

8.1. A.15 Suspended Sentence Status Report:

I Policy Index:

Date Signed: 12/16/2021
Distribution: Public
Replaces Policy: 10/2020
Affected Units: Board of Pardons and Paroles
Effective Date: 12/16/2021
Scheduled Revision Date: 11/2022
Revision Number: 5
Office of Primary Responsibility: Parole Board Office

II Purpose:

To establish objective standards for compliance and non-compliance with a suspended sentence.

III Definitions:

Suspended Sentence Notice

The written notice that shall be served on all offenders that contains: their name, DOC number, a statement that she/he must conform to the rules and program requirements of the Department of Corrections, maintain a good disciplinary record, and satisfactorily participate in programs as assigned, and that any violation may result in the offender's suspended sentence being imposed, and that the board may impose all or a portion of the offender's suspended sentence after a due process hearing (Attachment 2).

If a notice does not get served upon an offender, this policy does not apply. Offenders who receive a copy of the notice but refuse to sign acknowledging receipt of the notice will still be considered to have been served for purposes of this policy.

Suspended Sentence Status Report:

A written report submitted to the board of pardons and paroles to be used as evidence of an offender's violation of suspended sentence conditions. Attachments to the report will include, but are not limited to: suspended sentence notice, copy of disciplinary record, program refusal information (if applicable), program termination information (if applicable).

IV Procedures:

Suspended Sentence Supervision Notice:

- A. All offenders admitted to the Department of Corrections will be served a suspended sentence notice by staff during the admissions process or as soon thereafter as is practical.
 1. The suspended sentence notice will be explained and served on the offender by unit staff. An offender signature is encouraged but not required. If an offender refuses to sign the notice, staff will note such refusal on the paperwork.
 2. Staff will sign and date the notice when served, scan notice into COMS, and file original notice.

Suspended Sentence Compliance Standards:

- A. Disciplinary compliance is scored from the date the suspended sentence notice is presented to the offender to the offender's "no credit" suspended sentence release date (NCSSRD). Or, if the offender has a previous parole revocation, disciplinary compliance is scored from the date of the most recent board action of "revoke" to the offender's NCSSRD. Programming compliance is also applicable during this same time period.
 1. Disciplinary non-compliance:

- a. An offender is determined to be in violation of the disciplinary requirement if the per month average of his/her disciplinary points is at or exceeds 1.0.
 - i. Each High (H-) category infraction counts as ten (10) points
 - ii. Each Medium (M-) category infraction counts as six (6) points
 - iii. Each Low (L-) category infraction counts as three (3) points
 - b. In situations where multiple disciplinary reports or infractions are included for a single incident, only the most serious category infraction will be scored.
 - c. Only disciplinary reports where the sanction included disciplinary segregation and the finding is “guilty” will be scored
 - d. If an offender is found to be non-compliant with the disciplinary requirement at a suspended sentence violation hearing and the board does not impose or partially imposes the suspended sentence, future compliance will be scored from the date of that hearing to the suspended sentence release date.
2. Programming non-compliance:
- a. Programming compliance is monitored from the date the suspended sentence notice is served to the offender’s “no credit” suspended sentence release date.
 - b. A program refusal or termination from programming is the basis for non-compliance.
 - c. If an offender is found to be non-compliant with the programming requirement at a suspended sentence violation hearing and the board does not impose or partially imposes the suspended sentence, future compliance will be determined from the date of that hearing to the suspended sentence release date.

Suspended Sentence Compliance Review:

- A. Board staff will monitor offenders for compliance with the conditions of their suspended sentences. Within six (6) months of an offender’s suspended sentence release date, board staff will review an offender’s compliance with the conditions of his/her suspended sentence.
- B. If the offender meets the eligibility criteria for being non-compliant as outlined above or is determined to be non-compliant with any other condition of his/her suspended sentence, including court-ordered conditions, or committing a felony while incarcerated, a board staff will write a violation report and issue a warrant ahead of the offender’s suspended sentence release date.
- C. The offender will be served a notice of hearing and scheduled for a suspended sentence violation hearing before the board.
- D. An offender’s compliance with suspended sentence conditions may also be reviewed under the following circumstances:
 1. If an offender is scheduled for a hearing to determine whether he/she is noncompliant with the elements of his/her Individual Program Directive pursuant to DOC Policy 1.4.B.1 *Individual Program Directive*.
 2. At the request of a member of the Board of Pardons and Paroles or DOC staff.

V Related Directives:

SDCL § 23A-27-19

VI Attachments

Attachment 1: Suspended Sentence Notice

VII Revision Log:

New

July 2015: No changes

September 2016: No changes

February 2017: Grammar change. **Update** Suspended Sentence compliance standard. **Update** Suspended Sentence Notice DOC number instead of individual transaction(s).

October 2020: Minor formatting changes. **Revise** Notice definition to include this policy does not apply to those inmates on whom the notice has not been served. **Revise** following procedures: Notice now served on all inmates, not just those with suspended time; all references to suspended sentence release date now include “no credit” terminology; points assigned to L (3), M (6), and H (10) category write ups; disciplinary points per month average cutoff from .75 to 1.0. **Add** attachment section.

December 2021: **Change** inmate language to offender. **Move** information from IV Procedures – Suspended Sentence Supervision Notice Section B to III Definitions – Suspended Sentence Notice. For IV Procedures – **Add** Suspended Sentence Compliance Standards Section A “NCSSRD” and “Or, if the offender has a previous parole revocation...” **Remove** Section A.1.a. **Remove** from Section A.1.c “*unless the inmate was housed in restrictive housing at the time the disciplinary infraction was committed. In that case, all low, medium and high category infractions are scored.*” To IV Procedures – Suspended Sentence Compliance Review – **Add** to Section B “board staff will write a violation report and issue a warrant...” **Add** to Section C “served a notice of hearing”.

_____ Myron Rau, Chair	_____ Date

Attachment 1:

SUSPENDED SENTENCE NOTICE

NAME:

DOC Number:

I have been made aware that SDCL §§ 23A-27-18.4 and 23A-27-19 provide that persons whose sentences are suspended are under the supervision of the Board of Pardons and Paroles as provided in the statutes previously referenced. Also, I understand and agree that in the event I violate the conditions of my suspended sentence as imposed by the sentencing judge, the Board of Pardons and Paroles, or SDCL § 23A-27-18.6, even if the violation is prior to my suspended sentence commencing, the Board has the authority to revoke the suspended portion, impose the entire sentence, and I may not be given credit for time spent on parole and/or suspended sentence. I also understand and agree that the Board is charged with the responsibility for enforcing the conditions imposed by the sentencing judge and the Board retains jurisdiction to revoke the suspended portion of the sentence for violation of the terms of parole or the terms of the suspension.

The Board hereby places the following conditions of suspended sentence on you, in addition to any ordered by the sentence court:

You will conform to the rules and program requirements of the Department of Corrections, maintain a good disciplinary record, and satisfactorily participate in programs as assigned.

I have read or have had read to me and fully understand these conditions of suspended sentence. I acknowledge receipt and understanding of the rules I am expected to abide by while in the custody of the Department of Corrections and that I am expected to satisfactorily participate in programs as assigned. I acknowledge that I have been advised that a violation of this agreement can result in my suspended sentence being imposed prior to my release to serve such suspended sentence.

Witness Printed Name

Witness Signature

Date

Inmate Signature

Date