



## 2026 South Dakota Legislature

# House Bill 1268

Introduced by: **Representative Reisch**

1 **An Act to repeal capital punishment.**

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

3 **Section 1. That § 22-4-1 be AMENDED:**

4 **22-4-1.** Unless specific provision is made by law, any person who attempts to  
 5 commit a crime and, in the attempt, does any act toward the commission of the crime,  
 6 but fails or is prevented or intercepted in the perpetration of that crime, is punishable for  
 7 the attempt at a maximum sentence of one-half of the penalty prescribed for the  
 8 underlying crime. Unless specific provision is made by law, any person who attempts to  
 9 commit a ~~Class A~~, Class B, or ~~Class C~~ felony is guilty of a Class 2 felony.

10 **Section 2. That § 22-4A-1 be AMENDED:**

11 **22-4A-1.** Any person who, with the intent to promote or facilitate the commission  
 12 of a crime, commands, hires, requests, or solicits another person to engage in specific  
 13 conduct ~~which that~~ would constitute the commission of ~~such the~~ offense or an attempt to  
 14 commit ~~such the~~ offense, is guilty of criminal solicitation.

15 Criminal solicitation is a:

- 16 (1) Class 1 felony if the offense solicited is a Class ~~A~~, B or C felony;  
 17 (2) Class 2 felony if the offense solicited is a Class 1 felony;  
 18 (3) Class 3 felony if the offense solicited is a Class 2 felony;  
 19 (4) Class 4 felony if the offense solicited is a Class 3 felony;  
 20 (5) Class 5 felony if the offense solicited is a Class 4 felony;  
 21 (6) Class 6 felony if the offense solicited is a Class 5 felony; or  
 22 (7) Class 1 misdemeanor if the offense solicited is a Class 6 felony.

23 **Section 3. That § 22-6-1 be AMENDED:**

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

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

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

10       (3)(2) Class C felony: life imprisonment in a state correctional facility. In addition, a fine  
 11 of fifty thousand dollars may be imposed;

12       (4)(3) Class 1 felony: fifty years imprisonment in a state correctional facility. In addition,  
 13 a fine of fifty thousand dollars may be imposed;

14       (5)(4) Class 2 felony: twenty-five years imprisonment in a state correctional facility. In  
 15 addition, a fine of fifty thousand dollars may be imposed;

16       (6)(5) Class 3 felony: fifteen years imprisonment in a state correctional facility. In  
 17 addition, a fine of thirty thousand dollars may be imposed;

18       (7)(6) Class 4 felony: ten years imprisonment in a state correctional facility. In addition,  
 19 a fine of twenty thousand dollars may be imposed;

20       (8)(7) Class 5 felony: five years imprisonment in a state correctional facility. In addition,  
 21 a fine of ten thousand dollars may be imposed; and

22       (9)(8) Class 6 felony: two years imprisonment in a state correctional facility or a fine of  
 23 four thousand dollars, or both.

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

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

31           Nothing in this section limits increased sentences for habitual criminals under  
 32 §§ 22-7-7, 22-7-8, and 22-7-8.1.

33   **Section 4. That § 22-16-12 be AMENDED:**

1           **22-16-12.** Murder in the first degree ~~is a Class A felony.~~ Murder in the and second  
2 degree is a Class B felony.

3 **Section 5. That § 23A-10A-15 be AMENDED:**

4           **23A-10A-15.** If the most serious charge against the defendant is a Class ~~A,~~ B, or  
5 C felony, the order ~~shall~~ must be for a term of years the court determines is reasonable  
6 or until the charges have been dismissed by the prosecution. The order may not exceed  
7 the maximum penalty allowable for the most serious charge facing the defendant. Upon  
8 expiration of the order of detention, the criminal charges against the defendant ~~shall~~ must  
9 be dismissed. If the prosecutor believes there is probable cause to believe that the  
10 defendant is a danger to self or to others at the time of dismissal, the prosecutor may file  
11 a petition in accordance with chapter 27A-10 or 27A-11A or title 27B, for further  
12 restoration to competency.

