.

2. Preliminary Hearing Officer Selection and Responsibilities:

- A. The Executive Director of Parole appoints impartial hearing officers to conduct preliminary hearings for Parole Services (See ARSD [17:61:01:13](#)). The senior parole agent in each region, serving as the field training officers (FTO), will also serve as the preliminary hearing officer for that region.
 - 1. When the appointed hearing officer is unable to remain impartial (i.e. previously involved in the parolee's case), another trained parole agent will serve as the impartial hearing officer.
- B. The hearing officer will conduct the hearing and make findings as to whether probable cause exists for each allegation. The hearing officer will be responsible for:
 - 1. Conducting a fair and impartial hearing.
 - 2. Ensuring the due process rights of the parolee are provided.
 - 3. Ensuring the complete and accurate documentation of the preliminary hearing.
 - 4. Making a finding based upon the evidence and testimony presented.

3. Preliminary Hearing/Hearing Officer's Report:

- A. The hearing officer will ensure the preliminary hearing is digitally recorded.
- B. The hearing officer will open the preliminary hearing by identifying those present, advising the parolee of the purpose of the hearing and establishing jurisdiction and proper notice.
- C. The hearing officer will read the alleged violation(s) as specified in the violation report.
 - 1. The parole agent/area supervisor who authored the violation report may be present to give supporting evidence and/or present witnesses.
 - 2. The parolee will be given an opportunity to present evidence and witnesses in his/her defense.
 - 3. The parolee may confront adverse witnesses, unless such actions would subject the witnesses to a risk of harm.
- D. The hearing officer will render a decision that may result in either of the following:
 - 1. A finding that probable cause does exist and that the parolee be returned to a DOC facility for a final hearing before the Board of Pardons and Paroles (See [Attachment 2](#)).

2. A finding that probable cause does not exist and that the parolee be released back to supervision.
 - a. Upon determination that probable cause does not exist, the preliminary hearing officer will ensure the release of the parolee from detainment back to parole supervision within a reasonable amount of time, usually the same day.
 - b. The preliminary hearing officer will complete the *Hearing Officer's Report – No Probable Cause* by providing the decision and the need for the offender's release back to supervision (See [Attachment 3](#)).
 - c. The preliminary hearing officer will forward the *Hearing Officer's Report – No Probable Cause* to the Executive Director of the Board of Pardons and Paroles or designee, requesting the Warrant of Arrest be cancelled and the offender released back to community supervision.
- E. All parties will be verbally advised as to the decision of the hearing officer.
- F. The hearing officer will prepare a report after the preliminary hearing and send copies to the Board of Pardons and Paroles and the parolee.
 1. If the parolee was represented by counsel at the preliminary hearing the hearing officer will provide the counsel with a copy of the report.
 2. Within ten (10) days of the conclusion of the preliminary hearing, the parolee will be sent a written report, which includes a statement of the reason(s) for and the evidence used in determining the hearing outcome.

4. Parolees on Interstate Compact:

- A. Courtesy hearings will be held for any out-of-state parolee under interstate compact supervision in South Dakota.
- B. All rights and procedures outlined in this policy will be afforded to a parolee on interstate compact who is accused of a violation.
- C. The hearing officer will coordinate all reports with the Deputy Interstate Compact Administrator.

V Related Directives:

SDCL § [24-15-23](#), [24-15-23.1](#), [24-15-23.2](#) and [24-16](#).

ARSD § [17:60:01:00\(6\)](#), [17:60:02:09](#), [17:60:03:04](#), [17:60:11:03](#) and [17:61:01:13](#)

VI Revision Log:

October 2006: Converted Parole Department OM to a DOC policy.

September 2007: Minor style/format revisions.

August 2008: **Revised** formatting of policy in accordance with DOC policy 1.1.A.2. **Replaced** "parolee" with "compact" in definition of Parolee. **Deleted** "(Executive Director)" in the definition of Supervision Agreement. **Revised** formatting of ss (B1 and former B2 to B1 and B1a), **reversed** ss (C1 and C2) and **added** "parolee" when speaking of counsel within Procedural Rights Regarding the Preliminary Hearing section. **Revised** wording in ss (A of Preliminary Hearing Officer Selection and Responsibilities). **Replaced** "tape" with "digitally" recorded in ss (A) and **replaced** "receive" with "be sent" in ss (F2) of Preliminary Hearing/Hearing Officer's Report). **Added** "SDCL 24-16" to ss (V). **Revised** minor spelling corrections and wording throughout policy.

