



## 2023 South Dakota Legislature

# Senate Bill 146

Introduced by: **Senator Brent "B.R." Hoffman**

1 **An Act to limit parole for violent offenders.**

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

3 **Section 1. That chapter 24-15 be amended with a NEW SECTION:**

4 For the purposes of this section, the term, offense, means any of the following:

- 5 (1) Manslaughter in the first degree, as defined in § 22-16-15;  
 6 (2) Kidnapping in the first degree, as defined in § 22-19-1;  
 7 (3) Rape in the first degree, as defined in § 22-22-1;  
 8 (4) Rape in the second degree, as defined in § 22-22-1;  
 9 (5) Torture of a human trafficking victim, as defined in § 22-49-5;  
 10 (6) Commission of a felony while armed with firearms, as defined in § 22-14-12;  
 11 (7) Aggravated assault against a law enforcement officer, firefighter, ambulance  
 12 personnel, Department of Corrections employee or contractor, health care  
 13 personnel, or other public officer, as defined in § 22-18-1.05;  
 14 (8) Aggravated battery of an infant, as defined in § 22-18-1.4;  
 15 (9) Assault with intent to cause serious permanent disfigurement, as defined in § 22-  
 16 18-1.5;  
 17 (10) Robbery in the first degree, as defined in § 22-30-6;  
 18 (11) First degree burglary, as defined in § 22-32-1;  
 19 (12) First degree arson, as defined in § 22-33-9.1; and  
 20 (13) First degree human trafficking, as defined in § 22-49-2.

21 An inmate convicted of and sentenced for an offense as specified in this section,  
 22 on or after July 1, 2023, is not eligible for parole by the Board of Pardons and Paroles,  
 23 except as provided in §§ 24-15A-55 to 24-15A-68, inclusive. An inmate shall serve the  
 24 full term of imprisonment imposed by the court for the offense. The court shall retain the  
 25 discretion to suspend a portion of the prison sentence required. If the court suspends a

1 portion of the prison sentence, the Board of Pardons and Paroles shall supervise the  
2 suspended time.

3 An inmate may earn any credit for which the inmate is eligible. However, such  
4 credits may only be used for increased privileges and may not be used to reduce the  
5 sentence imposed by the court.

6 **Section 2. That chapter 24-15 be amended with a NEW SECTION:**

7 For the purposes of this section, the term, offense, means any of the following:

8 (1) Vehicular homicide, as defined in § 22-16-41;

9 (2) Aggravated assault, as defined in § 22-18-1.1;

10 (3) Aggravated criminal battery of an unborn child, as defined in § 22-18-1.3;

11 (4) Kidnapping in the second degree, as defined in § 22-19-1.1;

12 (5) Second degree burglary, as defined in § 22-32-3;

13 (6) Riot, as defined in § 22-10-1;

14 (7) Manslaughter in the second degree, as defined in § 22-16-20;

15 (8) Second degree human trafficking, as defined in § 22-49-3;

16 (9) Felony child abuse, as defined in § 26-10-1; and

17 (10) Attempt to commit, or a conspiracy to commit, or a solicitation to commit any  
18 offense enumerated in section 1 of this Act.

19 An inmate convicted of and sentenced for an offense as specified in this section,  
20 on or after July 1, 2023, is not eligible for parole by the Board of Pardons and Paroles  
21 except as provided in §§ 24-15A-55 to 24-15A-68, inclusive. An inmate shall serve the  
22 full term of imprisonment imposed by the court for the offense. The court shall retain the  
23 discretion to suspend a portion of the prison sentence required. If the court suspends a  
24 portion of the prison sentence, the Board of Pardons and Paroles shall supervise the  
25 suspended time.

26 An inmate may earn any credit for which the inmate is eligible. However, such  
27 credits may only be used for increased privileges and may not be used to reduce the  
28 sentence imposed by the court, except as otherwise provided in this section.

