



2023 South Dakota Legislature
Senate Bill 52
ENROLLED

AN ACT

ENTITLED An Act to update certain provisions regarding the Department of Corrections and the authority of the Secretary of Corrections.

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

Section 1. That § 1-7-1 be AMENDED:

1-7-1. The Governor shall possess the powers and perform the duties entailed upon him by the Constitution and by special provisions throughout this code and among others, but without limiting other prescriptions of his powers and duties, as follows:

- (1) He shall supervise the official conduct of all executive and ministerial officers;
- (2) He shall see that the laws of the state are faithfully and impartially executed;
- (3) He shall make appointments and fill vacancies in the public offices as required by law;
- (4) He is the sole official organ of communication between the government of this state and the government of any other state of the United States;
- (5) He shall issue patents for land as required by law and prescribed by the provisions of this code;
- (6) He may offer rewards, not exceeding one thousand dollars each, payable out of the general fund, for the apprehension of any convict who has escaped from a state correctional facility or for any person who has committed or is charged with the commission of an offense punishable with imprisonment for life;
- (7) He is authorized to appoint a private secretary and to employ such clerks and stenographers as he shall deem necessary for the proper discharge of his official duties, each of whom shall serve during the pleasure of the Governor and receive such compensation as shall be provided by the Legislature;
- (8) He shall have such other powers and must perform such other duties as are or may be devolved upon him by law.

Section 2. That § 1-15-1.12 be REPEALED.

Section 3. That § 1-15-36 be REPEALED.

Section 4. That § 5-12-7 be AMENDED:

5-12-7. The purposes of this authority are:

- (1) To build and otherwise provide hospital, housing, correctional facilities, administrative, classroom, dining halls, fieldhouses, parking facilities, union buildings, library, recreational, laboratory, office, and similar facilities for use by the State of South Dakota;
- (2) To serve the Legislature by making reports concerning the providing of such facilities; and
- (3) To make, and undertake commitments to make, loans to farmers or ranchers who are participants in the United States Department of Agriculture Conservation Reserve Program.

Section 5. That § 7-12-23 be AMENDED:

7-12-23. If any person accused of a public offense is taken before a judge in chambers for the purpose of entering a plea of guilty and receives a state incarceration sentence, the county where the alleged offense was committed shall reimburse the sheriff pursuant to §§ 7-12-21 and 7-12-22.

If a state incarceration sentence is not imposed, the county where the alleged offense was committed shall reimburse the sheriff for the actual expenses for conveying the person to and from the judge by the nearest traveled route.

Section 6. That § 16-22-16 be AMENDED:

16-22-16. If a probationer is sentenced to a term of imprisonment in a state correctional facility, the Unified Judicial System shall transfer the case history of the probationer including the results of a risk and needs assessment conducted on the probationer to the Department of Corrections.

Section 7. That § 19-19-516 be AMENDED:

19-19-516. The secretary of corrections, the warden of the state correctional facility, correctional facility staff, and Department of Corrections staff may not be examined as to communications made to them concerning an execution of an inmate under chapter 23A-27A. The privilege described in this section may be claimed by the

secretary of corrections, the warden of the state correctional facility, correctional facility staff, Department of Corrections staff, or by any representative of any of the foregoing to be examined and is binding on all of them. However, the secretary of corrections and the warden of the state correctional facility may personally waive the privilege described in this section.

Section 8. That § 21-27-9.2 be AMENDED:

21-27-9.2. The officer or person upon whom the writ of habeas corpus is served shall produce the body of the applicant before the court at the hearing of the cause of imprisonment or detainer. If the applicant is in the custody of a civil officer, the court or judge who granted the writ shall determine the expense of bringing the applicant to court, which shall be paid prior to the hearing. If remanded, security must be given to pay the charges for carrying the applicant back. If the applicant is confined in a state correctional facility or state hospital, the court shall issue an order commanding the sheriff of the county in which the application is made to take custody of the applicant during the pendency of any proceedings before the court and to transport the applicant from and return the applicant to a state correctional facility or state hospital if the applicant is not released.

Section 9. That § 22-1-4 be AMENDED:

22-1-4. Any crime is either a felony or a misdemeanor. A felony is a crime which is or may be punishable by imprisonment in a state correctional facility. Every other crime is a misdemeanor.

Section 10. That § 22-6-1 be AMENDED:

22-6-1. Except as otherwise provided by law, felonies are divided into the following nine classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

- (1) Class A felony: death or life imprisonment in a state correctional facility. A lesser sentence than death or life imprisonment may not be given for a Class A felony. In addition, a fine of fifty thousand dollars may be imposed;
- (2) Class B felony: life imprisonment in a state correctional facility. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed;

- (3) Class C felony: life imprisonment in a state correctional facility. In addition, a fine of fifty thousand dollars may be imposed;
- (4) Class 1 felony: fifty years imprisonment in a state correctional facility. In addition, a fine of fifty thousand dollars may be imposed;
- (5) Class 2 felony: twenty-five years imprisonment in a state correctional facility. In addition, a fine of fifty thousand dollars may be imposed;
- (6) Class 3 felony: fifteen years imprisonment in a state correctional facility. In addition, a fine of thirty thousand dollars may be imposed;
- (7) Class 4 felony: ten years imprisonment in a state correctional facility. In addition, a fine of twenty thousand dollars may be imposed;
- (8) Class 5 felony: five years imprisonment in a state correctional facility. In addition, a fine of ten thousand dollars may be imposed; and
- (9) Class 6 felony: two years imprisonment in a state correctional facility or a fine of four thousand dollars, or both.

If the defendant is under the age of eighteen years at the time of the offense and found guilty of a Class A, B, or C felony, the maximum sentence may be a term of years in a state correctional facility, and a fine of fifty thousand dollars may be imposed.

The court, in imposing sentence on a defendant who has been found guilty of a felony, shall order in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Nothing in this section limits increased sentences for habitual criminals under §§ 22-7-7, 22-7-8, and 22-7-8.1.

Section 11. That § 22-6-11 be AMENDED:

22-6-11. The sentencing court shall sentence an offender convicted of a Class 5 or Class 6 felony, except those convicted under §§ 22-11A-2.1, 22-14-15, 22-18-1, 22-18-1.05, 22-18-26, 22-18-29, 22-19A-1, 22-19A-2, 22-19A-3, 22-19A-7, 22-19A-16, 22-22A-2, 22-22A-4, 22-24A-3, 22-22-24.3, subdivision 22-23-2(2), 22-24-1.2, 22-24B-2, 22-24B-12, 22-24B-12.1, 22-24B-23, 22-30A-46, 22-42-7, subdivision 24-2-14(1), 32-34-5, and any person ineligible for probation under § 23A-27-12, to a term of probation. If the offender is under the supervision of the Department of Corrections, the court shall order a fully suspended state incarceration sentence pursuant to § 23A-27-18.4. The sentencing court may impose a sentence other than probation or a fully suspended state incarceration sentence if the court finds aggravating circumstances exist that pose a

significant risk to the public and require a departure from presumptive probation under this section. If a departure is made, the judge shall state on the record at the time of sentencing the aggravating circumstances and the same shall be stated in the dispositional order. Neither this section nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest.

Section 12. That § 22-14-12 be AMENDED:

22-14-12. Any person who commits or attempts to commit any felony while armed with a firearm, including a machine gun or short shotgun, is guilty of a Class 2 felony for the first conviction. A second or subsequent conviction is a Class 1 felony. The sentence imposed for a first conviction under this section shall carry a minimum sentence of imprisonment in a state correctional facility of five years. In case of a second or subsequent conviction under this section such person shall be sentenced to a minimum imprisonment of ten years in a state correctional facility.

Any sentence imposed under this section shall be consecutive to any other sentences imposed for a violation of the principal felony. The court may not place on probation, suspend the execution of the sentence, or suspend the imposition of the sentence of any person convicted of a violation of this section.

