

8.1.A.8 Restitution Hearings

I Policy Index:

Date Signed: 09/17/2020

Distribution: Public

Replaces policy: Replaces 10/2018 version

Affected Units: SD Board of Pardons and Paroles

Effective Date: 09/17/2020

Scheduled Revision Date: 09/2021

Revision Number: 9

Office of Primary Responsibility: Office of the SD Board of Pardons and Paroles

II Purpose:

To provide standards and procedures for conducting due process hearings in the matter of setting or modifying restitution/financial obligation agreements.

III Definitions:

Restrictions on Parole-Implementation of Child Support and Restitution Plans-Acceptance by Parolee

The board may place reasonable restrictions upon a parolee, which are designed to continue the parolee's rehabilitation. The board, upon granting parole, shall require the implementation of a restitution plan and payment of supervision fees, if reasonable possible. The prior obligations of child support and restitution payments take precedence over collection of supervision fees. All restrictions shall be in writing and the agreement shall be signed by the parolee (See SDCL 24-15-11).

Parolee Restrictions-Supervision Fees-Restitution and Child Support Payment Plans

The board and the department may place reasonable restrictions upon a parolee which are designed to continue the parolee's rehabilitation, including limited areas of residence or community access, required participation in treatment, enhanced reporting requirements, and use of electronic monitoring or global positioning units. The board and the department shall require the implementation of a restitution plan and payment of supervision fees, if reasonable possible. The prior obligation of child support and restitution payments takes precedence over collection of supervision fees. All restrictions shall be in writing and shall be agreed to and signed by the parolee (See SDCL 24-15A-24).

Interstate Parole Supervision

Chapter Applies to all South Dakota Inmates applying for and transferring supervision to another state. Interstate Compact Rules: Rule 4.108 - Collection of restitution and other cost: A sending state is responsible for collecting all fines, family support, restitution, court costs, or other financial obligations imposed by the sending state on the offender.

Upon notice by the sending state that the offender is not complying with family support and restitution obligations, financial obligations as set forth in subsection (a), the receiving state shall notify the offender that the offender is in violation of the conditions of supervision and must comply. The receiving state shall inform the offender of the address to which payments are to be sent (See SDCL 24-16-1).

All persons under supervision of parole services, either paroled in state, released on suspended sentence, or accepted through the interstate compact, are responsible, if ordered by a court or paroling authority that has jurisdiction, for paying court costs, restitution, fines, fees, support obligations, and supervision fees and shall provide documentation of payment to the supervising agent (See AR 17:61:01:10).

IV Procedure:

Notice of Hearing

- A. Parolees are required to follow the procedures as outlined under "Appeal Process Hearing" as described in Operational Memorandum - 7.3.E.5 - Collection of Fees, Fines, and Restitution.
- B. Board office staff will schedule a hearing upon receiving a request in writing from an offender on parole supervision (parolee) (Attachment #1).
- C. Notice of the hearing will be sent to the parolee with the time and place where the hearing will be held.
- D. If the parolee indicates in the written request that an attorney will represent them, the attorney will be notified.
- E. Victims will be notified through SAVIN upon a hearing being scheduled in COMS.

Hearing Procedures

- A. Hearings will be recorded.
- B. Hearing script will be utilized by the board/panel (Attachment #2).
- C. Upon completion of hearing, Findings, Conclusions, and a Board Order will be written and sent to the parolee. A copy will be sent to the parolee's counsel and filed in the legal file.

V Attachments

Attachment 1: Notice of Board Hearing
Attachment 2: Restitution Hearing Script
Attachment 3: Parolee Financial Statement

VI. Related Directives:

SDCL Chapters 24-13, 24-15, 24-15A, 24-16 and 1-26
Administrative Rules Chapters 17:60 and 17:61

VII Revision Log:

August 8, 2007 - New

September 2007 - No changes

October 2008 - No changes

January 2012 – **Revise** Page one third paragraph. S added to: “The prior obligation of child support and restitution payments takes”

January 2013: No changes

February 2015: No changes

March 2016: No changes

May 2017: No changes

October 2018: No changes

September 2020: **Add** headings. **Update** Section IV Procedure/Notice of Hearing Section to reference SAVIN and COMS. **Add** Section V – Attachments and Attachments 1 (Notice of Hearing) and Attachment 3 (Financial Statement).

<i>Myron Rau, Chair</i>	<i>Date</i>

Attachment 1 – Notice of Hearing

**South Dakota
Board of Pardons and Paroles**

NOTICE OF HEARING

In the Matter of the Determination of Financial Obligations/Restitution Payments of [REDACTED]:

To: [REDACTED]

You are hereby notified pursuant to SDCL 24-15-11, 24-15A-24, and 24-16A-1, that a request for a hearing before the South Dakota Board of Pardons and Paroles to review your financial ability to provide restitution payments will be held at the State Penitentiary in Sioux Falls, South Dakota, on [REDACTED], at [REDACTED], or as soon thereafter as the matter may be heard by the Board.

At this time the Board will review your financial status, Financial Obligations Agreement, restitution obligations, and other financial obligations to review your payment schedule. **Please complete the Financial Statement enclosed with this notice and return to the Board office at least one week prior to the hearing.**

This is an adversarial proceeding and you have a right to be present at the hearing, to be represented by an attorney, and to request an attorney at public expense. The decision of whether to appoint an attorney at public expense is a matter for your sentencing judge and not the Board to determine. At your hearing, you have the right to be heard in person or by counsel, or both, to present witnesses and documentary evidence, and to confront and cross-examine adverse witnesses. These and other due process rights will be waived if you do not exercise them at the hearing.

