

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

178J0045

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 2 - 01/21/2004

Introduced by: Senators Schoenbeck, Abdallah, Kelly, Napoli, and Reedy and Representatives Sebert, Burg, Engels, Garnos, Hennies, Murschel, O'Brien, Rhoden, Rounds, Schafer, and Valandra at the request of the Interim Committee on Department of Corrections Agency Review

1 FOR AN ACT ENTITLED, An Act to revise the style and form of certain provisions relating
2 to the Department of Corrections and to correct certain errors and omissions.

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

4 Section 1. That § 24-1-1 be amended to read as follows:

5 24-1-1. The state penitentiary ~~shall be~~ is the general prison of this state for the punishment
6 and reformation of offenders ~~wherein to which~~ such offenders as may be committed ~~thereto~~,
7 according to law, by any court of this state, shall be confined, employed, and governed in the
8 manner ~~hereinafter~~ provided by law.

9 Section 2. That § 24-1-12 be amended to read as follows:

10 24-1-12. All process to be served within the precincts of the state penitentiary, either upon
11 ~~convicts~~ inmates or upon persons or officers employed within the precincts thereof, except upon
12 the warden, shall be served and returned by the warden, ~~or his~~ personally or by a designee. All
13 officers and employees of the penitentiary ~~shall be~~ are exempt from serving upon juries in any
14 state court.



1 Section 3. That § 24-1-16 be amended to read as follows:

2 24-1-16. The warden ~~shall have power to~~ may make all purchases for the penitentiary on
3 such conditions and in such manner as in ~~his~~ the warden's opinion will best promote the interest
4 of the state; ~~except as may be otherwise specifically provided by law.~~

5 Section 4. That § 24-2-9 be amended to read as follows:

6 24-2-9. Any inmate violating the rules or institutional policies ~~may be~~ is subject to any one
7 or more of the following disciplinary sanctions:

8 (1) Withholding of statutory time for good conduct;

9 (2) Punitive confinement;

10 (3) Imposition of fines;

11 (4) Restriction of privileges;

12 (5) Loss of work or school privileges;

13 (6) Additional labor without compensation;

14 (7) Referral to various programs;

15 (8) Transfer to a more secure housing unit;

16 (9) Change in classification status.

17 ~~There may be no~~ No corporal punishment may be inflicted upon inmates in the penitentiary.

18 Section 5. That § 24-2-10 be amended to read as follows:

19 24-2-10. Any person sentenced to imprisonment in the state penitentiary is under the
20 protection of the law, and any injury to ~~him~~ such person not authorized by law is punishable in
21 the same manner as if ~~he~~ the person were not convicted or sentenced.

22 Section 6. That § 24-2-12 be amended to read as follows:

23 24-2-12. ~~Every~~ Any inmate against whom the disciplinary sanction of punitive confinement
24 has been given for violating any of the rules or policies of the Department of Corrections, unless

1 otherwise determined by the secretary of corrections, shall be housed in ~~the adjustment center~~
 2 a segregation section of the penitentiary for a such period ~~deemed~~ as may be necessary for the
 3 best interests of discipline, justice, rehabilitation, and the protection of ~~self~~ the inmate and
 4 others. The disciplinary board, established by rules promulgated by the Department of
 5 Corrections, may take away time granted for good conduct pursuant to § 24-5-1 for violating
 6 any of the rules or policies of the Department of Corrections, following a hearing and subject
 7 to the approval of the warden.

8 Section 7. That § 24-2-14 be amended to read as follows:

9 24-2-14. No alcoholic ~~beverages~~, beverage, marijuana, or weapon, as defined in subdivision
 10 22-1-2(10), may be possessed by any inmate of the state penitentiary. No prescription or
 11 nonprescription ~~drugs~~ drugs, controlled ~~substances~~ substance as defined by chapter 34-20B,
 12 ~~marijuana, weapons as defined in subdivision 22-1-2(10)~~; or any article of indulgence may be
 13 possessed by any inmate of the state penitentiary except by order of a physician, physician
 14 assistant, or nurse practitioner, as defined in chapters 36-4, 36-4A, and 36-9A, respectively,
 15 which order shall be in writing and for a definite period. ~~Any~~ Any violation of this section
 16 constitutes a felony pursuant to the following schedule:

- 17 (1) Possession of any alcoholic ~~beverages~~ beverage or marijuana is a Class 6 felony;
- 18 (2) Possession of any prescription or nonprescription ~~drugs~~ drug or controlled ~~substances~~
 19 substance is a Class 4 felony;
- 20 (3) Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

21 Section 8. That § 24-2-15 be amended to read as follows:

22 24-2-15. ~~Any~~ If any inmate, convicted under the laws of this state, ~~who, by~~ has demonstrated
 23 continued exceptional good behavior, or is in failing health, or for some other good and
 24 sufficient reason in the interest of justice ~~may be compensated therefor in the discretion of~~, the

1 Governor, upon the recommendation of the secretary of corrections ~~by diminishing his period~~
2 ~~of confinement,~~ may diminish the inmate's period of confinement.

