



## 2026 South Dakota Legislature

# House Bill 1214

Introduced by: **Representative Wittman**

1 **An Act to require that courts consider as a mitigating factor during sentencing an**  
 2 **individual's history as a victim of abuse and provide for a reduced sentence**  
 3 **in certain circumstances.**

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

5 **Section 1. That a NEW SECTION be added to chapter 23A-27:**

6 Terms used in sections 1 to 12, inclusive, of this Act, mean:

- 7 (1) "Abuse," physical, psychological, or sexual abuse threatened by, or actually  
 8 inflicted upon an individual by, a current or former family member, household  
 9 member, romantic or sexual partner, spouse, or trafficker of the individual, or by  
 10 another who used the individual for financial gain;  
 11 (2) "Physical abuse," any physical injury or damage to the body that is not accidental;  
 12 (3) "Psychological abuse," a pattern of coercive control, economic or financial control,  
 13 humiliation, mental intimidation, or threats, that provokes fear of harm; and  
 14 (4) "Sexual abuse," any sexual contact or behavior that is perpetrated without consent,  
 15 by force, or under unequal or coercive conditions.

16 **Section 2. That a NEW SECTION be added to chapter 23A-27:**

17 Before an individual's sentence is imposed, the court shall consider as a mitigating  
 18 factor, if applicable, the individual's history as a victim of abuse.

19 The individual shall provide to the court documentary evidence corroborating that  
 20 the individual was, at the time of the offense, a victim of abuse, with at least one piece of  
 21 evidence being a:

- 22 (1) Court record;  
 23 (2) Presentence report;  
 24 (3) Social services record;  
 25 (4) Hospital record;

- 1       (5) Sworn statement from a witness to the abuse who is not the individual;  
2       (6) Law enforcement record; or  
3       (7) Protective order.

4       **Section 3. That a NEW SECTION be added to chapter 23A-27:**

5               In addition to the evidence required by section 2 of this Act, the individual may  
6       provide to the court:

- 7       (1) Jail records;  
8       (2) Department of Corrections records;  
9       (3) Documentation prepared at or near the time of the commission or prosecution of  
10       an offense tending to support the individual's claim of abuse;  
11       (4) Verification of consultation with:  
12               (a) A licensed health care provider;  
13               (b) A licensed mental health care provider;  
14               (c) An employee of a court acting within the scope of employment;  
15               (d) A member of the clergy;  
16               (e) An attorney; or  
17               (f) A social worker, rape crisis counselor, or other advocate acting on behalf of  
18               an agency that assists victims of abuse; and  
19       (5) Expert testimony from a psychiatrist, psychologist, or mental health professional  
20       showing that the individual was diagnosed with post-traumatic stress disorder as  
21       a result of the abuse.

22       **Section 4. That a NEW SECTION be added to chapter 23A-27:**

23               If the court finds by clear and convincing evidence that, at the time of the offense,  
24       the individual was a victim of abuse, and the abuse was related to and was a substantial  
25       contributing factor to the crime for which sentence is being rendered, the court must  
26       reduce the penalty provided by law for the offense as follows:

- 27       (1) A sentence of life imprisonment in a state correctional facility without the possibility  
28       of parole must be reduced to thirty-five years or less;  
29       (2) A sentence of life imprisonment in a state correctional facility with the possibility  
30       of parole must be reduced to thirty years or less; and  
31       (3) A sentence to a term of years in a state correctional facility must be reduced by at  
32       least one-third.

1 **Section 5. That a NEW SECTION be added to chapter 23A-27:**

2 If the offense is a crime of violence, as defined in § 22-1-2, in order to receive the  
3 sentence reduction provided in section 4 of this Act, the individual must prove by clear  
4 and convincing evidence that the victim of the individual was the perpetrator of the  
5 individual's abuse.

6 **Section 6. That a NEW SECTION be added to chapter 23A-27:**

7 The provisions of sections 1 to 12, inclusive, of this Act do not apply to an individual  
8 convicted of:

9 (1) A Class A felony;

10 (2) An offense that would require the individual to register as a sex offender under  
11 chapter 22-24B; or

12 (2) An attempt or conspiracy to commit an offense that would require the individual to  
13 register as a sex offender.

