



SOUTH DAKOTA  DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE		POLICY NUMBER 1400-07	PAGE NUMBER 1 OF 3
		DISTRIBUTION: Public	
		SUBJECT: Parole– Preliminary Hearings	
RELATED STANDARDS:	None	EFFECTIVE DATE: April 15, 2024	
		SUPERSESSION: 08/31/2021	
DESCRIPTION: Parole Services	REVIEW MONTH: March	 <b>KELLIE WASKO</b> <b>SECRETARY OF CORRECTIONS</b>	

## I. POLICY

It is the policy of the South Dakota Department of Corrections (DOC) to provide preliminary hearings for parolees believed to have violated the terms of their supervision.

## II. PURPOSE

The purpose of this policy is to outline statutory and procedural requirements when determining the need for a preliminary hearing of a parolee who may have violated the terms of supervision, the necessary structure of the preliminary hearing, and selection of hearing officers.

## III. DEFINITIONS

### **Constitutional Rights/Preliminary Hearing Notice/Waiver:**

A written notification provided to the parolee that indicates: 1) whether the offender is entitled to a preliminary hearing; 2) the offender's rights at the preliminary hearing; 3) the date and time of the preliminary hearing should the offender be entitled to request one.

### **Dispositional Meeting:**

An informal meeting between a parolee and the 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.

### **Preliminary Hearing Findings:**

A written report of the preliminary hearing detailing the officer's findings and decision resulting from the findings.

## IV. PROCEDURES

### **1. Procedural Rights Regarding the Preliminary Hearing:**

- A. Subject to the provisions of SDCL, a preliminary hearing, if required, will be held within ten (10) working days of the arrest of the parolee. The preliminary hearing may be postponed for good cause upon the request and agreement of the preliminary hearing officer and parolee. Postponement will normally not exceed ten (10) working days.
  1. The parolee's agent will ensure the parolee is served with the violation report, supervision agreement, and Constitutional Rights/Preliminary Hearing Notice/Waiver form within five (5) working days of the arrest.

SECTION	SUBJECT	DOC POLICY	Page 2 of 3
Parole Services	Parole– Preliminary Hearings	1400-07	Effective: 04/15/2024

- a. If the agent is unable to serve the parolee within this timeframe due to the offender’s return to a South Dakota state correctional facility, the agent shall inform Parole Administrative Office staff who will serve the paperwork.
  - b. The parolee is not considered to be in DOC custody while being held by another jurisdiction under charges and bond.
2. The individual who serves the parolee with the violation report, and Constitutional Rights/Preliminary Hearing Notice/Waiver form shall verbally read to the offender the constitutional rights set forth on said form (see attachments #1 - *Constitutional Rights/Preliminary Hearing Notice/Waiver of Preliminary/Constitutional Rights, or if the offender is in South Dakota via Interstate compact, attachment#2 - Interstate Compact Constitutional Rights/Preliminary Hearing Notice/Waiver Form*).
    - a. The offender is required to initial the form to indicate the constitutional rights were read to him/her.
    - b. If entitled to a preliminary hearing and, after having been made aware of their constitutional rights, the offender elects to waive the preliminary hearing, the offender must indicate such waiver by initialing the appropriate line on the waiver section of the form.
- B. If the offender is entitled to a preliminary hearing and does not waive his/her right to said hearing, the serving Agent/Staff will contact the hearing officer to establish a date and time for the hearing. That information will be noted on the Constitutional Rights/Preliminary/Waiver form and provided to the offender.
1. Notice of the scheduled date and time shall be provided to the offender at least forty-eight (48) hours prior to the hearing unless the time period is waived by the offender. The waiver shall be documented on the form and the offender shall sign the form indicating his/her waiver.
    - a. This hearing may be conducted telephonically or by other electronic means.
- C. The preliminary hearing officer can recommend to the Parole Board the parolee’s return to state correctional facility or continued placement in custody, 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.
1. If probable cause is found, the parolee will remain in custody under the Parole Board warrant.
  2. If probable cause is not found the hearing officer will contact the Chairman of the Parole Board to recommend the warrant be rescinded.

