

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

358H0670

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1283** - 02/04/2002

Introduced by: Representatives Eccarius and Michels and Senators Daugaard, Diedrich  
(Larry), and Everist

1 FOR AN ACT ENTITLED, An Act to establish the crime of physical abuse of an infant, to  
2 designate the offense as a crime of violence, and to provide certain penalties therefor.

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

4 Section 1. Any person who, intentionally or recklessly, injures an infant, less than three years  
5 old, by causing any intracranial or intraocular bleeding, swelling, or damage to the brain, whether  
6 caused by blows, shaking, or causing the infant's head to impact with an object or surface, is  
7 guilty of a Class 2 felony.

8 A second or subsequent conviction for a violation of this section shall be punished by a  
9 mandatory sentence in the state penitentiary of at least ten years, which sentence may not be  
10 suspended. Probation, suspended imposition of sentence, or suspended execution of sentence,  
11 may not form the basis for reducing the mandatory time of incarceration required by this section.

12 A conviction for the purposes of the mandatory sentence provisions of this section is the  
13 acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding  
14 of guilt by a jury or court.



1 Section 2. That subdivision (9) of § 22-1-2 be amended to read as follows:

2 (9) "Crime of violence," any of the following crimes or an attempt to commit, or a  
3 conspiracy to commit, any of the same: murder, manslaughter, rape, aggravated  
4 assault, riot, robbery, burglary in the first or second degree, arson, kidnapping, felony  
5 sexual contact as defined in § § 22-22-7 and 22-22-19.1, felony child abuse as defined  
6 in § 26-10-1 and felony physical abuse of an infant as provided in section 1 of this  
7 Act, or any other felony in the commission of which the perpetrator used force, or  
8 was armed with a dangerous weapon, or used any explosive or destructive device;

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

10 24-15A-32. Each inmate sentenced to a penitentiary term, except those under a sentence of  
11 life or death, or an indeterminate sentence which is not yet set to a term of years by the board,  
12 shall have an initial parole date set by the department. This date ~~will~~ shall be calculated by  
13 applying the percentage indicated in the following grid to the full term of the inmate's sentence  
14 pursuant to § 22-6-1. The following crimes or an attempt to commit, or a conspiracy to commit,  
15 any of the following crimes shall be considered a violent crime for purposes of setting an initial  
16 parole date: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first  
17 or second degree, arson, kidnapping, felony sexual contact as defined in §§ 22-22-7 and  
18 22-22-19.1, felony child abuse as defined in § 26-10-1 and felony physical abuse of an infant as  
19 provided in section 1 of this Act, felony sexual contact as defined in § 22-22-7.2, felony stalking  
20 as defined in §§ 22-19A-2 and 22-19A-3, photographing a child in an obscene act, felony assault  
21 as defined in § 22-18-26, felony simple assault as defined in § 22-18-1, commission of a felony  
22 while armed as defined in §§ 22-14-12 and 22-14-13.1, discharging a firearm at an occupied  
23 structure or motor vehicle as defined in § 22-14-20, discharging a firearm from a moving vehicle  
24 as defined in § 22-14-21, and criminal pedophilia as defined in § 22-22-30.1:

	Felony Convictions			
	Felony Class	First	Second	Third
1				
2				
3	Nonviolent			
4	Class 6	.25	.30	.40
5	Class 5	.25	.35	.40
6	Class 4	.25	.35	.40
7	Class 3	.30	.40	.50
8	Class 2	.30	.40	.50
9	Class 1	.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 B	1.0	1.0	1.0
18	Class A	1.0	1.0	1.0

19 Each inmate shall serve at least sixty days prior to parole release. Inmates with life sentences  
20 are not eligible for parole. An initial parole date through the application of this grid may be  
21 applied to a life sentence only after the sentence is commuted to a term of years. A Class A or  
22 B felony commuted to a number of years shall be applied to the Class 1 violent column of the  
23 grid.