14 **Section 7. That a NEW SECTION be added to chapter 23A-27:**

15 An individual serving a sentence for an offense committed prior to July 1, 2026,  
16 may submit, to the court that imposed the individual's original sentence, a request to  
17 apply for resentencing. The request must include documentation showing the individual  
18 is:

19 (1) Confined in a state correctional facility under the custody and control of the  
20 Department of Corrections;

21 (2) Serving a sentence for an offense committed prior to July 1, 2026; and

22 (3) Eligible for an alternative sentence as a victim of abuse.

23 If the court finds the requirements are met, the court must notify the individual  
24 that the individual may apply for resentencing. Upon notification, the individual may  
25 request that the court appoint an attorney to assist in the preparation of and proceedings  
26 on the application for resentencing.

27 If the court finds the requirements are not met, the court must notify the individual  
28 and deny the individual's request without prejudice.

29 **Section 8. That a NEW SECTION be added to chapter 23A-27:**

1           To apply for resentencing, an individual shall submit, to the court that imposed the  
2 individual's original sentence, the same evidence required by section 2 of this Act. The  
3 individual may also submit to the court evidence permitted by section 3 of this Act.

4           If the application does not comply with the requirements of section 2 of this Act,  
5 the court must notify the individual and deny the individual's application without prejudice.

6           If the application does comply with the requirements of section 2 of this Act, the  
7 court must notify the individual and, within thirty days, conduct a sentencing hearing to  
8 determine whether the individual may be resentenced in accordance with section 4 of this  
9 Act.

10           Upon receipt of an application for resentencing, the clerk of court shall notify and  
11 provide a copy of the application to the appropriate state's attorney.

12 **Section 9. That a NEW SECTION be added to chapter 23A-27:**

13           At a resentencing hearing pursuant to section 8 of this Act, the court shall  
14 determine any controverted issues of fact relevant to the issue of sentencing. The court  
15 may consider any facts or circumstances relevant to the imposition of a new sentence  
16 submitted by the individual or the state's attorney.

17           The court may consider the individual's institutional record of confinement, but the  
18 institutional record may not be solely dispositive as to whether the individual receives a  
19 new sentence. Consideration of the institutional record may include the individual's  
20 participation in programming and treatment while incarcerated and the individual's  
21 disciplinary history. The inability of the individual to participate in programming or  
22 treatment despite the individual's willingness to do so may not be considered an  
23 aggravating factor.

24           The court may not order a new presentence investigation or entertain any matter  
25 challenging the underlying basis of the individual's original conviction.

26 **Section 10. That a NEW SECTION be added to chapter 23A-27:**

27           If, at the conclusion of the resentencing hearing, the court determines that the  
28 individual may not be resentenced in accordance with section 4 of this Act, the court must  
29 notify the individual and enter an order that includes written findings of fact and the  
30 reasons for the court's determination. If the individual is denied resentencing on the merits  
31 of the individual's application, the court must deny the application with prejudice.

32           If the court determines that the individual may be resentenced in accordance with  
33 section 4 of this Act, the court must notify the individual and, unless the individual

1 withdraws the application for resentencing, enter an order vacating the individual's original  
2 sentence and impose a new sentence in accordance with section 4 of this Act. The order  
3 must include written findings of fact and the reasons for the court's determination.

4 **Section 11. That a NEW SECTION be added to chapter 23A-27:**

5 When calculating a new sentence to be served pursuant to sections 4 and 10 of  
6 this Act, the court shall credit to the individual any time served in a county jail and any  
7 period of incarceration served under the custody and control of the Department of  
8 Corrections as a result of the individual's original sentence.

9 **Section 12. That a NEW SECTION be added to chapter 23A-27:**

10 An appeal may be taken to the Supreme Court, as a matter of right, from any order  
11 denying resentencing or any new sentence imposed pursuant to sections 1 to 11, inclusive,  
12 of this Act. The procedure on appeal is the same as prescribed by law or Supreme Court  
13 rule in other criminal cases.