3 Section 9. That § 24-2-17 be amended to read as follows:

4 24-2-17. The warden of the penitentiary shall keep a true record of the conduct of each
5 inmate, ~~specifying therein~~ and shall specify each infraction of the rules of discipline. Each
6 inmate shall be notified of every entry on ~~his~~ the inmate's record of each such infraction of the
7 rules of discipline and shall have thirty days to challenge the validity of the entry or the
8 disciplinary sanction imposed by notifying the warden ~~thereof to that effect.~~ After investigation,
9 the warden may remove the entry or modify the imposed disciplinary sanction. Such record shall
10 be used whenever the question of any inmate's eligibility for parole or discharge ~~shall arise~~
11 ~~under and by virtue of~~ arises pursuant to § 24-5-1.

12 Section 10. That § 24-2-18 be amended to read as follows:

13 24-2-18. The warden may, at any time prior to an inmate's final discharge, consider
14 recommendations of the disciplinary committee pertaining to the withholding of statutory time
15 granted for good conduct and may recommend to the secretary of corrections that the reduction
16 of time for good conduct ~~under and by virtue of~~ pursuant to § 24-5-1 be withheld in full or in
17 part. The warden may also, at any time prior to the inmate's final discharge, recommend to the
18 secretary of corrections that the reduction of time for good conduct ~~under~~ pursuant to § 24-5-1
19 be withheld in full or in part for conduct evincing an intent to reoffend or commit further
20 offenses when discharged or for any person convicted of a sex crime within the meaning of
21 § 22-22-30 who fails to fully cooperate with all treatment offered.

22 The secretary shall, after hearing, fix the amount of time earned by good conduct to be
23 withheld. ~~The, which~~ decision of the secretary is final.

24 Section 11. That § 24-2-20 be amended to read as follows:

1 24-2-20. Notwithstanding the provisions of § 24-1-26, ~~the records and any other facts that~~
2 ~~may have come to the knowledge of the warden and the warden's opinion,~~ when requested,
3 regarding the fitness of any inmate, sentenced as an adult, for a modification of sentence, parole,
4 pardon, or early release ~~shall be furnished only,~~ the warden shall furnish only to the sentencing
5 court, the secretary of corrections, the Board of Pardons and Parole, or the Governor,
6 respectively, any requested record, fact, or opinion in the warden's possession or knowledge.
7 The Department of Corrections may release the following information on any inmate or parolee
8 sentenced as an adult for purposes of community and victim notification pursuant to
9 subdivisions 23A-28C-1(10) and (12), §§ 23A-28C-5, 24-15-8.1, 24-15-8.2, and 24-15A-22,
10 and to other governmental entities as defined in § 24-2-20.1:

- 11 (1) Name and any known aliases;
- 12 (2) Date of birth;
- 13 (3) Race and gender;
- 14 (4) Location of incarceration;
- 15 (5) Community of residence;
- 16 (6) Custody status and conditions of supervision;
- 17 (7) Any Department of Corrections sentence identification number;
- 18 (8) Any crime of conviction;
- 19 (9) Number of felony convictions;
- 20 (10) Sentence, time suspended, jail time credit, and revoked good-time credits;
- 21 (11) Offense, sentence, admission, release, and parole eligibility dates;
- 22 (12) Dates of pending hearings and final determinations of parole, suspended sentence,
23 pardon, and commutation hearings;
- 24 (13) Status as an inmate, parolee, or person who has completed a prison term;

1 (14) County of conviction;

2 (15) Plea;

3 (16) Citizenship status; and

4 (17) Birth town, state, and country.

5 Section 12. That § 24-2-20.1 be amended to read as follows:

6 24-2-20.1. As used in § 24-2-20, the term, governmental entities, means any department,
7 division, or other public agency of ~~a municipality~~ any municipal, county, state, or ~~nation~~
8 national government.

