

2022 South Dakota Legislature

House Bill 1232**AMENDMENT 1232B FOR THE HOUSE JUDICIARY
ENGROSSED BILL**

1 **An Act to establish mandatory sentences for certain driving while under the**
2 **influence violations.**

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

4 **Section 1. That § 32-23-4.6 be AMENDED:**

5 **32-23-4.6.** If a conviction for a violation of § 32-23-1 is for a fourth offense, the
6 person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall order
7 that the driver's license of any person so convicted be revoked for a period of not less
8 than two years from the date sentence is imposed or two years from the date of initial
9 release from imprisonment, whichever is later. If the person is returned to imprisonment
10 prior to the completion of the period of driver's license revocation, time spent imprisoned
11 does not count toward fulfilling the period of revocation. If the person is convicted of
12 driving without a license during that period, the person ~~shall~~ must be sentenced to the
13 county jail for not less than twenty days, which sentence may not be suspended.
14 Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the
15 license revocation for the term of such revocation. Upon the successful completion of a
16 court-approved chemical dependency counseling program, and proof of financial
17 responsibility pursuant to § 32-35-113, the court may permit the person to operate a
18 vehicle for the purposes of employment, 24/7 sobriety testing, attendance at school, or
19 attendance at counseling programs. Further, sentencing pursuant to this section includes
20 the provisions of § 23A-27-18.

21 If a person is convicted of a fourth violation of § 32-23-1, the court shall sentence
22 the person to at least ~~three years one year~~ in the state penitentiary, which sentence may
23 not be suspended.

24 **Section 2. That § 32-23-4.7 be AMENDED:**

1 **32-23-4.7.** If a conviction for violation of § 32-23-1 is for a fifth offense, or
2 subsequent offenses thereafter, the person is guilty of a Class 4 felony and the court, in
3 pronouncing sentencing, shall order that the driver's license of any person so convicted
4 be revoked for a period of not less than three years from the date sentence is imposed or
5 three years from the date of initial release from imprisonment, whichever is later. In the
6 event the person is returned to imprisonment prior to the completion of the period of
7 driver's license revocation, time spent imprisoned does not count toward fulfilling the
8 period of revocation. If the person is convicted of driving without a license during that
9 period, the person ~~shall~~ must be sentenced to the county jail for not less than twenty
10 days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court
11 retains jurisdiction to modify the conditions of the license revocation for the term of such
12 revocation. Upon the successful completion of a court-approved chemical dependency
13 counseling program, and proof of financial responsibility pursuant to § 32-35-113, the
14 court may permit the person to operate a vehicle for the purposes of employment, 24/7
15 sobriety testing, attendance at school, or attendance at counseling programs.

16 If a person is convicted of a fifth or subsequent violation of § 32-23-1, the court
17 shall sentence the person to at least ~~seven~~ ~~three~~ years in the state penitentiary, which
18 sentence may not be suspended.

19 **Section 3. That § 32-23-4.9 be AMENDED:**

20 **32-23-4.9.** If a conviction for a violation of § 32-23-1 is for a sixth offense, or
21 subsequent offense, and the person had at least five convictions of § 32-23-1 occurring
22 within twenty-five years of the violation being charged, and at least two of those prior
23 convictions having occurred within ten years, the violation is an aggravated offense and
24 the person is guilty of a Class 4 felony. If a person is convicted of an aggravated violation
25 of § 32-23-1 and the person had at least six convictions of § 32-23-1 occurring within
26 fifteen years of the violation being charged, the court shall sentence the person to at least
27 seven five years in the state penitentiary, which sentence may not be suspended.

28 The court, in pronouncing sentencing, shall order that the driver license of any
29 person so convicted be revoked for a period of not less than three years from the date the
30 sentence is imposed or three years from the date of initial release from imprisonment,
31 whichever is later. If the person is returned to imprisonment prior to the completion of
32 the period of driver license revocation, time spent imprisoned does not count toward
33 fulfilling the period of revocation. If the person is convicted of driving without a license
34 during that period, the person ~~shall~~ must be sentenced to the county jail for not less than

1 twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the
2 court retains jurisdiction to modify the conditions of the license revocation for the term of
3 such revocation.

4 Upon the person's successful completion of a court-approved chemical dependency
5 counseling program and proof of financial responsibility pursuant to § 32-35-113, the
6 court may permit the person to operate a vehicle for the purposes of employment, 24/7
7 sobriety testing, attendance at school, or attendance at counseling programs.

8 For each person convicted under this section and placed on probation, parole, or
9 released from prison due to a suspended sentence, the person's supervision ~~shall~~ must
10 include at least one of the following: enrollment in an alcohol or drug accountability
11 program, ignition interlock, breath alcohol interlock, an alcohol monitoring bracelet, or
12 another enhanced monitoring tool. Supervision of the offender ~~shall~~ must be overseen by
13 the Unified Judicial System if the sentence does not include a term of imprisonment in the
14 penitentiary or by the Department of Corrections if the sentence includes a term of
15 imprisonment in the penitentiary. Any offender supervised pursuant to this section is not
16 excluded from earned discharge credit as otherwise authorized by statute.

17 If, during the period of supervision imposed under this section, the person being
18 supervised violates conditions, the offender ~~shall~~ must be penalized according to the
19 graduated sanctions policy to be established by the Supreme Court or the Department of
20 Corrections, respectively.

21 **Section 4. That chapter 32-23 be amended with a NEW SECTION:**

22 Any person subject to a mandatory sentence under § 32-23-4.6, 32-23-4.7, or 32-
23 23-4.9 is not eligible for parole consideration.