

1.4.B.5 Withholding Good Time Pursuant to SDCL § 24-2-18

I Policy Index:



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II Policy:

The Secretary of Corrections may hold hearings upon recommendation by a Warden that an inmate's statutory time for good conduct be withheld in full or in part, pursuant to SDCL § 24-2-18. Inmates who committed a sex crime, as defined in SDCL § 22-24B-1, on or after July 1, 1995 are subject to good time loss due to failure to fully cooperate with all treatment offered. Inmates who committed a sex crime as defined in SDCL § 22-24B-1, on or after July 1, 1993 are subject to good time loss for conduct evincing an intent to reoffend or commit further offenses when discharged.

III Definitions:

Special Treatment of Perpetrators (STOP) Program:

Special Treatment of Perpetrators (STOP) is a sex offender treatment program operated through the DOC. The STOP program consists of therapy, educational treatment and relapse prevention.

Sex Offender Management Program (SOMP):

SOMP is the sex offender management program operated by the DOC. This includes sex offender specific assessments, A&O psychosexual screens, STOP programming, psychosexual reports, community release planning, assistance in community supervision, development and promotion of a community treatment provider network, and sex offender community treatment and supervision standards.

Good Conduct Time:

Graduated scale of reductions from sentence for good conduct applicable to inmates per SDCL § 24-5-1.

Old System:

Inmates sentenced to the South Dakota prison system as a result of an offense committed prior to July 1, 1996.

Sex Offender:

An inmate convicted of a sex crime as defined within SDCL § 22-24B-1.

IV Procedures:

1. Reporting Procedures:

- A. SOMP staff will provide a report to the respective Warden or his/her designee when an inmate convicted of a sex crime (See SDCL § [22-24B-1](#)) between June 30, 1995 and July 1, 1996 fails to fully cooperate with all treatment offered; including but not limited to participation in sex offender treatment, or when the inmate is terminated from sex offender treatment.
 1. If the inmate chooses not to cooperate with all recommended treatment, a Program Refusal form and narrative report from SOMP staff will be forwarded to the respective Warden (See DOC policy 1.4.A.3 [Sex Offender Management Program](#)).
 2. The SOMP staff will document the report on the STOP screen in the Comprehensive Offender Management System (COMS).
- B. DOC staff will provide a report to the respective Warden or his/her designee when an inmate convicted of a sex crime between June 30, 1993 and July 1, 1996 evinces an intent to reoffend or commit further offenses when discharged.

2. Recommendation to Withhold Good Conduct Time:

- A. In accordance with SDCL § [24-2-18](#), the Warden may make a written recommendation to the Secretary of Corrections prior to the discharge of any inmate meeting the criteria stated in Section 1, that the inmate's statutory time granted for good conduct pursuant to SDCL § [24-5-1](#) be withheld in full, or in part.
- B. The Warden's written recommendation will be submitted to the Secretary of Corrections at least thirty (30) days prior to an inmate's scheduled good time release/discharge date.

3. Scheduling the Hearing:

- A. Upon receipt of the Warden's recommendation, the Secretary of Corrections will either support or reject the recommendation.
 1. If the Warden's recommendation is supported, the Secretary will arrange for the inmate to be notified of the time and place set for the hearing.
 2. If the Warden's recommendation is not supported by the Secretary, a hearing will not be scheduled. The Secretary will notify the Warden of his/her decision.

4. Rights of the Inmate:

- A. An inmate scheduled for a hearing before the Secretary of Corrections for consideration of withholding of good time pursuant to SDCL § [24-2-18](#), will be afforded the following rights:
 1. Written notice of the reason(s) for referral and notification of the time and place set for the hearing at least forty-eight (48) hours prior to the scheduled hearing.
 2. Disclosure of adverse evidence.
 3. A copy of SDCL § [24-2-18](#) and of this policy.