9 Section 13. That § 24-2-22 be amended to read as follows:

10 24-2-22. Any employee or other person who delivers or procures to be delivered, or ~~shall~~
11 ~~have in his possession~~ possesses with the intention to deliver, to any inmate in the state
12 penitentiary, or deposits or conceals in or around any facility or place used to house inmates, or
13 in any mode of transport entering upon the grounds of any facility or place and its ancillary
14 facilities used to house inmates, any article ~~or thing whatever contrary~~ which is unlawful for an
15 inmate to possess pursuant to state law or the rules of the Department of Corrections with the
16 intent that any inmate ~~shall~~ obtain or receive ~~the same~~ such article, is guilty of a Class 6 felony.

17 Section 14. That § 24-2-25 be amended to read as follows:

18 24-2-25. The warden of the state penitentiary may extend the limits of the place of
19 confinement of an inmate, ~~who he~~ if the warden has reasonable cause to believe that the inmate
20 will honor ~~his trust by authorizing him under~~ the warden's prescribed conditions to visit or be
21 housed in specifically designated places within the state.

22 Section 15. That § 24-2-26 be amended to read as follows:

23 24-2-26. ~~Any article or item which is not specifically authorized by law or by the~~ The
24 ~~warden and in the personal possession or effects of any inmate shall be confiscated and disposed~~

1 may confiscate and dispose of, in the manner as in the opinion of the secretary of corrections
2 will best promote the interest of the state, any article in the personal possession of any inmate
3 which is unlawful for an inmate to possess pursuant to state law or the rules of the Department
4 of Corrections. ~~Unauthorized~~ Any unauthorized money which ~~has been~~ is confiscated shall be
5 deposited in the state general fund.

6 Section 16. That § 24-2-27 be amended to read as follows:

7 24-2-27. The Department of Corrections may establish and maintain facilities, programs,
8 or services outside the precincts of the penitentiary proper and contract with other governmental
9 entities for the care and maintenance of inmates committed to the penitentiary. However, the
10 court may not order that an inmate be housed in any particular facility nor may the court order
11 that an inmate be placed in a specific program or receive specific services. No inmate has any
12 implied right or expectation to be housed in any particular facility, participate in any specific
13 program, or receive any specific service, and ~~all inmates are~~ each inmate is subject to transfer
14 from any one facility, program, or service at the discretion of the warden of the penitentiary. ~~An~~
15 Any escape from the penitentiary or from a facility, program, or service maintained outside the
16 penitentiary is ~~considered~~ a violation of § 22-11A-2. Venue for a prosecution for an escape from
17 any facility ~~shall be in~~ is the county where the acts constituting the escape take place, ~~unless~~
18 ~~otherwise provided by law.~~

19 Section 17. That § 24-2-28 be amended to read as follows:

20 24-2-28. ~~An~~ Each inmate under the jurisdiction of the Department of Corrections is liable
21 for the cost of the inmate's confinement which includes: room and board charges; medical,
22 dental, optometric, and psychiatric services charges; vocational education training; and
23 alcoholism treatment charges.

24 ~~Consideration may be given the following factors:~~ However, if the secretary of corrections

1 determines after considering the net income, net worth, number of dependents, and any existing
2 obligations. ~~If the secretary of corrections determines~~ of the inmate, that the inmate is unable
3 to pay, the secretary may waive all or part of the payment for the costs of the inmate's
4 confinement.

5 Section 18. That § 24-2-29 be amended to read as follows:

6 24-2-29. ~~An~~ Each inmate is liable for ~~court-ordered~~ court-ordered fines, costs, fees,
7 sanctions, and restitution and any obligation incurred while under the jurisdiction of the
8 Department of Corrections including those provided for in §§ 24-2-28, 24-7-3, 24-8-9,
9 24-11A-19, 24-15-11, 24-15A-24, and 23A-35B-4 and any other charge owed to the state.
10 Disbursement shall be made from an inmate's institutional account to defray the inmate's
11 obligation, regardless of the source of the inmate's funds, including moneys in the inmate's
12 institutional account pursuant to § 24-2-5 and wages earned by the inmate pursuant to §§ 24-4-9,
13 24-7-3(3), 24-7-6, 24-8-8, and 24-11A-20.

