

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0205

SENATE BILL NO. 20

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to provide for court-ordered restitution at the time a
2 defendant is sentenced to the state penitentiary.

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

4 Section 1. That § 23A-28-3 be amended to read as follows:

5 23A-28-3. If the sentencing court orders the defendant to the county jail, suspended
6 imposition of sentence, suspended sentence, ~~or~~ probation, or to the state penitentiary, the court
7 may require as a condition that the defendant, in cooperation with the court services officer
8 assigned to the defendant, promptly prepare a plan of restitution, including the name and address
9 of each victim, a specific amount of restitution to each victim and a schedule of restitution
10 payments. If the defendant is presently unable to make any restitution, but there is a reasonable
11 possibility that the defendant may be able to do so at some time during ~~his~~ the defendants
12 probation, incarceration, or parole period, the plan of restitution shall also state the conditions
13 under which or the event after which the defendant will make restitution. If the defendant
14 believes that no person suffered pecuniary damages as a result of the defendant's criminal
15 activities, the defendant shall so state. If the defendant contests the amount of restitution
16 recommended by the court services officer, the defendant is entitled to a hearing at which the
17 court shall determine the amount. If the sentencing court orders the defendant to the state

1 penitentiary and does not suspend the sentence, the Board of Pardons and Paroles shall require
2 as a condition of parole that the defendant, ~~in cooperation with the executive director of the~~
3 ~~Board of Pardons and Paroles, prepare the plan of restitution as described in this section~~ abide
4 by any restitution plan ordered by the court.

5 Section 2. That § 23A-28-5 be amended to read as follows:

6 23A-28-5. The court services officer when assisting the defendant in preparing the plan of
7 restitution and the court before approving or modifying the plan of restitution shall consider the
8 physical and mental health and condition of the defendant, the defendant's age, the defendant's
9 education, the defendant's employment circumstances, the defendant's potential for employment
10 and vocational training, the defendant's family circumstances, the defendant's financial condition,
11 the number of victims, the pecuniary damages of each victim, what plan of restitution will most
12 effectively aid the rehabilitation of the defendant, and each victim, and such other factors as may
13 be appropriate.

14 ~~—For a defendant serving a sentence in the state penitentiary the board of pardons and paroles~~
15 ~~shall consider these factors when preparing the plan of restitution.~~

16 Section 3. That § 23A-28-6 be amended to read as follows:

17 23A-28-6. The court services officer shall provide each known victim a copy of the court's
18 order approving or modifying the plan of restitution for any defendant ~~not serving his sentence~~
19 ~~in the state penitentiary. The executive director of the board of pardons and paroles shall provide~~
20 ~~each known victim a copy of the plan of restitution approved or modified by the board of~~
21 ~~pardons and paroles.~~ If the victim is not satisfied with the approved or modified plan of
22 restitution, the victim's exclusive remedy is a civil action against the defendant, which, if
23 successful, may include attorney's fees.