



## 2024 South Dakota Legislature

# House Bill 1039

HOUSE APPROPRIATIONS ENGROSSED

Introduced by: **Representative Otten** (Ernie)

1 **An Act to provide for the payment of legal expenses originating from crime**  
 2 **committed at a facility maintained by the Department of Corrections.**

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

4 **Section 1. That § 1-11-1 be AMENDED:**

5 **1-11-1.** ~~The duties~~ It is the duty of the attorney general ~~shall be:~~

- 6 (1) To appear for the state and prosecute and defend all actions and proceedings, civil  
 7 or criminal, in the Supreme Court, in which the state shall be interested as a party;
- 8 (2) When requested by the Governor or either branch of the Legislature, or whenever,  
 9 ~~in his~~ the judgment of the attorney general, the welfare of the state demands, to  
 10 appear for the state and prosecute or defend, in any court or before any officer,  
 11 any cause or matter, civil or criminal, in which the state may be a party or  
 12 interested;
- 13 (3) To attend to all civil cases remanded by the Supreme Court to the circuit court, in  
 14 which the state shall be a party or interested;
- 15 (4) To prosecute, at the request of the Governor, state auditor, or state treasurer, any  
 16 official bond or contract in which the state is interested, upon a breach thereof,  
 17 and to prosecute or defend for the state all actions, civil or criminal, relating to any  
 18 matter connected with either of their departments;
- 19 (5) To consult with, advise, and exercise supervision over the several state's attorneys  
 20 of the state in matters pertaining to the duties of their office, and ~~he~~ the attorney  
 21 general shall be authorized and it is made ~~his~~ the duty of the office, whenever in  
 22 ~~his~~ the attorney general's judgment any opinion written by ~~him~~ the attorney  
 23 general will be of general interest and value, to mail either written or printed copies  
 24 of such opinion to the auditor-general and to every state's attorney and county  
 25 auditor in the state;

- 1 (6) When requested, to give ~~his~~ an opinion in writing, without fee, upon all questions  
 2 of law submitted to ~~him~~ the attorney general by the Legislature or either branch  
 3 thereof, or by the Governor, auditor, or treasurer;
- 4 (7) When requested by the state auditor, treasurer, or commissioner of school and  
 5 public lands, to prepare proper drafts for contracts, forms, and other writings,  
 6 which may be wanted for use of the state;
- 7 (8) To report to the Legislature, or either branch thereof, whenever requested, upon  
 8 any business relating to the duties of ~~his~~ the office;
- 9 (9) To prosecute state officers who neglect or refuse to comply with the provisions of  
 10 statutes of this state prohibiting officers of the state from accepting any money,  
 11 fee, or perquisite other than salary for performance of duties connected with ~~his~~  
 12 the office or paid because of holding such office and the statute requiring issue and  
 13 delivery and filing of prenumbered duplicate receipts and accounting for money  
 14 received for the state;
- 15 (10) To pay into the state treasury all moneys received by ~~him~~ the attorney general,  
 16 belonging to the state, immediately upon the receipt thereof;
- 17 (11) To prosecute any criminal action that was committed by an inmate under  
 18 confinement in a facility operated by the Department of Corrections; and
- 19 (12) To attend to and perform any other duties which may from time to time be required  
 20 by law.

21 **Section 2. That § 23A-40-8 be AMENDED:**

22 **23A-40-8.** ~~Counsel~~ Except as provided below, counsel assigned pursuant to § 23A-  
 23 40-6 and subdivision 23A-40-7(2) shall, after the disposition of the cause, be paid by the  
 24 county in which the action is brought, or, in case of a parole revocation, by the county  
 25 from which the inmate was sentenced, a reasonable and just compensation for ~~his~~ the  
 26 services and for necessary expenses and costs incident to the proceedings in an amount  
 27 to be fixed by a judge of the circuit court or a magistrate judge within guidelines  
 28 established by the presiding judge of the circuit court.

29 If the cause originated from a criminal offense committed by an inmate under  
 30 confinement in a facility operated by the Department of Corrections, the Department of  
 31 Corrections must, after the disposition of the cause, pay counsel assigned pursuant to §  
 32 23A-40-6, a reasonable and just compensation for the services and for necessary  
 33 expenses and costs incident to the proceedings in an amount to be fixed by a judge of the

1 circuit court or a magistrate judge within guidelines established by the presiding judge of  
2 the circuit court.

3 **Section 3. That § 23A-40-10 be AMENDED:**

4 **23A-40-10.** If the court finds that funds are available for payment from or on  
5 behalf of a defendant to carry out, in whole or in part, the provisions of this chapter, the  
6 court may order that the funds be paid, as court costs or as a condition of probation, to  
7 the court for deposit with the state, county, or municipal treasurer, to be placed in the  
8 state, county, or municipal general fund or in the public defender fund in those counties  
9 establishing the office pursuant to subdivision 23A-40-7(1) as a reimbursement to the  
10 county or municipality to carry out the provisions of this section. The court may also order  
11 payment to be made in the form of installments or wage assignments, in amounts set by  
12 a judge of the circuit court or a magistrate judge, either during the time a charge is  
13 pending or after the disposition of the charge, regardless of whether the defendant has  
14 been acquitted or the case has been dismissed by the prosecution or by order of the court.  
15 The provisions of this section also apply to persons who have had counsel appointed under  
16 chapters 26-7A, 26-8A, 26-8B, and 26-8C. The reimbursement is a credit against any lien  
17 created by the provisions of this chapter against the property of the defendant.