Section 13. That § 22-22-1.3 be AMENDED:

22-22-1.3. Any person convicted of a felony violation as provided in subdivisions 22-24B-1(1) to (15), inclusive, and (19), (24) and (25), shall have included in the offender's presentence investigation report a psycho-sexual assessment including the following information: the offender's sexual history; an identification of precursor activities to sexual offending; intellectual, adaptive and academic functioning; social and emotional functioning; previous legal history; previous treatment history; victim selection and age; risk to the community; and treatment options recommended. If a presentence investigation is not prepared, the court shall order a psycho-sexual assessment which shall be made available to the court prior to sentencing. If the offender is sentenced to a state correctional facility, the psycho-sexual assessment shall be attached to the official statement and supplied to the Board of Pardons and Paroles and the warden.

Section 14. That § 22-42-2 be AMENDED:

22-42-2. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with intent to manufacture, distribute, or dispense a substance listed in Schedules I or II; create or distribute a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a counterfeit substance listed in Schedules I or II. A violation of this section is a Class 4 felony. However, a violation of this section is a Class 3 felony if the person is in possession of three or more of the following:

- (1) Three hundred dollars or more in cash;
- (2) A firearm or other weapon pursuant to §§ 22-14-6, 22-14-15, 22-14-15.1, 22-14-15.3, and subdivision 22-1-2(8);
- (3) Bulk materials used for the packaging of controlled substances;
- (4) Materials used to manufacture a controlled substance including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment; or
- (5) Drug transaction records or customer lists.

The distribution of a substance listed in Schedules I or II to a minor is a Class 2 felony. A first conviction under this section shall be punished by a mandatory sentence in a state correctional facility of at least one year, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction under this section shall be punished by a mandatory sentence in a state correctional facility of at least ten years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. However, a first conviction for distribution to a minor under this section shall be punished by a mandatory sentence in a state correctional facility of at least five years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction for distribution to a minor under this section shall be punished by a mandatory sentence in a state correctional facility of at least fifteen years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence, may not form the basis for reducing the mandatory time of incarceration required by this section.

Any conviction for, or plea of guilty to, an offense in another state which, if committed in this state, would be a violation of this section, and occurring within fifteen years prior to the date of the violation being charged, must be used to determine if the violation being charged is a second or subsequent offense.

Any person who, for consideration, intentionally distributes any controlled substance or counterfeit substance in violation of this section and another person dies as a direct result of using that substance, the sentence for the principal felony shall be enhanced by increasing the class of the principal felony two levels. The enhancement may not exceed the sentence for a Class C felony.

A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars. A conviction for the purposes of the mandatory sentence provisions of this chapter is the acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding of guilt by a jury or court.

Section 15. That § 22-42-3 be AMENDED:

22-42-3. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a controlled drug or substance listed in Schedule III; possess with intent to manufacture, distribute, or dispense a substance listed in Schedule III; create or distribute a counterfeit substance listed in Schedule III; or possess with intent to distribute a counterfeit substance listed in Schedule III. A violation of this section is a Class 5 felony. However, the distribution of a substance listed in Schedule III to a minor is a Class 3 felony. A first conviction under this section shall be punished by a mandatory sentence in a state correctional facility or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction under this section shall be punished by a mandatory state correctional facility or county jail sentence of at least one year, which sentence may not be suspended. However, a first conviction for distribution to a minor under this section shall be punished by a mandatory sentence in a state correctional facility or county jail of at least ninety days, which sentence may not be suspended. A second or subsequent conviction for distribution to a minor under this section shall be punished by a mandatory sentence in a state correctional facility of at least two years, which sentence may not be suspended. A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars.

Section 16. That § 22-42-4 be AMENDED:

22-42-4. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a controlled drug or substance listed in Schedule IV; possess with intent to manufacture, distribute, or dispense a substance listed in Schedule IV; create or distribute a counterfeit substance listed in Schedule IV; or possess with intent to distribute a counterfeit substance listed in Schedule IV. A violation of this section is a Class 6 felony. However, the distribution of a substance listed in Schedule IV to a minor is a Class 4 felony. A first conviction under this section shall be punished by a mandatory sentence in a state correctional facility or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction under this section shall be punished by a mandatory state correctional facility or county jail sentence of at least one year, which sentence may not be suspended. A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars. Notwithstanding any other provision of this section, a violation of this section with respect to distribution of Flunitrazepam to a minor is a Class 4 felony, but in all other cases under this section is a Class 5 felony.

Section 17. That § 22-42-4.3 be AMENDED:

22-42-4.3. Except as authorized by this section or chapter 34-20B, no person may manufacture, distribute, or dispense more than five grams of methamphetamine, a methamphetamine analog or immediate precursor; possess with intent to manufacture, distribute, or dispense methamphetamine, a methamphetamine analog or immediate precursor; create or distribute a counterfeit of methamphetamine, a methamphetamine analog or immediate precursor; or possess with intent to distribute a counterfeit of methamphetamine, a methamphetamine analog or immediate precursor. A violation of this section is a Class 3 felony. However, a violation of this section is a Class 2 felony if the person is in possession of three or more of the following:

- (1) Three hundred dollars or more in cash;
- (2) A firearm, or other weapon pursuant to §§ 22-14-6, 22-14-15, 22-14-15.1, 22-14-15.3, and subdivision 22-1-2(8);
- (3) Bulk materials used for the packaging of methamphetamine;
- (4) Materials used to manufacture methamphetamine including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment; or

(5) Drug transaction records or customer lists.

A first conviction under this section shall be punished by a mandatory sentence in a state correctional facility of at least one year, which sentence may not be suspended. A second or subsequent conviction under this section shall be punished by a mandatory sentence in a state correctional facility of at least ten years, which sentence may not be suspended.

The manufacture, distribution, or dispensing of methamphetamine, a methamphetamine analog or immediate precursor to a minor is a Class 1 felony. A first conviction for distribution to a minor under this section shall be punished by a mandatory sentence in a state correctional facility of at least five years, which sentence may not be suspended. A second or subsequent conviction for distribution to a minor under this section shall be punished by a mandatory sentence in a state correctional facility of at least fifteen years, which sentence may not be suspended.

Probation, suspended imposition of sentence, or suspended execution of sentence, may not form the basis for reducing the mandatory time of incarceration required by this section.

A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars. A conviction for the purposes of the mandatory sentence provisions of this chapter is the acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding of guilt by a jury or court.

Section 18. That § 22-42-7 be AMENDED:

22-42-7. The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana is a Class 6 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one-half pound of marijuana is a Class 5 felony. The distribution, or possession with intent to distribute, of one-half pound but less than one pound of marijuana is a Class 4 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana is a Class 3 felony. The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana to a minor without consideration is a Class 6 felony; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana to a minor is a Class 5 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one-half

pound of marijuana to a minor is a Class 4 felony. The distribution, or possession with intent to distribute, of one-half pound but less than one pound of marijuana to a minor is a Class 3 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana to a minor is a Class 2 felony. A first conviction of a felony under this section shall be punished by a mandatory sentence in a state correctional facility or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction of a felony under this section shall be punished by a mandatory sentence of at least one year. Conviction of a Class 1 misdemeanor under this section shall be punished by a mandatory sentence in county jail of not less than fifteen days, which sentence may not be suspended. A civil penalty, not to exceed ten thousand dollars, may be imposed, in addition to any criminal penalty, upon a conviction of a felony violation of this section.