13           Every twelve months thereafter, the director of the approved facility ~~shall~~ must  
14 notify the court if the defendant is still in a restoration to competency program under the  
15 direction of an approved facility or in the approved facility pursuant to this chapter, and  
16 the circuit court ~~shall~~ must hold a hearing to review any order of detention to determine  
17 if the defendant has become competent to proceed.

18 **Section 6. That § 23A-20-20 be AMENDED:**

19           **23A-20-20.** If an offense charged is a ~~Class A,~~ Class B, Class C, or Class 1 felony,  
20 the prosecution and the defense each have twenty peremptory challenges. In all other  
21 felony cases, the prosecution and the defense each have ten peremptory challenges. In  
22 misdemeanor cases, the prosecution and the defense each have three peremptory  
23 challenges.

24 **Section 7. That § 23A-27-1 be AMENDED:**

25           **23A-27-1.** Sentences ~~shall~~ A sentence must be imposed without unreasonable  
26 delay, but not within forty-eight hours after determination of guilt. A defendant may waive  
27 the forty-eight hour delay. Before imposing a sentence, a court may order a hearing in  
28 mitigation or aggravation of punishment. If the defendant is a juvenile convicted as an  
29 adult of a ~~Class A or~~ Class B felony, prior to imposing a sentence, the court ~~shall~~ must  
30 conduct a presentence hearing. At ~~such~~ the hearing, the court shall allow the defense  
31 counsel an opportunity to speak on behalf of the defendant and shall address the

1 defendant personally ~~and to ask him if he~~ the defendant wishes to make a statement in  
2 ~~his~~ the defendant's own behalf and to present any information in mitigation of punishment.  
3 The prosecuting attorney shall have an equivalent opportunity to speak to the court. The  
4 circumstances must be presented by the testimony of witnesses examined in open court,  
5 except that a ~~witness'~~ deposition of a witness may be taken by a magistrate in accordance  
6 with chapter 23A-12. In imposing a sentence, the court shall enter an order of restitution  
7 in accordance with chapter 23A-28.

8 **Section 8. That § 23A-27A-14 be AMENDED:**

9 **23A-27A-14.** In the event the death penalty ~~for a Class A felony~~ is held to be  
10 unconstitutional by the South Dakota Supreme Court or the United States Supreme Court,  
11 the court having jurisdiction over a person previously sentenced to death ~~for a Class A~~  
12 ~~felony~~ shall have ~~such~~ the person brought before the court, and the court shall sentence  
13 ~~such~~ the person to life imprisonment.

14 **Section 9. That § 23A-42-1 be AMENDED:**

15 **23A-42-1.** There is no limitation on the time within which a prosecution for ~~Class~~  
16 ~~A,~~ a Class B, ~~or Class C~~ felony must be commenced.

17 **Section 10. That § 26-11-3.1 be AMENDED:**

18 **26-11-3.1.** Any delinquent child sixteen years of age or older against whom ~~Class~~  
19 ~~A,~~ a Class B, Class C, Class 1, or Class 2 felony ~~charges have~~ charge has been filed ~~shall~~  
20 must be tried in circuit court as an adult. ~~However, the~~ The child may request a transfer  
21 hearing ~~which shall be,~~ conducted pursuant to § 26-11-4, to determine if it is in the best  
22 interest of the public that the child be tried in circuit court as an adult. In ~~such a~~ the  
23 transfer hearing, there is a rebuttable presumption that it is in the best interest of the  
24 public that any child, sixteen years of age or older, who is charged with a ~~Class A,~~ Class  
25 B, Class C, Class 1, or Class 2 felony, ~~shall~~ must be tried as an adult.

26 **Section 11.** Notwithstanding chapter 23A-27A, a defendant who has been charged with a  
27 crime carrying an authorized punishment of death but who has not yet been convicted and  
28 sentenced to death prior to July 1, 2026, may not be sentenced to death.

29 **Section 12.** Nothing in this Act alters, mitigates, or suspends the execution of any death  
30 sentence initially imposed prior to July 1, 2026, regardless of any appellate litigation resulting

- 1 from the death sentence. Nothing in this Act gives rise to any cause of action to alter, mitigate,
- 2 or suspend the execution of any death sentence initially imposed prior to July 1, 2026,
- 3 regardless of any appellate litigation resulting from the death sentence.