

2023 South Dakota Legislature

House Bill 1170**AMENDMENT 1170B
FOR THE INTRODUCED BILL**

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

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

4 **Section 1. That § 24-15A-32 be AMENDED:**

5 **24-15A-32.** Each inmate sentenced to a penitentiary term, except those under a
6 sentence of life or death, or determined to be ineligible for parole as authorized in § 24-
7 15A-32.1, or under section 5 of this Act, shall have an initial parole date set by the
8 department. This date shall be calculated by applying the percentage indicated in the
9 following grid to the full term minus any suspended time of the inmate's sentence pursuant
10 to § 22-6-1. The following crimes or an attempt to commit, or a conspiracy to commit, or
11 a solicitation to commit, any of the following crimes shall be considered a violent crime
12 for purposes of setting an initial parole date: murder, manslaughter, rape, aggravated
13 assault, riot, robbery, burglary in the first degree, burglary in the second degree if
14 committed before July 1, 2006, arson, kidnapping, felony sexual contact as defined in
15 § 22-22-7, child abuse, felony sexual contact as defined in § 22-22-7.2, felony stalking as
16 defined in §§ 22-19A-2 and 22-19A-3, photographing a child in an obscene act, felony
17 assault as defined in §§ 22-18-26 and 22-18-29, felony simple assault as defined in § 22-
18 18-1, aggravated criminal battery of an unborn child as defined in § 22-18-1.3,
19 aggravated battery of an infant as defined in § 22-18-1.4, assault with intent to cause
20 serious permanent disfigurement as defined in § 22-18-1.5, commission of a felony while
21 armed as defined in § 22-14-12, discharging a firearm at an occupied structure or motor
22 vehicle as defined in § 22-14-20, discharging a firearm from a moving vehicle as defined
23 in § 22-14-21, criminal pedophilia, threatening to commit a sexual offense as defined in
24 § 22-22-45, abuse or neglect of a disabled adult as defined in § 22-46-2, and aggravated
25 incest as defined in §§ 22-22A-3 and 22-22A-3.1:

26 Felony Convictions

1	Felony Class	First	Second	Third
2	Nonviolent			
3	Class 6	.25	.30	.40
4	Class 5	.25	.35	.40
5	Class 4	.25	.35	.40
6	Class 3	.30	.40	.50
7	Class 2	.30	.40	.50
8	Class 1	.35	.40	.50
9	Class C	.35	.40	.50
10	Violent			
11	Class 6	.35	.45	.55
12	Class 5	.40	.50	.60
13	Class 4	.40	.50	.65
14	Class 3	.50	.60	.70
15	Class 2	.50	.65	.75
16	Class 1	.50	.65	.75
17	Class C	.50	.65	.75
18	Class B	1.0	1.0	1.0
19	Class A	1.0	1.0	1.0

20 The application of the violent or nonviolent column of the grid is based on whether
 21 the inmate's current sentence is for a violent or nonviolent crime. Any prior felony shall
 22 be considered regardless of whether it is violent or nonviolent when determining which
 23 percentage to apply to the inmate's parole date calculation. Each inmate shall serve at
 24 least sixty days prior to parole release. Inmates with life sentences are not eligible for
 25 parole except as provided in §§ 24-15A-55 to 24-15A-68, inclusive. An initial parole date
 26 through the application of this grid may be applied to a life sentence only after the
 27 sentence is commuted to a term of years. A Class A or B felony commuted to a number
 28 of years shall be applied to the Class C violent column of the grid. An inmate convicted of
 29 a Class A or B felony who was a juvenile at the time of the offense and receives a sentence
 30 of less than life shall be applied to the Class C violent column of the grid.

