

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 A ) RULE 13-16  
GRADUATED RESPONSE GRID )

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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 a graduated response grid 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 a graduated response grid be and it is hereby adopted to read in its entirety as follows:

**Establishing a response grid.**

Section 1. Pursuant to SDCL 16-22-13, the Supreme Court hereby adopts the following graduated response grid and rules to guide court services officers in determining the appropriate response to a violation of conditions of probation. It is the policy of the Unified Judicial System that violations of probation be addressed in a timely, consistent and reasonable manner by use of a graduated response grid. The use of graduated sanctions and incentives is intended to achieve public safety by holding offenders accountable for their behavior and reinforcing positive behavior.

Section 2. The response grid attached to this rule as Appendix A is hereby adopted for statewide use by court services officers. The response grid shall be utilized statewide for all adult cases supervised through court services. This rule does not apply to probationers supervised as part of a drug court as defined by SDCL 16-22-3.

Section 3. Court services officers are encouraged to provide incentives for compliance with the conditions of probation and acknowledge achievements to reinforce positive behavior.

Section 4. Except as stated in Section 2 the response grid shall be made a standard condition of probation and a probationer shall be informed that they may seek review of any moderate or

serious sanction imposed by requesting review by the chief court services officer for the judicial circuit. 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 shall be assigned by the director of trial court services. The decision made by the chief court services officer concerning the imposition of a sanction is final.

Section 5. The response grid applies to conduct that is a violation of the terms and conditions of probation including an arrest for a misdemeanor offense. If a probationer is arrested for a felony the court services officer shall submit a probation violation report to the prosecuting attorney. The court services officer may file a petition to modify or revoke probation with the court at any time. If a probationer's conduct demonstrates a significant risk to public safety the court services officer shall immediately submit a probation violation report.

Section 6. A court services officer shall respond to a violation through the application of the grid by utilizing the appropriate cells based on the probationer's risk level and the type of violation. The imposition of sanctions within a grid cell is vested to the discretion of the supervising court services officer. A court services officer may deviate up or down from the grid cell with supervisor approval. Not all responses in each grid cell may be appropriate for all violations or for all probationers. Graduated responses may be used individually or in combination and include formal and informal responses to probation violations. The imposition of any sanction or incentive shall be documented by the court services officer.

Section 7. Court services officers shall consider the risk the probationer poses to the community, the severity of any violation, prior history on probation, previous violations or sanctions, and the deterrent effect when imposing a sanction. The court services officer shall also employ positive reinforcement for a probationer's compliance with the conditions of supervision and completion of benchmarks during the term of supervision.

Section 8. In response to a violation of the conditions of probation the court services officer may:

- a. Modify the conditions of community supervision for the limited purpose of imposing graduated sanctions.

- b. Place a probationer who violates the terms of supervision in a local correctional or detention facility for a period of time up to forty-eight hours with review and prior approval of the chief court services officer for the judicial circuit.
- c. Impose any sanction with consideration to the probationers' employment schedule while still preserving public safety and maintaining the purpose and integrity of the sanctioning process.

Section 9. A sanction cannot extend the term of probation.

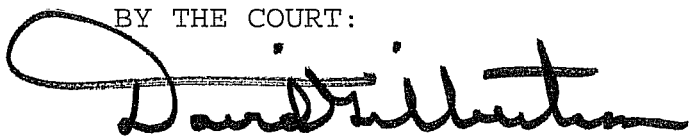
Section 10. There is hereby established a response grid oversight committee to consider recommendations to the graduated response grid and make such changes as the committee determines appropriate by majority vote. The committee shall be appointed by the Chief Justice of the South Dakota Supreme Court. The committee shall consist of nine members and be composed of two judges, two chief court services officers, one deputy chief court services officer, two court services officers that are not chief or deputy chief court services officers, one state's attorney and one defense attorney. The director of trial court services shall also serve as a non-voting member of the committee. The committee shall meet within 180 days from appointment and at least annually thereafter.

Section 11. Nothing in this rule shall be construed to limit the sentencing court's ability to respond to a probation violation or modify the terms and conditions of probation.

Section 12. This rule shall become effective January 1, 2014.