March 2009: **Added** "Class 1" as it relates to misdemeanor in the policy statement. **Added** definition of Dispositional Meeting. **Added** statement regarding 48 hours prior to hearing in ss (B) and **added** ss (F1) within Procedural Rights Regarding the Preliminary Hearing. **Added** statement regarding Senior Parole Agent and FTO in ss (A) and **added** ss (A1) within Preliminary Hearing Officer Selection and Responsibilities. **Added** ss (Da of Preliminary Hearing/Hearing Officer's Report).

March 2010: **Revised** formatting of Section 1. **Added** ARSD 17:61:01:13 to section (A of Preliminary Hearing Officer Selection and Responsibilities) and Section V. **Added** reference to Attachment 1 within ss (D1) and **added** ss (D2b and D2c) both within Preliminary Hearing/Hearing Officer's Report.

Added picture of Attachment 2. **Added** new Attachment 3 to policy. **Added** hyperlinks.

March 2011: **No changes.**

April 2012: **Reviewed with no changes.**

Denny Kaemingk

Denny Kaemingk, Secretary of Corrections

07/06/2012

Date

Attachment 1: Related SDCL and ARSD

SDCL 24-15-23. Preliminary hearing on parole violation--Waiver of preliminary hearing--Detention for board hearing--Waiver of appearance at revocation hearing. 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 a personal appearance at the revocation hearing with the board.

SDCL 24-15-23.1. Preliminary hearing on parole violation not required under certain conditions. A preliminary hearing as provided for in § 24-15-23 is not required if:

- (1) The parolee is under arrest and being held on an order issued by a jurisdiction other than the Board of Pardons and Paroles;
- (2) The parolee left the state or other approved jurisdiction without authorization and was apprehended outside of that jurisdiction; or
- (3) The parolee was convicted of a felony or misdemeanor in a South Dakota court or a court of another state or a federal court.

SDCL 24-15-23.2. Failure to provide preliminary hearing prior to return to facility—Hearing required after return. If a preliminary under SDCL 24-15-23 is required and a parolee fails to receive a preliminary hearing prior to the parolee's return to a Department of Corrections facility, the parolee shall receive a preliminary hearing within ten working days of the parolee's return to a Department of Corrections facility.

ARSD 17:60:01:00. Definitions. Words used in this article mean:

- (6) "Parolee," an individual who has been conditionally released to parole or suspended sentence from a South Dakota Department of Corrections facility prior to the expiration of the individual's sentence under the supervision of the Department of Corrections.

ARSD 17:60:02:09. Supervision agreement. Before being released on parole or suspended sentence, the inmate shall execute a supervision agreement setting forth the general and special limitations, restrictions, and conditions that are imposed by the board, the executive director, a parole supervisor, and a parole agent. Any violation of institution rules after being paroled but before actual release may be considered a violation of parole.

ARSD 17:60:03:04. Preliminary hearing. A preliminary hearing is not required if the parolee is not under arrest on a board warrant, has signed a waiver of preliminary hearing, has left the State of South Dakota or other approved jurisdiction without authorization and was apprehended outside of that jurisdiction, or has been convicted of a felony or misdemeanor in a South Dakota court, a court of another state, or a federal court. If a preliminary hearing under SDCL 24-15-23 is required and a parolee fails to either receive or waive a preliminary hearing prior to the parolee's return to a South Dakota Department of Corrections facility, the parolee shall receive a preliminary hearing within ten working days of the parolee's return to a South Dakota Department of Corrections facility.

After the preliminary hearing, the hearing officer shall submit to the board a written report on the officer's findings and on the officer's decision resulting from the findings. The report shall be submitted to the board within ten days after the preliminary hearing.