14 Section 19. That § 24-2-30 be amended to read as follows:

15 24-2-30. It is ~~hereby declared to be a~~ the policy of the State of South Dakota that each
16 inmate of a Department of Corrections facility shall be employed or work in some productive
17 capacity ~~provided~~ if there is a suitable work situation. ~~An~~ Any inmate may be required to work
18 without compensation as a condition of confinement.

19 Section 20. That § 24-4-8 be amended to read as follows:

20 24-4-8. Any person who has ~~been given~~ custody of an inmate pursuant to § 24-4-7 shall
21 immediately report the unauthorized absence of any inmate and shall promptly return any inmate
22 to the custody of the warden if ordered to do so.

23 Section 21. That § 24-5-1 be amended to read as follows:

24 24-5-1. Every inmate sentenced for any term less than life, or who has had an indeterminate

1 sentence set at a term of years, or who has had a life sentence commuted to a term of years, and
2 subject to the provisions of §§ 24-2-17 and 24-2-18, is entitled to a deduction of four months
3 from his or her sentence for each year and pro rata for any part of a year for the first year to the
4 tenth, and six months for the tenth year and for each year thereafter until the expiration of the
5 period of the sentence as pronounced by the court, for good conduct.

6 Section 22. That § 24-5-2 be amended to read as follows:

7 24-5-2. Whenever any inmate has been discharged under the provisions of § 24-5-1, ~~he~~ the
8 inmate shall at the time of ~~his~~ discharge be considered as restored to the full rights of
9 citizenship. At the time of the discharge of any inmate under the provisions of this chapter, ~~he~~
10 the inmate shall receive from the secretary of corrections a certificate stating that ~~he~~ the inmate
11 has been restored to the full rights of a citizen. If an inmate is on parole at the time ~~he~~ the inmate
12 becomes eligible for discharge, the secretary of corrections shall issue a like certificate, ~~which~~
13 ~~shall be due notice that such~~ stating that the inmate has been restored to the full rights of a
14 citizen.

15 The secretary of corrections shall mail a copy of the certificate to the clerk of court for the
16 county from which the inmate was sentenced.

17 Section 23. That § 24-5-3 be amended to read as follows:

18 24-5-3. Every inmate, when discharged from the penitentiary, whether by parole, suspended
19 sentence, or final discharge, shall be provided with suitable clothing, a sum of money to be
20 determined by the secretary of corrections, and transportation to the place where the inmate
21 received sentence. Any inmate who has received such money and transportation, and who is
22 returned to the penitentiary upon revocation of ~~his~~ parole or suspended sentence, is not eligible
23 to receive such payment or transportation upon final discharge.

24 Section 24. That § 24-5-7 be amended to read as follows:

1 24-5-7. Upon recommendation of the supervising agent, the Board of Pardons and Paroles
2 may grant an early final discharge from supervision for a parolee or person serving a suspended
3 sentence under supervision of the board if the board is satisfied that an early final discharge
4 would be in the best interests of society and the inmate. At the time of early final discharge from
5 supervision, the secretary of corrections shall issue a certificate of discharge pursuant to
6 § 24-5-2. ~~An~~ No inmate is ~~not~~ entitled to an early final discharge. Neither this section nor its
7 application may be the basis for establishing a constitutionally protected liberty, property, or due
8 process interest in any inmate.

9 Section 25. That § 24-6A-1 be amended to read as follows:

10 24-6A-1. The ~~Springfield Correctional Facility~~ Mike Durfee State Prison, located at
11 Springfield in Bon Homme County, is under the control of the Department of Corrections. The
12 secretary of corrections shall appoint and set a salary for the warden of the facility. The warden
13 of the ~~Springfield Correctional Facility~~ Mike Durfee State Prison, under the supervision of the
14 secretary, shall have charge and custody of the facility, with all lands, buildings, furniture, tools,
15 equipment, implements, stock, and provisions, and all other property pertaining thereto or within
16 the precincts thereof. All officers and employees of the ~~Springfield Correctional Facility~~ Mike
17 Durfee State Prison shall perform duties as may be required of them by the warden of the
18 facility.