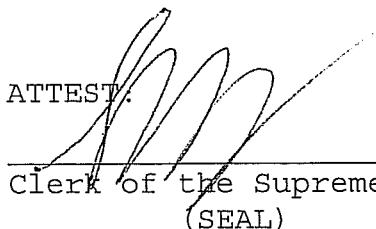
DATED at Pierre, South Dakota, this 8th day of November, 2013.

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  
8<sup>th</sup> day of Nov, 2013  
Shirley A. Jameson-Fargel  
Clerk of Supreme Court

Deputy

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

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Clerk

South Dakota's Application of Supervisory Responses (ASR): Responding to the Public Safety Improvement Act

Violation Severity	Administrative/Financial Obligations Only/Case Service Monitoring	Low Risk active probationer (LSI-R)	Moderate Risk active probationer (LSI-R)	High Risk active probationer (LSI-R)
<b>Minor</b> Failure to file paperwork/form on time Failure to complete an assignment/directive Missing programming appointment (1 <sup>st</sup> time) Missing meeting with officer (1 <sup>st</sup> time) Late to meeting w/officer (1 <sup>st</sup> time) Failure to meet financial obligation (1 <sup>st</sup> time) Dishonesty (1 <sup>st</sup> time) Failure to maintain satisfactory performance at educational/employment endeavor (1 <sup>st</sup> time) One 24/7 violation Violation of social decorum	<ul style="list-style-type: none"> <li>• Verbal consequence</li> <li>• Letter to client</li> <li>• Volunteer opportunity (service; 1 time)</li> <li>• Written assignment for client (brief)</li> <li>• Discretion of CSO; appropriate per violation</li> </ul>	<ul style="list-style-type: none"> <li>• Verbal consequence</li> <li>• Letter to client</li> <li>• Volunteer opportunity (service; 1 time)</li> <li>• Written assignment for client (brief)</li> <li>• Discretion of CSO; appropriate per violation</li> </ul>	<ul style="list-style-type: none"> <li>• Verbal consequence</li> <li>• Letter to client</li> <li>• Volunteer opportunity (service; 1 time)</li> <li>• Written assignment for client (brief)</li> <li>• Discretion of CSO; appropriate per violation</li> </ul>	<ul style="list-style-type: none"> <li>• Verbal consequence</li> <li>• Letter to client</li> <li>• Volunteer opportunity (service; 1 time)</li> <li>• Written assignment for client (brief)</li> <li>• Discretion of CSO; appropriate per violation</li> <li>• Extra (scheduled) meeting with officer for problem solving</li> </ul>
<b>Moderate</b> Continuing failure to file paperwork/form Continuing failure to complete assign./direct. Continuing missed programming appt. Continuing lateness to meeting w/officer Continuing failure to meet finance. ob. Continuing dishonesty Failure to report change in status (employ; residence; other) New arrest/charge – Misdemeanor Class 2 Continuing missed meeting w/officer New arrest/charge – Misdemeanor Class 1 Prohibited space by statute or court order Unsatisfactory termination from treatment program Continuing failure to maintain satisfactory performance at educational/employment endeavor Contact with prohibited associates Violation of protection order Two 24/7 violation Positive (or continuing positive) UA Positive (or continuing positive) PBT AWOL	<ul style="list-style-type: none"> <li>• Verbal consequence</li> <li>• Letter to client</li> <li>• Volunteer opportunity (service)</li> <li>• Written assignment</li> <li>• Discretion of CSO; appropriate per violation</li> </ul>	<ul style="list-style-type: none"> <li>• Verbal consequence</li> <li>• Letter to client</li> <li>• Volunteer opportunity (service)</li> <li>• Written assignment</li> <li>• Discretion of CSO; appropriate per violation</li> <li>• Treatment referral</li> <li>• Short-term jail stay – up to 48 hours</li> </ul>	<ul style="list-style-type: none"> <li>• Verbal consequence</li> <li>• Letter to client</li> <li>• Volunteer opportunity (service)</li> <li>• Written assignment</li> <li>• Discretion of CSO; appropriate per violation</li> <li>• Treatment referral</li> <li>• Increase meeting requirement</li> <li>• Develop planner/scheduler/workbook</li> <li>• Court observations</li> <li>• Increase UA and similar</li> <li>• Residential/out-of-home