

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

556Q0521

HOUSE JUDICIARY ENGROSSED NO. **HB 1264** 2/23/2009

Introduced by: Representatives Gosch, Cronin, Feinstein, Frerichs, Gibson, Greenfield, Hoffman, Jensen, Kirkeby, Kirschman, Krebs, Lederman, Lust, Moser, Novstrup (David), Rounds, Solum, Van Gerpen, and Verchio and Senators Gant, Ahlers, Haverly, Howie, and Maher

1 FOR AN ACT ENTITLED, An Act to provide for the utilization of conditional early release
2 bonds in regard to certain furloughs and paroles.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

- 5 (1) "Releasing authority," the Board of Pardons and Paroles having legal authority to
6 release a prisoner on furlough or parole;
- 7 (2) "Principal," any person to be released on furlough or parole pursuant to this Act;
- 8 (3) "Surety," any insurance company licensed under the laws of the state to execute
9 bonds filed in criminal cases;
- 10 (4) "Bond," the written undertaking delivered by the surety to the releasing authority and
11 describing the terms and conditions of surety's duties;
- 12 (5) "Conditions," such conditions as the releasing authority may impose as a prerequisite
13 to being on release from custody;



- 1 (6) "Breach," any condition of release violated by the principal;
- 2 (7) "Breach penalty," the amount of money to be paid by surety to the state upon the
3 surety's failure to meet the requirements under this Act. The breach penalty is equal
4 to the face amount of the bond. There are two types of breach penalties: an amount
5 of money paid by the surety upon breach of a release condition and an amount of
6 money paid by the surety if the principal is not back in custody within a given
7 amount of time following breach of release condition;
- 8 (8) "Charge," the amount of money the surety charges to write the bond. In no case may
9 the charges be less than ten percent of the aggregate penalty amounts which charge
10 is fully earned when the bond is written;
- 11 (9) "Revocation of bond," the use and effectiveness of the bond has ceased. The
12 releasing authority may revoke the bond upon a breach or continue the bond by
13 nullifying the breach. The decision of the releasing authority is final. The bond may
14 be revoked at any time the releasing authority determines that the principal has failed
15 to abide by the conditions of the bond or is no longer capable of abiding by the
16 conditions of the bond;
- 17 (10) "Mandatory conditions," those nondiscretionary conditions the releasing authority has
18 placed on the principal as a condition to early release by operation of law.

19 Section 2. Upon the decision of the releasing authority to release any person on furlough or
20 parole, the releasing authority may condition the release of a principal by requiring the posting
21 of an early release bond by cash or surety. The releasing authority may set other conditions of
22 release, which conditions shall be appended to and made a part of the bond. The conditions are
23 discretionary with the releasing authority and shall be appropriate to the character and
24 circumstances of the principal and the circumstances of the principal's release. Discretionary

1 conditions may include, but are not limited to:

- 2 (1) The principal shall be drug/alcohol tested as specified;
- 3 (2) The principal shall take part in specified recovery programs;
- 4 (3) The principal may not contact, go about, or communicate directly with any witness
5 involved in the principal's conviction;
- 6 (4) The principal may not contact, go about, or communicate directly or indirectly with
7 any victim involved in the principal's crime;
- 8 (5) The principal shall obtain and keep employment;
- 9 (6) The principal shall be on home arrest via global positioning satellite (GPS)
10 monitoring devices approved by the state;
- 11 (7) The principal shall abide by specified travel restrictions;
- 12 (8) The principal shall make all specified periodic restitution payments;
- 13 (9) The principal shall pay specified fines and court costs;
- 14 (10) The principal shall perform specified community services;
- 15 (11) The principal shall pursue specified education courses;
- 16 (12) The principal shall obtain such education as specified;
- 17 (13) The principal shall participate in such family or third party involvement as specified.

18 Section 3. The following are mandatory conditions and shall be imposed on the principal
19 as a matter of law:

- 20 (1) The principal shall pay the surety's charge; and
- 21 (2) The principal shall personally report to the surety at such time and in such manner
22 as directed by the releasing authority and the surety.

23 Section 4. The early release bond put up by the surety shall be for the term of the parole. The
24 early release bond shall be in favor of and payable to the State.

1 Section 5. The releasing authority shall give the surety written notice of any breach of
2 condition within five calendar days of the releasing authority learning of the breach.

3 If within one hundred eighty calendar days from date of receipt of written notice by releasing
4 authority that the principal has failed to meet one or more of the conditions of the principal's
5 early release, the principal has been placed back into custody, whether by surety or another, then
6 the bond shall be exonerated.

7 Section 6. The surety shall pay a breach penalty:

8 (1) Upon breach of a condition by the principal; or

9 (2) Upon the principal not being back in custody within the prescribed one hundred
10 eighty days.

11 Upon a breach of subdivision (1), the surety shall pay forthwith ten percent of the face
12 amount of the bond directly to the state treasurer to be deposited in the state general fund.

13 Upon a breach of subdivision (2), the surety shall pay forthwith the remaining ninety percent
14 of the face amount of the bond directly to the state treasurer to be deposited in the state general
15 fund.

16 Section 7. At any time after receiving a notice of breach by the principal, the surety may
17 arrest the principal and surrender the principal to the nearest county jail. If the principal is
18 surrendered within one hundred eighty calendar days of receipt of the notice of breach, the bond
19 shall be exonerated.