

8.1. A.2 Parole & Suspended Sentence Revocation Hearings

I Policy Index:

Date Signed: 3/12/15
Distribution: Public
Replaces Policy: N/A This policy supersedes the previous version.
Affected Units: SD Board of Pardons and Paroles
Effective Date: Upon signature
Scheduled Revision Date: 3/16
Revision Number:
Office of Primary Responsibility: Parole Board Office

II Purpose:

To outline the authority, responsibility, and procedures of the Board of Pardons and Paroles in the revocation of offenders on supervision with the Department of Corrections.

III Definitions:

Detainer

A document issued by the Parole Services Division, through its Parole Agents, for the arrest and detention of a person under supervision (see ARSD 17:61:01:01 (4) & 17:61:01:11). The document authorizes a parolee to be detained in jail or a designated DOC facility for a period of time as a disciplinary sanction or for investigative purposes (see DOC Policy 1.5.G.8).

Evidence

Evidence at the final (revocation) hearing may include testimony, affidavits, letters, and other materials not ordinarily admissible in a criminal proceeding (see ARSD 17:60:03:08 & 17:60:11:08). The provisions of chapters 19-9 to 19-12, inclusive, and chapters 19-14 to 19-18, inclusive, do not apply in proceedings before the Parole Board (see SDC: 24-13-12).

Standard of Proof

If the board is reasonably satisfied that the conditions, special limitations, or rules of supervision have been violated, the board may revoke supervision. The Board shall give full consideration to any mitigating circumstances presented by the parolee (see ARSD 17:60:03:09 & 17:60:11:09).

Designation of Hearing Officers:

The chair of the board may designate individual board members as hearing officers who may conduct hearings pursuant to SDCL chapters 24-13, 24-14, 24-15, and 24-15A, take testimony and make recommendations to the board.

Designation of Hearing Panels:

The chair of the board may designate panels of two or more board members to conduct hearings pursuant to SDCL chapters 24-13, 24-14, 24-15, and 24-15A, take testimony, and take final action, exclusive of a clemency recommendation to the Governor in accordance with SDCL 24-13-4.6 (See SDCL 24-15A-10).

Final Hearing

An offender charged with violating a condition, special limitation, or other rule of supervision will be afforded a final revocation hearing before the Parole Board within ninety (90) days following their return to a South Dakota Department of Corrections (DOC) facility (see ARSD 17:60:03:03 & 17:60:11:07).

Types of Revocation Hearings

The following revocation hearings are subsequent to the dispositional meeting process (see Parole Board Policy 8.1.A.2 *Dispositional Meetings* & Parole Board Office OM 9.1.A.2 *Dispositional Meetings – Parole Revocations*):

- A. Revocation Waiver Hearing - the offender (with or without counsel) has reached an agreement of sanction, which is presented to a hearing panel or hearing officer.
- B. Initial/Contested – the offender did not reach an agreement and is contesting the allegations specified in the violation report.
- C. Mitigation Only - the offender has requested to appear before a hearing panel or hearing officer, admit to the alleged violations and offer mitigation.
- D. Rejected Recommendation – the hearing panel or hearing officer has rejected the agreed upon resolution and requested the offender appears before a new hearing panel or hearing officer for final revocation action.

Street Time

For new system offenders, all time spent on supervision, including time spent on absconder status and suspended sentence, will be considered street time. For old system offenders, all time spent serving the suspended portion of the sentence will be considered street time (see attachment #6 – *Maximum Potential Sanctions*). When calculating the amount of Street Time an offender has accumulated, the date released to parole (start) and the detainer custody date (end) will be used

Good Time

For old system offenders, all time considered and calculated as good time on an offender's sentence. Good time is not applicable to new system offenders (see attachment #6 – *Maximum Potential Sanctions*).

Dead Time

For old system offenders, all time spent on absconder status will be considered dead time. Dead time is not applicable to new system offenders (see attachment #6 – *Maximum Potential Sanctions*). When calculating the amount of Dead Time an offender has accumulated, the absconder date (or ATL date; the date indicating the start of absconding behavior will be used) (start) and the detainer custody date (end) will be used (the date indicating the start of absconding behavior will be used).

Official Record

An official record of the revocation proceedings will be created and maintained. A court report or recording device will be present at all revocation hearings, and each hearing will be recorded. Recordings will be transcribed as needed for litigation purposes. All recordings will be kept for a period of three (3) years after an offender's final discharge of sentence.

IV Procedures:

Revocation Hearing Procedures:

- A. A hearing panel or hearing officer will conduct revocation hearings.
- B. A court reporter or recording device will record all responses for the official record.

- C. All offenders will be read and explained their constitutional rights before individual proceedings begin (see attachment #1 – *Revocation Hearing – Reading of Rights – Script*).
- D. All offenders and other witnesses offering testimony will be administered the oath by a board member or court reporter:
 - 1. "Do you solemnly swear that the testimony you are about to give in this matter now in hearing is the truth, the whole truth and nothing but the truth".
- E. Revocation hearings will be conducted in accordance with the applicable Revocations Hearing Scripts.
 - 1. Hearing procedures will vary based upon hearing types:
 - a. Initial Hearing (see attachment #2 – *Revocation Hearing (Initial) Script*).
 - b. Contested Hearing (see attachment #3 – *Revocation Hearing (Contested) Script*).
 - c. Mitigation Only Hearing (see attachment #4 – *Revocation Hearing (Mitigation Only) Script*).
 - d. Rejected Waiver Hearing (see attachment #5 – *Revocation Hearing (Rejected Waiver) Script*).
- F. Board staff will assist the hearing panel with the necessary documents and/or files.
- G. When a hearing officer conducts a hearing pursuant to this section the hearing officer shall make a recommendation in writing to a hearing panel who may adopt, modify, or reject the recommendation.

