# 1.5.G.9 Parole Services-Preliminary Hearings

## I Policy Index:

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| **Distribution:** | ***Public*** |
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| **Supersedes Policy Dated:** | ***07/06/2012*** |
| **Affected Units:** | ***Parole Services and Parole Board*** |
| **Effective Date:** | ***04/20/2015*** |
| **Scheduled Revision Date:** | ***March 2015*** |
| **Revision Number:** | ***8*** |
| **Office of Primary Responsibility:** | ***Director of Parole Services & DOC Administration*** |

## II Policy:

A preliminary hearing is an informal hearing to determine whether there is probable cause to believe that a violation(s) of the supervision agreement has occurred. A parolee has the right to a timely preliminary hearing before an impartial hearing officer. This hearing will normally occur telephonically or in person in or near the community where a supervision agreement violation is alleged to have occurred or in person upon the return of the parolee to a SD DOC facility. However, a preliminary hearing is not required if: 1. The parolee is under arrest and being held on an order issued by a jurisdiction other than the Board of Pardons and Paroles, 2. The parolee left the state or other approved jurisdiction without authorization and was apprehended outside of that jurisdiction, or 3. The parolee was convicted of a felony or misdemeanor in a South Dakota court or a court of another state or a federal court (SDCL § 24-15-23.1).

## III Definitions:

### Parolee:

An individual who has been conditionally released to parole or suspended sentence from a South Dakota Department of Corrections (DOC) facility prior to the expiration of the individual's sentence under the supervision of the DOC (See ARSD § 17:60:01:00(6)). This also includes an offender received from another state under interstate compact supervision (See SDCL chapter 24-16).

### Supervision Agreement:

A document setting forth the general and special limitations, restrictions, and conditions that are imposed by the Board of Pardons and Paroles, the Executive Director of the Board of Pardons and Paroles, a parole supervisor and a parole agent (See ARSD § 17:60:02:09).

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

A written notification provided to the parolee that indicates: 1) whether the offender is entitled to a preliminary hearing; 2) the offender's rights at the preliminary hearing; 3) the date and time of the preliminary hearing should the offender be entitled to and request one. Offenders are provided copies of the violation report and supervision agreement at the time of being served the Constitutional Rights/Preliminary Hearing Notice/Waiver form. The offender is required to initial the form to indicate the constitutional rights were read and explained to them. If entitled to a hearing and, after being made aware of their constitutional rights, the offender elects to waive their preliminary hearing, they are required to indicate that waiver by initialing the waiver line on the form. If the offender is entitled to a

preliminary hearing and requests one, the serving Agent/Staff will contact the Hearing Officer to set up a date and time for the hearing, indicate that information on the Constitutional Rights/Preliminary Hearing Notice/Waiver form, and provide the offender this notice of hearing (Attachment #2). Offenders on Interstate Compact supervision in South Dakota from other states are required to make admission of the violation(s) if they elect to waive their preliminary hearing (Attachment #3).

### Hearing Officer's Report:

A summary report of the preliminary hearing that is submitted to the Board of Pardons and Paroles by the hearing officer within 10 working days following the hearing. A copy of the Hearing Officer's Report is also provided to the offender. If the Hearing Officer finds that probable cause exists following the hearing, the offender will then have the right to proceed to the dispositional meeting and then, if elected, to a final hearing in front of the Board of Pardons and Paroles. If probable cause is not found, the Hearing Officer will immediately notify the appropriate staff to make arrangements to have the offender released back to community supervision in a reasonable amount of time when a plan is established and approved.

### Dispositional Meeting:

An informal meeting between a parolee and the Executive Director of Parole or designee to assist the parolee in determining the options available in proceeding with the matter of his/her parole and/or suspended sentence revocation. The parolee and Executive Director or designee, may come to a resolution and determination of sanction or may elect to proceed to a revocation hearing before the Board of Pardons and Paroles.

### Revocation Hearing:

The final dispositional hearing before the Board of Pardons and Paroles on an alleged parole or suspended sentence violation. In the event the Board of Pardons and Paroles determines a parolee violated the terms of his/her supervision agreement, the findings may include sanctions such as the loss of good time (where applicable) and/or the loss of street time.

