

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

491U0384

CONFERENCE COMMITTEE

ENGROSSED NO. **SB 39** - 03/06/2013

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 establish a penalty for a juvenile convicted as an adult
2 of a Class A or B felony and allow a sentence of up to life imprisonment after a sentencing
3 hearing.

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

5 Section 1. That § 22-6-1 be amended to read as follows:

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

9 (1) Class A felony: death or life imprisonment in the state penitentiary. A lesser sentence
10 than death or life imprisonment may not be given for a Class A felony. In addition,
11 a fine of fifty thousand dollars may be imposed;

12 (2) Class B felony: life imprisonment in the state penitentiary. A lesser sentence may not
13 be given for a Class B felony. In addition, a fine of fifty thousand dollars may be
14 imposed;



- 1 (3) Class C felony: life imprisonment in the state penitentiary. In addition, a fine of fifty
2 thousand dollars may be imposed;
- 3 (4) Class 1 felony: fifty years imprisonment in the state penitentiary. In addition, a fine
4 of fifty thousand dollars may be imposed;
- 5 (5) Class 2 felony: twenty-five years imprisonment in the state penitentiary. In addition,
6 a fine of fifty thousand dollars may be imposed;
- 7 (6) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine
8 of thirty thousand dollars may be imposed;
- 9 (7) Class 4 felony: ten years imprisonment in the state penitentiary. In addition, a fine of
10 twenty thousand dollars may be imposed;
- 11 (8) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine
12 of ten thousand dollars may be imposed; and
- 13 (9) Class 6 felony: two years imprisonment in the state penitentiary or a fine of four
14 thousand dollars, or both.

15 If the defendant is under the age of eighteen years at the time of the offense and found guilty
16 of a Class A or B felony, the maximum sentence may be life imprisonment in the state
17 penitentiary. In addition, a fine of fifty thousand dollars may be imposed.

18 The court, in imposing sentence on a defendant who has been found guilty of a felony, shall
19 order in addition to the sentence that is imposed pursuant to the provisions of this section, that
20 the defendant make restitution to any victim in accordance with the provisions of chapter 23A-
21 28.

22 Nothing in this section limits increased sentences for habitual criminals under §§ 22-7-7,
23 22-7-8, and 22-7-8.1.

24 Section 2. That § 23A-27-1 be amended to read as follows:

1 23A-27-1. Sentences shall be imposed without unreasonable delay, but not within forty-eight
2 hours after determination of guilt. A defendant may waive the forty-eight hour delay. Before
3 imposing a sentence, a court may order a hearing in mitigation or aggravation of punishment.
4 If the defendant is a juvenile convicted as an adult of a Class A or Class B felony, prior to
5 imposing a sentence, the court shall conduct a presentence hearing. At such hearing, the court
6 shall allow the defense counsel an opportunity to speak on behalf of the defendant and shall
7 address the defendant personally and ask him if he wishes to make a statement in his own behalf
8 and to present any information in mitigation of punishment. The prosecuting attorney shall have
9 an equivalent opportunity to speak to the court. The circumstances must be presented by the
10 testimony of witnesses examined in open court, except that a witness' deposition may be taken
11 by a magistrate in accordance with chapter 23A-12. In imposing a sentence, the court shall enter
12 an order of restitution in accordance with chapter 23A-28.

13 Section 3. That § 24-15A-32 be amended to read as follows:

14 24-15A-32. Each inmate sentenced to a penitentiary term, except those under a sentence of
15 life or death, or an indeterminate sentence which is not yet set to a term of years by the board
16 or determined to be ineligible for parole as authorized in § 24-15A-32.1, shall have an initial
17 parole date set by the department. This date shall be calculated by applying the percentage
18 indicated in the following grid to the full term of the inmate's sentence pursuant to § 22-6-1. The
19 following crimes or an attempt to commit, or a conspiracy to commit, or a solicitation to
20 commit, any of the following crimes shall be considered a violent crime for purposes of setting
21 an initial parole date: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in
22 the first degree or burglary in the second degree if committed before July 1, 2006, arson,
23 kidnapping, felony sexual contact as defined in §§ 22-22-7 and 22-22-19.1, child abuse, felony
24 sexual contact as defined in § 22-22-7.2, felony stalking as defined in §§ 22-19A-2 and 22-19A-

1 3, photographing a child in an obscene act, felony assault as defined in § 22-18-26, felony
 2 simple assault as defined in § 22-18-1, commission of a felony while armed as defined in §§ 22-
 3 14-12 and 22-14-13.1, discharging a firearm at an occupied structure or motor vehicle as defined
 4 in § 22-14-20, discharging a firearm from a moving vehicle as defined in § 22-14-21, criminal
 5 pedophilia as defined in § 22-22-30.1, threatening to commit a sexual offense as defined in
 6 § 22-22-45, abuse or neglect of a disabled adult as defined in § 22-46-2, and aggravated incest
 7 as defined in §§ 22-22A-3 and 22-22A-3.1:

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

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

8 Section 4. That § 23A-27-1.1 be amended to read as follows:

9 23A-27-1.1. ~~Upon~~ If a defendant has been convicted of an A, B, or C felony, upon request
10 to the court by a victim and before imposing sentence on a defendant, the victim, in the
11 ~~discretion of the court, may~~ has the right to orally address the court concerning the emotional,
12 physical, and monetary impact of the defendant's crime upon the victim and the victim's family,
13 and may comment upon the sentence which may be imposed upon the defendant.

14 If a defendant has been convicted of any other felony or misdemeanor, upon request to the
15 court by a victim and before imposing sentence on a defendant, the victim, in the discretion of
16 the court, may orally address the court concerning the emotional, physical, and monetary impact
17 of the defendant's crime upon the victim and the victim's family, and may comment upon the
18 sentence which may be imposed upon the defendant.

19 The defendant shall be permitted to respond to such statements orally or by presentation of
20 evidence and shall be granted a reasonable continuance to refute any inaccurate or false charges
21 or statements.

22 For the purpose of this section, the term, victim, means the actual victim or the parent,
23 spouse, next of kin, legal or physical custodian, guardian, foster parent, case worker, victim
24 advocate, or mental health counselor of any actual victim who is incompetent by reason of age

1 or physical condition, who is deceased, or whom the court finds otherwise unable to comment.

2 Section 5. That § 23A-27-1.3 be amended to read as follows:

3 23A-27-1.3. ~~Upon~~ If a defendant has been convicted of an A, B, or C felony, upon request
4 to the court by a victim and before imposing sentence on a defendant, a victim, ~~in the discretion~~
5 ~~of the court, may~~ has a right to address the court in writing concerning the emotional, physical,
6 and monetary impact of the defendant's crime upon the victim and the victim's family, and may
7 comment upon the sentence which may be imposed upon the defendant.

8 If a defendant has been convicted of any other felony or misdemeanor, upon request to the
9 court by a victim and before imposing sentence on a defendant, the victim, in the discretion of
10 the court, may address the court in writing concerning the emotional, physical, and monetary
11 impact of the defendant's crime upon the victim and the victim's family, and may comment upon
12 the sentence which may be imposed upon the defendant.

13 The defendant shall be permitted to respond to such statements and shall be granted a
14 reasonable continuance to refute any inaccurate or false charges or statements.

15 For the purpose of this section, the term, victim, means anyone adversely impacted
16 emotionally, physically, or monetarily by the defendant's crime.