Offender's Right to a Final Hearing

- A. An offender charged with violating a condition, special limitation, or other rule of supervision will be afforded a final revocation hearing before the Parole Board within ninety (90) days following their return to a South Dakota Department of Corrections (DOC) facility (see ARSD 17:60:03:03 & 17:60:11:07).
 - 1. If the offender, counsel, the Board, or the state requests a continuance in the matter and it is granted, the offender's right under this rule is tolled for the period of the continuance. Continuances may be made by the previously identified parties and may be granted in the best interests of justice or for good cause.
 - 2. For calculation purposes, the ninety (90) day period will commence the day the offender is admitted to a South Dakota DOC facility under the authority of a Warrant of Arrest issued by the Executive Director, or designee. Any and all time spent under the authority of a Detainer (prior to the issuance of a Warrant of Arrest and admission to a DOC facility) will not be counted toward the ninety (90) day period.
 - a. Detainment for investigative purposes either in a jail or at a designated DOC facility prior to the issuing of a warrant is not considered time to be counted toward the 90 days to a final hearing.
 - 3. If the parolee is to have a hearing ordered on an appeal or collateral attack, the ninety (90) day period for final hearing shall commence to run from the date of order on appeal or collateral attack, or the filing of the mandate on remand.
 - 4. The following periods shall be excluded in computing the ninety (90) day period for a final hearing:
 - a. The period of delay resulting from other proceedings concerning the offender, including but not limited to, an examination and hearing on competency; and the period during which he/she is incompetent to be heard; the time from filing until final disposition of pre-hearing motions of the

- offender; and, the time consumed in the trial or disposition of other proceedings against the offender.
- b. The period of delay resulting from a continuance granted at the request or with the consent of the offender or his/her counsel, provided it is approved by the board and recorded.
 - c. The period of delay resulting from a continuance granted by the board at the request of the state's counsel for good cause and in the best interest of justice.
 - d. The period of delay resulting from the absence or unavailability of the offender.
 - e. Other periods of delay not specifically addressed in this policy, but only if and when the board finds that they are for good cause.
5. Once a final hearing has commenced, it may be adjourned or continued from time to time and the commencement of the final hearing ends the running of the ninety (90) day time period.
 6. If an offender does not have a final hearing before the conclusion of the ninety (90) day period for a final hearing, as extended by excluded periods, the offender shall be entitled to a dismissal without prejudice by the board, or the violation charged and any other violations required by law to be joined with the violation charged.

Offender's Right to Counsel

- A. Offenders have the right to be represented by an attorney at a revocation hearing. If they cannot afford an attorney, they may request one through their sentencing court.
 1. *Old System Offenders* ARSD 17:60:03:06. Right to counsel. If the parolee appears without counsel at the final hearing, the board shall determine that the parolee understands the right to counsel. If the board is satisfied that the parolee's waiver of counsel is knowingly, intelligently, and freely made, the board shall accept a waiver of counsel. If the parolee desires counsel and is without means to obtain counsel, the board shall notify the sentencing court and request the appointment of counsel.
 2. *New System Offenders:* ARSD 17:60:11:05. Right to counsel. If the inmate appears without legal counsel at the hearing, the board shall determine that the inmate understands the right to counsel. If the board is satisfied that the inmate understands the right to counsel and waives the right knowingly, freely, and intelligently, the board may accept the waiver of counsel and proceed. If the inmate raises any substantial reason which justifies or mitigates the inmate's action or if the reason is complex and otherwise difficult to develop or present, and if the inmate is financially unable to obtain counsel and requests counsel, the board shall notify the sentencing court, request the appointment of counsel, and continue the hearing until a later date.

Continuance of a Hearing

- A. The board may order a continuance of a hearing on the request of the offender, the state, or counsel for either party, or on the board's own motion, if it appears to be in the best interest of justice or for good cause (see ARSD 17:60:03:10 & 17:60:11:10).

Final Decision-making

A. The hearing officer /panel's decision may be one of the following:

1. Revoke, with the setting of a next review date
2. Revoke and reinstate parole
3. Reinstate parole
4. Continue hearing to a later date

B. Revocation actions for old system offenders (see attachment #6 – *Maximum Potential Sanctions*):

1. SDCL 24-15-24 Modification or revocation of parole and reduction of good conduct time on finding of violation--Restoration or modification of parole on finding of no violation. If the Board of Pardons and Paroles is satisfied that any provision of § 24-15-20 has been violated, it may revoke the parole and reinstate the terms of the original sentence and conviction or it may modify conditions of parole and restore parole status. In addition, the board may order the reduction of time in full or in part for good conduct granted under § 24-5-1. If the board does not find that the provisions of § 24-15-20 have been violated, the board may restore the parolee to the original or modified terms and conditions of parole.
2. At the Board's discretion, all time considered and calculated as Street Time under the current admission and violation may be denied credit towards the offender's sentence.
 - a. If an offender is serving multiple sentences (DOC #'s), any sentence that has flatted while on parole will not have the Street Time denied credit.
3. At the Board's discretion, it may be ordered that all time considered and calculated as Good Time on the offender's sentence be denied credit or reduced in full or in part.
4. At the Board's discretion, all time considered and calculated as Dead Time under the current admission and violation may be denied credit towards the offender's sentence.
5. If the Board denies an offender credit for any time considered street time, dead time, or good time, the offender may only request the reinstatement of that time at subsequent discretionary parole hearings (see ARSD 17:60:03:13 and ARSD 17:60:11:13).
6. At the Board's discretion, any suspended portion of an offender's sentence(s) (both CC and CS) may be imposed, in part or in full, under the current admission and violation.
 - a. When the board imposes a suspended sentence, good time is not taken. Good time is not granted under 24-5-1, until after the sentence is imposed and Central Records calculates the good time and sets the official dates.
7. Any time credited to an offender through a partial early final discharge (see Parole Board Policy 8.1.A.7 *Early Discharges*) will be rescinded upon a subsequent finding that the offender is in violation of community supervision.

