


SOUTH DAKOTA  PAROLE BOARD POLICIES AND PROCEDURES		POLICY NUMBER 8.1.A.2	PAGE NUMBER 1 OF 10
		DISTRIBUTION:	Public
		SUBJECT:	Parole & Suspended Sentence Revocation Hearings
RELATED STANDARDS:	N/A	EFFECTIVE DATE:	11/14/2022
		SUPERSESSION:	08/12/2021
DESCRIPTION: Parole Board	REVIEW MONTH: November	Myron Rau, Chair Board of Pardons and Paroles	

I Policy

It is the policy of the South Dakota Department of Correction Board of Pardons and Paroles that offenders who have violated the terms of their parole/suspended sentence are subject to having their parole revoked and/or imposition of their suspended sentence.

II Purpose:

The purpose of this policy is 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 SDCL: 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.

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Designation of Hearing Panels:

- A. 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 (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 30 days (30) 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

- B. The following revocation hearings are subsequent to the disposition meeting process (see Parole Board Policy 8.1.A.2 *Dispositional Meetings* and *Attachment 6 – Violation Sanctioning Guidelines*):
 - 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 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 in-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).

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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 the hearing for the official record.
- C. All offenders will be read and explained their constitutional rights before individual proceedings begin.
- D. All offenders and other witnesses offering testimony will be administered an oath by a board member or court reporter:

Revocation hearings will be conducted in accordance with the applicable hearing type i.e. initial, contested, mitigating, rejected waiver.

- E. Parole Administration staff will assist the hearing panel as needed.
- F. 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 thirty (30) 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 thirty (30) day period will commence the day the offender is admitted being held 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 thirty (30) day period.

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- 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 30 days to a final hearing.
3. If the parolee is to have a hearing ordered on an appeal or collateral attack, the thirty (30) 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 thirty (30) 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 thirty (30) daytime period.
6. If an offender does not have a final hearing before the conclusion of the thirty (30) 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 charges 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 parole 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 parole administration staff shall notify the sentencing court and request the appointment of counsel.

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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 parole admin staff shall notify the sentencing court, request the appointment of counsel, and continue the hearing until a later date.

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 (dismiss violation);
 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 (transactions), 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.

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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. In accordance with 23A-27-18.4, at the board's discretion, any suspended portion of an offender's sentence(s) (both concurrent and consecutive) 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*) may be rescinded upon a subsequent finding that the offender is in violation of community supervision.

C. Revocation hearings for new system offenders

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 (transactions), 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) or extended detainment 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).

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5. At the board's discretion, any suspended portion of an offender's sentence(s) (both concurrent and consecutive) 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*) may be rescinded upon a subsequent finding that the offender is in violation of community supervision.
- D. Parole Administration staff will prepare the applicable Findings of Facts, Conclusions of Law, and Order in preparation of the parole board decision.
- E. The hearing 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 one 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.
1. Notification to counsel will be made through US first class mail.

Extra Session

- A. Board Members will conduct extra sessions outside of the regularly scheduled board week to follow DOC's policy of Parole Services-Detain and Arrest on Violation (1.5.G.8).
1. Final decisions can be made by a two-member panel as noted in *SDCL 24-15A-10* and decisions shall be carried out by applicable staff (Parole Admin, Central Records, Parole Services, SD DOC institution staff etc.)
 2. Board Member's will be compensated at their hourly training rate of (\$37.50/hr) if the extra session is less than 3 hours. If the session takes longer, than 3 hours they will be compensated the daily rate of \$200/day.

Appeal of the Board's Final Decision

- A. Offenders have the right to appeal the board's decision to the circuit court in accordance with SDCL Ch 1-26.

V Related Directives:

- A. South Dakota Codified Laws: Chapters 1-26, 24-15 and 24-15A
- B. South Dakota Administrative Rules: Chapters 17:60 & 17:61
- C. Board of Pardons and Paroles Policy 8.1.A.3 *Dispositional Meetings*

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- D. Board of Pardons and Paroles Policy 8.1.A.7 *Early Discharges*
- E. DOC Policy 1.5.G.8 Detainers and Arrest on Violation

VI Revision Log:

February 2009

July 2010

September 2012:

May 2013

March 2015

July 2016

October 2017

August 2021

Attachments

1. Violation Sanctioning Guidelines

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Attachment 1: Violation Sanctioning Guidelines

Non- Absconder			
<u>Supervision Level</u>	<u>Violation Count</u>	<u>NRD</u>	
Intensive/ Maximum	1st violation	4-6 months	
Intensive/Maximum	2nd violation	5-7 months	
Intensive/Maximum	3rd/subsequent violation	6-8 months	
Medium/Minimum/ Indirect	1st violation	3-5 months	
Medium/Minimum/ Indirect	2nd violation	4-6 months	
Medium/Minimum/ Indirect	3rd violation/subsequent violation	5-7 months	
Deviations from the matrix must be noted on the disposition investigative summary paperwork, for parole board panel review.			
Absconding			
<u>Supervision Level</u>	<u>Violation Count</u>	<u>Loss of</u>	<u>NRD</u>
ALL	1st violation	absconding time	3-5 Months
	2nd violation	absconding time	4-6 months
	3rd violation	absconding time	5-7 months
	4th/ subsequent violation	absconding time	6-8 months

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* SDCL 24-15A-29 Can be taken into consideration.

The next review date and loss of street time sanction may be based on but not limited to the inmate's behavior while on supervision, previous violations/non-compliance this admission and behaviors indicating an intention to re-offend. Time that has lapsed in between revocations will also be taken into consideration.

Jail time and detainment time can be considered when determining the amount of street time to take as a sanction and if they turned themselves in (TSI) prior to their apprehension. Absconding time can be taken up to amount of days absconded.

This document or its application shall not bind the Board, Director or designee. Neither this document nor its application may be the basis for establishing a constitutionally protected liberty or due process interest in any prisoner.

Updated 12/18/2020