19 Section 26. That § 24-6A-2 be repealed.

20 ~~24-6A-2. The Department of Corrections, established pursuant to chapter 1-15, as previously~~
21 ~~enacted, may provide for architectural services, engineering services, or other planning for the~~
22 ~~construction of a housing unit for female inmates at the Springfield Correctional Facility.~~

23 Section 27. That § 24-6A-3 be repealed.

24 ~~24-6A-3. The Department of Corrections may accept and expend for the purposes of~~

1 ~~§§ 24-6A-2 to 24-6A-4, inclusive, any funds which it may obtain from federal sources, gifts,~~
 2 ~~contributions, or any other source, provided such acceptance and expenditure is approved in~~
 3 ~~accordance with § 4-8B-10.~~

4 Section 28. That § 24-6A-4 be repealed.

5 ~~— 24-6A-4. The design and construction of this project shall be under the general charge and~~
 6 ~~supervision of the Bureau of Administration as provided in § 5-14-2. The funds obtained in~~
 7 ~~§ 24-6A-3 shall be paid on warrants drawn by the state auditor on vouchers approved by the~~
 8 ~~state engineer and the secretary of the Department of Corrections.~~

9 Section 29. That § 24-6A-5 be repealed.

10 ~~— 24-6A-5. Pursuant to the provisions of § 5-12-46, the Legislature hereby authorizes the sale~~
 11 ~~and lease-back of the Springfield Correctional Facility by the South Dakota Building Authority~~
 12 ~~as described in §§ 5-12-42 and 5-12-43.~~

13 Section 30. That § 24-7-1 be amended to read as follows:

14 24-7-1. The South Dakota State Prison Industries ~~shall constitute~~ constitutes the operating
 15 organization for all of the industries now established at the state penitentiary, including the
 16 license plate plant, furniture shop, bookbindery, and sign shop, ~~and farm operations~~. The same
 17 prison industries shall also embrace ~~all such~~ any new industries ~~as may be~~ industry that is
 18 established by the Department of Corrections at the state penitentiary or any other facilities
 19 facility for the employment of inmate labor.

20 Section 31. That § 24-7-18 be amended to read as follows:

21 24-7-18. In the collection of past-due accounts of the prison industries, the attorney general
 22 may institute probate proceedings as a creditor of any deceased person or institute other court
 23 actions to collect ~~same~~ the past-due account, enter into any stipulation or agreement to
 24 compromise or settle ~~same~~ the past-due account, whether paid in full or not, if, in ~~his~~ the

1 attorney general's judgment, it is for the best interests of the state to do so, and make any such
2 settlement or compromise and execute any release, partial release, discharge, satisfaction, or
3 partial satisfaction of any lien if necessary to the settlement of the account. However, before
4 making such settlement, ~~he~~ the attorney general shall secure the approval of the secretary of
5 corrections to ~~same~~ the settlement.

6 Section 32. That § 24-7-19 be amended to read as follows:

7 24-7-19. The attorney general may employ such special assistant attorney or collector as ~~he~~
8 ~~may deem~~ may be necessary to collect any delinquent accounts of the prison industries and to
9 pay ~~him~~ such special assistant attorney or collector on a salary, fee, or contingent fee basis as
10 ~~he the attorney general~~ may deem best ~~and determine; all.~~ All of such expense, including filing
11 fees, sheriff's fees, court costs, traveling, expenses, and other necessary expenses of collection
12 ~~to~~ shall be paid out of the sums collected, or out of the prison industries revolving fund on
13 itemized claims approved by the attorney general and the secretary of corrections; but the
14 amount expended for such purposes from the prison industries funds may not exceed the sum
15 of five hundred dollars.

16 Section 33. That § 24-7-32 be amended to read as follows:

17 24-7-32. All state departments shall buy license plates and licensing decals from the prison
18 industries ~~as it may be~~ if the prison industries are able to furnish such license plates and
19 licensing decals. The prison industries shall furnish ~~the same~~ such license plates and licensing
20 decals at the actual cost of production, plus fifteen percent.

21 Section 34. That § 24-7-33 be amended to read as follows:

22 24-7-33. ~~The state departments~~ Any state department contracting for any of the products
23 ~~herein~~ provided for by prison industries shall pay for such goods as provided by law, ~~and all.~~
24 All money received for the manufacturing of products ~~as herein provided~~ shall be deposited to

1 the credit of the revolving fund provided for in this chapter.

2 Section 35. That § 24-8-1 be amended to read as follows:

3 24-8-1. The Department of Corrections may conditionally release selected inmates and may
4 extend the limits of the place of confinement of such inmates of the state penitentiary. If the
5 warden determines that the character and attitude of an inmate reasonably indicate that ~~he~~ the
6 inmate may be so trusted, the warden may release and provide for continued supervision of such
7 an inmate to work at paid employment, to seek employment, or to participate in vocational
8 training or other educational programs in the community after such employment or program has
9 been investigated and approved pursuant to rules promulgated by the Department of
10 Corrections. The warden ~~at his discretion~~ may, with or without cause, terminate or suspend any
11 such release.