C. Revocation hearings for new system offenders (see attachment #6 – *Maximum Potential Sanctions*):

1. SDCL 24-15A-28 Revocation or modification of parole. If the board is satisfied that any provision of § 24-15A-27 has been violated, it may revoke the parole and reinstate the terms of the original

sentence and conviction or it may modify conditions of parole and restore parole status. In addition, the board may order the denial of credit for time served on parole. If the board does not find that the provisions of § 24-15A-27 have been violated, the board may restore the parolee to the original or modified terms and conditions of the parolee's parole.

2. SDCL 24-15A-29 Discretionary parole date established on revocation--Discretionary hearings. If a parole is revoked, the board shall establish a discretionary parole date of not more than two years from the date of revocation. Subsequent discretionary hearings shall be held at intervals of not more than two years. The board is not required to see an inmate for a discretionary parole hearing at two-year intervals following a revocation if the inmate receives an additional felony sentence or has a suspended sentence imposed which carries a first parole date longer than two years from the revocation. If a suspended sentence is revoked and the sentence is imposed, a discretionary parole date shall be calculated based on the entire imposed term.
 3. At the Board's discretion, all time considered and calculated as street time under the current admission and violation may be denied credit towards the offender's sentence.
 - a. If an offender is serving multiple sentences (DOC transaction number/s), any sentence that has flattened while on parole may not have the Street Time added to that sentence.
 - b. Any inmate who spends time on supervision while in the Community Transition Program (CTP) may not be denied credit for such time.
 4. If the Board denies an offender credit for any time considered street time, the offender may only request the reinstatement of that time at subsequent discretionary parole hearings (see ARSD 17:60:11:13).
 5. At the Board's discretion, any suspended portion of an offender's sentence(s) (both CC and CS) may be imposed, in part or in full, under the current admission and violation.
 6. Any time credited to an offender through a partial early final discharge (see Parole Board Policy 8.1.A.7 *Early Discharges*) will be rescinded upon a subsequent finding that the offender is in violation of community supervision.
- D. The hearing officer / panel will prepare the applicable Findings of Facts, Conclusions of Law, and Order.
1. In certain cases, the hearing panel/officer may order the state's counsel to prepare the necessary documents for approval and entry.
 2. In certain cases, the hearing panel/officer may request counsel for both parties to submit briefs, prior to the hearing panel making its final decision. In such a case, the decision will be entered at a later date.
- E. The hearing officer/panel's decision will be in writing.
1. If the board orders a revocation, the decision shall be in writing and shall specifically state the findings of fact and conclusions of law, which support the order. (see ARSD 17:60:03:11 & 17:60:11:11).
- F. The hearing panel's/officer's decision will be furnished to the offender and necessary counsel as soon as practical, within ten (10) days of the decision (see ARSD 17:60:03:12 & 17:60:11:12).
- G. In hearings conducted by a hearing officer, the officer's written Findings of Facts, Conclusions of Law, and Order will be submitted to a two person panel who may adopt, modify, or reject the recommendation.

The panel's action will be furnished to the offender and necessary counsel as soon as practical, within ten (10) days of the decision (see ARSD 17:60:03:12 & 17:60:11:12).

1. Notification to counsel will be made through US First Class Mail.

Appeal of the Board's Final Decision

- A. Offenders have the right to appeal the board's decision to the Circuit Court.
 1. SDCL 1-26-31. Notice of appeal--Time for service and filing. An appeal shall be taken by serving a copy of a notice of appeal upon the adverse party, upon the agency, and upon the hearing examiner, if any, who rendered the decision, and by filing the original with proof of such service in the office of the clerk of courts of the county in which the venue of the appeal is set, within thirty days after the agency served notice of the final decision or, if a rehearing is authorized by law and is requested, within thirty days after notice has been served of the decision thereon. Failure to serve notice of the appeal upon the hearing examiner does not constitute a jurisdictional bar to the appeal.

V Related Directives:

South Dakota Codified Laws: Chapters 1-26, 24-15 and 24-15A
 South Dakota Administrative Rules: Chapters 17:60 & 17:61
 Board of Pardons and Paroles Policy 8.1.A.3 *Dispositional Meetings*
 Board of Pardons and Paroles Policy 8.1.A.7 *Early Discharges*
 DOC Policy 1.5.G.8 Detainers and Arrest on Violation
 Parole Board Office OM 9.1.A.2 *Dispositional Meetings - Revocations*

VI Revision Log:

February 2009: **Revised** and reordered document. Grammar and language through-out, updated to DOC format for policies, **Revised:** standard of proof, and expanded definitions. **Added:** Final Hearing Definitions items A through F. **Added** Definition on Detainer

July 2010 **Revised** Policy Format. **Revised** complete policy in accordance with correct format. **Revised** Policy purpose. **Revised/Updated/Added/Deleted** Policy definitions. **Revised** all policy procedures. **Added** SDCL changes, including changes to 24-15A-29, regarding next review past 24 months when SS imposed and recalculated date. **Revised/Added/Deleted** all attachments. **Added** procedures regarding court reporter fees. **Removed** Definition outlining previous decisions of Board Minutes, as Board has adopted attachment outlining Maximum Potential Sanctions. **Added** reference and procedures for rescindment of partial early final discharge.

