



2023 South Dakota Legislature

Senate Bill 146

HOUSE JUDICIARY ENGROSSED

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

1 shall supervise the suspended time and has the authority to revoke the suspended portion
2 of the sentence for failing to follow the conditions of release.

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 for a crime committed on or after July 1, 2023, is not eligible for parole by the Board of
21 Pardons and Paroles except as provided in §§ 24-15A-55 to 24-15A-68, inclusive. An
22 inmate shall serve the full term of imprisonment imposed by the court for the offense. The
23 court shall retain the discretion to suspend a portion of the prison sentence required. If
24 the court suspends a portion of the prison sentence, the Board of Pardons and Paroles
25 shall supervise the suspended time and has the authority to revoke the suspended portion
26 of the sentence for failing to follow the conditions of release.

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

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

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

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

23 **Felony Convictions**

24	Felony Class	First	Second	Third
25	Nonviolent			
26	Class 6	.25	.30	.40
27	Class 5	.25	.35	.40
28	Class 4	.25	.35	.40
29	Class 3	.30	.40	.50
30	Class 2	.30	.40	.50
31	Class 1	.35	.40	.50
32	Class C	.35	.40	.50

1	Violent			
2	Class 6	.35	.45	.55
3	Class 5	.40	.50	.60
4	Class 4	.40	.50	.65
5	Class 3	.50	.60	.70
6	Class 2	.50	.65	.75
7	Class 1	.50	.65	.75
8	Class C	.50	.65	.75
9	Class B	1.0	1.0	1.0
10	Class A	1.0	1.0	1.0

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

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

1 a moving vehicle as defined in § 22-14-21, threatening to commit a sexual offense as
 2 defined in § 22-22-45, abuse or neglect of a disabled adult as defined in § 22-46-2, and
 3 aggravated incest as defined in §§ 22-22A-3 and 22-22A-3.1:

4 Felony Convictions

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

28 The application of the violent or nonviolent column of the grid is based on whether
 29 the inmate's current sentence is for a violent or nonviolent crime. The department shall
 30 consider any prior felony regardless of whether the crime is violent or nonviolent when
 31 determining which percentage to apply to the inmate's parole date calculation. Each

1 inmate shall serve at least sixty days prior to parole release. An inmate with a life sentence
2 and an inmate who commits an offense as defined in section 1 of this Act is not eligible
3 for parole except as provided in §§ 24-15A-55 to 24-15A-68, inclusive. An inmate who
4 commits an offense as defined in section 2 of this Act is not eligible for parole except as
5 provided in section 2 of this Act and §§ 24-15A-55 to 24-15A-68, inclusive. The provisions
6 set forth in sections 1 and 2 of this Act apply to a life sentence that has been commuted
7 to a term of years.