

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0757

## HOUSE STATE AFFAIRS COMMITTEE

### ENGROSSED NO. **SB210** - 3/3/99

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to provide mandatory prison sentences for certain violations  
2 regarding controlled substances and marijuana.

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

4 Section 1. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any person who has been convicted of a violation of §§ 22-42-2.1, 22-42-3 to 22-42-4.1,  
7 inclusive, 22-42-5 to 22-42-8, inclusive, 22-42-10, 22-42-16, 22-42-19, 34-20B-42, and 34-20B-  
8 46 shall, in addition to any other penalties, be remanded to the custody of the Department of  
9 Corrections for a period of ten days, no part of which may be waived or suspended except as  
10 provided in § 22-42-2.3. The secretary of the Department of Corrections shall assign the person  
11 to an institution under the jurisdiction of the secretary.

12 Section 2. That § 22-42-2.3 be amended to read as follows:

13 22-42-2.3. The sentencing court may impose a sentence other than that which is required by  
14 § 22-42-2 and section 1 of this Act if the court finds that mitigating circumstances exist which  
15 require a departure from the mandatory sentence imposed by § 22-42-2 or section 1 of this Act.

16 The court's finding of mitigating circumstances allowed by this section and the factual basis relied

1 upon by the court shall be in writing and shall be filed with the clerk of courts.

2 Section 3. The mandatory incarceration provisions of section 1 of this Act do not apply to  
3 a child, as defined in subdivision 26-7A-1(6), unless the child is tried as an adult pursuant to  
4 § 26-11-3.1 or 26-11-4.

5 Section 4. Notwithstanding the provisions of § 22-1-4, crimes otherwise denominated as  
6 misdemeanors whose penalty includes an additional ten-day incarceration in the custody of the  
7 Department of Corrections pursuant to section 1 of this Act shall remain classified as  
8 misdemeanors.

9 Section 5. The provisions of § 23A-27-35 do not apply to any person whose sentence  
10 includes no more than ten days incarceration in the custody of the Department of Corrections.

11 Section 6. That § 22-6-2 be amended to read as follows:

12 22-6-2. Except as otherwise provided by law, misdemeanors are divided into two classes  
13 which are distinguished from each other by the following maximum penalties which are  
14 authorized upon conviction:

15 (1) Class 1 misdemeanor: one year imprisonment in a county jail or one thousand dollars  
16 fine, or both;

17 (2) Class 2 misdemeanor: thirty days imprisonment in a county jail or two hundred dollars  
18 fine, or both.

19 Misdemeanors may include incarceration in the custody of the Department of Corrections  
20 as provided in section 1 of this Act.

21 The court in imposing sentence on a defendant who has been found guilty of a misdemeanor  
22 shall order, in addition to the sentence that is imposed pursuant to the provisions of this section,  
23 that the defendant make restitution to any victim in accordance with the provisions of chapter  
24 23A-28.

25 Except in cases where punishment is prescribed by law, every offense declared to be a

1 misdemeanor and not otherwise classified, is a Class 2 misdemeanor.

2 Except in Titles 1 to 20, inclusive, 22, 25 to 28, inclusive, 32 to 36, inclusive, 40 to 42,  
3 inclusive, 47 to 54, inclusive, and 58 to 62, inclusive, if the performance of an act is prohibited  
4 by a statute, and no penalty for the violation of such statute is imposed by a statute, the doing  
5 of such act is a Class 2 misdemeanor.

6 Section 7. That § 26-8C-4 be amended to read as follows:

7 26-8C-4. If the court is satisfied that the best interests of the public, justice and child will be  
8 served, the court may, without entering an adjudication of delinquency, with consent of the child,  
9 suspend imposition of adjudication of delinquency and place the child on probation under the  
10 terms, conditions, and duration required by the court. If the proceeding involves the unlawful  
11 possession or distribution of marijuana or a controlled drug or substance, the court shall include  
12 as a condition of probation that the child be committed to the Department of Corrections for a  
13 period of not less than ten days which may not be reduced unless the court finds mitigating  
14 circumstances exist which require a departure from the mandatory ten-day incarceration in the  
15 custody of the Department of Corrections. The court's finding of mitigating circumstances  
16 allowed by this section and the factual basis relied upon by the court shall be in writing. A court  
17 may revoke the suspension at any time during the probationary period and impose an  
18 adjudication of delinquency without diminishment or credit for any of the probationary period.

