

2023 South Dakota Legislature

House Bill 1170**AMENDMENT 1170E
FOR THE HOUSE ENGROSSED BILL**

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

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

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

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

21 If a person is convicted of a fourth violation of § 32-23-1, the court must sentence
22 the person to at least two years in a state correctional facility, one of which must be served
23 on parole, unless refused pursuant to § 24-15A-15. Any term of parole must include at
24 least one of the following: enrollment in an alcohol or drug accountability program, an
25 ignition interlock, a breath alcohol interlock, an alcohol monitoring bracelet, or another
26 enhanced monitoring tool. The court may suspend this sentence only if the court orders

1 the person to participate in and complete a drug court program, DUI court program,
2 veterans treatment court program, or mental health court program, as a condition of
3 probation.

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

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

20 If a person is convicted of a fifth or subsequent violation of § 32-23-1, the court
21 must sentence the person to at least four years in a state correctional facility, one of which
22 must be served on parole, unless refused pursuant to § 24-15A-15. Any term of parole
23 must include at least one of the following: enrollment in an alcohol or drug accountability
24 program, an ignition interlock, a breath alcohol interlock, an alcohol monitoring bracelet,
25 or another enhanced monitoring tool. The court may suspend this sentence only if the
26 court orders the person to participate in and complete a drug court program, DUI court
27 program, veterans treatment court program, or mental health court program, as a
28 condition of probation.

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

30 **32-23-4.9.** If a conviction for a violation of § 32-23-1 is for a sixth offense, or
31 subsequent offense, and the person had at least five convictions of § 32-23-1 occurring
32 within twenty-five years of the violation being charged, and at least two of those prior
33 convictions having occurred within ten years, the violation is an aggravated offense and

1 the person is guilty of a Class 4 felony. If a person is convicted of an aggravated violation
2 of § 32-23-1 and the person has at least six convictions of § 32-23-1 occurring within
3 fifteen years of the violation being charged, the court must sentence the person to at least
4 six years in a state correctional facility, one of which must be served on parole, unless
5 refused pursuant to § 24-15A-15. Any term of parole must include at least one of the
6 following: enrollment in an alcohol or drug accountability program, an ignition interlock,
7 a breath alcohol interlock, an alcohol monitoring bracelet, or another enhanced monitoring
8 tool. The court may suspend this sentence only if the court orders the person to participate
9 in and complete a drug court program, DUI court program, veterans treatment court
10 program, or mental health court program, as a condition of probation.

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

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

25 For each person convicted under this section and placed on probation, parole, or
26 released from prison due to a suspended sentence, the person's supervision must include
27 at least one of the following: enrollment in an alcohol or drug accountability program, an
28 ignition interlock, a breath alcohol interlock, an alcohol monitoring bracelet, or another
29 enhanced monitoring tool. The Unified Judicial System shall oversee supervision of the
30 offender if the sentence does not include a term of imprisonment in the penitentiary. The
31 Department of Corrections shall oversee supervision of the offender if the sentence
32 includes a term of imprisonment in the penitentiary. Any offender supervised pursuant to
33 this section is not excluded from earned discharge credit as otherwise authorized by
34 statute.

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

5 **Section 4. That a NEW SECTION be added:**

6 The sentencing court may impose a sentence other than that which is required by
7 § 32-23-4.6, 32-23-4.7, or 32-23-4.9, if the court finds that mitigating circumstances
8 exist which require a departure from the mandatory sentence imposed. The court's finding
9 of mitigating circumstances and the factual basis relied upon by the court must be in
10 writing.