

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0267

HOUSE JUDICIARY ENGROSSED NO. **HB 1021** - 1/19/2012

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the rights of victims
2 of crime.

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

4 Section 1. That § 24-15A-43 be repealed.

5 ~~—24-15A-43. Consistent with § 23A-28C-4, victims of the crime, including victims of driving~~
6 ~~under the influence vehicle accidents, have the following rights:~~

7 ~~—(1)— Notification of scheduled bail hearings and release from custody, notification by~~
8 ~~prosecutor's office when the case is received and to whom the case is assigned, and~~
9 ~~notification in advance of the date of preliminary hearing and trial;~~

10 ~~—(2)— To be informed of what the charges mean and the elements necessary for conviction;~~

11 ~~—(3)— To testify at scheduled bail or bond hearings regarding any evidence indicating~~
12 ~~whether the offender represents a danger to the victim or the community if released;~~

13 ~~—(4)— To be protected from intimidation by the defendant, including enforcement of orders~~
14 ~~of protection;~~

15 ~~—(5)— To offer written input into whether plea bargaining or sentencing bargaining~~



- 1 ~~agreements should be entered into;~~
- 2 ~~— (6) — To be present during all scheduled phases of the trial or hearings, except where~~
3 ~~otherwise ordered by the judge hearing the case or by contrary policy of the presiding~~
4 ~~circuit judge;~~
- 5 ~~— (7) — To be prepared as a witness, including information about basic rules of evidence,~~
6 ~~cross-examination, objections, and hearsay;~~
- 7 ~~— (8) — To provide to the court a written or oral victim impact statement prior to sentencing~~
8 ~~regarding the financial and emotional impact of the crime on the victim and the~~
9 ~~victim's family as well as recommendations for restitution and sentencing and § 23A-~~
10 ~~28-8 notwithstanding, the right to appear at any hearing during which a change in the~~
11 ~~plan of restitution is to be considered;~~
- 12 ~~— (9) — To receive restitution, if the victim requests it, whether the convicted criminal is~~
13 ~~probated or incarcerated, unless the court or parole board provides to the victim on~~
14 ~~the record specific reasons for choosing not to require it;~~
- 15 ~~— (10) — To provide written input with respect to commutations of sentences by the Governor,~~
16 ~~should this be considered;~~
- 17 ~~— (11) — In the case in which the death penalty may be authorized, to provide to the court or~~
18 ~~to the jury, as appropriate, testimony about the victim and the impact of the crime on~~
19 ~~the victim's family; and~~
- 20 ~~— (12) — To receive notification of the defendant's release from custody, including:~~
- 21 ~~— (a) — Notice of the defendant's escape from custody and return to custody following~~
22 ~~escape;~~
- 23 ~~— (b) — Notice of any other release from custody, including placement in an intensive~~
24 ~~supervision program or other alternative disposition, and any associated~~

1 conditions of release;

2 ~~———— (c) Notice of parole; and~~

3 ~~———— (d) Notice of pending release of an inmate due to expiration of sentence.~~

4 Section 2. That § 23A-28C-1 be amended to read as follows:

5 23A-28C-1. Consistent with § 23A-28C-4, victims of the crime, including victims of driving
6 under the influence vehicle accidents, have the following rights:

- 7 (1) To be notified of scheduled bail hearings and release from custody, to be notified by
8 the prosecutor's office when the case is received and to whom the case is assigned,
9 and to be notified in advance of the date of preliminary hearing and trial;
- 10 (2) To be informed of what the charges mean and the elements necessary for conviction;
- 11 (3) To testify at scheduled bail or bond hearings regarding any evidence indicating
12 whether the offender represents a danger to the victim or the community if released;
- 13 (4) To be protected from intimidation by the defendant, including enforcement of orders
14 of protection;
- 15 (5) To offer written input into whether plea bargaining or sentencing bargaining
16 agreements should be entered into;
- 17 (6) To be present during all scheduled phases of the trial or hearings, except where
18 otherwise ordered by the judge hearing the case or by contrary policy of the presiding
19 circuit judge;
- 20 (7) To be prepared as a witness, including information about basic rules of evidence,
21 cross-examination, objections, and hearsay;
- 22 (8) To provide to the court a written or oral victim impact statement prior to sentencing
23 regarding the financial and emotional impact of the crime on the victim and his or her
24 family as well as recommendations for restitution and sentencing and § 23A-28-8

1 notwithstanding, the right to appear at any hearing during which a change in the plan
2 of restitution is to be considered;

3 (9) To receive restitution, whether the convicted criminal is probated or incarcerated,
4 unless the court or parole board provides to the victim on the record specific reasons
5 for choosing not to require it;

6 (10) To provide written input at parole and clemency hearings or with respect to
7 ~~commutations of sentences~~ clemency by the Governor, should those options be
8 considered;

9 (11) In a case in which the death penalty may be authorized, to provide to the court or to
10 the jury, as appropriate, testimony about the victim and the impact of the crime on
11 the victim's family;

12 (12) To be notified of the defendant's release from custody, which notice includes:

13 (a) Notice of the defendant's escape from custody and return to custody following
14 escape;

15 (b) Notice of any other release from custody, including placement in an intensive
16 supervision program or other alternative disposition, and any associated
17 conditions of release;

18 (c) Notice of parole; and

19 (d) Notice of pending release of an inmate due to expiration of sentence;

20 (13) To be notified of the victim's right to request testing for infection by blood-borne
21 pathogens pursuant to § 23A-35B-2; ~~and~~

22 (14) To be provided a copy of any report of law enforcement that is related to the crime,
23 at the discretion of the state's attorney, or upon motion and order of the court.

24 However, no victim may be given the criminal history of any defendant or any

1 witness; and

2 (15) To be notified of a petition by the sex offender for removal from the sex offender
3 registry and to provide written input with respect to the removal request.

4 Section 3. That § 24-15A-3 be amended to read as follows:

5 24-15A-3. The provisions of §§ 24-2-9, 24-2-12, 24-2-12.1, 24-2-12.2, 24-2-17, 24-2-18,
6 24-5-1, 24-5-2, 24-5-7, 24-13-4.2, 24-13-4.3, 24-13-4.5, 24-13-6, 24-13-7, 24-13-10, 24-15-1,
7 24-15-1.1, 24-15-1.2, 24-15-2, 24-15-3, 24-15-5, 24-15-6, 24-15-7, 24-15-7.1, 24-15-8, 24-15-
8 10, 24-15-11, 24-15-12, 24-15-15, 24-15-20, 24-15-24, and 24-15-25, ~~and 23A-28C-1~~ do not
9 apply to any person sentenced to prison for a crime committed after July 1, 1996.