29 Discharge credits earned pursuant to §§ 24-15A-50 and 24-15A-50.1 may be used  
30 to reduce an inmate's sentence by up to fifteen percent of the sentence imposed by the  
31 court that the inmate must serve before becoming eligible for release on parole. Discharge  
32 credits may not be used to alter the inmate's sentence expiration date.

33 **Section 3. That § 24-15A-32 be AMENDED:**

1       **24-15A-32.** ~~Each~~For a crime committed before July 1, 2023, each inmate  
2       sentenced to a penitentiary term, except those under a sentence of life or death, or  
3       determined to be ineligible for parole as authorized in § 24-15A-32.1, ~~shall~~must have an  
4       initial parole date set by the department. This date ~~shall~~must be calculated by applying  
5       the percentage indicated in the following grid to the full term, minus any suspended time  
6       of the inmate's sentence pursuant to § ~~22-6-1~~. The following crimes or an attempt to  
7       commit, ~~or a conspiracy to commit, or a solicitation to commit,~~ any of the following crimes  
8       shall be considered a violent crime for purposes of setting an initial parole date: murder,  
9       manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree,  
10      burglary in the second degree if committed before July 1, 2006, arson, kidnapping, felony  
11      sexual contact as defined in § 22-22-7, child abuse, felony sexual contact as defined in  
12      § 22-22-7.2, felony stalking as defined in §§ 22-19A-2 and 22-19A-3, photographing a  
13      child in an obscene act, felony assault as defined in §§ 22-18-26 and 22-18-29, felony  
14      simple assault as defined in § 22-18-1, aggravated criminal battery of an unborn child as  
15      defined in § 22-18-1.3, aggravated battery of an infant as defined in § 22-18-1.4, assault  
16      with intent to cause serious permanent disfigurement as defined in § 22-18-1.5,  
17      commission of a felony while armed as defined in § 22-14-12, discharging a firearm at an  
18      occupied structure or motor vehicle as defined in § 22-14-20, discharging a firearm from  
19      a moving vehicle as defined in § 22-14-21, criminal pedophilia, threatening to commit a  
20      sexual offense as defined in § 22-22-45, abuse or neglect of a disabled adult as defined  
21      in § 22-46-2, and aggravated incest as defined in §§ 22-22A-3 and 22-22A-3.1:

Felony Convictions

Felony Class	First	Second	Third
Nonviolent			
Class 6	.25	.30	.40
Class 5	.25	.35	.40
Class 4	.25	.35	.40
Class 3	.30	.40	.50
Class 2	.30	.40	.50
Class 1	.35	.40	.50
Class C	.35	.40	.50
Violent			
Class 6	.35	.45	.55

Underscores indicate new language.  
Overstrokes indicate deleted language.

1	Class 5	.40	.50	.60
2	Class 4	.40	.50	.65
3	Class 3	.50	.60	.70
4	Class 2	.50	.65	.75
5	Class 1	.50	.65	.75
6	Class C	.50	.65	.75
7	Class B	1.0	1.0	1.0
8	Class A	1.0	1.0	1.0

9           The application of the violent or nonviolent column of the grid is based on whether  
10 the inmate's current sentence is for a violent or nonviolent crime. ~~Any~~ The department  
11 shall consider any prior felony ~~shall be considered~~ regardless of whether ~~it~~ the crime is  
12 violent or nonviolent when determining which percentage to apply to the inmate's parole  
13 date calculation. Each inmate shall serve at least sixty days prior to parole release.  
14 ~~Inmates~~ An inmate with a life sentence is not eligible for parole except as  
15 provided in §§ 24-15A-55 to 24-15A-68, inclusive. An initial parole date through the  
16 application of this grid may be applied to a life sentence only after the sentence is  
17 commuted to a term of years. A Class A or B felony commuted to a number of years shall  
18 be applied to the Class C violent column of the grid. An inmate convicted of a Class A or  
19 B felony who was a juvenile at the time of the offense and receives a sentence of less than  
20 life shall be applied to the Class C violent column of the grid.