Section 19. That § 22-42-19 be AMENDED:

22-42-19. Any person who commits a violation of § 22-42-2, 22-42-3, or 22-42-4, or a felony violation of § 22-42-7, if such activity has taken place:

- (1) In, on, or within one thousand feet of real property comprising a public or private elementary or secondary school or a playground; or
- (2) In, on, or within five hundred feet of real property comprising a public or private youth center, public swimming pool, or video arcade facility; is guilty of a Class 4 felony. The sentence imposed for a conviction under this section carries a minimum sentence of imprisonment in a state correctional facility of five years. Any sentence imposed under this section shall be consecutive to any other sentence imposed for the principal felony. The court may not place on probation, suspend the execution of the sentence, or suspend the imposition of the sentence of any person convicted of a violation of this section. However, the sentencing court may impose a sentence other than that specified in this section if the court finds that mitigating circumstances exist which require a departure from the mandatory sentence provided for in this section. The court's finding of mitigating circumstances allowed by this section and the factual basis relied upon by the court shall be in writing.

It is not a defense to the provisions of this section that the defendant did not know the distance involved. It is not a defense to the provisions of this section that school was not in session.

Section 20. That § 23-5-8 be AMENDED:

23-5-8. The warden of the state correctional facility shall furnish photographs, fingerprints, and other identifying information of all inmates received at such institution and shall transmit the same to the Division of Criminal Investigation.

Section 21. That § 23A-7-9 be AMENDED:

23A-7-9. If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court, or on a showing of good cause, in chambers, at the time the plea is offered. The prosecuting attorney shall disclose on the record any comments on the plea agreement made by the victim, or his designee, of the defendant's crime to the prosecuting attorney. Thereupon the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the court accepts a plea agreement involving any felony charge, the prosecuting attorney shall file a brief written report, which includes the terms of the plea agreement and the ultimate reasons therefor, with the division of criminal investigation and, if the defendant is incarcerated in a state correctional facility, also with the warden thereof.

Section 22. That § 23A-27-1.2 be AMENDED:

23A-27-1.2. If a reduction of a previously imposed sentence requiring time to be served in a state correctional facility is proposed for consideration, the state's attorney in the county where the offense was committed shall notify the victim, at the victim's last known address, of the hearing. Upon request to the court by a victim and before reducing any sentence, the victim, in the discretion of the court, may address the court concerning the emotional, physical, and monetary impact of the crime upon the victim and may comment upon the proposed reduction of the sentence.

The defendant may respond to the victim's statements orally or by presentation of evidence and may be granted a reasonable continuance to refute any inaccurate or false charges or statements.

For the purpose of this section the term "victim" is defined as in § 23A-27-1.1.

Section 23. That § 23A-27-4 be AMENDED:

23A-27-4. In felony and Class 1 misdemeanor cases, the judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the judgment is for imprisonment in a state correctional facility, the judgment of conviction

shall include the defendant's name, the county of conviction, the judge, the prosecuting attorney, the defense attorney, the docket number, the South Dakota Codified Law citation of the crime, any crime qualifier and any habitual offender enhancement, the date of the offense, date of conviction, date of sentence, the sentence term, any suspended time, any jail time credit granted and, in the case of multiple crimes, if the sentences are to be served concurrently or consecutively. In addition, the judgment of conviction involving a sentence to a state correctional facility shall indicate if the state incarceration term is a condition of a suspended imposition or execution of sentence or condition of a term of probation as allowed under § 23A-27-18.1. In the case of multiple convictions arising from different transactions, a separate judgment of conviction shall be entered for each conviction. If a defendant is found not guilty or for any other reason is entitled to be discharged, the judgment therefor shall be entered forthwith. Judgments of conviction shall be signed by the judge and filed with the clerk.

The term, crime qualifier, as used in this section means the offenses of accessory to a crime pursuant to § 22-3-5; aiding, abetting, or advising in planning or committing a crime pursuant to § 22-3-3; an attempt to commit a crime pursuant to § 22-4-1; conspiracy to commit an offense pursuant to § 22-3-8; or criminal solicitation pursuant to § 22-4A-1.

Section 24. That § 23A-27-10 be AMENDED:

23A-27-10. Immediately following the imposition of sentence or the granting of probation, the defendant or the defendant's counsel and the prosecuting attorney shall return to the court services officer any presentence investigation report made available to the parties. When a person is sentenced to a state correctional facility, the court shall file a copy of the person's presentence report with the Board of Pardons and Paroles and the state correctional facility. Department of Corrections officials and the Board of Pardons and Paroles may utilize information contained in the report, including any pre-plea report being used as the presentence investigation report, for the development of a rehabilitation program for the individual. If a person is sentenced to jail on felony charges, the court shall file a copy of the presentence report with the sheriff or administrator of the jail. Jail officials may utilize information contained in the report, including any pre-plea report being used as the presentence investigation report for the safety and protection of the inmate, rehabilitation programs for the inmate, and assignments to various programs offered by the jail. However, the contents of the reports may not be disclosed to the

individual without a written order from the sentencing judge or the sentencing judge's successor.

Section 25. That § 23A-27-18 be AMENDED:

23A-27-18. Upon conviction, the sentencing court may suspend the execution of any sentence imposed during good behavior, subject to such conditions or restitutions as the court may impose. The suspension order or judgment can be made only by the court in which the conviction occurred. A defendant given a suspended execution of sentence shall remain under the jurisdiction of the court. A state incarceration sentence may be imposed as a condition of a suspended execution of sentence as authorized in § 23A-27-18.1.

Section 26. That § 23A-27-18.1 be AMENDED:

23A-27-18.1. The conditions of probation imposed pursuant to § 23A-27-12 or 23A-27-13 or the conditions of suspension of execution imposed pursuant to § 23A-27-18, may include the requirement that the defendant be imprisoned in the county jail for no more than one hundred eighty days, except as otherwise specified in this section, or in a state correctional facility for no more than one hundred eighty days or the sentence which was imposed or which may be imposed by law, whichever is less. However, for persons sentenced pursuant to § 32-23-4.6, the conditions of probation imposed pursuant to § 23A-27-12 or 23A-27-13 or the conditions of suspension of execution imposed pursuant to § 23A-27-18, may include the requirement that the defendant be imprisoned in the county jail for a specific period not exceeding three hundred sixty-five days. The imprisonment may be further restricted to certain days specified by the court as part of such conditions. The required period of imprisonment for a county jail or state incarceration term should not exceed sixty consecutive days to ensure the court retains authority to impose additional days of imprisonment, if necessary, during the term of supervision pursuant to § 16-22-13. The court retains jurisdiction to raise or lower the required period of imprisonment within the sentence otherwise allowed by law. Any such imprisonment, either in the county jail or state correctional facility, shall be credited toward any incarceration imposed upon any subsequent revocation of a suspended imposition or execution of sentence. During any such imprisonment the defendant shall be subject to all policies, rules, and regulations of the county jail or state correctional facility.

Section 27. That § 23A-27-18.2 be AMENDED:

23A-27-18.2. A person who is sentenced to a county jail as a condition of suspended imposition of sentence, suspended sentence, or suspended execution of sentence, is under the supervision of the court services officer assigned by the court having jurisdiction of the person. A person sentenced to a state correctional facility as a condition of suspended imposition of sentence or suspended execution of sentence is under the supervision of the court services officer assigned by the court having jurisdiction of the person upon that person's release from the state correctional facility after completion of the state incarceration term imposed pursuant to § 23A-27-18.1.

Section 28. That § 23A-27-18.4 be AMENDED:

23A-27-18.4. Upon conviction, the sentencing court may suspend any portion of a state incarceration sentence subject to conditions or restrictions as the court may impose. The suspension order or judgment can be made only in the court in which the conviction occurred. A defendant with a partially suspended state incarceration sentence is under the supervision of the Department of Corrections and the Board of Pardons and Paroles. The board is charged with the responsibility for enforcing the conditions imposed by the sentencing judge, and the board retains jurisdiction to revoke the suspended portion of the sentence for violation of the terms of parole or the terms of the suspension.

