

Chapter 107

(House Bill 1170)

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

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

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

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

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

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

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

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

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

32-23-4.9. If a conviction for a violation of § 32-23-1 is for a sixth offense, or subsequent offense, and the person had at least five convictions of § 32-23-1 occurring within twenty-five years of the violation being charged, and at least two of those prior convictions having occurred within ten years, the violation is an aggravated offense and the person is guilty of a Class 4 felony. If a person is convicted of an aggravated violation of § 32-23-1 and the person has at least six convictions of § 32-23-1 occurring within fifteen years of the violation being charged, the court must sentence the person to at least six years in a state correctional facility, one of which must be served on parole, unless refused pursuant to § 24-15A-15. Any term of parole must include at least one of the following: enrollment in an alcohol or drug accountability program, an ignition interlock, a breath alcohol interlock, an alcohol monitoring bracelet, or another enhanced monitoring tool. The court may suspend this sentence only if the court orders the person to participate in and complete a drug court program, DUI court program, veterans treatment court program, or mental health court program, as a condition of probation.

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

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

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

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

Signed March 20, 2023