placement</li> <li>• House arrest/Electronic monitoring</li> <li>• Short-term jail stay – up to 48 hours</li> </ul>	<ul style="list-style-type: none"> <li>• Verbal consequence</li> <li>• Letter to client</li> <li>• Volunteer opportunity (service)</li> <li>• Written assignment</li> <li>• Discretion of CSO; appropriate per violation</li> <li>• Treatment referral</li> <li>• Increase meeting requirement</li> <li>• Develop planner/scheduler/workbook</li> <li>• Court observations</li> <li>• Increase UA and similar</li> <li>• Residential/out-of-home placement</li> <li>• House arrest/Electronic monitoring</li> <li>• Short-term jail stay – up to 48 hours</li> </ul>
<b>Serious</b> Continuing or ongoing contact w/prohibited associates Continuing or ongoing prohibited space by statute or court order Continuing failure to report change in status (employ; residence; other) Three or more 24/7 violation Ongoing failure to file paperwork/form Ongoing missed programming appt. Ongoing missed meeting w/officer Ongoing lateness to meeting w/officer Ongoing failure to meet finance ob. Ongoing dishonesty Ongoing failure to maintain satisfactory performance at educational/employment endeavor Ongoing positive UA and similar Ongoing positive PBT Unsatisfactory termination from any treatment program A significant event related to original/instant offense *New arrest/charge – Felony *Absconding *Continuing or ongoing AWOL *Continuing violation of protection order	<ul style="list-style-type: none"> <li>• Verbal consequence</li> <li>• Letter to client</li> <li>• Volunteer opportunity (service)</li> <li>• Written assignment (thinking report)</li> <li>• Increase/institute meeting requirement</li> <li>• Increase in supervision level/risk level</li> <li>• Discretion of CSO; appropriate per violation</li> <li>• Formal violation order to show cause issued</li> </ul>	<ul style="list-style-type: none"> <li>• Verbal consequence</li> <li>• Letter to client</li> <li>• Volunteer opportunity (service)</li> <li>• Written assignment (thinking report)</li> <li>• Increase meeting requirement</li> <li>• Treatment referral</li> <li>• Increase UA and similar</li> <li>• Increase in supervision level/risk level</li> <li>• House arrest/Electronic monitoring</li> <li>• Discretion of CSO; appropriate per violation</li> <li>• Short-term jail stay – up to 48 hours</li> </ul>	<ul style="list-style-type: none"> <li>• Verbal consequence</li> <li>• Letter to client</li> <li>• Volunteer opportunity (service)</li> <li>• Written assignment (thinking report)</li> <li>• Increase meeting requirement</li> <li>• Treatment referral</li> <li>• Increase UA and similar</li> <li>• House arrest/Electronic monitoring</li> <li>• Develop planner/scheduler/workbook</li> <li>• Residential/out-of-home placement (incl. tx)</li> <li>• Discretion of CSO; appropriate per violation</li> <li>• Short-term jail stay – up to 48 hours</li> </ul>	<ul style="list-style-type: none"> <li>• Verbal consequence</li> <li>• Letter to client</li> <li>• Volunteer opportunity (service)</li> <li>• Written assignment (thinking report)</li> <li>• Increase meeting requirement</li> <li>• Treatment referral</li> <li>• Increase UA and similar</li> <li>• House arrest/Electronic monitoring</li> <li>• Develop planner/scheduler/workbook</li> <li>• Residential/out-of-home placement (incl. tx)</li> <li>• Discretion of CSO; appropriate per violation</li> <li>• Short-term jail stay – up to 48 hours</li> </ul>

Yellow highlight = discharge credit is not earned, if applicable to the case. Once discharge credit has not been granted to the offender for a month, it may not be earned back.

Violations that are not highlighted assume earned discharge credit can still be earned by the offender, if applicable to the case.

\* Indicates the officer is required to submit a violation of probation report. In all other cells of the grid, the officer has the discretion to submit a probation violation report as appropriate in response to behavior.