A defendant with an entirely suspended state incarceration sentence is under the supervision of the sentencing court unless the entirely suspended state incarceration sentence is concurrent or consecutive to an additional state incarceration sentence in which case, the defendant is under the supervision of the Board of Pardons and Paroles.

Section 29. That § 23A-27-25.7 be AMENDED:

23A-27-25.7. If the sentencing court orders a defendant to a state correctional facility and the defendant objects at sentencing to the fines or costs imposed as a portion of the punishment on the basis the defendant will be ineligible to receive a wage for work performed while incarcerated because the defendant does not have a verifiable Social Security number, the defendant is entitled to a hearing at which the court shall determine whether there is good cause to reduce the fines or costs pursuant to § 23A-27-25.8 by a preponderance of the evidence. In making this determination, the court shall consider the defendant's employment circumstances, potential for employment and vocational training, financial condition, and other factors as may be appropriate.

Section 30. That § 23A-27-30 be AMENDED:

23A-27-30. If the judgment is for imprisonment in a state correctional facility, the sheriff of the county shall, upon receipt of a certified copy of the judgment, take and deliver the defendant to the warden of the state correctional facility. He shall also deliver to the warden or other proper officer a certified copy of the judgment containing the information required pursuant to § 23A-27-4.

Section 31. That § 23A-27-32 be AMENDED:

23A-27-32. Whenever any person is convicted of a felony, the judge before whom such person is convicted shall furnish the Board of Pardons and Parole with a plan of restitution pursuant to chapter 23A-28. The state's attorney of the county in which the person is convicted shall furnish the warden of the state correctional facility with an official statement of the facts and circumstances constituting the crime whereof the convict has been convicted, with all the information accessible to them in regard to the career of the convict prior to the commission of the crime of which he is convicted, relating to the habits, associates, disposition, and reputation of such convict and any other facts or circumstances which may tend to throw any light upon the question as to whether he is capable of again becoming a law-abiding citizen. If a presentence investigation report has been prepared by a court services officer and contains all information otherwise provided by an official statement, the court services officer shall furnish the report in lieu of an official statement.

Section 32. That § 23A-27-33 be AMENDED:

23A-27-33. It shall be the duty of the court reporter, when directed by the judge, to write the official statements of the judge and state's attorney referred to in § 23A-27-32.

It shall be the duty of the clerk of the court to cause such official statements to be attached to the certified copy of the judgment of conviction to be delivered by the sheriff to the warden of the state correctional facility at the time of the delivery of the convict.

Section 33. That § 23A-27-35 be AMENDED:

23A-27-35. A sentence of imprisonment in a state correctional facility for any term suspends the right of the person so sentenced to hold public office, to become a candidate for public office, and to serve on a jury. Any such person so sentenced forfeits

all public offices and all private trusts, authority, or power during the term of such imprisonment. Any person who is serving a term in any state correctional facility shall be a competent witness in any action now pending or hereafter commenced in the courts of this state, and the person's deposition may be taken in the same manner prescribed by statute or rule relating to taking of depositions. After a suspension of sentence pursuant to § 23A-27-18, upon the termination of the time of the original sentence or the time extended by order of the court, a defendant's rights withheld by this section are restored. However, the voting rights of any person sentenced to imprisonment in a state correctional facility shall be governed by Title 12.

Section 34. That § 23A-27-38 be AMENDED:

23A-27-38. If a defendant is found "guilty but mentally ill" or enters that plea and the plea is accepted by the court, the court shall impose any sentence which could be imposed upon a defendant pleading or found guilty of the same charge. If the defendant is sentenced to a state correctional facility, he shall undergo further examination and may be given the treatment that is psychiatrically indicated for his mental illness. If treatment is available, it may be provided through facilities under the jurisdiction of the Department of Social Services. The secretary of corrections may transfer the defendant from the state correctional facility to other facilities under the jurisdiction of the Department of Social Services, with the consent of the secretary of social services, and return the defendant to the state correctional facility after completion of treatment for the balance of the defendant's sentence.

Section 35. That § 23A-27A-15 be AMENDED:

23A-27A-15. Whenever judgment of death is rendered, the judge shall also sign and provide to the Governor, the secretary of corrections, and the sheriff of the county where the crime was committed a warrant of death sentence and execution, along with a brief statement of the facts and circumstances of the case, duly attested by the clerk under the seal of the court. The warrant of death sentence and execution shall describe the conviction and sentence and appoint the week within which the sentence shall be executed. The warrant of death sentence and execution shall be directed to the secretary of corrections, commanding the secretary of corrections or a designee of the secretary to execute the sentence on some day within the week appointed.

Section 36. That § 23A-27A-16 be AMENDED:

23A-27A-16. Within ten days after the issuing of a warrant of death sentence and execution under § 23A-27A-15, the sheriff shall deliver the defendant together with certified copies of the warrant of death sentence and execution and the judgment of conviction to the state correctional facility.

Section 37. That § 23A-27A-17 be AMENDED:

23A-27A-17. The week so appointed may not be less than six months or more than eight months after the date of judgment of death. The time of execution within the week is in the discretion of the secretary of corrections to whom the warrant is directed. The secretary shall cause the execution to be performed on some day of such week. Not less than forty-eight hours prior to the execution, the secretary shall make a public announcement of the scheduled day and hour of the execution.

Section 38. That § 23A-27A-21 be AMENDED:

23A-27A-21. No judge, officer, commission, or board, other than the Governor, may reprieve or suspend the execution of a judgment of death. However, the secretary of corrections is authorized so to do in a case and in the manner prescribed in this chapter or as provided in §§ 23A-27A-24 and 23A-27A-28. This section does not apply to a stay of proceedings upon appeal or to the issuance of a writ of habeas corpus, certiorari, or other original remedial writ of the Supreme Court.

Section 39. That § 23A-27A-31.1 be REPEALED.

Section 40. That § 23A-27A-32 be AMENDED:

23A-27A-32. The punishment of death must be inflicted within the walls of some building at a state correctional facility. The punishment of death must be inflicted by the intravenous injection of a substance or substances in a lethal quantity. The secretary of corrections or a designee of the secretary shall determine the substances and the quantity of substances used for the punishment of death. Only persons trained to administer the injection, selected by the secretary or a designee of the secretary, may perform an execution carried out by intravenous injection. The persons administering the intravenous injection need not be physicians, registered nurses, licensed practical nurses, or other medical professionals licensed or registered under the laws of this or any other state. Any infliction of the punishment of death by intravenous injection of a substance or substances in the manner required by this section may not be construed to be the practice of medicine.

Any pharmacist or pharmaceutical supplier is authorized to dispense to the secretary or a designee of the secretary the substance or substances used to inflict the punishment of death without prescription, for carrying out the provisions of this section, notwithstanding any other provision of law.

Section 41. That § 23A-27A-32.1 be AMENDED:

23A-27A-32.1. Any person convicted of a capital offense or sentenced to death prior to July 1, 2007 may choose to be executed in the manner provided in § 23A-27A-32 or in the manner provided by South Dakota law at the time of the person's conviction or sentence. The person shall choose by indicating in writing to the secretary of corrections not less than seven days prior to the scheduled week of execution the manner of execution chosen. If the person fails or refuses to choose in the time provided under this section, then the person shall be executed as provided in § 23A-27A-32.

Section 42. That § 23A-27A-33 be AMENDED:

23A-27A-33. The Department of Corrections shall arrange for and provide a proper and suitable place at a state correctional facility for the custody of persons awaiting sentence of death and for the execution of the death sentence together with any and all proper equipment and appliances for the infliction of such punishment.

Section 43. That § 23A-27A-34 be AMENDED:

23A-27A-34. The secretary of corrections shall request, by at least two days' previous notice, the presence of the attorney general, the trial judge before whom the conviction was had or the judge's successor in office, the state's attorney and sheriff of the county where the crime was committed, representatives of the victim, at least one member of the news media, and a number of reputable adult citizens to be determined by the secretary. All witnesses and persons present at an execution are subject to approval by the secretary.

