

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE ADOPTION)
OF A NEW RULE ESTABLISHING AN) RULE 13-15
EARNED DISCHARGE POLICY FOR)
CERTAIN PROBATIONERS)

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A hearing was held on November 5, 2013, at Pierre, South Dakota, relating to the adoption of a new rule establishing an earned discharge policy for certain probationers and the Court having considered the proposed rule and the oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule establishing an earned discharge policy for certain probationers be and it is hereby adopted to read in its entirety as follows:

Establishing an earned discharge policy for certain probationers.

Section 1. Pursuant to the South Dakota Public Safety Improvement Act the Supreme Court establishes the following criteria and procedure for awarding earned credits for discharge from probation.

Section 2. Definitions for the purposes of determining earned discharge credits:

- A. **Absconded.** The term absconded means to be absent from the offender's approved place of residence or employment with the intent of avoiding supervision. When there is reason to believe that an offender has absconded, verification of absence is obtained by conducting a field contact at the last known approved place of residence, contacting the last known approved place of employment, if applicable, and contacting known family members and collateral contacts.
- B. **Probationer.** A probationer is defined as any person convicted of a felony or receiving a suspended imposition under SDCL 23A-27-13 on a felony charge and sentenced by a South Dakota court to a term of supervised probation

exceeding six months. A probationer for the purpose of these rules does not include a person sentenced to drug court, a minor on juvenile court probation, or a person serving probation only on a misdemeanor offense under the laws of the State of South Dakota.

C. Probation Violation. A probation violation is defined as any written report submitted to the prosecuting attorney by a supervising court service's officer, or any petition to modify or revoke probation filed with the court by a state's attorney, the attorney general or court services officer alleging that a probationer has violated the terms of supervised probation.

D. Supervised Probation. Supervised probation under these rules shall mean a period of probation, exceeding six months, imposed upon a probationer who has entered into a written agreement for probation with a court services officer that has been approved and filed with the court. Supervised probation does not include supervision through case-service monitoring or through the financial accountability collections system.

Section 3. Any probationer serving a term of supervised probation as the result of a sex offense under §22-24B-1, a violation of the sex offender registry requirements, or a violation of community safety zone requirements is not eligible for earned discharge credits under this rule.

Section 4. Except as set forth in Section 3, a probationer who has a term of supervised probation of six months or more as of the effective date of this rule shall be eligible for earned discharge credit as set forth in Section 5 regardless of the date of conviction.

Section 5. A probationer shall be awarded earned discharge credits while on supervised probation as follows:

(1) For each full calendar month of compliance with the terms of supervised probation an earned discharge credit of 30 days shall be awarded to a probationer. Each earned discharge credit shall reduce the term of supervised probation by 30 days. No earned discharge credit may be awarded for a partial month or the last full month of supervised probation. No earned discharge credit may be

awarded for any month, or portion of a month, during which the probationer is incarcerated as part of a sentence or sanction.

(2) A probationer shall not receive an earned discharge credit for any month(s) during which a probation violation is pending before the court. If the court does not sustain the probation violation, the court may enter a written order awarding earned discharge credits to the probationer for the months the probation violation was pending before the court. Absent such an order the probationer shall not be entitled to any earned discharge credit for such period of time.

(3) Earned discharge credits shall not be awarded to a probationer for any month(s) in which a probationer is absconded. Additionally, a probationer shall not be awarded earned discharge credit for any month in which the probationer was sanctioned for conduct that disqualifies the probationer from receiving earned discharge credit as provided by the graduated response grid.

(4) A South Dakota probationer placed on supervised probation who is supervised in another state under the Interstate Compact for Adult Offender Supervision is eligible for earned discharge credits pursuant to this rule.

(5) Earned discharge credits shall be applied to the probation term within fifteen days after the end of the month in which any credit was earned. A probationer who is eligible for earned discharge credits shall be notified of their probation discharge date on a semi-annual basis.

Section 6. Within ten days following the end of the month, a supervising court services officer shall report to the chief court services officer for the judicial circuit the name of any probationer eligible for an award of earned discharge credit and whether an earned discharge credit was awarded for the previous month.

Section 7. A probationer who objects to a supervising court services officer's determination that the probationer is ineligible for the award of earned discharge credit may seek review of that decision with the chief court services officer for the judicial circuit. Review of the denial of earned discharge credit may be made by filing a notice of review with the chief court services officer within 10 days from receiving notice of the denial. In the event the supervising court services officer is the chief court

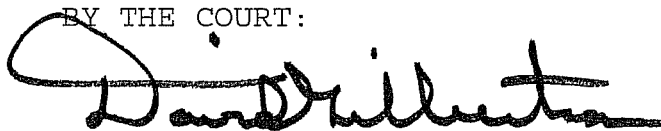
services officer, the probationer may request review of such determination by a chief court services officer from another judicial circuit which will be assigned by the director of trial court services. The decision made by the chief court services officer concerning the award of earned discharge credits is final.

Section 8. Earned discharge credits are not revocable once awarded. However, nothing in this rule limits the sentencing court's authority to modify the terms and conditions of probation.

Section 9. The effective date of this Rule shall be January 1, 2014.

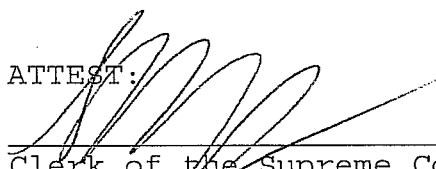
DATED at Pierre, South Dakota, this 8th day of November, 2013

BY THE COURT:



David Gilbertson, Chief Justice

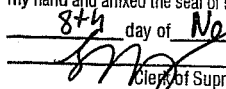
ATTEST:


Clerk of the Supreme Court
(SEAL)

STATE OF SOUTH DAKOTA

In the Supreme Court

I, Shirley A. Jameson-Fargel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this

8th day of Nov, 2013

Clerk of Supreme Court

Deputy

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

NOV - 8 2013


Clerk