### Working Day:

A standard workweek day, Monday through Friday, except for recognized state holidays, recognized national holidays and any other special holidays declared by the Governor of South Dakota or the President of the United States.

## IV Procedures:

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

A. Subject to the provisions of §§ 24-15-23.1 and 24-15-23.2, a preliminary hearing, if required, will be held within ten (10) working days of the arrest of the parolee, after the order for arrest has been issued by the Executive Director of the Board of Pardons and Paroles for the return of the parolee to a SD DOC facility (See SDCL § 24-15-23).

B. The parolee will receive advance written notice of the time and place of the preliminary hearing at least forty-eight (48) hours prior to the scheduled hearing, unless the time period is waived by the parolee and this is acceptable to the hearing officer, along with a copy of the violation report and applicable attachments.

   1. The preliminary hearing will take place in or near the community where a supervision agreement violation is alleged to have occurred.

a. "In or near the community" means the preliminary hearing will typically take place at the location where the parolee is currently being held on arrest.

b. This hearing may be conducted telephonically or by other electronic means.

C. A parolee accused of violating the conditions of his/her supervision agreement has the following rights at the preliminary hearing:

1. To be present at such hearing.

2. To remain silent; if the parolee chooses to testify on their own behalf, they give up this right and are subject to cross examination.

3. To know the charges filed against them, indicating the precise rules violated and the circumstances alleged.

4. To be present when witnesses testify against them and to cross examine them. The only exception to this rule is if the hearing officer determines that the witness may be subject to risk or harm if their identities were disclosed.

5. To present his/her own witnesses who can give relevant information concerning the violation. These witnesses cannot be character witnesses. The hearing officer, however, may terminate questioning if the testimony becomes irrelevant, repetitious, or excessive. It is the responsibility of the parolee to produce their own witnesses as the hearing officer does not have subpoena power, or the funds to assure the appearance of any witness for the preliminary hearing.

6. To present any relevant evidence in the form of letters, affidavits, or documents.

7. A parolee does not have a right to an attorney at the preliminary hearing unless the hearing officer has reason to believe that they are incapable of understanding the proceedings.

8. If the preliminary hearing is conducted and the hearing officer finds probable cause or if the parolee waives the preliminary hearing, the parolee will then have the right to a final hearing in front of the Board of Pardons and Paroles at which hearing they will have the right to an attorney.

D. The preliminary hearing will be recorded to establish a record.

E. The preliminary hearing officer can order and/or recommend the parolee's return to prison, or continued placement in custody, only when probable cause is found to exist that the parolee did violate the terms or conditions of the supervision agreement at the preliminary hearing.

F. Parolees accused of absconding from supervision will be provided a preliminary hearing when apprehended and returned to local custody, except as provided under ASDR 17:60:03:04 or ASDR 17:60:11:03 (See Attachment 1).

G. The preliminary hearing may be postponed for good cause upon the request and agreement of the preliminary hearing officer and parolee. Postponement will normally not exceed ten (10) working days.

## 2. Preliminary Hearing Officer Selection and Responsibilities:

A. The Executive Director of Parole appoints impartial hearing officers to conduct preliminary hearings for Parole Services (See ARSD 17:61:01:13). The Director of Field Services will normally serve as the Division's preliminary hearing office.

   1. When the appointed hearing officer is unable to remain impartial, another trained parole agent/staff will serve as the impartial hearing officer.

B. The hearing officer will conduct the hearing and make findings as to whether there is reasonable grounds to believe that the parolee violated the terms of his/her community supervision agreement. The hearing officer will be responsible for:

   1. Conducting a fair and impartial hearing.

   2. Ensuring that the parolee was/is properly advised of and understands his/her due process rights.

   3. Ensuring the complete and accurate documentation of the preliminary hearing.

   4. Making a finding based upon the evidence and testimony presented.

C. The hearing officer will ensure the preliminary hearing is digitally recorded.

D. The hearing officer will open the preliminary hearing by identifying those present, advising the parolee of the purpose of the hearing and establishing jurisdiction and proper notice.

E. The hearing officer will advise the parolee of his/her rights at the preliminary hearing and read/review the alleged violation(s) as specified in the violation report.

   1. The parole agent/area supervisor who authored the violation report and/or other witnesses may be present to give supporting evidence and/or present witnesses.