Section 44. That § 23A-27A-34.1 be AMENDED:

23A-27A-34.1. The secretary of corrections or a designee of the secretary shall arrange for the attendance of a person trained to examine the defendant and pronounce death and for the attendance of such correctional facility staff, Department of Corrections

staff, and law enforcement officers as deemed necessary to perform the execution and maintain security.

Section 45. That § 23A-27A-37.1 be REPEALED.

Section 46. That § 23A-27A-39 be AMENDED:

23A-27A-39. After the postmortem examination and any autopsy, the body of the defendant, unless claimed by some relative, shall be interred in a cemetery within the county where the state correctional facility is situated.

Section 47. That § 23A-28-3 be AMENDED:

23A-28-3. If the sentencing court orders the defendant to the county jail, suspended imposition of sentence, suspended sentence, or probation, the court may require as a condition that the defendant, in cooperation with the court services officer assigned to the defendant, promptly prepare a plan of restitution, including the name and address of each victim, a specific amount of restitution to each victim, and a schedule of restitution payments. If the defendant is presently unable to make any restitution, but there is a reasonable possibility that the defendant may be able to do so at some time during the defendant's probation period, the plan of restitution shall also state the conditions under which or the event after which the defendant will make restitution. If the defendant believes that no person suffered pecuniary damages as a result of the defendant's criminal activities, the defendant shall so state. If the defendant contests the amount of restitution recommended by the court services officer, the defendant is entitled to a hearing at which the court shall determine the amount. If the sentencing court orders the defendant to a state correctional facility and does not suspend the sentence, the court shall set forth in the judgment the names and specific amount of restitution owed each victim. The Department of Corrections shall establish the collection schedule for court-ordered restitution while the defendant is in the state correctional facility and on parole. The Board of Pardons and Paroles shall require, as a condition of parole, that the defendant pay restitution ordered by the court.

Section 48. That § 23A-28-6 be AMENDED:

23A-28-6. The court services officer shall provide each known victim a copy of the court's order approving or modifying the plan of restitution for any defendant not serving his sentence in a state correctional facility. The executive director of the Board of Pardons

and Paroles shall provide each known victim a copy of the schedule of restitution for each inmate placed on parole. If the victim is not satisfied with the approved or modified plan of restitution, the victim's exclusive remedy is a civil action against the defendant, which, if successful, may include attorney's fees.

Section 49. That § 23A-43-31 be AMENDED:

23A-43-31. Any person who, having been released pursuant to this chapter, fails to appear before any court or judicial officer as required or fails to comply with the provisions of § 25-10-41 shall, subject to the provisions of this title, forfeit any security which was given or pledged for such person's release and, in addition, shall:

- (1) If such person was released in connection with a charge of a felony, an alleged felony violation of § 32-23-1, or fails to report for a jail or state correctional facility sentence for any offense, be guilty of a Class 6 felony;
- (2) If such person was released in connection with a charge of a misdemeanor, be guilty of a Class 1 misdemeanor; or
- (3) If such person was released for appearance as a material witness, be guilty of a Class 1 misdemeanor.

Section 50. That § 24-1-1 be AMENDED:

24-1-1. The South Dakota State Penitentiary, Mike Durfee State Prison, South Dakota Women's Prison, Jameson Prison, Pierre Minimum Center, Rapid City Minimum Center, Yankton Minimum Center, and Sioux Falls Minimum Center are the correctional facilities of this state for the punishment and reformation of offenders to which such offenders as may be committed, according to law, by any court of this state, shall be confined, employed, and governed in the manner provided by law.

The secretary of corrections shall designate each facility operated by the department with a security level as follows:

- (1) A level I facility must have designated boundaries but need not have perimeter fencing. An inmate classified as minimum may be incarcerated in a level I facility, but generally an inmate of a higher classification may not be incarcerated in a level I facility.
- (2) A level II facility must have designated boundaries with a single or double perimeter fencing. The perimeter of a level II facility must be patrolled periodically. An inmate classified as minimum restrictive or minimum may be incarcerated in a

level II facility, but generally an inmate of a higher classification may not be incarcerated in a level II facility.

- (3) A level III facility generally must have a wall or double perimeter fencing with razor wire and detection devices. A level III facility generally must use controlled sally ports. The perimeter of a level III facility must be continuously patrolled. An appropriately designated close classified inmate, an inmate classified as medium, or an inmate of a lower classification level may be incarcerated in a level III facility, but generally an inmate of a higher classification may not be incarcerated in a level III facility.
- (4) A level IV facility generally must have a wall or double perimeter fencing with razor wire and detection devices. A level IV facility generally must use controlled sally ports. The perimeter of a level IV facility must be continuously patrolled. An inmate designated close classified or an inmate of a lower classification level may be incarcerated in a level IV facility, but generally an inmate of a higher classification may not be incarcerated in a level IV facility on a long-term basis.
- (5) A level V facility is the highest security level and may incarcerate an inmate of any classification level. A level V facility must have double perimeter fencing with razor wire and detection devices, or equivalent security architecture. A level V facility must use controlled sally ports. The perimeter of a level V facility must be continuously patrolled.

Section 51. That § 24-1-4 be AMENDED:

24-1-4. Each state correctional facility and its ancillary facilities is under the direction and government of the Department of Corrections.

Section 52. That § 24-1-6 be AMENDED:

24-1-6. The secretary of corrections shall appoint a warden for each correctional facility under the direction and government of the department. The secretary may remove a warden at the secretary's discretion.

Section 53. That § 24-1-8 be AMENDED:

24-1-8. The secretary of corrections shall fix a salary for the warden of each correction facility, any part of which may be paid out of the prison industries revolving fund.

Section 54. That § 24-1-11 be AMENDED:

24-1-11. All officers and persons employed by the Department of Corrections shall perform such duties as may be required of them by the secretary, in conformity with law and the rules, policies and procedures of the department. The Department of Corrections may promulgate rules pursuant to chapter 1-26 establishing standards of personal conduct for correctional officers and employees. The standards shall be consistent with those standards of personal conduct required of law enforcement personnel.

Section 55. That § 24-1-12 be AMENDED:

24-1-12. All process served within the precincts of a state correctional facility, either upon an inmate or upon a person or officer employed within the precincts thereof, except upon the warden, must be served and returned by the warden, personally or by a designee. All officers and employees of a state correctional facility are exempt from serving upon juries in any state court.

Section 56. That § 24-1-13 be AMENDED:

24-1-13. The secretary of corrections shall have charge and custody of each state correctional facility, with all lands, buildings, furniture, tools, equipment, implements, stock and provisions, and all other property pertaining thereto or within the precincts thereof.

Section 57. That § 24-1-16 be AMENDED:

24-1-16. The secretary of corrections may make any purchase for a state correctional facility on such conditions and in such manner as in the warden's opinion best promotes the interest of the state.

Section 58. That § 24-1-25 be AMENDED:

24-1-25. No person employed by the Department of Corrections may have any pecuniary interest in any contract or business conducted by the department.

Section 59. That § 24-1-26 be AMENDED:

24-1-26. No person employed by the Department of Corrections may engage in procuring clemency for any inmate confined therein, except as provided for in § 24-2-20.

Section 60. That § 24-1-27 be AMENDED:

24-1-27. Upon notification of the death of any inmate who has not been released on parole or suspended sentence, an official of the Department of Corrections shall contact the county coroner, who shall proceed in accordance with the provisions of chapter 23-14. A department official shall also attempt to contact the person designated by the inmate prior to death or the next of kin, if known, and offer the body to be delivered to such person at that person's expense. If attempts to contact such persons fail or if the offer of delivery is declined, a department official, after forty-eight hours, shall make arrangements for the disposition of the body.

Section 61. That § 24-1-35 be AMENDED:

24-1-35. The Department of Corrections may contract with any local jail in the state for the custody and care of any prisoner committed to a state correctional facility at a rate to be negotiated by the secretary of corrections.