September 2012: Revised added: Designation of Hearing Officers:

- H. The chair of the board may designate individual board members as hearing officers who may conduct hearings pursuant to SDCL chapters 24-13, 24-14, 24-15, and 24-15A, take testimony and make recommendations to the board./ one (1)/ Board staff will assist the hearing panel with the necessary documents and/or files. When a single hearing officer conducts a hearing pursuant to this section the hearing officer shall make a recommendation in writing to the board who may adopt, modify, or reject the recommendation./ officer / officer / Conclusions of Law, and Order will be submitted to the full board who may adopt, modify, or reject the recommendation. The Board's action will be furnished to the offender and necessary counsel as soon as practical, within ten (10) days of the decision (see ARSD 17:60:03:12 & 17:60:11:12).

May 2013: REMOVE-. Court Reporter Fees

- A. All court reporter fees associated with an individual's revocation hearing will be the responsibility of the offender appearing before the board.
 1. The DOC will pay all court reporter fees associated with an individual's revocation hearing in the event an offender is found to not be in violation and is reinstated to community supervision.

Remove Maximum Potential Punishment attachment : Use of 30 Day Months versus Calendar Months
In calculations requiring the subtraction or addition of time or dates to or from another date, full years and months are added or subtracted

In cases where the calculations require borrowing days from a month, converting a number of days to months, or a fraction of a month, a month will be calculated as having thirty (30) days

Calculations resulting in nonexistent dates, i.e., February 30, will be moved forward to the next actual date.

During a Leap Year, February 30 would be adjusted to March 1; during a non-Leap Year, February 30 would be adjusted to March 2.

These adjustments will be made only when needed for actual dates, i.e. Term Expires, Good Time release, suspended sentence release date, parole eligibility and initial parole date.

Calculations resulting in a fraction of a day will be rounded up. For example, one half of 15 days will be rounded to 8 days.

See DOC Policy 1.1.E.2 *Date Computation*

3/12/15- No changes.

<i>Kay Nikolas</i>	<i>3/12/15</i>
Kay Nikolas, Chair	Date

Attachment 1: Revocation Hearing – Reading of Rights – Script

The **Revocation Hearing – Reading of Rights – Script** form is located on the state’s M Drive.

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

1. Click [here](#) to access the **Revocation Hearing – Reading of Rights – Script** form 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, locate the file on the M Drive, at M:\DOC\DOC Policies\Agency\Parole Division\Parole Board Policy\8.1.A.5 Hearing Scripts.

<p style="font-size: small; margin: 0;">South Dakota Board of Pardons and Paroles Attachment: Revocation Hearing (Initial Script) Policy: 8.1.A.5 Distribution: Public Parole Decision – Setting of Next Review Dates</p> <div style="text-align: center; margin: 10px 0;">  <div style="border: 1px solid black; padding: 2px; display: inline-block; font-size: x-small;"> STATE OF SOUTH DAKOTA BOARD OF PARDONS AND PAROLES 1600 N. Drive, P.O. Box 5911 Sioux Falls, SD 57117-5911 </div> </div> <p style="text-align: center; margin: 5px 0;"><u>Reading of Rights - Revocation Hearing</u></p> <p style="font-size: x-small; margin: 0;">All inmates appearing for an Initial Revocation Hearing and Contested Revocation Hearings should be brought into the hearing room – those appearing for a <u>recommutation hearing</u> should not appear with this group.</p> <p style="font-size: x-small; margin: 0;"><u>Hearing Officer/Hearing Panel:</u></p> <p style="font-size: x-small; margin: 0;">A. Request that each inmate present identify themselves by their full name and inmate ID number.</p> <p style="font-size: x-small; margin: 0;">B. When all inmates appearing for an Initial Revocation Hearing and a Contested Revocation Hearing are determined to be present, they will be read their rights:</p> <p style="font-size: x-small; margin: 0;">Reading of rights:</p> <ol style="list-style-type: none"> 1. You have the absolute right to remain silent. You need not put on any evidence in your defense. You may rely upon the state's burden to prove its case for revocation. 2. Should you give up your right to remain silent, you do have the right to testify on your own behalf if you so desire. You may call witnesses on your own behalf, and may place before the Board any documentary evidence you wish for us to consider. If you choose to testify on your own behalf, you are subject to cross-examination by the state and counsel. 3. You have the right to confront any witnesses called to testify against you and to cross-examine them. Additionally, the state may place into evidence against you certain documentary evidence, which would normally be termed hearsay – these would be letters, affidavits, police reports or depositions – that type of thing. 4. You have the right to be represented by an attorney, at your own expense. If you cannot afford an attorney, you may request counsel be appointed to you through your sentencing court. 5. You have the right to know the charges or allegations against you. 6. You have the right to a final hearing and to have your case disposed of within ninety (90) days of your return to a South Dakota Department of Corrections facility. However, if you, your counsel, the Board, or the state requests continuance in the matter and it is granted, your right under this rule is waived. Continuances may be made by the previously identified parties and may be granted in the best interests of justice or for good cause. <p style="font-size: x-small; margin: 0;">C. Have each inmate again identify themselves to the Board and <u>police will escort you or do not fully understand the rights in these proceedings.</u></p> <p style="font-size: x-small; margin: 0;">D. Once all inmates present indicate they understand their rights, <u>all the inmates will be sworn in or follow the oath.</u> Each inmate reads in response "I do."</p> <p style="font-size: x-small; margin: 0;">Revised: March 2010 Page 1 of 2</p>	<p style="font-size: small; margin: 0;">South Dakota Board of Pardons and Paroles Attachment: Revocation Hearing (Initial Script) Policy: 8.1.A.5 Distribution: Public Parole Decision – Setting of Next Review Dates</p> <p style="font-size: x-small; margin: 0;">E. The inmates may be excused and will wait to be called individually before the Board for their hearing. Security staff will escort the inmates out of the hearing room and into a secure location.</p> <p style="font-size: x-small; margin: 0;">Revised: March 2010 Page 2 of 2</p>
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Attachment 2: Revocation Hearing – Initial – Script

The **Revocation Hearing – Initial – Script** form is located on the state’s M Drive.