   2. The parolee will be given an opportunity to present evidence and witnesses in his/her defense.

   3. The parolee may confront adverse witnesses, unless such actions would subject the witnesses to a risk of harm.

F. At the conclusion of the hearing, the hearing officer will normally render a decision that will result in either of the following:

   1. A finding that probable cause does exist and that the parolee be returned to or remain in the custody of a DOC facility for a final hearing before the Board of Pardons and Paroles.

   2. A finding that probable cause does not exist and that the parolee be released back to supervision.

      a. Upon determination that probable cause does not exist, the preliminary hearing officer will ensure the release of the parolee from detainment back to parole supervision within a reasonable amount of time, once a viable release plan is established and approved.

G. All parties will be verbally advised as to the decision of the hearing officer at the conclusion of the hearing.

H. The hearing officer will ensure the proper updating of the data system to reflect the outcome and results of the hearing.

### 3. Parolees on Interstate Compact:

A. Courtesy hearings will be held for any out-of-state parolee under interstate compact supervision in South Dakota.

B. All rights and procedures outlined in this policy will be afforded to a parolee on interstate compact who is accused of a violation.

C. The hearing officer will coordinate all reports with the Deputy Interstate Compact Administrator.

## V Related Directives:

SDCL § 24-15-23, 24-15-23.1, 24-15-23.2 and 24-16.
ARSD § 17:60:01:00(6), 17:60:02:09, 17:60:03:04, 17:60:11:03 and 17:61:01:13

## VI Revision Log:

**October 2006:** Converted Parole Department OM to a DOC policy.
**September 2007:** Minor style/format revisions.
**August 2008:** **Revised** formatting of policy in accordance with DOC policy 1.1.A.2. **Replaced** "parolee" with "compact" in definition of Parolee. **Deleted** "(Executive Director)" in the definition of Supervision Agreement. **Revised** formatting of ss (B1 and former B2 to B1 and B1a), **reversed** ss (C1 and C2) and **added** "parolee" when speaking of counsel within Procedural Rights Regarding the Preliminary Hearing section..**Revised** wording in ss (A of Preliminary Hearing Officer Selection and Responsibilities). **Replaced** "tape" with "digitally" recorded in ss (A) and **replaced** "receive" with "be sent" in ss (F2) of Preliminary Hearing/Hearing Officer's Report). **Added** "SDCL 24-16" to ss (V). **Revised** minor spelling corrections and wording throughout policy.
**March 2009:** **Added** "Class 1" as it relates to misdemeanor in the policy statement. **Added** definition of Dispositional Meeting. **Added** statement regarding 48 hours prior to hearing in ss (B) and **added** ss (F1) within Procedural Rights Regarding the Preliminary Hearing. **Added** statement regarding Senior Parole Agent and FTO in ss (A) and **added** ss (A1) within Preliminary Hearing Officer Selection and Responsibilities. **Added** ss (Da of Preliminary Hearing/Hearing Officer's Report).
**March 2010:** **Revised** formatting of Section 1. **Added** ARSD 17:61:01:13 to section (A of Preliminary Hearing Officer Selection and Responsibilities) and Section V. **Added** reference to Attachment 1 within ss (D1) and **added** ss (D2b and D2c) both within Preliminary Hearing/Hearing Officer's Report. **Added** picture of Attachment 2. **Added** new Attachment 3 to policy. **Added** hyperlinks.
**March 2011:** **No changes.**
**April 2012:** **Reviewed with no changes.**
**November 2013:** **Reviewed with no changes.**
**April 2015:** **Revised** policy statement. **Deleted** definition of "Preliminary Hearing" **Added** definition of "Constitutional Rights/Preliminary Hearing Notice/Waiver". **Deleted** definition of "Waiver of Preliminary Hearing" **Revised** definition of "Hearing Officer's Report". **Added** "if required" and "issued by the Executive Director of the Board, or the return of the parolee to a SD DOC facility" in Section 1 A. **Added** "unless the time period is waived by the parolee and acceptable to the hearing officer" in Section 1 B. **Added** "if feasible" to Section 1 B. 1. **Added** b. to Section 1 B. **Deleted** previous 1.-3. and **Replaced/Added** 1.- 8. in Section 1 C. **Added** "or continued placement in custody" in Section a D. Deleted "when the preliminary hearing officer and the parolee agree" **Added** "upon the request and agreement of the preliminary hearing officer and parolee" in Section 1 F. Deleted 1. In Section 1 E. Deleted "The senior parole agent in each region, serving as the field training officers will also serve as the preliminary hearing officer for that region and Replaced with "The director of Field Services will normally serve as the Division's preliminary hearing officer". Deleted "probable cause exists for each allegation" and Replaced with "there are reasonable grounds to believe that the parolee