4. An opportunity to be heard. The inmate is responsible for presenting their witnesses and documentary evidence on their behalf (See [Attachment 1](#)).
 5. An opportunity to ask questions of witnesses and be informed of all relevant documents or evidence that is not confidential. Information that has been held from the inmate as confidential may be used without disclosing the source.
 6. All relevant, non-repetitious evidence will be allowed.
 7. The inmate must present his/her own case unless he/she retains private legal counsel. Retention of legal counsel will at the inmate's own expense.
- B. Designated DOC staff will ensure the inmate receives the notice of hearing and other documents he/she is entitled to in advance of the scheduled hearing.

5. Conduct of the Hearing:

- A. The Secretary of Corrections (and/or designated DOC staff) will conduct the hearing, which will include:
1. Advisement to the inmate about the purpose of the hearing.
 2. Review of the rights afforded to the inmate to ensure compliance with this policy.
 3. Presentation of adverse documents and evidence, and adverse witnesses.
 4. Allowing the inmate to confront and question adverse witnesses.
 5. Taking statements from the inmate and allowing for questions.
 6. Allowing the inmate to present documentary evidence on his/her own behalf, present witnesses and allowing for witness testimony.
 7. Deliberation.
- B. The hearing may be held electronically.
1. If an inmate persists in exhibiting unacceptable behavior, refuses to cooperate or refuses to participate in the hearing in a reasonable manner after being warned such behavior will cause him/her to be excluded from the hearing, the inmate will be excluded from the hearing. The hearing may be delayed or the inmate's actions will be documented and the hearing will proceed.
- C. The Secretary of Corrections may require the participation of staff who can provide information relating to the matter at hand; e.g. SOMP staff, Warden, DOC Policy and Compliance Manager.
- D. The hearing will be recorded and the recording and supporting documents used at the hearing will be maintained by Central Records for a minimum of three (3) years after the inmate discharges his/her sentence.

6. Issuance of a Written Ruling:

- A. The Secretary of Corrections will consider all evidence presented and will determine if good conduct time will be withheld, and if so, the amount of good conduct time to be withheld.
- B. The inmate, Warden and Central Records staff (only if good time is withheld) will be provided a written statement of the Secretary's decision.
- C. In accordance with SDCL § 24-2-18, the decision of the Secretary is final.

7. Return of Good Conduct Time Withheld Pursuant to SDCL 24-2-18:

- A. An inmate requesting the return of good conduct time withheld pursuant to SDCL § 24-2-18 must submit a written request to the Secretary of Corrections.
 - 1. An inmate may only request the return of good conduct time withheld pursuant to SDCL § 24-2-18 one (1) time per calendar year.
 - 2. No inmate is automatically entitled to the return of good conduct time withheld upon completion of all required treatment.
- B. The Secretary of Corrections may contact SOMP staff, Warden and/or others for a written status report on the inmate's completion of all treatment offered.
 - 1. The staff will submit a written status report to the Secretary within five (5) days.
- C. The Secretary of Corrections will review the inmate's request and may approve, deny or modify the request for return of good time withheld.
 - 1. A copy of the Secretary's decision will be sent to the inmate, Warden, SOMP staff and if any amount of good time is returned, to the Central Records Administrator. Central Records staff will adjust the inmate's sentence dates in COMS.
 - 2. The decision of the Secretary of Corrections is final.

V Related Directives:

SDCL §§ 22-24B-1, 24-5-1 and 24-2-18.

DOC policy 1.3.C.6 -- *Restoration of Good Conduct Time Forfeited Pursuant to SDCL 24-2-12*

DOC policy 1.3.E.2 -- *Administrative Remedy for Inmates*

DOC policy 1.4.A.3 -- *Sex Offender Management Program*

VI Revision Log:

October 2002: Revised Policy. Added related directives. Revised DOC Central Office to DOC Administration throughout policy. Added Central Records to B under Issuance of a Written Ruling Section.

August 2003: Revised policy statement. Changed DOC Administration to DOC Corrections Specialist based in Sioux Falls. Added information on who provides the inmate with documentation in the section on Rights of the Inmate. Added B & C in the section on Conduct of the Hearing.