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

1. Click [here](#) to access the **Revocation Hearing – Initial – Script** form 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, locate the file on the M Drive, at M:\DOC\DOC Policies\Agency\Parole Division\Parole Board Policy\8.1.A.5 Hearing Scripts.

<p>South Dakota Board of Pardons and Paroles Policy: Attachment: Revocation Hearing (Initial) Script Distribution: Public Parole Decision – Setting of Next Review Date 8.1.A.5</p>	<p>South Dakota Board of Pardons and Paroles Policy: Attachment: Revocation Hearing (Initial) Script Distribution: Public Parole Decision – Setting of Next Review Date 8.1.A.5</p>
 <p>STATE OF SOUTH DAKOTA BOARD OF PARDONS AND PAROLES 1600 N. Drive P.O. Box 5911 Sioux Falls, SD 57117-2911</p>	
<p>Revocation Hearing (Initial Appearance) Script</p>	
<p><i>All inmates appearing for an Initial Revocation Hearing will have already been read their rights and sworn in/given the oath – security staff will escort the individual inmates into the hearing room</i></p>	
<p><u>Hearing Officer (Hearing Panel) – Conducting the first Initial Revocation Hearing:</u></p>	
<p>A. Begin the hearing by introducing the Board members present for the hearing (for the record). B. State to the inmate: 1. "This is the time and place set for the revocation hearing in the matter of inmate _____." 2. Ask the Counsel for the state to introduce themselves (for the record). 3. To the inmate: "Please state your name and South Dakota inmate ID number, for the record." a. (if necessary) "Please introduce your guests for us." b. (if necessary) Request that any other visitors for this hearing would introduce themselves. 4. Ask the inmate if he/she was present earlier for the reading of the rights? a. If "yes" – proceed b. If "no" – re-read the rights. 5. Ask the inmate if he/she could hear and understands the rights as they were read? a. If "yes" – proceed b. If "no" – re-read the rights and offer explanations. 6. At this time, are you prepared to have this revocation hearing or will you (or your counsel) be requesting a continuance? a. If requesting a continuance, and if granted, the hearing will be continued to a later month. 1) Explain to the inmate/counsel: a) You have the right to a final hearing and to have your case disposed of within ninety (90) days of your return to a South Dakota Department of Corrections facility. However, if you, your counsel, the Board, or the state request a continuance in the matter and it is granted, your right under this rule is waived. Continuances may be made by the previously identified parties and may be granted in the best interests of justice or for good cause. b. If requesting to proceed at this time: 1) Ask the states counsel if they are prepared to move forward today?</p>	<p>2) If all parties are ready to move forward today, proceed to the Revocation Hearing (Contested) Script– do not continue below. 7. The request for a continuance made by _____ has been granted and this matter will be continued to _____ 8. That will conclude this hearing.</p> <p>**REMINDER: Board Office staff is present at the hearings as a resource to the Board and may answer questions of the Board and provide clarification to the Board.</p>
<p>Revised: March 2010 Page 1 of 2</p>	<p>Revised: March 2010 Page 2 of 2</p>

Attachment 3: Revocation Hearing – Contested – Script

The **Revocation Hearing – Contested – Script** form is located on the state’s M Drive.

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

1. Click [here](#) to access the **Revocation Hearing –Contested – Script** form 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, locate the file on the M Drive, at M:\DOC\DOC Policies\Agency\Parole Division\Parole Board Policy\8.1.A.5 Hearing Scripts.