## 2. Preliminary Hearing Officer Selection and Responsibilities:

- A. The Director of Parole appoints impartial hearing officers to conduct preliminary hearings for Parole Services. Training will be provided by the director of parole and DOC attorney so that the hearing officer has the knowledge, skills, and abilities to perform this function.
- B. The hearing officer will conduct the hearing and make findings as to whether there are reasonable grounds to believe that the parolee violated the terms of his/her community supervision agreement. The hearing officer will be responsible for:
  1. Conducting a fair and impartial hearing.
  2. Ensuring the parolee was/is properly advised of and understands his/her due process rights.
  3. Ensuring the complete and accurate documentation of the preliminary hearing.
  4. Making a finding based upon the evidence and testimony presented.
- C. The hearing officer will ensure the preliminary hearing is digitally recorded.
- D. The hearing officer will ensure the proper updating of the data system to reflect the outcome and results of the hearing.
- E. The hearing officer will issue a Preliminary Hearing Findings report detailing their findings and the decision resulting from those findings. The report shall be provided to the parolee and to the Board of Pardons and Paroles within ten (10) days following the preliminary hearing.

SECTION	SUBJECT	DOC POLICY	Page 3 of 3
Parole Services	Parole– Preliminary Hearings	1400-07	Effective: 04/15/2024

### 3. Parolees on Interstate Compact:

- A. Courtesy hearings will be held for any out-of-state parolee under interstate compact supervision in South Dakota pending revocation and return to the sending state.
- B. All rights and procedures outlined in this policy will be afforded to a parolee on interstate compact who is accused of a violation.
  1. Offenders on Interstate Compact supervision in South Dakota from other states are required to make admission of the violation(s) if they elect to waive their preliminary hearing.
- C. The hearing officer will coordinate all reports with the Deputy Interstate Compact Administrator.

## V. RESPONSIBILITY

The director of Parole is responsible for the maintenance and annual review of this policy.

## VI. AUTHORITY

- A. ARSD: [17:60:03:04](#) Preliminary hearing.
- B. ARSD: [17:60:11:03](#) Preliminary hearing.
- C. ARSD: [17:61:01:13](#) Hearing officers.
- D. SDCL § [24-15-23](#) Preliminary hearing on parole violation--Waiver of preliminary hearing--Detention for board hearing--Waiver of appearance at revocation hearing.
- E. SDCL § [24-15-23.1](#) Preliminary hearing on parole violation not required under certain conditions.
- F. SDCL § [24-15-23.2](#) Failure to provide preliminary hearing prior to return to facility--Hearing required after return.

## VII. HISTORY

April 2024  
August 2021  
July 2019  
June 2018  
April 2017  
May 2016  
April 2015  
November 2013  
April 2012  
March 2011

## ATTACHMENTS *(\*Indicates document opens externally)*

1. Constitutional Rights/Preliminary Hearing Notice/Waiver of Preliminary/Constitutional Rights (Generated in COMS – PAR-PRELIM2)
2. Interstate Compact Constitutional Rights/Preliminary Hearing Notice/Waiver Form (Generated in COMS – PA\_ISC\_RIWA2)
3. DOC Policy Implementation / Adjustments



**STATE OF SOUTH DAKOTA BOARD OF PARDONS AND PAROLES  
CONSTITUTIONAL RIGHTS/PRELIMINARY HEARING NOTICE/WAIVER**

State of South Dakota:

Vs:

Defendant

Offender Name

DOC #

**PRELIMINARY HEARING**

Preliminary hearing is an informal hearing to determine whether there is probable cause to believe that a violation occurred. Any parolee, who has allegedly violated the conditions of supervision and is in custody based upon a warrant for said violations, or alleged violator of Suspended Sentence who will be held beyond their suspended sentence release date, has a right to a preliminary hearing.

[ ] **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 24-15-23.1}.*

**At the preliminary hearing you have the following rights:**

1. To be present at such hearing
2. You have the right to remain silent; if you choose to testify on your own behalf you give up this right and will be subject to cross examination.
3. To know the charges filed, indicating the precise rules violated and the circumstances alleged.
4. To be present when witnesses testify against you and to cross examine them. The only exception to this rule is if the hearing officer determines that the witness may be subject to risk or harm if their identities were disclosed.
5. The offender may present his/her own witnesses who can give relevant information concerning the violation. These witnesses cannot be character witnesses. The hearing officer, however, may terminate questioning if the testimony becomes irrelevant, repetitious, or excessive. It is your responsibility to produce your own witnesses as the hearing officer does not have subpoena power, or the funds to assure the appearance of any witness for the preliminary hearing.
6. To present any relevant evidence in the form of letters, affidavits, or documents.
7. You do not have a right to an attorney at the preliminary hearing unless the hearing officer has reason to believe that you are incapable of understanding the proceedings.
8. If the preliminary hearing is conducted and the hearing officer finds probable cause or if you waive the preliminary hearing, you will then have the right to a final hearing in front of the Board of Pardons and Paroles at which hearing you will have the right to an attorney.