August 2004: Added a definition for STOP program and updated language in Reporting Procedures. Clarified the length of time that the tape of the hearing is maintained. Revised Attachment 1 from "inmate witnesses" to "witnesses".

November 2004: Added a new section on return of good conduct time.

June 2005: Revised policy statement. Clarifies that evincing an intent to reoffend may apply regardless of crime throughout the policy. Removed Sioux Falls as location of Corrections Specialist.

October 2006: Changed the reference on sex offenses from 22-22-30 to 22-24B-1. Changed the duties of the DOC Corrections Specialist to the DOC Policy and Compliance Manager. Added information on the maintenance of hearing records. Added language on the SOC extending the response time

September 2007: Revised the definition of STOP. Added a definition for working day. Revised the requirements for an inmate to be eligible for the return of good conduct time.

August 2008: Revised policy and attachment in accordance with DOC policy 1.1.A.2. Added definition of SOMP and revised definition of STOP. Deleted statement about inmate receiving copies of adverse documents in ss (A2) and replaced "waived" with "denied" in ss (A5) of Rights of the Inmate. Replaced STOP with SOMP when referring to staff throughout policy. Revised other minor grammatical and wording throughout policy.

August 2009: Added definition of Old System. Deleted reference of contacting the Policy & Compliance Manager and replaced with Warden or designee of SOMP Program Manager in ss (A, A1 and A2 of Reporting Procedures). Replaced telephonically with electronically (polycom) in ss (A of Scheduling the Hearing and B of Conduct of the Hearing) and added reference to Section B of Conduct of the Hearing within ss (A of Scheduling the Hearing). Revised other minor wording and added hyperlinks throughout policy.

August 2010: Revised formatting of Section 1. Revised wording within ss (A of Reporting Procedures).

July 2012: Deleted "Working Day" from definitions. Deleted "participate in sex offender treatment" and Replaced with "Fully cooperate with all treatment offered" in Policy section. Added definition of Good Conduct Time. Deleted "refuses to participate in sex offender treatment" and Replaced with "fails to fully cooperate with all treatment offered, included but not limited to participate in sex offender treatment" in Section 1 A. Deleted "refusal or termination form" and Replaced with "program refusal form" in Section 1 A. 1. Deleted "reasons outlined" and Replaced with "conduct evincing an intent to reoffend or commit further offenses when discharged or for any inmate convicted of a sex crime who fails to fully cooperate with all treatment offered" in Section 2 A. Added "or is unavailable" to Section 4 A. 6 a. Added c. to Section 4 A. 6. Deleted "DOC Policy and Compliance Manager and Replaced with "full time staff member" Added "documentary evidence on his/her own behalf" to Section 5 A. 6. Added "thereby waiving their right to appear" in Section 5 B. Deleted "conclude that the inmate will or will not have good conduct time withheld and set" and Replaced with "consider all evidence presented and determine if an inmate's good conduct time will be withheld, as if so," in Section 6 A. Added "Withheld Pursuant to SDCL 24-2-18 to title of Section 7. Added B. C. D. to Section 7. Deleted "participation in the STOP program, an inmate must have successfully completed the requirements of STOP" and Replaced with "fully cooperate with all treatment offered, the inmate must have successfully completed all required treatment, including but not limited to STOP programming" in Section 8 A. 1. Deleted "three (3) working days" and Replaced with "five days" in Section 8 B. Deleted "working" in Section 8 C. Added "after receiving all information and reports requested" in Section 9. A. Added "Central Records staff will adjust the inmate's sentence dates" in Section 9 A. 2. Removed reference to "working days" throughout the policy and Replaced with "days".

