

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0757

## SENATE ENGROSSED NO. **SB210** - 2/22/99

**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 second violation of §§ 22-42-2.1, 22-42-3 to 22-42-  
7 4.1, inclusive, 22-42-5 to 22-42-8, inclusive, 22-42-10, 22-42-16, 22-42-19, 34-20B-42, and 34-  
8 20B-46 shall, in addition to any other penalties, be remanded to the custody of the Department  
9 of Corrections for a period of thirty days, no part of which may be waived or suspended except  
10 as provided in § 22-42-2.3. Any person convicted of a third or subsequent violation of the  
11 provisions enumerated herein shall, in addition to any other penalties, be remanded to the  
12 custody of the Department of Corrections for a period of sixty days, no part of which may be  
13 waived or suspended except as provided in § 22-42-2.3. Any person remanded to the custody  
14 of the department under this section shall immediately after sentencing be transported by the  
15 department without delay to an assigned facility for service of the person's sentence. The  
16 secretary of the Department of Corrections shall assign the person to an institution under the

1 jurisdiction of the secretary.

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

3 22-42-2.3. The sentencing court may impose a sentence other than that which is required by  
4 § 22-42-2 and section 1 of this Act if the court finds that mitigating circumstances exist which  
5 require a departure from the mandatory sentence imposed by § 22-42-2 or section 1 of this Act.  
6 The court's finding of mitigating circumstances allowed by this section and the factual basis relied  
7 upon by the court shall be in writing and shall be filed with the clerk of courts.

8 Section 3. The mandatory incarceration provisions of section 1 of this Act do not apply to  
9 a child, as defined in subdivision 26-7A-1(6), unless the child is tried as an adult pursuant to  
10 § 26-11-3.1 or 26-11-4.

11 Section 4. Notwithstanding the provisions of § 22-1-4, crimes otherwise denominated as  
12 misdemeanors whose penalty includes additional incarceration in the custody of the Department  
13 of Corrections pursuant to section 1 of this Act shall remain classified as misdemeanors.

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

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

17 22-6-2. Except as otherwise provided by law, misdemeanors are divided into two classes  
18 which are distinguished from each other by the following maximum penalties which are  
19 authorized upon conviction:

- 20 (1) Class 1 misdemeanor: one year imprisonment in a county jail or one thousand dollars  
21 fine, or both;
- 22 (2) Class 2 misdemeanor: thirty days imprisonment in a county jail or two hundred dollars  
23 fine, or both.

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

1 The court in imposing sentence on a defendant who has been found guilty of a misdemeanor  
2 shall order, in addition to the sentence that is imposed pursuant to the provisions of this section,  
3 that the defendant make restitution to any victim in accordance with the provisions of chapter  
4 23A-28.

5 Except in cases where punishment is prescribed by law, every offense declared to be a  
6 misdemeanor and not otherwise classified, is a Class 2 misdemeanor.

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

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

12 26-8C-4. If the court is satisfied that the best interests of the public, justice and child will be  
13 served, the court may, without entering an adjudication of delinquency, with consent of the child,  
14 suspend imposition of adjudication of delinquency and place the child on probation under the  
15 terms, conditions, and duration required by the court. If the proceedings involve a second  
16 adjudication for the unlawful possession or distribution of marijuana or a controlled substance,  
17 the court shall include as a condition of probation that the child be committed to the Department  
18 of Corrections for a period of not less than thirty days, which may not be suspended except as  
19 otherwise provided. If the proceedings involve a third or subsequent adjudication for the  
20 unlawful possession or distribution of marijuana or a controlled substance, the court shall include  
21 as a condition of probation that the child be committed to the Department of Corrections for a  
22 period of not less than sixty days, which may not be suspended except as otherwise provided.  
23 Any juvenile committed to the custody of the department under this section shall immediately  
24 upon adjudication be transported by the department without delay to an assigned facility for  
25 service of their commitment. The adjudicating court may impose a sentence other than that which

1 is required by § 26-8C-4 if the court finds that mitigating circumstances exist which require  
2 departure from the mandatory sentence. The court's finding of mitigating circumstances and the  
3 factual basis therefore shall be in writing and filed with the clerk of courts. A court may revoke  
4 the suspension at any time during the probationary period and impose an adjudication of  
5 delinquency without diminishment or credit for any of the probationary period.

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

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

11 (1) The court may make any one or more of the dispositions in § 26-8B-6, except that  
12 a delinquent child may be incarcerated in a detention facility established pursuant to  
13 provisions of chapter 26-7A for not more than ninety days, which may be in addition  
14 to any period of temporary custody;

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

16 (3) The court may place the child on probation under the supervision of a court services  
17 officer or another designated individual. The child may be required as a condition of  
18 probation to report for assignment to a supervised work program, provided the child  
19 is not deprived of the schooling that is appropriate for the child's age, needs and  
20 specific rehabilitative goals. The supervised work program shall be of a constructive  
21 nature designed to promote rehabilitation, appropriate to the age level and physical  
22 ability of the child, and shall be combined with counseling by the court services officer  
23 or other guidance personnel. The supervised work program assignment shall be made  
24 for a period of time consistent with the child's best interests, but for not more than  
25 ninety days;

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

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

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

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

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

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

11 If a child has been adjudicated as a delinquent child for a second violation of a state law  
12 prohibiting the unlawful possession or distribution of marijuana or a controlled drug or  
13 substance, the court shall enter a decree of disposition committing the child to the Department  
14 of Corrections for a period of not less than thirty days. If the child has been adjudicated as a  
15 delinquent child for a third or subsequent violation of a state law prohibiting the unlawful  
16 possession or distribution of marijuana or a controlled substance, the court shall enter a decree  
17 of disposition committing the child to the Department of Corrections for a period of not less than  
18 sixty days. Any juvenile committed to the custody of the department under this section shall  
19 immediately upon adjudication be transported by the department without delay to an assigned  
20 facility for service of their commitment. The adjudicating court may impose a sentence other than  
21 that which is required by § 26-8C-4 if the court finds that mitigating circumstances exist which  
22 require departure from the mandatory sentence. The court's finding of mitigating circumstances  
23 and the factual basis therefore shall be in writing and filed with the clerk of courts.

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