Section 62. That § 24-2-1 be AMENDED:

24-2-1. All inmates under confinement in a state correctional facility are under the charge and custody of the secretary of corrections, who may delegate to the warden of the state correctional facility the authority to govern, house, discipline and employ them in the manner prescribed by law and the rules and institutional policies of the Department of Corrections as approved by the secretary. A warden may delegate administrative decision making to various staff members or committees consisting of staff members. However, any decision made by such staff member or committee is subject to the final approval of the secretary.

Section 63. That § 24-2-2 be REPEALED.**Section 64. That § 24-2-2.1 be AMENDED:**

24-2-2.1. A warden may not accept delivery of a defendant to a state correctional facility without a certified copy of the judgment containing the information required pursuant to § 23A-27-4.

Section 65. That § 24-2-5 be AMENDED:

24-2-5. A correctional facility official shall mail to the destination of the inmate's choice, at the expense of the inmate, all effects, except money, in possession of each inmate when committed to the correctional facility. Money shall be deposited in the inmate's personal institutional account.

Section 66. That § 24-2-9 be AMENDED:

24-2-9. Any inmate violating the rules or institutional policies is subject to any one or more of the following disciplinary sanctions:

- (1) Withholding of statutory time for good conduct;
- (2) Punitive confinement;
- (3) Imposition of fines;
- (4) Restriction of privileges;
- (5) Loss of work or school privileges;
- (6) Additional labor without compensation;
- (7) Referral to various programs;
- (8) Transfer to a more secure housing unit;
- (9) Change in classification status.

No corporal punishment may be inflicted upon any inmate in a state correctional facility.

Section 67. That § 24-2-10 be AMENDED:

24-2-10. Any person sentenced to imprisonment in a state correctional facility is under the protection of the law, and any injury to such person not authorized by law is punishable in the same manner as if the person were not convicted or sentenced.

Section 68. That § 24-2-12 be AMENDED:

24-2-12. Any inmate against whom the disciplinary sanction of punitive confinement has been given for violating any of the rules or policies of the Department of Corrections, unless otherwise determined by the secretary of corrections, shall be housed in a segregation section of the state correctional facility for such period as may be necessary for the best interests of discipline, justice, rehabilitation, and the protection of the inmate and others. The disciplinary board, established by rules promulgated by the Department of Corrections, may take away time granted for good conduct pursuant to

§ 24-5-1 for violating any of the rules or policies of the Department of Corrections, following a hearing and subject to the approval of the secretary of corrections.

Section 69. That § 24-2-14 be AMENDED:

24-2-14. No alcoholic beverage, marijuana, or weapon, as defined in subdivision 22-1-2(10), may be possessed by any inmate of a state correctional facility. No prescription or nonprescription drug, controlled substance as defined by chapter 34-20B, or any article of indulgence may be possessed by any inmate of a state correctional facility except by order of a physician, physician assistant, or licensed nurse practitioner, as defined in chapters 36-4, 36-4A, and 36-9A, respectively. Such order must be in writing and for a definite period. Any violation of this section constitutes a felony pursuant to the following schedule:

- (1) Possession of any alcoholic beverage or marijuana is a Class 6 felony;
- (2) Possession of any prescription or nonprescription drug or controlled substance is a Class 4 felony;
- (3) Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

Section 70. That § 24-2-17 be AMENDED:

24-2-17. The warden of a state correctional facility shall keep a true record of the conduct of each inmate and shall specify each infraction of the rules of discipline. An inmate shall receive notice of every entry on the inmate's record of each such infraction of the rules of discipline and shall have thirty days to challenge the validity of the finding that the inmate committed the rule infraction or the disciplinary sanction imposed by notifying the warden. After investigation, the warden may determine that the inmate did not commit the rule infraction and revise the record accordingly. The warden may also modify the imposed disciplinary sanction or rule infraction upon approval of the secretary of corrections. The record shall be used whenever the question of any inmate's eligibility for parole or discharge arises pursuant to § 24-5-1.

Section 71. That § 24-2-22 be AMENDED:

24-2-22. Any employee or other person who delivers or procures to be delivered, or possesses with the intention to deliver, to any inmate in a state correctional facility, or deposits or conceals in or around any facility or place used to house inmates, or in any mode of transport entering upon the grounds of any facility or place and its ancillary

facilities used to house inmates, any article which is unlawful for an inmate to possess pursuant to state law or the rules of the Department of Corrections with the intent that any inmate obtain or receive such article, is guilty of a Class 6 felony.

Section 72. That § 24-2-25 be AMENDED:

24-2-25. The secretary of corrections may extend the limits of the place of confinement of an inmate, if the secretary has reasonable cause to believe that the inmate will honor the secretary's prescribed conditions to visit or be housed in specifically designated places within the state.

Section 73. That § 24-2-27 be AMENDED:

24-2-27. The Department of Corrections may establish and maintain facilities, programs, or services outside the precincts of a state correctional facility and contract with other governmental entities for the care and maintenance of inmates committed to the Department of Corrections. However, the court may not order that an inmate be housed in any particular facility nor may the court order that an inmate be placed in a specific program or receive specific services. No inmate has any implied right or expectation to be housed in any particular facility, participate in any specific program, or receive any specific service. Each inmate is subject to transfer from any one facility, program, or service at the discretion of the secretary of corrections or a designee of the secretary. Any escape from a state correctional facility or from a facility, program, or service maintained outside a state correctional facility is a violation of § 22-11A-2 or 22-11A-2.1. Venue for a prosecution for an escape from any facility is the county where the acts constituting the escape take place.

Section 74. That § 24-5-3 be AMENDED:

24-5-3. If not already provided, a correctional facility official shall provide every inmate with suitable clothing, a sum of money to be determined by the secretary of corrections, and transportation to the place where the inmate received sentence or an equivalent distance upon discharge from a correctional facility, whether by parole, suspended sentence, or final discharge.

Section 75. That § 24-5-5 be AMENDED:

24-5-5. If any inmate of a state correctional facility dies, is discharged, or escapes, leaving funds in the inmate's institutional account or other tangible personal property of value, a correctional facility official shall apply these funds towards the inmate's obligations as provided for in § 24-2-29. At the official's discretion, tangible personal property of value may be sold, donated to charity, discarded, returned to an heir, or used for the benefit of the Department of Corrections. If the funds exceed the inmate's obligations as provided for in § 24-2-29, the official shall give the excess balance back to the inmate or an heir of the inmate. Otherwise, the official shall deposit the excess balance in the state general fund.

Section 76. That § 24-5-6 be AMENDED:

24-5-6. If any inmate of a state correctional facility dies or is discharged from a state correctional facility with a negative balance in the inmate's institutional account, a state correctional facility official may close out that account.

Section 77. That § 24-6A-1 be REPEALED.

Section 78. That § 24-8-1 be AMENDED:

24-8-1. The Department of Corrections may conditionally release selected inmates and may extend the limits of the place of confinement of such inmates of a state correctional facility. If the warden determines that the character and attitude of an inmate reasonably indicate that the inmate may be so trusted, the warden may release and provide for continued supervision of such an inmate to work at paid employment, or to participate in vocational training or other educational programs in the community after such employment or program has been investigated and approved pursuant to rules promulgated by the Department of Corrections. The warden may, with or without cause, terminate or suspend any such release.

Section 79. That § 24-8-4 be AMENDED:

24-8-4. The secretary of corrections may enter into agreements with other agencies of the state and the political subdivisions for the confinement and the providing of other services for those inmates whose employment or vocational training or other educational programs so require, and such agencies of the state and the political subdivisions may enter into such agreements.