June 2013: Added definition of "Sex Offender". Deleted "notify" and Replaced with "provide a report to" in Section 1 A. and B. Deleted "sex offender" and Replaced with "an inmate convicted of a sex crime between June 30, 1995 and July 1, 1996" in Section 1 A. Deleted "signed by the sex offender" in Section 1 A. 1. Deleted "track and review reports of all sex offenders who have failed to fully cooperate with all sex offender treatment" and Replaced with "document the report on the STOP screen in COMS" in Section 1 A. 2. Deleted "they become aware of information indicating or support an inmate's conduct" and Replaced with "an inmate convicted of a sex crime between June 30, 1993 and July 1 1996" in Section 1 B. Added "prior to the discharge of any inmate meeting the criteria stated in Section 1" in Section 2 A. Added "either support or reject the recommendation" in Section 3 A. Added "the inmate to be notified of the" and Deleted "to conduct" and Replaced with "set for" in Section 3 A. 1. Added "If the recommendation is not supported" and Deleted "if the SOC rejects the recommendation from the Warden to withhold an inmate's good time" and Added "The Secretary will

notify the Warden of his/her decision" in Section 3 A. 2. **Deleted** "referred to the" and **Replaced** with "scheduled for a hearing before the" in Section 4 A. **Deleted** "and hearing at" and **Replaced** with "and notification of the time and place set for the hearing" in Section 4 A. 1. **Deleted** "in person" and **Added** "the inmate is responsible for presenting their" in Section 4 A. 4. **Deleted** "confront" and **Replaced** with "ask questions of" and **Deleted** "This right may be denied if the SOC or designee finds good cause for not allowing the inmate to confront and question adverse witnesses" and **Replaced** with "and may be informed of all relevant documents or evidence that is not confidential. Information that has been held from the inmate as confidential may be used without disclosing the source. All relevant non repetitious evidence will be allowed" in Section 4 A. 5. **Deleted** "The services of a full time staff member (if so requested by the inmate) to assist with the hearing" and **Replaced** with "The inmate must present his/her own case unless her/she retains private legal counsel at his/her own expense" in Section 4 A. 6. **Deleted** a-c referencing duties of staff member. **Added** Designated staff member and **Added** "in advance of the scheduled hearing" in Section 4 B. **Added** "and/or designated DOC staff" to Section 5 A. **Deleted** "without the inmate's presence" in Section 5 B. 2. Combined E. with D. in Section 5. **Deleted** "and reasons supporting the ruling" in Section 6 B. **Deleted** "his/her respective Warden" and **Replaced** with "Secretary of Corrections" in Section 7 A. **Deleted** B. "The warden will approve or deny the request" in Section 7. **Deleted** C. "If the request is denied, the Warden will notify the inmate in writing within 10 days" in Section 7. **Deleted** 1. "An inmate has 30 days to initiate the AR procedure upon receiving notice of the Warden's decision to deny the request for restoration of good time" in Section 7 C. **Deleted** D. "If the warden approves the return of good conduct time withheld, the inmate's request will be forwarded to the SOC with 10 days of the Warden's receipt of the request" in Section 7. **Deleted** Section 8 "Good Time Withheld for a Sex Offender's Failure to Fully Cooperate with Treatment Offered" **Added** "approve or deny the inmate's request for return of withheld good conduct time. If approved, the Warden will" and **Deleted** "written recommendation" and **Replaced** with "the inmate's written request for return of withheld good conduct time" in Section 8 C. **Deleted** "issue a written decision with 10 days of receiving all information and reports requested" and **Replaced** with "may approve, deny or modify the request for return of good time withheld" in Section 9 A. **Deleted** 2. "In the event the SOC requires additional time to review materials and/or gather additional information regarding the case, he/she may extend the time period for the response up to 30 additional days" in Section 9 **Added** 2. to Section 9 A. **Deleted** Attachment 1. **August 2014: Updated** definition of "STOP". **Revised** language in Section 5 B.1. **Deleted** title of Section 8 and added language in Section 8 to Section 7.

Denny Kaemingk (original signature on file)

Denny Kaemingk, Secretary of Corrections

11/17/2014

Date