The Board's decision in this matter may be appealed to the circuit court and the State Supreme Court

Dated at Sioux Falls, South Dakota, this [REDACTED] day of [REDACTED], 20[REDACTED].

Board of Pardons and Paroles Staff

Personal service of the notice within and receipt of true and correct copy thereof is hereby admitted at Sioux Falls, SD, this [REDACTED] day of [REDACTED], 20[REDACTED].

Parolee

Witness: _____

Date: _____

Attachment 2 - Financial Obligation Hearing Script

Hearing Officer/Hearing Panel:

- A. Identify the hearing panel members for the record
- B. Request that the parolee present identify themselves by their full name and inmate ID number.
- C. Read them their rights. **Reading of rights:**
 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 non-compliance.***
 2. ***On the other hand, 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.***
 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 can not afford an attorney, you may request counsel be appointed to you through your sentencing court. However, your sentencing court is not obligated to provide you counsel.***
 5. ***You have the right to know the charges or allegations against you.***
- D. Ask the parolee if he/she could hear all the rights and if he/she understands the rights as they were read?
 1. If “yes” – proceed
 2. If “no” – clarify
- E. Administer this Oath to the parolee and anyone else wishing to testify on their behalf:
 1. ***“Do you solemnly swear that the testimony you are about to give in this matter is the truth, the whole truth, and nothing but the truth?”***
- F. State to the parolee:
 1. ***“This is the time and place set for the financial obligation hearing in the matter of parolee _____ (parolee name)”***
 2. (If necessary) “Please introduce your guests for us.”
 3. (If necessary) Request that any other visitors for this hearing would introduce themselves
 4. Ask the inmate if he/she has any questions regarding the procedures?
 - a. If “yes” – clarify
 - b. If “no” – proceed
 5. Advise it is the board’s understanding that the parolee (or whomever it may be) has requested this hearing for the determination or review of the parolee’s financial obligation/restitution payments.

- a. Ask the parolee if they were served notice of the hearing (should have been served by the board office staff/parole agent).
6. Testimony:
- a. Ask the parolee to state the facts as they were presented in their written request to the board office when requesting this hearing
 - 1) If parolee has an attorney, the attorney may offer testimony and/or mitigation – may ask family/friends to also offer testimony
 - b. Ask any representative(s) of the state to offer testimony or submit any documents in the matter
7. The board should ask any questions of those present, request any needed clarification, and review any and all documents submitted on the matter.
8. If there are victims specified in the case, they should be sought for any questions/input (if they are not present).
- G. Closing the hearing:
1. State ***“The Full Board will meet on Thursday and you will be notified of our decision in writing within ten (10) days via US mail*”**

*****REMINDER: Board office staff is present at the hearings as a resource to the board and may answer questions and provide clarification to the board.***

FINANCIAL STATEMENT

Please answer every question or state not applicable (N/A) if the question does not pertain to your financial situation. If you need more space to answer a question, please attach an additional sheet if necessary to fully answer any item. Be sure to attach a copy of you most recent paycheck stub and your last filed Federal Income Tax Return. Include your W-2 if you file jointly. Be sure to date and sign the financial statement after completion.

Personal Information:

Name: _____ Phone: Home _____

Address: _____ Phone: Work _____

Current Marital Status: _____

Number of Dependents: _____

Bank Name: _____ Checking Account #: _____

Saving Account #: _____

Bank Address: _____

Other Accounts #: _____

Employment Information:

Employer: _____ Dates Employed:

From: _____

Address: _____ To: _____

Phone #: _____ Occupation: _____

Rate of Pay: \$ _____ Per: _____ Hours Worked Per Week: _____ Other Income: _____

Gross Monthly Income:

1. \$ _____ Salary, Wages, Tips, Commissions, Bonus or Other Designations
2. \$ _____ Gain or profit from a business or professions (self-employment)
3. \$ _____ Pension, retirement, disability, veterans, social security or insurance payments
4. \$ _____ Interest, dividends, rentals, royalties or other gain
5. \$ _____ Gain from sail, trade or conversion of capital assets
6. \$ _____ Unemployment insurance and workers compensation benefits
7. \$ _____ Benefit in lieu of compensation including, but not limited to, military pay allowances.
8. \$ _____ Other income (including Spousal Support Received) Explain: _____
9. \$ _____ **TOTAL GROSS MONTHLY INCOME** (Add lines 1 through 8).

Withholding:

- 10. \$ _____ Income tax withholding.
- 11. \$ _____ Social Security and Medicare taxes withheld from wages or salary
- 12. \$ _____ Contributions to an IRS qualified retirement plan not exceeding 10% of gross income
- 13. \$ _____ Unreimbursed employee business expenses (Attach IRS form 2106)
- 14. \$ _____ Payments made on support orders
- 15. \$ _____ Payments made for Spousal Support
- 16. \$ _____ TOTAL WITHHOLDING (Add lines 10 through 15)

Asset Information:

List assets, value and location (Include vehicles, boats, hunting/fishing gear, sporting goods, real estate, depository accounts (with name, address, and account number of each), cash value of insurance policies, jewelry, securities, and any other property of any kind. If any property has a balanced owed against it, show full value of property without regard to this balance; list dept/balance separately).

Description & Location of Item:	Market Value:	Debt/Balance Owed:

I declare and affirm that the information contained herein has been examined by me, and to the best of my knowledge and belief, is in all things true and correct. I further understand that knowing the information to be false for untrue, in whole or in part, or failing to disclose information requested may place you in violation of your parole.

Signature of person completing this Financial Statement is required:

Signature

Date