ARSD 17:60:11:03. Preliminary hearing. A preliminary hearing is not required if the parolee is not under arrest on a board warrant, has signed a waiver of preliminary hearing, has left the State of South Dakota or other approved jurisdiction without authorization and was apprehended outside of that jurisdiction, or has been convicted of a felony or misdemeanor in a South Dakota court, a court of another state, or a federal court. If a preliminary hearing under SDCL 24-15-23 is required and a parolee fails to either receive or waive a preliminary hearing prior to the parolee's return to a South Dakota Department of Corrections facility, the parolee shall receive a preliminary hearing within ten working days of the parolee's return to a South Dakota Department of Corrections facility.

After the preliminary hearing, the hearing officer shall submit to the board a written report on the officer's findings and on the officer's decision resulting from the findings. The report shall be submitted to the board within ten days after the preliminary hearing.

Attachment 2: Hearing Officer's Report – Probable Cause (Seq. 1025)

The *Hearing Officer's Report – Probable Cause (Seq. 1025)* form is located on Citrix.

1. Select **Citrix** / Select the **DOC** tab / Select **Parole** / Select **Parole Revocation** / Select **Hearing Officer's Report – No Probable Cause** / Select **Seq. 1025** / Select **Open**.

Parole Revocations - [Report 1025 - Probable Cause Hearing]

File Edit View Insert Format Records Tools Window Help

Report 1025 - Probable Cause Hearing Parole Agent: [] Region: [] Office: [] **Help**

Parolee: [] Other ID's: [] System: [] Seq: []

Revocation Type: [] Revocation Of: [] Date Of Violation: []

Released to Supervision: [] Release Status: [] Current Status: [] Date Placed in Custody: []

Absconder: [] Date From: [] to [] Inter State Compact State: [] Detainer Custody Date: []

Day: [] Month: [] Year: [] Time: []

Hearing Officer: [] Location: [] Plea: []

Supervision Agreement Signed with: []

Present:

[]

Testimony:

[]

Finding of Facts IV: Admit / Deny:

[]

Attachment 3: Hearing Officer's Report – No Probable Cause

The **Hearing Officer's Report – No Probable Cause** form is located on the state's WAN.

A copy may be printed using **Microsoft Word 97** as follows:

1. Click [here](#) to access the **Hearing Officer's Report – No Probable Cause** by:
 - a. Placing mouse on the word "here" above
 - b. Press and hold the "Ctrl" key on the keyboard
 - c. Click the left button of mouse.
- 2.. Or Select **File/New** from the Menu Bar / Select the **DOC** tab / Select **Hearing Officer's Report – No Probable Cause**.

The gray areas indicate the information that is to be entered.

DEPARTMENT OF CORRECTIONS
DIVISION OF PAROLE SERVICES
201 E. Superior, Pierre
1400 North Drive
Sioux Falls, SD 57107-0111
Phone: (605) 337-3000
Fax: (605) 337-4112

HEARING OFFICER'S REPORT – NO PROBABLE CAUSE

In re: SD DOC NO

A Preliminary Hearing to determine probable cause was held regarding , in the city of , on the day of , 20, at approximately am/pm.

Present at the hearing were:

admitted some of the violation reported and stated he/she was aware of the Preliminary Hearing was signified to her Constitutional Rights by this Hearing Officer and indicated that he/she understood her/his Constitutional Rights as read by this Hearing Officer.

This Hearing Officer advised if he/she wished to admit or deny the alleged parole violation as stated in the violation report submitted by Parole Agent . Upon asking did in fact admit/deny the said violation(s).

Hearing Testimony

Findings of Fact

Conclusions

Based on the Findings of Fact herein, this Hearing Officer concludes that there is no reasonable grounds to believe that has violated the terms of his/her Parole Supervision Agreement. Therefore, the Warrant of Arrest issued on the alleged violation(s) should be cancelled.

Recommendations

Based on the Findings of Fact and Conclusions, this Hearing Officer recommends that be released from detention and return to public supervision. The release of should occur no later than , in accordance with the facility policy and procedure.

Respectfully submitted,

, Preliminary Hearing Officer

CC: Case File
Legal File
Executive Director of Parole Supervision

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