Section 80. That § 24-15-1 be AMENDED:

24-15-1. If a defendant is sentenced to a state correctional facility, the Department of Corrections shall develop a file which shall contain a complete history of that person. The executive director of the Board of Pardons and Paroles shall generate an adequate case history of each inmate of a state correctional facility to enable the executive director to make recommendations to the Board of Pardons and Paroles. The case history shall include results of risk and needs assessments of the inmate conducted by the department and other agencies as available and copies of documents relevant to supervision, treatment, and violation decisions in the inmate's prior prison, probation and parole custodies. The case history shall be transferred and kept as a permanent record of the Department of Corrections, solely for the proper supervision of the inmate by the Department of Corrections and as a guide to the inmate's needs. Except for the information authorized for release pursuant to § 24-2-20, no person other than members of the Board of Pardons and Paroles, its executive director, the secretary of corrections, or any person specifically delegated for such access by the secretary of corrections, may inspect such file unless otherwise ordered by a circuit court or subpoena after notice to the secretary of corrections and an opportunity for a hearing on any objections to inspection. The secretary shall have ten days after receipt of the notice to inform the court if the secretary requests a hearing.

Section 81. That § 24-15-1.1 be AMENDED:

24-15-1.1. Parole is the discretionary conditional release of an inmate from actual state correctional facility custody before the expiration of the inmate's term of imprisonment. The prisoner remains an inmate under the legal custody of the Department of Corrections until the expiration of the inmate's term of imprisonment. A prisoner is not required to accept a conditional parole. A prisoner is never entitled to parole. However, parole may be granted if in the judgment of the Board of Pardons and Paroles granting a parole would be in the best interests of society and the prisoner.

Neither this section or its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any prisoner.

Section 82. That § 24-15-3 be AMENDED:

24-15-3. Whenever any person becomes an inmate of a state correctional facility, the Department of Corrections must immediately establish in the record the date when

the inmate will be eligible for consideration for parole. Such consideration for a parole eligibility date is subject to change upon receipt of information regarding a change in the number of prior felony convictions or any subsequent felony convictions. Any inmate who is aggrieved by the established parole consideration eligibility date may apply for a hearing before the Board of Pardons and Paroles for a final determination of the true and correct parole consideration eligibility date. Between the date a person becomes an inmate of the state correctional facility and the date on which the person becomes eligible for consideration for parole, the department must complete the history of the inmate and must study the life, habits, previous environment, and nature of the inmate to determine the advisability of recommending the inmate for parole when the inmate becomes eligible to be considered. At least ten days before the date of eligibility the department must submit to the board the findings regarding the inmate.

Section 83. That § 24-15-7.1 be AMENDED:

24-15-7.1. Any person convicted of a felony while an inmate under the custody of the Department of Corrections and for which the sentence is made to run consecutively is not eligible for consideration for parole until serving the last of all such consecutive sentences. In such cases the parole consideration eligibility date shall be established subject to the provisions of subdivisions 24-15-5(2) and (3).

Section 84. That § 24-15-8 be AMENDED:

24-15-8. When an inmate becomes eligible for consideration for parole, the inmate is entitled to a hearing with the Board of Pardons and Paroles to present the inmate's application for parole. An inmate may decline parole consideration and waive the right to a hearing. The board may issue an order to the Department of Corrections that the inmate shall be paroled if it is satisfied that:

- (1) The inmate has been confined in a state correctional facility for a sufficient length of time to accomplish the inmate's rehabilitation;
- (2) The inmate will be paroled under the supervision and restrictions provided by law for parolees, without danger to society; and
- (3) The inmate has secured suitable employment or beneficial occupation of the inmate's time likely to continue until the end of the period of the inmate's parole in some suitable place within or without the state where the inmate will be free from criminal influences.

Neither this section nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any prisoner.

Section 85. That § 24-15-9 be AMENDED:

24-15-9. The Board of Pardons and Paroles may order the Department of Corrections to transfer any inmate to the Human Services Center. The director of the human services center shall notify the Department of Corrections when the inmate is ready to be transferred back to the state correctional facility. Upon receipt of the notice, the Department of Corrections shall within five days bring the inmate back to the state correctional facility.

Section 86. That § 24-15-21 be AMENDED:

24-15-21. If the chair of the Board of Pardons and Parole is satisfied that any provision of § 24-15-20 or 24-15A-27 has been violated or an inmate under parole supervision in the community has escaped, the executive director of the Board of Pardons and Parole may issue a warrant approved by the chair or a designee of the Board of Pardons and Parole to the Department of Corrections, a law enforcement officer, or parole agent directing that the parolee or inmate named be arrested. Pursuant to the provisions of § 24-15-23, the parolee may be returned to the state correctional facility. Upon the issuance of the warrant, the running of the parole supervision time shall be suspended until the board has entered a final order on the revocation. The board shall credit the inmate with time spent in custody as a direct result of the parole violation.

Section 87. That § 24-15-22 be AMENDED:

24-15-22. Immediately upon the return of a parolee to the state correctional facility, the supervising agent shall immediately furnish to the Board of Pardons and Paroles the permanent records and a report containing all the facts connected with the return of the parolee.

Section 88. That § 24-15-23 be AMENDED:

24-15-23. Subject to the provisions of §§ 24-15-23.1 and 24-15-23.2, within ten working days of the arrest of the parolee, a preliminary hearing must be held. The preliminary hearing must be held before an independent hearing officer to determine if there is probable cause to believe that the parolee has violated the terms and conditions

of the parolee's parole status. The parolee has the right to waive this preliminary hearing at any time after the order for arrest has been issued by the executive director of the Board of Pardons and Paroles. If probable cause is found to exist, the parolee is to be returned to the state correctional facility, there to be held, for a hearing to be held before the Board of Pardons and Paroles to determine whether the parole should be revoked. If the parolee wishes to admit to an alleged violation of conditions of parole, the parolee may waive an appearance at the revocation hearing with the board.

Section 89. That § 24-15A-4 be REPEALED.

Section 90. That § 24-15A-6 be AMENDED:

24-15A-6. The department must establish the sentence discharge date for each inmate based on the total sentence length, minus court ordered jail time credit. The total sentence length is the sum of imprisonment time and any suspended time. In the case of an entirely suspended state incarceration sentence under the supervision of the Department of Corrections and the Board of Pardons and Paroles pursuant to §§ 22-6-11, 23A-27-18.4, and 23A-27-19, the total sentence length is the term of imprisonment that has been suspended. Each inmate is under the jurisdiction of the department, either incarcerated or under parole release or a combination, for the entire term of the inmate's total sentence length unless the board grants an early final discharge pursuant to § 24-15A-8, a partial early final discharge pursuant to § 24-15A-8.1, the court modifies the sentence, the inmate receives earned discharge credits pursuant to § 24-15A-50 or 24-15A-50.1, the inmate receives a compliant discharge pursuant to § 16-22-29, or the sentence is commuted.

Section 91. That § 24-15A-15 be AMENDED:

24-15A-15. Parole is the conditional release of an inmate from actual state correctional facility custody before the expiration of the inmate's term of imprisonment. The prisoner remains an inmate under the legal custody of the department until the expiration of the inmate's term of imprisonment. A prisoner is not required to accept parole.

Section 92. That § 24-15A-20 be AMENDED:

24-15A-20. If a person is convicted of a felony while an inmate under the custody of the warden of the Department of Corrections, the sentence shall run consecutively and

the person is not eligible for consideration for parole until serving the last of all such consecutive sentences, unless the sentencing court specifically orders otherwise. The parole date shall be established subject to the provisions of § 24-15A-32. This section does not apply to a person who commits a felony while on parole as defined in § 24-15A-15.