<p>South Dakota Board of Pardons and Paroles Policy: Attachment: Revocation Hearing (Contested) Script Distribution: Public</p> <p>STATE OF SOUTH DAKOTA BOARD OF PARDONS AND PAROLES 1600N. State P.O. Box 59111 Sioux Falls, SD 57117-9911</p> <p>Revocation Hearing (Contested) Script</p> <p>All inmates appearing for a Contested Revocation Hearing will have already been read their rights and sworn in/given the oath – security staff will escort the individual inmate into the hearing room.</p> <p><u>Hearing Officer/Hearing Panel – Check off the Contested Revocation Hearing:</u></p> <p>A. Begin the hearing by introducing the Board members present for the hearing (for the record). B. State to the inmate: 1. "This is the time and place set for the revocation hearing in the matter of inmate _____." 2. Ask the Counsel for the state to introduce themselves (for the record). 3. To the inmate: "Please state your name and South Dakota inmate ID number, for the record." a. (if necessary) "Please introduce your guests for us." b. (if necessary) "Request that any other visitors to this hearing visual introduce themselves." 4. Ask the inmate if he/she has present/counsel for the hearing of the right? a. If "yes" – proceed. b. If "no" – read the rights. 5. Ask the inmate if he/she could hear and understands the rights as they were read? a. If "yes" – proceed. b. If "no" – read the rights and offer explanations. 6. Advise that it is the understanding of the Board that, at this time, the state and the inmate/counsel are prepared to proceed with this revocation hearing. 7. If the inmate is <u>unsub/counsel</u> – further explain the following: a. One of those rights is the right to be represented by an attorney. An attorney can help you in the presentation of evidence and protection of your legal rights. Do you wish to proceed without an attorney? 1. If "yes" – proceed. 2. If "no" – the proceeding will be continued and an attorney will be requested by the inmate through the courts. C. Address the Violation Packet (link the packet as exhibit): 1. Ask the inmate if they were served a copy of the violation packet? 2. Refer to the Supervision Agreement within the violation Packet.</p> <p>Revised: March 2010 Page 1 of 3</p>	<p>South Dakota Board of Pardons and Paroles Policy: Attachment: Revocation Hearing (Contested) Script Distribution: Public</p> <p>Parole Decision – Setting of Next Review Date</p> <ol style="list-style-type: none">3. Ask the inmate if they have seen the agreement and if they have signed the agreement, and if they received a copy of the agreement.4. Ask the inmate to verbally state the date they signed the agreement (for the record).4. Ask the inmate/counsel: "Do you have any object to entering the violation packet into evidence?"3. Review the inmate's original conviction, sentence and release date to parole/suspended sentence. Refer to the Violation Report within the packet. a. Acknowledge that the violation report contains alleged violations of specific conditions of the supervision agreement previously reviewed. b. Ask the inmate: "Have you received a copy of the violation report?" 1. Should respond "no" – entry violation is served and read copy of the violation packet. c. Address the preliminary hearing. 1. "It is the Board's understanding that you (unsub/counsel) a preliminary hearing in this matter?" a. Is this correct? 2. Did you (and your counsel) receive a copy of the preliminary hearing report? a. Should respond "yes." b. If not one can be provided by the Board Office staff. 5. Specifically address the violations. 6. Review the Maximum Points: Punishment with the inmate/counsel: 1. "Do you understand that if you admit, or if the Board finds you have violated the conditions of supervision, we can revoke your parole/suspended sentence, return you to an institution, and take any/all of your good time and/or street time?" a. If "yes" – proceed. b. If "no" – clarify. 2. "Were you made any promises or were you threatened in any way to make a certain decision today?" a. If "yes" – clarify. b. If "no" – proceed. 3. For each specific allegation - Read the alleged conditions violated from the Violation Report. a. "Regarding condition _____ do you admit or deny being in violation?" b. Repeat for multiple conditions. 6. Allow the state's counsel to begin presenting their case. a. For each witness, allow for cross-examination by the inmate/counsel and rebuttal. 7. Allow the inmate/counsel to present their case. a. For each witness, allow for cross-examination by the state's counsel and rebuttal. b. For each document/evidence, accept or deny substantiate the evidence. <p>Revised: March 2010 Page 2 of 3</p>
<p>South Dakota Board of Pardons and Paroles Policy: Attachment: Revocation Hearing (Contested) Script Distribution: Public</p> <p>Parole Decision – Setting of Next Review Date</p> <ol style="list-style-type: none">3. The Board should ask any questions they have or clarify any issues raised.D. Closing the hearing.<ol style="list-style-type: none">1. Allow counsel for the state to offer their closing arguments)2. Allow the inmate/counsel to offer their closing arguments)3. Allow for any remarks.4. Inform the inmate and hearing participants that a final decision will be made and they will be notified of that decision by the close of business on Friday.5. The hearing is concluded. <p>**REMINDER: Board Office staff is present at the hearings as a resource to the Board and they answer questions of the Board and provide clarification to the Board.</p> <p>Revised: March 2010 Page 3 of 3</p>	

Attachment 4: Revocation Hearing – Mitigation Only – Script

The **Revocation Hearing – Mitigation Only – Script** form is located on the state's M Drive.

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

1. Click [here](#) to access the **Revocation Hearing – Mitigation Only – Script** form 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, locate the file on the M Drive, at M:\DOC\DOC Policies\Agency\Parole Division\Parole Board Policy\8.1.A.5 Hearing Scripts.

<p>South Dakota Board of Pardons and Paroles Attachment: Revocation Hearing (Mitigation Only) Script Policy: 8.1.A.5 Distribution: Public Parole Decision – Setting of Next Review Dates</p>  <p>STATE OF SOUTH DAKOTA BOARD OF PARDONS AND PAROLES 1600 N. Drive, P. O. Box 6911 Sioux Falls, SD 57117-6911</p> <p>Revocation Hearing (Mitigation Only) Script</p> <p><i>All inmates appearing for a Mitigation Only - Revocation Hearing will have already been read their rights and sworn in/upon the oath – security staff will escort the individual inmate into the hearing room</i></p> <p><u>Hearing Officer/Hearing Panel – Conducting the hearing:</u></p> <ol style="list-style-type: none">A. Begin the hearing by introducing the Board members present for the hearing (for the record).B. State to the inmate:<ol style="list-style-type: none">1. "This is the time and place set for the revocation hearing in the matter of inmate _____."2. Ask the Counsel for the state to introduce themselves (for the record)3. To the inmate: "Please state your name and South Dakota inmate ID number, for the record."<ol style="list-style-type: none">a. (if necessary) "Please introduce your guests for us."b. (if necessary) Request that any other visitors for this hearing would introduce themselves4. Ask the inmate if he/she was present earlier for the reading of the rights?<ol style="list-style-type: none">a. if "yes" – proceedb. if "no" – reread the rights5. Ask the inmate if he/she could hear and understands the rights as they were read?<ol style="list-style-type: none">a. if "yes" – proceedb. if "no" – reread the rights and offer explanations6. Advise that it is the understanding of the Board that a dispositional meeting was held on this matter on _____. Further, it is the Board's understanding that at that dispositional meeting the inmate made the decision to admit to the alleged conditions violated but chose to proceed to a hearing before the Board in order to offer mitigation.<ol style="list-style-type: none">a. Read the specific alleged conditions violated.b. Ask the inmate if this is correct?<ol style="list-style-type: none">1) if "yes" – proceed2) if "no" – clarifyC. Allow the inmate to proceed with their case and present any mitigation for the Board to consider in their decision.D. Allow the state's counsel to present their case, present any relevant testimony, and offer any evidence.E. Closing the hearing<p>Revised: March 2010 Page 1 of 2</p>	<p>South Dakota Board of Pardons and Paroles Attachment: Revocation Hearing (Mitigation Only) Script Policy: 8.1.A.5 Distribution: Public Parole Decision – Setting of Next Review Dates</p> <ol style="list-style-type: none">1. Inform the inmate and hearing participants that a final decision will be made and they will be notified of that decision by the close of business on Friday.2. The hearing is concluded. <p><i>**REMINDER: Board Office staff is present at the hearings as a resource to the Board and may answer questions of the Board and provide clarification to the Board.</i></p> <p>Revised: March 2010 Page 2 of 2</p>
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Attachment 5: Revocation Hearing – Rejected Waiver – Script