31 **Section 2. That § 32-23-4.6 be AMENDED:**

1 **32-23-4.6.** If a conviction for a violation of § 32-23-1 is for a fourth offense, the
2 person is guilty of a Class 5 felony, and the court, in pronouncing sentence, ~~shall~~ must
3 revoke the person's driver license for a period of not less than two years from the date
4 sentence is imposed or two years from the date of initial release from imprisonment,
5 whichever is later. If the person is returned to imprisonment prior to the completion of
6 the period of driver's license revocation, time spent imprisoned does not count toward
7 fulfilling the period of revocation. If the person is convicted of driving without a license
8 during that period, the court ~~shall~~ must sentence the person to the county jail for not less
9 than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19,
10 the court retains jurisdiction to modify the conditions of the license revocation for the term
11 of such revocation. Upon the successful completion of a court-approved chemical
12 dependency counseling program, and proof of financial responsibility pursuant to § 32-
13 35-113, the court may permit the person to operate a vehicle for the purposes of
14 employment, 24/7 sobriety testing, attendance at school, child care delivery or pickup, or
15 attendance at counseling programs. Further, sentencing pursuant to this section includes
16 the provisions of § 23A-27-18.

17 If a person is convicted of a fourth violation of § 32-23-1, the court must sentence
18 the person to at least ~~one year~~ two years in a state correctional facility, one of which must
19 be served on parole, unless refused pursuant to § 24-15A-15. Any term of parole must
20 include at least one of the following: enrollment in an alcohol or drug accountability
21 program, an ignition interlock, a breath alcohol interlock, an alcohol monitoring bracelet,
22 or another enhanced monitoring tool. The court may ~~not only~~ suspend this sentence if the
23 court orders the person to participate in a problem-solving court or other treatment
24 program as a condition of probation.

25 **Section 3. That § 32-23-4.7 be AMENDED:**

26 **32-23-4.7.** If a conviction for violation of § 32-23-1 is for a fifth offense, or
27 subsequent offenses thereafter, the person is guilty of a Class 4 felony and the court, in
28 pronouncing sentencing, ~~shall~~ must revoke the person's driver license for a period of not
29 less than three years from the date sentence is imposed or three years from the date of
30 initial release from imprisonment, whichever is later. In the event the person is returned
31 to imprisonment prior to the completion of the period of driver's license revocation, time
32 spent imprisoned does not count toward fulfilling the period of revocation. If the person is
33 convicted of driving without a license during that period, the court ~~shall~~ must sentence
34 the person to the county jail for not less than twenty days, which sentence may not be

1 suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the
2 conditions of the license revocation for the term of such revocation. Upon the successful
3 completion of a court-approved chemical dependency counseling program, and proof of
4 financial responsibility pursuant to § 32-35-113, the court may permit the person to
5 operate a vehicle for the purposes of employment, 24/7 sobriety testing, attendance at
6 school, child care delivery or pickup, or attendance at counseling programs.

7 If a person is convicted of a fifth or subsequent violation of § 32-23-1, the court
8 must sentence the person to at least ~~three-four~~ years in a state correctional facility, ~~one~~
9 of which must be served on parole, unless refused pursuant to § 24-15A-15. Any term of
10 parole must include at least one of the following: enrollment in an alcohol or drug
11 accountability program, an ignition interlock, a breath alcohol interlock, an alcohol
12 monitoring bracelet, or another enhanced monitoring tool. The court may not suspend this
13 sentence.

14 **Section 4. That § 32-23-4.9 be AMENDED:**

15 **32-23-4.9.** If a conviction for a violation of § 32-23-1 is for a sixth offense, or
16 subsequent offense, and the person had at least five convictions of § 32-23-1 occurring
17 within twenty-five years of the violation being charged, and at least two of those prior
18 convictions having occurred within ten years, the violation is an aggravated offense and
19 the person is guilty of a Class 4 felony. If a person is convicted of an aggravated violation
20 of § 32-23-1 and the person has at least six convictions of § 32-23-1 occurring within
21 fifteen years of the violation being charged, the court must sentence the person to at least
22 five-six years in a state correctional facility, one of which must be served on parole, unless
23 refused pursuant to § 24-15A-15. The court may not suspend this sentence.

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

33 Upon the person's successful completion of a court-approved chemical dependency
34 counseling program and proof of financial responsibility pursuant to § 32-35-113, the

1 court may permit the person to operate a vehicle for the purposes of employment, 24/7
2 sobriety testing, attendance at school, child care delivery or pickup, or attendance at
3 counseling programs.

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

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

18 **~~Section 5. That chapter 32-23 be amended with a NEW SECTION:~~**

19 Any person subject to a mandatory sentence under §§ ~~32-23-4.6, 32-23-4.7, or 32-23-4.9~~ is
20 not eligible for parole consideration.