

# State of South Dakota

EIGHTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2009

556Q0521

## HOUSE BILL NO. 1264

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;
- 14 (6) "Breach," any condition of release violated by the principal;



1       (7) "Breach penalty," the amount of money to be paid by surety to the state upon the  
2       surety's failure to meet the requirements under this Act. The breach penalty is equal  
3       to the face amount of the bond. There are two types of breach penalties: an amount  
4       of money paid by the surety upon breach of a release condition and an amount of  
5       money paid by the surety if the principal is not back in custody within a given  
6       amount of time following breach of release condition;

7       (8) "Charge," the amount of money the surety charges to write the bond. In no case may  
8       the charges be less than ten percent of the aggregate penalty amounts which charge  
9       is fully earned when the bond is written;

10      (9) "Revocation of bond," the use and effectiveness of the bond has ceased. The  
11      releasing authority may revoke the bond upon a breach or continue the bond by  
12      nullifying the breach. The decision of the releasing authority is final. The bond may  
13      be revoked at any time the releasing authority determines that the principal has failed  
14      to abide by the conditions of the bond or is no longer capable of abiding by the  
15      conditions of the bond;

16      (10) "Mandatory conditions," those nondiscretionary conditions the releasing authority has  
17      placed on the principal as a condition to early release by operation of law.

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

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

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

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

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

24 Section 5. The releasing authority shall give the surety written notice of any breach of

1 condition within five calendar days of the breach.

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

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

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

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

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

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

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