

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

400X0296

SENATE JUDICIARY ENGROSSED NO. **SB 44** 02/18/2016

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to create provisions for aggravated vehicular homicide and
2 classify the crime as a crime of violence.

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

4 Section 1. That subdivision (9) of § 22-1-2 be amended to read:

5 (9) "Crime of violence," any of the following crimes or an attempt to commit, or a
6 conspiracy to commit, or a solicitation to commit any of the following crimes:
7 murder, manslaughter, aggravated vehicular homicide, rape, aggravated assault, riot,
8 robbery, burglary in the first degree, arson, kidnapping, felony sexual contact as
9 defined in § 22-22-7, felony child abuse as defined in § 26-10-1, or any other felony
10 in the commission of which the perpetrator used force, or was armed with a
11 dangerous weapon, or used any explosive or destructive device;

12 Section 2. That § 24-15A-32 be amended to read:

13 24-15A-32. Each inmate sentenced to a penitentiary term, except those under a sentence of
14 life or death, or determined to be ineligible for parole as authorized in § 24-15A-32.1, shall have



1 an initial parole date set by the department. This date shall be calculated by applying the
 2 percentage indicated in the following grid to the full term of the inmate's sentence pursuant to
 3 § 22-6-1. The following crimes or an attempt to commit, or a conspiracy to commit, or a
 4 solicitation to commit, any of the following crimes shall be considered a violent crime for
 5 purposes of setting an initial parole date: murder, manslaughter, aggravated vehicular homicide,
 6 rape, aggravated assault, riot, robbery, burglary in the first degree or burglary in the second
 7 degree if committed before July 1, 2006, arson, kidnapping, felony sexual contact as defined in
 8 §§ 22-22-7 and 22-22-19.1, child abuse, felony sexual contact as defined in § 22-22-7.2, felony
 9 stalking as defined in §§ 22-19A-2 and 22-19A-3, photographing a child in an obscene act,
 10 felony assault as defined in § 22-18-26, felony simple assault as defined in § 22-18-1,
 11 commission of a felony while armed as defined in §§ 22-14-12 and 22-14-13.1, discharging a
 12 firearm at an occupied structure or motor vehicle as defined in § 22-14-20, discharging a firearm
 13 from a moving vehicle as defined in § 22-14-21, criminal pedophilia as defined in § 22-22-30.1,
 14 threatening to commit a sexual offense as defined in § 22-22-45, abuse or neglect of a disabled
 15 adult as defined in § 22-46-2, and aggravated incest as defined in §§ 22-22A-3 and 22-22A-3.1:

16 Felony Convictions				
17	Felony Class	First	Second	Third
18	Nonviolent			
19	Class 6	.25	.30	.40
20	Class 5	.25	.35	.40
21	Class 4	.25	.35	.40
22	Class 3	.30	.40	.50
23	Class 2	.30	.40	.50
24	Class 1	.35	.40	.50
25	Class C	.35	.40	.50
26	Violent			

1	Class 6	.35	.45	.55
2	Class 5	.40	.50	.60
3	Class 4	.40	.50	.65
4	Class 3	.50	.60	.70
5	Class 2	.50	.65	.75
6	Class 1	.50	.65	.75
7	Class C	.50	.65	.75
8	Class B	1.0	1.0	1.0
9	Class A	1.0	1.0	1.0

10 Each inmate shall serve at least sixty days prior to parole release. Inmates with life sentences
11 are not eligible for parole. An initial parole date through the application of this grid may be
12 applied to a life sentence only after the sentence is commuted to a term of years. A Class A or
13 B felony commuted to a number of years shall be applied to the Class C violent column of the
14 grid. An inmate convicted of a Class A or B felony who was a juvenile at the time of the offense
15 and receives a sentence of less than life shall be applied to the Class C violent column of the
16 grid.

17 Section 3. That chapter 22-16 be amended by adding a NEW SECTION to read:

18 Any person who, while under the influence of alcohol, drugs, or substances in a manner and
19 to a degree prohibited by § 32-23-1, without design to effect death, operates or drives a vehicle
20 of any kind in a reckless manner and thereby causes the death of another person, including an
21 unborn child is guilty of aggravated vehicular homicide.

22 Any person who, while under the influence of alcohol, drugs, or substances in a manner and
23 to a degree prohibited by § 32-23-1, without design to effect death, operates or drives a vehicle
24 of any kind in a negligent manner and that person:

25 (1) Has two or more convictions for a violation of § 32-23-1 occurring within ten years

1 of the date of the violation being charged excluding any period of time during which
2 the person was incarcerated for a previous violation;

3 (2) Has at any time been convicted of a violation of § 22-16-41 or 22-18-36; or

4 (3) Has a .17 percent or more by weight of alcohol in that person's blood as shown by a
5 chemical analysis of that person's breath, blood, or other bodily substance; and

6 thereby causes the death of another person, including an unborn child is guilty of aggravated
7 vehicular homicide.

8 Aggravated vehicular homicide is a Class 2 felony. In addition to any other penalty
9 prescribed by law, the court shall order that the driver license of any person convicted of
10 aggravated vehicular homicide be revoked for period of not less than fifteen years from the date
11 sentence is imposed or ten years from the date of initial release from imprisonment, whichever
12 is later. In the event the person is returned to imprisonment prior to the completion of the period
13 of driver license revocation, time spent imprisoned does not count toward fulfilling the period
14 of revocation.

15 Section 4. That the code be amended by adding a NEW SECTION to read:

16 If conduct constituting an offense under § 22-16-41 or section 3 of this Act also constitutes
17 an offense under another section of this chapter, the defendant may be prosecuted under either
18 section or under both sections. The defendant may be found guilty of one or both offenses but
19 the court shall only enter a judgment of conviction for the greater of the offenses.