

2023 South Dakota Legislature

Senate Bill 146**AMENDMENT 146E
FOR THE HOUSE JUDICIARY ENGROSSED BILL**

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 (14) Vehicular homicide, as defined in § 22-16-41;
22 (15) Aggravated assault, as defined in § 22-18-1.1;
23 (16) Aggravated criminal battery of an unborn child, as defined in § 22-18-1.3;
24 (17) Kidnapping in the second degree, as defined in § 22-19-1.1;
25 (18) Second degree burglary, as defined in § 22-32-3;
26 (19) Riot, as defined in § 22-10-1;

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

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

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

4 (23) Attempt to commit, or a conspiracy to commit, or a solicitation to commit any
 5 offense enumerated in section 1 of this Act.

6 An Except as provided in §§ 24-15A-55 to 24-15A-68, inclusive, an inmate
 7 convicted of and sentenced for an offense as specified in this section must serve the length
 8 of sentence established pursuant to § 24-15A-32, plus an additional .20 of the sentence
 9 imposed by the court, prior to becoming eligible for parole, for a crime committed on or
 10 after July 1, 2023, is not eligible for parole by the Board of Pardons and Paroles, except
 11 as provided in §§ 24-15A-55 to 24-15A-68, inclusive. An inmate shall serve the full term
 12 of imprisonment imposed by the court for the offense. The court shall retain the discretion
 13 to suspend a portion of the prison sentence required. If the court suspends a portion of
 14 the prison sentence, the Board of Pardons and Paroles shall supervise the suspended time
 15 and has the authority to revoke the suspended portion of the sentence for failing to follow
 16 the conditions of release.

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

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

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

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

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

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

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

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

27 (6) Riot, as defined in § 22-10-1;

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

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

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

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

33 An inmate convicted of and sentenced for an offense as specified in this section,
 34 for a crime committed on or after July 1, 2023, is not eligible for parole by the Board of

~~Pardons and Paroles except as provided in §§ 24-15A-55 to 24-15A-68, inclusive. An inmate shall serve the full term of imprisonment imposed by the court for the offense. The court shall retain the discretion to suspend a portion of the prison sentence required. If the court suspends a portion of the prison sentence, the Board of Pardons and Paroles shall supervise the suspended time and has the authority to revoke the suspended portion of the sentence for failing to follow the conditions of release.~~

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

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

Section 2. That § 24-15A-32 be AMENDED:

24-15A-32. Each ~~For a crime committed before July 1, 2023, each~~ Each inmate sentenced to a penitentiary term, except those under a sentence of life or death, or determined to be ineligible for parole as authorized in § 24-15A-32.1, ~~shall~~ must have an initial parole date set by the department. This date ~~shall~~ must be calculated by applying the percentage indicated in the following grid to the full term, plus an additional .20 pursuant to section 1 this Act, if applicable, minus any suspended time ~~of the inmate's sentence pursuant to § 22-6-1.~~ The following crimes or an attempt to commit, ~~or~~ 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

1 sexual offense as defined in § 22-22-45, abuse or neglect of a disabled adult as defined
 2 in § 22-46-2, and aggravated incest as defined in §§ 22-22A-3 and 22-22A-3.1:

3 Felony Convictions

4	Felony Class	First	Second	Third
5	Nonviolent			
6	Class 6	.25	.30	.40
7	Class 5	.25	.35	.40
8	Class 4	.25	.35	.40
9	Class 3	.30	.40	.50
10	Class 2	.30	.40	.50
11	Class 1	.35	.40	.50
12	Class C	.35	.40	.50
13	Violent			
14	Class 6	.35	.45	.55
15	Class 5	.40	.50	.60
16	Class 4	.40	.50	.65
17	Class 3	.50	.60	.70
18	Class 2	.50	.65	.75
19	Class 1	.50	.65	.75
20	Class C	.50	.65	.75
21	Class B	1.0	1.0	1.0
22	Class A	1.0	1.0	1.0