21           For a crime committed on or after July 1, 2023, each inmate sentenced to a  
22 penitentiary term, except those under a sentence of life or death, or determined to be  
23 ineligible for parole as authorized in §§ 24-15A-32.1, section 1 of this Act, and section 2  
24 of this Act, must have an initial parole date set by the department. The date must be  
25 calculated by applying the percentage indicated in the following grid to the full term of the  
26 sentence, minus any suspended time. Any of the following crimes, or any attempt to  
27 commit, a conspiracy to commit, or a solicitation to commit any of the following crimes is  
28 considered a violent crime for the purpose of setting an initial parole date: felony stalking  
29 as defined in §§ 22-19A-2 and 22-19A-3, felony assault as defined in §§ 22-18-26 and  
30 22-18-29, felony simple assault as defined in § 22-18-1, discharging a firearm at an  
31 occupied structure or motor vehicle as defined in § 22-14-20, discharging a firearm from  
32 a moving vehicle as defined in § 22-14-21, threatening to commit a sexual offense as  
33 defined in § 22-22-45, abuse or neglect of a disabled adult as defined in § 22-46-2, and  
34 aggravated incest as defined in §§ 22-22A-3 and 22-22A-3.1:

<u>Felony Convictions</u>				
	<u>Felony Class</u>	<u>First</u>	<u>Second</u>	<u>Third</u>
3	<u>Nonviolent</u>			
4	<u>Class 6</u>	<u>.25</u>	<u>.30</u>	<u>.40</u>
5	<u>Class 5</u>	<u>.25</u>	<u>.35</u>	<u>.40</u>
6	<u>Class 4</u>	<u>.25</u>	<u>.35</u>	<u>.40</u>
7	<u>Class 3</u>	<u>.30</u>	<u>.40</u>	<u>.50</u>
8	<u>Class 2</u>	<u>.30</u>	<u>.40</u>	<u>.50</u>
9	<u>Class 1</u>	<u>.35</u>	<u>.40</u>	<u>.50</u>
10	<u>Class C</u>	<u>.35</u>	<u>.40</u>	<u>.50</u>
11	<u>Violent</u>			
12	<u>Class 6</u>	<u>.35</u>	<u>.45</u>	<u>.55</u>
13	<u>Class 5</u>	<u>.40</u>	<u>.50</u>	<u>.60</u>
14	<u>Class 4</u>	<u>.40</u>	<u>.50</u>	<u>.65</u>
15	<u>Class 3</u>	<u>.50</u>	<u>.60</u>	<u>.70</u>
16	<u>Class 2</u>	<u>.50</u>	<u>.65</u>	<u>.75</u>
17	<u>Class 1</u>	<u>.50</u>	<u>.65</u>	<u>.75</u>
18	<u>Class C</u>	<u>.50</u>	<u>.65</u>	<u>.75</u>
19	<u>Class B</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>
20	<u>Class A</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>
21	<u>Section 1</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>
22	<u>of this Act</u>			
23	<u>Section 2</u>	<u>1.0-.85</u>	<u>1.0-.85</u>	<u>1.0-.85</u>
24	<u>of this Act</u>			

25        The application of the violent or nonviolent column of the grid is based on whether  
 26 the inmate's current sentence is for a violent or nonviolent crime. The department shall  
 27 consider any prior felony regardless of whether the crime is violent or nonviolent when  
 28 determining which percentage to apply to the inmate's parole date calculation. Each  
 29 inmate shall serve at least sixty days prior to parole release. An inmate with a life sentence  
 30 and an inmate who commits an offense as defined in section 1 of this Act is not eligible  
 31 for parole except as provided in §§ 24-15A-55 to 24-15A-68, inclusive. An inmate who

1 commits an offense as defined in section 2 of this Act is not eligible for parole except as  
2 provided in section 2 of this Act and §§ 24-15A-55 to 24-15A-68, inclusive. The provisions  
3 set forth in sections 1 and 2 of this Act apply to a life sentence that has been commuted  
4 to a term of years.