violated the terms of his/her community supervision agreement" in Section 2 B. Deleted "ensuring the due process rights of the parolee are provided" and Replaced with "Ensuring that the parolee was/is properly advised of and understands his/her due process rights" in Section 2 B. 1. Deleted Section 3 "Preliminary Hearing/Hearing Officer's Report. Added "advise the parolee of his/her rights at the preliminary hearing and read/review the" in Section 2 E. Added a. to Section 2 F. 1. Deleted "usually the same day" and Replaced with "once a viable release plan is established" in Section 2 F. 2. Deleted b. and c. in Section 2 F. Added H. to Section 2. Deleted 1.-2. In old section 3 E.

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| *Denny Kaemingk (original signature on file)* | *04/18/2015* |
| Denny Kaemingk, Secretary of Corrections | Date |

# Attachment 1: Related SDCL and ARSD

**SDCL 24-15-23. Preliminary hearing on parole violation--Waiver of preliminary hearing--Detention for board hearing--Waiver of appearance at revocation hearing**. Subject to the provisions of §§ 24- 15-23.1 and 24-15-23.2, within ten working days of the arrest of the parolee, a preliminary hearing shall be held. The preliminary hearing shall be held before an independent hearing officer to determine if there is probable cause to believe that the parolee has violated the terms and conditions of the parolee's parole status. The parolee has the right to waive this preliminary hearing at any time after the order for arrest has been issued by the executive director of the Board of Pardons and Paroles. If probable cause is found to exist, the parolee is to be returned to the penitentiary, there to be held, for a hearing to be held before the Board of Pardons and Paroles to determine whether the parole should be revoked. If the parolee wishes to admit to an alleged violation of conditions of parole, the parolee may waive a personal appearance at the revocation hearing with the board.

**SDCL 24-15-23.1. Preliminary hearing on parole violation not required under certain conditions.** A preliminary hearing as provided for in § 24-15-23 is not required if:
(1) The parolee is under arrest and being held on an order issued by a jurisdiction other than the Board of Pardons and Paroles;
(2) The parolee left the state or other approved jurisdiction without authorization and was apprehended outside of that jurisdiction; or
(3) The parolee was convicted of a felony or misdemeanor in a South Dakota court or a court of another state or a federal court.

**SDCL 24-15-23.2. Failure to provide preliminary hearing prior to return to facility—Hearing required after return.** If a preliminary under SDCL 24-15-23 is required and a parolee fails to receive a preliminary hearing prior to the parolee's return to a Department of Corrections facility, the parolee shall receive a preliminary hearing within ten working days of the parolee's return to a Department of Corrections facility.

**ARSD 17:60:01:00. Definitions.** Words used in this article mean:
(6) "Parolee," an individual who has been conditionally released to parole or suspended sentence from a South Dakota Department of Corrections facility prior to the expiration of the individual's sentence under the supervision of the Department of Corrections.

**ARSD 17:60:02:09. Supervision agreement.** Before being released on parole or suspended sentence, the inmate shall execute a supervision agreement setting forth the general and special limitations, restrictions, and conditions that are imposed by the board, the executive director, a parole supervisor, and a parole agent. Any violation of institution rules after being paroled but before actual release may be considered a violation of parole.

**ARSD 17:60:03:04. Preliminary hearing.** A preliminary hearing is not required if the parolee is not under arrest on a board warrant, has signed a waiver of preliminary hearing, has left the State of South Dakota or other approved jurisdiction without authorization and was apprehended outside of that jurisdiction, or has been convicted of a felony or misdemeanor in a South Dakota court, a court of another state, or a federal court. If a preliminary hearing under SDCL 24-15-23 is required and a parolee fails to either receive or waive a preliminary hearing prior to the parolee's return to a South Dakota Department of Corrections facility, the parolee shall receive a preliminary hearing within ten working days of the parolee's return to a South Dakota Department of Corrections facility.