23 The application of the violent or nonviolent column of the grid is based on whether
 24 the inmate's current sentence is for a violent or nonviolent crime. ~~Any~~ The department
 25 shall consider any prior felony shall be considered regardless of whether ~~it~~ the crime is
 26 violent or nonviolent when determining which percentage to apply to the inmate's parole
 27 date calculation. Each inmate shall serve at least sixty days prior to parole release.
 28 ~~Inmates~~ An inmate with a life sentences are sentence is not eligible for parole except as
 29 provided in §§ 24-15A-55 to 24-15A-68, inclusive. An initial parole date through the
 30 application of this grid may be applied to a life sentence only after the sentence is
 31 commuted to a term of years. A Class A or B felony commuted to a number of years shall

1 be applied to the Class C violent column of the grid. An inmate convicted of a Class A or
 2 B felony who was a juvenile at the time of the offense and receives a sentence of less than
 3 life shall be applied to the Class C violent column of the grid.

4 ~~For a crime committed on or after July 1, 2023, each inmate sentenced to a~~
 5 ~~penitentiary term, except those under a sentence of life or death, or determined to be~~
 6 ~~ineligible for parole as authorized in §§ 24-15A-32.1, section 1 of this Act, and section 2~~
 7 ~~of this Act, must have an initial parole date set by the department. The date must be~~
 8 ~~calculated by applying the percentage indicated in the following grid to the full term of the~~
 9 ~~sentence, minus any suspended time. Any of the following crimes, or any attempt to~~
 10 ~~commit, a conspiracy to commit, or a solicitation to commit any of the following crimes is~~
 11 ~~considered a violent crime for the purpose of setting an initial parole date: felony stalking~~
 12 ~~as defined in §§ 22-19A-2 and 22-19A-3, felony assault as defined in §§ 22-18-26 and~~
 13 ~~22-18-29, felony simple assault as defined in § 22-18-1, discharging a firearm at an~~
 14 ~~occupied structure or motor vehicle as defined in § 22-14-20, discharging a firearm from~~
 15 ~~a moving vehicle as defined in § 22-14-21, threatening to commit a sexual offense as~~
 16 ~~defined in § 22-22-45, abuse or neglect of a disabled adult as defined in § 22-46-2, and~~
 17 ~~aggravated incest as defined in §§ 22-22A-3 and 22-22A-3.1:~~

18 Felony Convictions

19 <u>Felony Class</u>	<u>First</u>	<u>Second</u>	<u>Third</u>
20 <u>Nonviolent</u>			
21 <u>Class-6</u>	<u>.25</u>	<u>.30</u>	<u>.40</u>
22 <u>Class-5</u>	<u>.25</u>	<u>.35</u>	<u>.40</u>
23 <u>Class-4</u>	<u>.25</u>	<u>.35</u>	<u>.40</u>
24 <u>Class-3</u>	<u>.30</u>	<u>.40</u>	<u>.50</u>
25 <u>Class-2</u>	<u>.30</u>	<u>.40</u>	<u>.50</u>
26 <u>Class-1</u>	<u>.35</u>	<u>.40</u>	<u>.50</u>
27 <u>Class-C</u>	<u>.35</u>	<u>.40</u>	<u>.50</u>
28 <u>Violent</u>			
29 <u>Class-6</u>	<u>.35</u>	<u>.45</u>	<u>.55</u>
30 <u>Class-5</u>	<u>.40</u>	<u>.50</u>	<u>.60</u>
31 <u>Class-4</u>	<u>.40</u>	<u>.50</u>	<u>.65</u>
32 <u>Class-3</u>	<u>.50</u>	<u>.60</u>	<u>.70</u>

1	<u>Class 2</u>	<u>.50</u>	<u>.65</u>	<u>.75</u>
2	<u>Class 1</u>	<u>.50</u>	<u>.65</u>	<u>.75</u>
3	<u>Class C</u>	<u>.50</u>	<u>.65</u>	<u>.75</u>
4	<u>Class B</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>
5	<u>Class A</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>
6	<u>Section 1</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>
7	<u>of this Act</u>			
8	<u>Section 2</u>	<u>1.0 .85</u>	<u>1.0 .85</u>	<u>1.0 .85</u>
9	<u>of this Act</u>			

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

Section 3. The provisions of this Act apply only to those crimes committed on or after July 1, 2023.

Underscores indicate new language.
Overstrikes indicate deleted language.