The hearing will most likely be held telephonically and will be recorded. At the end of the hearing the hearing officer shall make a finding of probable cause or lack of probable cause and a brief statement describing the basis for the finding. The hearing officer will forward a written report to the parole board and cause a copy of the same to be served on you.

Initials

[ ] These Constitutional Rights were read and explained to me.

[ ] With a full understanding of these Rights and not acting under any threat, fear, coercion, or promise, and acting of my own free will, I hereby waive my right to a Preliminary Hearing on the alleged violation.

X

Parolee Signature

Date

I hereby certify that a true and correct copy of the violation report and its attachments was served upon the above-named individual.

X

Staff signature

Date

[ ] **NOTICE OF HEARING**

PLEASE TAKE NOTICE that a preliminary hearing will be held telephonically on \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
Date Time AM/PM

I hereby certify that on today's date I served the forgoing Notice of Preliminary Hearing on \_\_\_\_\_

Parolee Name

Date

Staff Signature

Distribution: **Public**



**STATE OF SOUTH DAKOTA BOARD OF PARDONS AND PAROLES  
CONSTITUTIONAL RIGHTS/PRELIMINARY HEARING NOTICE/WAIVER**

State of South Dakota:

**Vs:  
Defendant**

**Offender Name**

**DOC #**

**PRELIMINARY HEARING**

A preliminary hearing is an informal hearing to determine whether there is probable cause to believe that a violation occurred. Parolees who are alleged to have violated the conditions of supervision and are in custody solely based upon a warrant for said violations have the right to a preliminary hearing.

[ ] **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 24-15-23.1}*

**At the preliminary hearing you have the following rights:**

1. To be present at such hearing
2. You have the right to remain silent; if you choose to testify on your own behalf you give up this right and will be subject to cross examination.
3. To know the charges filed, indicating the precise rules violated and the circumstances alleged.
4. To be present when witnesses testify against you and to cross examine them. The only exception to this rule is if the hearing officer determines that the witness may be subject to risk or harm if their identities were disclosed.
5. The offender may present his/her own witnesses who can give relevant information concerning the violation. These witnesses cannot be character witnesses. The hearing officer, however, may terminate questioning if the testimony becomes irrelevant, repetitious, or excessive. It is your responsibility to produce your own witnesses as the hearing officer does not have subpoena power, or the funds to assure the appearance of any witness for the preliminary hearing.
6. To present any relevant evidence in the form of letters, affidavits, or documents.
7. You do not have a right to an attorney at the preliminary hearing unless the hearing officer has reason to believe that you are incapable of understanding the proceedings.
8. If the preliminary hearing is conducted and the hearing officer finds probable cause or if you waive the preliminary hearing, you will then have the right to a final hearing in front of the Board of Pardons and Paroles at which hearing you will have the right to an attorney. The hearing may be held telephonically and will be recorded. At the end of the hearing the hearing officer shall make a finding of probable cause or lack of probable cause and a brief statement describing the basis for the finding. The hearing officer will forward a written report to the parole board and cause a copy of the same to be provided to you.

Initials

[ ] These Constitutional Rights were read and explained to me.

[ ] With a full understanding of these Rights and not acting under any threat, fear, coercion, or promise, and acting of my own free will, I hereby admit that I am in violation of the parole violations as listed in the Offender Violation Report (conditions SA <<list conditions here>>) and waive my right to a Preliminary Hearing.

**X** \_\_\_\_\_  
Parolee Signature Date

I hereby certify that a true and correct copy of the violation report and its attachments was served upon the above-named individual.

**X** \_\_\_\_\_  
Staff signature Date

[ ] **NOTICE OF HEARING**

PLEASE TAKE NOTICE that a preliminary hearing will be held telephonically on \_\_\_\_\_, at \_\_\_\_\_  
Date Time AM/PM

I hereby certify that on today's date I served the forgoing Notice of Preliminary Hearing on \_\_\_\_\_  
Parolee Name

\_\_\_\_\_  
Date Staff Signature