The **Revocation Hearing – Rejected Waiver – Script** form is located on the state’s M Drive.

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

1. Click [here](#) to access the **Revocation Hearing – Rejected Waiver – Script** form 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, locate the file on the M Drive, at M:\DOC\DOC Policies\Agency\Parole Division\Parole Board Policy\8.1.A.5 Hearing Scripts.

<p>South Dakota Board of Pardons and Paroles Attachment: Revocation Hearing (Rejected Waiver) Script Policy: 8.1.A.5 Distribution: Public Parole Decision – Setting of Next Review Dates</p>  <p>STATE OF SOUTH DAKOTA BOARD OF PARDONS AND PAROLES 1600N. Drive P.O. Box 5911 SOUTH FALS. SD 57117-2911</p> <p>Revocation Hearing (Rejected Waiver) Script</p> <p><i>All inmates appearing for a Rejected Waiver - Revocation Hearing should not have testified their rights with the other violation cases – they will have their rights read and be sworn in/given the oath at the time of their individual hearing.</i></p> <p>Security staff will escort the individual inmates into the hearing room.</p> <p><u>Hearing Officer/Hearing Panel – Conducting the Hearing:</u></p> <p>A. Begin the hearing by introducing the Board members present for the hearing. (for the record).</p> <p>B. State to the inmate:</p> <ol style="list-style-type: none">1. “This is the time and place set for the revocation hearing in the matter of inmate _____.”2. Ask the Counsel for the state to introduce themselves. (for the record).3. To the inmate: “Please state your name and South Dakota inmate ID number, for the record.”<ol style="list-style-type: none">a. (if necessary) “Please introduce your guests for us.”b. (if necessary) Request that any other visitors for this hearing would introduce themselves.4. Reading of the Rights:<ol style="list-style-type: none">a. Upon review of this recommended sanction, the Board rejected the recommendation that was agreed upon by you and the Executive Director, which has resulted in this hearing. At this hearing, the Board will hear evidence and argument, if any, and decide what sanctions will be imposed for the violation of your parole.b. At this proceeding, you have the absolute right to remain silent; you are not required to put on any evidence.c. Should you give up your right to remain silent, you have the right to testify and/or call witnesses on your behalf as to why you believe the recommended sanction, or any other sanction, should be imposed. If you choose to testify on your own behalf, you are subject to cross-examination by the state and counsel. You also have the right to confront and cross-examine any witnesses called by the state.d. You have the right to be represented by an attorney, and if you cannot afford an attorney, one will be appointed for you and this proceeding will be adjourned until you have had an opportunity to consult with an attorney.5. Ask the inmate if he/she could hear and understands the rights as they were read? <p>Revised: March 2010 Page 1 of 2</p>	<p>South Dakota Board of Pardons and Paroles Attachment: Revocation Hearing (Rejected Waiver) Script Policy: 8.1.A.5 Distribution: Public Parole Decision – Setting of Next Review Dates</p> <ol style="list-style-type: none">a. If “yes” – proceedb. If “no” – reread the rights and offer explanations <p>6. Once the inmate indicates they understand their rights, the inmate will be sworn in. Each inmate needs to respond “I do.”</p> <p>7. Advise that it is the understanding of the Board that a dispositional meeting was held on this matter on _____. Further, it is the Board’s understanding that at that dispositional meeting the inmate made the decision to admit to the alleged conditions violated, waived your personal appearance before the Board, and accepted the sanction recommended by the Executive Director.</p> <ol style="list-style-type: none">a. Read the specific alleged conditions violated.b. Ask the inmate if this is correct?<ol style="list-style-type: none">1) If “yes” – proceed2) If “no” – clarifyb. Upon reviewing the recommended sanction, the Board rejected the recommendation of _____, which brings us to this hearing.b. Advise it is this hearing panel’s understanding that the recommendation was rejected by the Board due to _____. <p>C. If the Board chooses, you may allow the state’s counsel or Board Office staff to present their case behind the recommended sanction.</p> <p>D. If the Board chooses, you may allow the inmate to testify as to why they agreed to the sanction and why the sanction should be imposed, or why a lesser sanction should be imposed.</p> <p>E. Closing the hearing</p> <ol style="list-style-type: none">1. Inform the inmate and hearing participants that a final decision will be made and they will be notified of that decision by the close of business on Friday.2. The hearing is concluded. <p><i>**REMEMBER: Board Office staff is present at the hearings as a resource to the Board and may answer questions of the Board and provide clarification to the Board.</i></p> <p>Revised: March 2010 Page 2 of 2</p>
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Attachment 6: Maximum Potential Sanctions

The **Maximum Potential Sanctions** form is located on the state's M Drive.