Section 93. That § 24-15A-32 be AMENDED:

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

Felony Class	Felony Convictions		
	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
Class 5	.40	.50	.60
Class 4	.40	.50	.65
Class 3	.50	.60	.70
Class 2	.50	.65	.75
Class 1	.50	.65	.75
Class C	.50	.65	.75
Class B	1.0	1.0	1.0
Class A	1.0	1.0	1.0

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

Section 94. That § 25-6-4 be AMENDED:

25-6-4. No child may be adopted without the consent of the child's parents. However, if it is in the best interest of the child, the court may waive consent from a parent or putative father who:

- (1) Has been convicted of any crime punishable by imprisonment in a state correctional facility for a period that, in the opinion of the court, will deprive the child of the parent's companionship for a critical period of time;
- (2) Has, by clear and convincing evidence, abandoned the child for six months or more immediately prior to the filing of the petition;
- (3) Has substantially and continuously or repeatedly neglected the child and refused to give the child necessary parental care and protection;
- (4) Being financially able, has willfully neglected to provide the child with the necessary subsistence, education, or other care necessary for the child's health, morals, or welfare or has neglected to pay for such subsistence, education, or other care if legal custody of the child is lodged with others and such payment ordered by the court;
- (5) Is unfit by reason of habitual abuse of intoxicating liquor or narcotic drugs;
- (6) Has been judicially deprived of the custody of the child, if the adjudication is final on appeal to the court of last resort or the time for an appeal has expired;
- (6A) Has caused the child to be conceived as a result of rape or incest; or
- (7) Does not appear personally or by counsel at the hearing to terminate parental rights after notice pursuant to §§ 25-5A-11 and 25-5A-12 which was received at least fifteen days prior to the hearing.

Section 95. That § 26-11A-6 be AMENDED:

26-11A-6. A child under the age of eighteen years who has been sentenced as an adult felon to a term of imprisonment in a state correctional facility may be placed in a Department of Corrections juvenile facility by the secretary of corrections. This section does not affect the child's status as an adult offender and inmate of the state correctional facility.

Section 96. That § 26-11A-20 be AMENDED:

26-11A-20. The secretary of corrections may discharge a juvenile from the Department of Corrections upon the following:

- (1) As a reward for good conduct and upon satisfactory evidence of reformation;
- (2) As a result of a conviction for a new crime as an adult, if the juvenile is placed on adult probation or sentenced to the county jail or a state correctional facility;

- (3) If the juvenile, upon reaching the age of majority, lives outside the jurisdiction of the State of South Dakota and the interstate compact on juveniles is not available due to the juvenile's age or circumstances; or
- (4) If the juvenile is on aftercare and has a suitable placement, and a discharge is determined to be in the best interests of the juvenile.

No adjudicated juvenile may remain within the jurisdiction of the Department of Corrections beyond the age of twenty-one years. The discharge of a juvenile from the Department of Corrections constitutes a complete release from all penalties, excluding unpaid fines, fees, or restitution.

Section 97. That § 32-23-4.9 be AMENDED:

32-23-4.9. If a conviction for a violation of § 32-23-1 is for a sixth offense, or subsequent offense, and the person had at least five convictions of § 32-23-1 occurring within twenty-five years of the violation being charged, and at least two of those prior convictions having occurred within ten years, the violation is an aggravated offense and the person is guilty of a Class 4 felony.

The court, in pronouncing sentencing, shall revoke the person's driver license for a period of not less than three years from the date the sentence is imposed or three years from the date of initial release from imprisonment, whichever is later. If the person is returned to imprisonment prior to the completion of the period of driver license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the court shall sentence the person to the county jail for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation.

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

For each person convicted under this section and placed on probation, parole, or released from prison due to a suspended sentence, the person's supervision must include at least one of the following: enrollment in an alcohol or drug accountability program, an ignition interlock, a breath alcohol interlock, an alcohol monitoring bracelet, or another enhanced monitoring tool. The Unified Judicial System shall oversee supervision of the

offender if the sentence does not include a term of imprisonment in a state correctional facility. The Department of Corrections shall oversee supervision of the offender if the sentence includes a term of imprisonment in a state correctional facility. Any offender supervised pursuant to this section is not excluded from earned discharge credit as otherwise authorized by statute.

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

Section 98. That § 34-20B-1 be AMENDED:

34-20B-1. Terms as used in this chapter mean:

- (1) "Administer," to deliver a controlled drug or substance to the ultimate user or human research subject by injection, inhalation, or ingestion, or by any other means;
- (2) "Agent," an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser and includes a common or contract carrier, public warehouseman, or employee thereof;
- (3) "Control," to add, remove, or change the placement of a drug, substance, or immediate precursor under §§ 34-20B-27 and 34-20B-28;
- (4) "Counterfeit substance," a controlled drug or substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;
- (5) "Deliver" or "delivery," the actual, constructive, or attempted transfer of a controlled drug, substance, or marijuana whether or not there exists an agency relationship;
- (6) "Department," the Department of Health created by chapter 1-43;
- (7) "Dispense," to deliver a controlled drug or substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery, and a dispenser is one who dispenses;

- (8) "Distribute," to deliver a controlled drug, substance, or marijuana. A distributor is a person who delivers a controlled drug, substance, or marijuana;
- (9) "Hashish," the resin extracted from any part of any plant of the genus cannabis that contains a delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent on a dry weight basis;
- (10) "Imprisonment," imprisonment in a state correctional facility unless the penalty specifically provides for imprisonment in the county jail;
- (11) "Manufacture," the production, preparation, propagation, compounding, or processing of a controlled drug or substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. A manufacturer includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer;
- (12) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds. The term does not include fiber produced from the mature stalks of the plant, or oil or cake made from the seeds of the plant, or the resin when extracted from any part of the plant or cannabidiol in a drug product approved by the United States Food and Drug Administration. The term does not include the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis;
- (13) "Narcotic drug," any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
 - (a) Opium, coca leaves, and opiates;
 - (b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;
 - (c) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subsections (a) and (b) of this subdivision;

except that the term, narcotic drug, as used in this chapter does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine;

- (14) "Opiate" or "Opioid," any controlled drug or substance having an addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability;
- (15) "Opium poppy," the plant of the species *papaver somniferum* L., except the seeds thereof;
- (16) "Person," any corporation, association, limited liability company, partnership or one or more individuals;
- (17) "Poppy straw," all parts, except the seeds, of the opium poppy, after mowing;
- (18) "Practitioner," a doctor of medicine, osteopathy, podiatry, optometry, dentistry, or veterinary medicine licensed to practice their profession, or pharmacists licensed to practice their profession; physician assistants certified to practice their profession; certified nurse practitioners, certified nurse midwives, and certified registered nurse anesthetists to practice their profession; government employees acting within the scope of their employment; and persons permitted by certificates issued by the department to distribute, dispense, conduct research with respect to, or administer a substance controlled by this chapter;
- (19) "Prescribe," an order of a practitioner for a controlled drug or substance.
- (20) "Production," the manufacture, planting, cultivation, growing, or harvesting of a controlled drug or substance;
- (21) "State," the State of South Dakota;
- (22) "Ultimate user," a person who lawfully possesses a controlled drug or substance for personal use or for the use of a member of the person's household or for administration to an animal owned by the person or by a member of the person's household;
- (23) "Controlled substance analogue," any of the following:
 - (a) A substance that differs in its chemical structure to a controlled substance listed in or added to the schedule designated in schedule I or II only by substituting one or more hydrogens with halogens or by substituting one halogen with a different halogen; or
 - (b) A substance that is an alkyl homolog of a controlled substance listed in or added to schedule I or II; or
 - (c) A substance intended for human consumption; and

- (i) The chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;
- (ii) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or
- (iii) With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II;

However, the term, controlled substance analogue, does not include a controlled substance or any substance for which there is an approved new drug application.

An Act to update certain provisions regarding the Department of Corrections and the authority of the Secretary of Corrections.

I certify that the attached Act originated in
the:
Senate as Bill No. 52

Received at this Executive Office
this ____ day of _____,
2023 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby
approved this ____ day of
_____, A.D., 2023

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2023
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 52
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State