After the preliminary hearing, the hearing officer shall submit to the board a written report on the officer's findings and on the officer's decision resulting from the findings. The report shall be submitted to the board within ten days after the preliminary hearing.

**ARSD 17:60:11:03. Preliminary hearing.** A preliminary hearing is not required if the parolee is not under arrest on a board warrant, has signed a waiver of preliminary hearing, has left the State of South Dakota or other approved jurisdiction without authorization and was apprehended outside of that jurisdiction, or has been convicted of a felony or misdemeanor in a South Dakota court, a court of another state, or a federal court. If a preliminary hearing under SDCL 24-15-23 is required and a parolee fails to either receive or waive a preliminary hearing prior to the parolee's return to a South Dakota Department of Corrections facility, the parolee shall receive a preliminary hearing within ten working days of the parolee's return to a South Dakota Department of Corrections facility.

After the preliminary hearing, the hearing officer shall submit to the board a written report on the officer's findings and on the officer's decision resulting from the findings. The report shall be submitted to the board within ten days after the preliminary hearing.

# Attachment 2: Constitutional Rights/Preliminary Hearing Notice/Waiver of Preliminary/Constitutional Rights

IWP in COMS-"Parole-Waiver of Prelim/Constitutional Rights"

**STATE OF SOUTH DAKOTA**
**BOARD OF PARDONS AND PAROLES**

**CONSTITUTIONAL RIGHTS/PRELIMINARY HEARING NOTICE/WAIVER**

**State of South Dakota:**
**Vs:**
**Defendant** [_____] [_____]
**Parolee Name** **Number**

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

[ ] **Preliminary hearing on parole violation not required under certain conditions.** *A preliminary hearing as provided for in § 24-15-23 is not required if: (1) The parolee is under arrest and being held on an order issued by a jurisdiction other than the Board of Pardons and Paroles; (2) The parolee left the state or other approved jurisdiction without authorization and was apprehended outside of that jurisdiction; or (3) The parolee was convicted of a felony or misdemeanor in a South Dakota court or a court of another state or a federal court. {SDCL 24-15-23.1.}*

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At the preliminary hearing you have the following rights:

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

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

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

[_____] [_____] [_____] [_____]
**Parolee Signature** **Date** **Witness** **Date**

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[ ] **NOTICE OF HEARING**
PLEASE TAKE NOTICE that a preliminary hearing will be held telephonically on [_____], at [_____] [____]
**Date** **Time** **AM/PM**

Version:201206

# Attachment 3: Interstate Compact Constitutional Rights/Preliminary Hearing Notice/Waiver form

IWP in COMS "Parole-Interstate Compact Constitutional Rights Waiver"

**STATE OF SOUTH DAKOTA**
**BOARD OF PARDONS AND PAROLES**

**CONSTITUTIONAL RIGHTS/PRELIMINARY HEARING NOTICE/WAIVER WITH ADMISSION**

**State of South Dakota:**
**Vs:**
**Defendant** [_____] [_____]
**Parolee Name** **Number**

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

[ ] **Preliminary hearing on parole violation not required under certain conditions.** *A preliminary hearing as provided for in § 24-15-23 is not required if: (1) The parolee is under arrest and being held on an order issued by a jurisdiction other than the Board of Pardons and Paroles; (2) The parolee left the state or other approved jurisdiction without authorization and was apprehended outside of that jurisdiction; or (3) The parolee was convicted of a felony or misdemeanor in a South Dakota court or a court of another state or a federal court. {SDCL 24-15-23.1.}*

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At the preliminary hearing you have the following rights:

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

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

Initials
[ ] These Constitutional Rights were read and explained to me.
[ ] With a full understanding of these Rights and not acting under any threat, fear, coercion, or promise, and acting of my own free will, I hereby admit that I am in violation of the parole violations as listed in the Offender Violation Report and waive my right to a Preliminary Hearing..

[_____] [_____] [_____] [_____]
**Parolee Signature** **Date** **Witness** **Date**

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[ ] **NOTICE OF HEARING**
PLEASE TAKE NOTICE that a preliminary hearing will be held telephonically on [_____], at [_____] [____]
**Date** **Time** **AM/PM**

Version: 201209