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

1. Click [here](#) to access the **Maximum Potential Sanctions** form 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, locate the file on the M Drive, at M:\DOC\DOC Policies\Agency\Parole Division\Parole Board Policy\8.1.A.5 Hearing Scripts.

<p>South Dakota Board of Pardons and Paroles Policy: Attachment Maximum Potential Sanctions Distribution: Public Parole/Suspended Sentence Revocation Hearings 8.1.A.2</p> <p>STATE OF SOUTH DAKOTA BOARD OF PARDONS AND PAROLES 1500 N. Olive, P.O. Box 8911 Sioux Falls, SD 57117-8911</p> <p>Maximum Potential Sanctions for Violators</p> <p>A. Street Time</p> <ol style="list-style-type: none">1. New System Offenses<ol style="list-style-type: none">a. All time spent on supervision, including time spent on absconder status and suspended sentence, will be considered Street Time.b. At the Board's discretion, all time considered and calculated as Street Time under the current admission and violation may be denied credit towards the offender's sentence.c. If an offender is serving multiple sentences (DOO #s), any sentence that has terminated while on parole will not have the Street Time denied credit.d. Time spent on supervision while in the Community Transition Program (CTP) may not be denied credit towards the offender's sentence.2. Calculating Street Time<ol style="list-style-type: none">a. When calculating the amount of Street Time an offender has accumulated, the date released to parole (start) and the detainer (custody) date (end) will be used.b. See SDOL 24-18A-2B3. Old System Offenses<ol style="list-style-type: none">a. All the time spent serving the suspended portion of the sentence will be considered Street Time.b. At the Board's discretion, all time considered and calculated as Street Time under the current admission and violation may be denied credit towards the offender's sentence.c. If an offender is serving multiple sentences (DOO #s), any sentence that has terminated while on parole will not have the Street Time denied credit.4. Calculating Street Time<ol style="list-style-type: none">a. When calculating the amount of Street Time an offender has accumulated, the date released to parole (start) and the detainer (custody) date (end) will be used.b. See SDOL 23A-27-19 and 24-18-245. Calculating Street Time<ol style="list-style-type: none">a. When calculating the amount of Street Time an offender has accumulated, the date released to parole (start) and the detainer (custody) date (end) will be used. <p>Revised: March 2010 - approved April 15, 2010 Page 1 of 3</p>	<p>South Dakota Board of Pardons and Paroles Policy: Attachment Maximum Potential Sanctions Distribution: Public Parole/Suspended Sentence Revocation Hearings 8.1.A.2</p> <p>B. Good Time</p> <ol style="list-style-type: none">1. New System Offenses<ol style="list-style-type: none">a. Not Applicable2. Old System Offenses<ol style="list-style-type: none">a. At the Board's discretion, it may be considered all time considered and calculated as Good Time on the offender's sentence be denied credit or reduced in full or in part.b. See SDOL 24-18-24 <p>C. Dead Time</p> <ol style="list-style-type: none">1. New System Offenses<ol style="list-style-type: none">a. Not Applicable2. Old System Offenses<ol style="list-style-type: none">a. All time spent on "absconder status" will be considered Dead Time.b. At the Board's discretion, all time considered and calculated as Dead Time under the current admission and violation may be denied credit towards the offender's sentence.3. Calculating Dead Time<ol style="list-style-type: none">a. When calculating the amount of Dead Time an offender has accumulated, the absconder date (or ATT date, the date indicating the start of abscondering behavior) will be used (start) and the detainer (custody) date (end) will be used (the date indicating the start of abscondering behavior will be used). <p>D. Suspended Sentence</p> <ol style="list-style-type: none">1. New System Offenses<ol style="list-style-type: none">a. At the Board's discretion, any suspended portion of an offender's sentence(s) (both DOO and OS) may be imposed, in part or in full, under the current admission and violation.2. Old System Offenses<ol style="list-style-type: none">a. At the Board's discretion, any suspended portion of an offender's sentence(s) (both DOO and OS) may be imposed, in part or in full, under the current admission and violation. <p>E. Use of 30 Day Months versus Calendar Months</p> <ol style="list-style-type: none">1. In calculations requiring the subtraction or addition of time or dates to or from another date, full years and months are added or subtracted.2. In cases where the calculations require borrowing days from a month, converting a number of days to months, or a fraction of a month, a month will be calculated as having thirty (30) days.3. Calculations resulting in nonexistent dates, i.e., February 30, will be moved forward to the next actual date. <p>Revised: March 2010 - approved April 15, 2010 Page 2 of 3</p>
<p>South Dakota Board of Pardons and Paroles Policy: Attachment Maximum Potential Sanctions Distribution: Public Parole/Suspended Sentence Revocation Hearings 8.1.A.2</p> <ol style="list-style-type: none">4. During a Leap Year, February 30 would be adjusted to March 1, during a non-leap Year, February 30 would be adjusted to March 2.5. These adjustments will be made only when needed for actual dates, i.e. Term Expires, Good Time release, suspended sentence release date, parole eligibility and initial parole date.6. Calculations resulting in a fraction of a day will be rounded up. For example, one half of 18 days will be rounded to 9 days.7. See DOO Policy 1.1 E.2 Date Computation <p>Revised: March 2010 - approved April 15, 2010 Page 3 of 3</p>	