19 Section 8. That § 26-8C-7 be amended to read as follows:

20 26-8C-7. If Except as provided in section 7 of this Act, if a child has been adjudicated as a  
21 delinquent child, the court shall enter a decree of disposition according to the least restrictive  
22 alternative available in keeping with the best interests of the child. The decree shall contain one  
23 or more of the following alternatives:

- 24 (1) The court may make any one or more of the dispositions in § 26-8B-6, except that  
25 a delinquent child may be incarcerated in a detention facility established pursuant to

1 provisions of chapter 26-7A for not more than ninety days, which may be in addition  
2 to any period of temporary custody;

3 (2) The court may impose a fine not to exceed one thousand dollars;

4 (3) The court may place the child on probation under the supervision of a court services  
5 officer or another designated individual. The child may be required as a condition of  
6 probation to report for assignment to a supervised work program, provided the child  
7 is not deprived of the schooling that is appropriate for the child's age, needs and  
8 specific rehabilitative goals. The supervised work program shall be of a constructive  
9 nature designed to promote rehabilitation, appropriate to the age level and physical  
10 ability of the child, and shall be combined with counseling by the court services officer  
11 or other guidance personnel. The supervised work program assignment shall be made  
12 for a period of time consistent with the child's best interests, but for not more than  
13 ninety days;

14 (4) The court may place the child at the Human Services Center for examination and  
15 treatment;

16 (5) The court may commit the child to the Department of Corrections;

17 (6) The court may place the child in a detention facility for not more than ninety days,  
18 which may be in addition to any period of temporary custody;

19 (7) The court may place the child in an alternative educational program;

20 (8) The court may order the suspension or revocation of the child's driving privilege or  
21 restrict the privilege in such manner as it sees fit.

22 Section 9. That chapter 26-8C be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 If a child has been adjudicated as a delinquent child for a violation of state law regarding the  
25 possession or distribution of marijuana or a controlled drug or substance, the court shall enter

1 a decree of disposition committing the child to the Department of Corrections for a period of not  
2 less than ten days unless the court finds mitigating circumstances exist which require a departure  
3 from the mandatory ten-day incarceration in the custody of the Department of Corrections. The  
4 court's finding of mitigating circumstances allowed by this section and the factual basis relied  
5 upon by the court shall be in writing. Probation, suspended imposition of adjudication of  
6 delinquency, suspended execution of adjudication of delinquency, or discharged under § 26-7A-  
7 122 may not form the basis for reducing the mandatory time of commitment required by this  
8 section to less than ten days.

9 Section 10. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 The Governor may offer a standing reward of not more than one thousand dollars for  
12 evidence leading to the arrest and conviction of any person or persons guilty of any violation of  
13 chapter 22-42, § 34-20B-42, or 34-20B-46. The Governor may also offer special rewards in  
14 reasonable amounts for the purpose of securing the arrest and conviction of any person or  
15 persons charged with a felony under this section.

16 Section 11. There is hereby appropriated from the general fund the sum of one million dollars  
17 (\$1,000,000), or so much thereof as may be necessary, to the Office of the Governor for the  
18 purpose of making payments for the rewards authorized in section 10 of this Act.

19 Section 12. The Governor shall approve vouchers and the state auditor shall draw warrants  
20 to pay expenditures authorized by this Act.

1 **BILL HISTORY**

2 1/29/99 First read in Senate and referred to State Affairs. S.J. 254

3 2/8/99 Scheduled for Committee hearing on this date.

4 2/8/99 Scheduled for Committee hearing on this date.

5 2/10/99 Scheduled for Committee hearing on this date.

6 2/17/99 Scheduled for Committee hearing on this date.

7 2/17/99 State Affairs Do Pass Amended, Passed, AYES 5, NAYS 3. S.J. 540

8 2/18/99 State Affairs Hog Housed.

9 2/19/99 Motion to Amend, Passed. S.J. 602

10 2/19/99 Motion to Amend, Passed. S.J. 604

11 2/19/99 Senate Do Pass Amended, Failed, AYES 22, NAYS 11. S.J. 605

12 2/19/99 Intent to reconsider, AYES 22, NAYS 11. S.J. 605

13 2/19/99 Motion to Amend, Passed. S.J. 606

14 2/19/99 Senate Do Pass Amended, Passed, AYES 29, NAYS 4. S.J. 607

15 2/19/99 Senate Title Amended Passed. S.J. 607

16 2/22/99 First read in House and referred to State Affairs. H.J. 691

17 3/1/99 Scheduled for Committee hearing on this date.

18 3/1/99 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 5. H.J. 832

19 3/2/99 State Affairs Hog Housed.