

Chapter 138

(House Bill 1126)

An Act to revise a provision related to driving under the influence.

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

Section 1. 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 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 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 offense~~ and the person has at least ~~six~~ five 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 year 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 must 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 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 the 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, health appointments, attendance at court or probation appointments, or attendance at counseling programs, treatment, or aftercare.

For any person convicted under this section and placed on probation, or 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 supervise the offender if the sentence does not include a term of imprisonment in a state correctional facility. The Department of Corrections shall supervise the offender if the sentence includes a term of imprisonment in a state correctional facility. 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 as established by the Supreme Court or the Department of Corrections, respectively.

Signed March 9, 2026