12 Section 36. That § 24-8-3 be amended to read as follows:

13 24-8-3. ~~An~~ Any inmate released pursuant to § 24-8-1 shall be confined in the institution
14 from which released or some other suitable place of confinement approved by the warden. Such
15 confinement shall be for such periods of time that such inmate is not actually working at his or
16 her employed job, seeking employment, or ~~engaged~~ engaging in a vocational training or other
17 educational program.

18 Section 37. That § 24-8-6 be amended to read as follows:

19 24-8-6. The failure of an inmate to report to or return from planned employment, the seeking
20 of employment, or vocational training ~~shall be considered as an~~ constitutes escape, and such
21 inmate shall be ~~tried~~ charged therefor.

22 Section 38. That § 24-8-9 be amended to read as follows:

23 24-8-9. The warden shall place all earnings in the inmate's account and make disbursements
24 therefrom in the priority set forth below:

- 1 (1) The board and room charges of the inmate;
- 2 (2) Necessary travel expenses and other incidental expenses of the inmate related to ~~his~~
3 the inmate's release program;
- 4 (3) ~~Assist in the support~~ Support of the inmate's legal dependents;
- 5 (4) Payments on fines and restitution;
- 6 (5) ~~The inmate shall have the discretion of directing payments to be made upon proper~~
7 proof Payments of personal debts and obligations upon proper proof and at the
8 discretion of the inmate;
- 9 (6) The balance, if any, to be retained in the inmate's account and paid to the inmate
10 upon parole or discharge.

11 Section 39. That § 24-8-9.1 be amended to read as follows:

12 24-8-9.1. No ~~prisoner~~ inmate engaged in work-release activities may drive or operate a
13 motor vehicle unless ~~he~~ the inmate has established to the satisfaction of the sheriff or warden
14 that ~~he~~ the inmate is in compliance with § 32-35-113.

15 Section 40. That § 24-8-10 be amended to read as follows:

16 24-8-10. The earnings of inmates under this chapter ~~shall~~ are not ~~be~~ subject to garnishment,
17 attachment, or execution either in the hands of the employer or an agent authorized to hold or
18 transmit such moneys.

19 Section 41. That § 24-13-4 be amended to read as follows:

20 24-13-4. At the first meeting in each year, the board shall select one of its members as
21 ~~chairman~~ chair. The board shall meet at the times and places prescribed by its rules and
22 whenever called together by the ~~chairman~~ chair.

23 Section 42. That § 24-13-4.2 be amended to read as follows:

24 24-13-4.2. The ~~chairman~~ chair of the board may designate individual parole board members

1 as hearing officers who may conduct hearings, hear applications, take testimony, and make
2 recommendations to the board regarding the granting, denial, revocation, rescission, or an
3 administrative continuance of a parole. The recommendation shall be in writing and reviewed
4 by the board or a panel of the board who may adopt, modify, or reject the recommendations.

5 Section 43. That § 24-13-4.3 be amended to read as follows:

6 24-13-4.3. The ~~chairman~~ chair of the board may designate panels of two or more board
7 members to conduct hearings, hear applications, take testimony, and take final action regarding
8 the granting, denial, revocation, rescission, or an administrative continuance of a parole.

9 Section 44. That § 24-13-4.4 be amended to read as follows:

10 24-13-4.4. The decisions made by a panel of two or more board members are not appealable
11 to the Board of Pardons and Paroles. Panels as designated by the ~~chairman~~ chair shall exercise
12 the same authority and assume the same responsibilities as the full Board of Pardons and Paroles
13 in those actions that panels are authorized to take pursuant to § 24-13-4.3.

14 Section 45. That § 24-13-4.6 be amended to read as follows:

15 24-13-4.6. No recommendation for the commutation of a sentence or for a pardon ~~other than~~
16 including an exceptional pardon authorized by § 24-14-8, may be made by less than the majority
17 vote of all members of the Board of Pardons and Paroles.

18 Section 46. That § 24-13-7 be amended to read as follows:

19 24-13-7. Pursuant to chapter 1-26, the Board of Pardons and Paroles may promulgate
20 procedural rules for the effective enforcement of chapters 24-13 to 24-15, inclusive, and for the
21 exercise of powers and duties conferred upon it. Additionally, the Board of Pardons and Paroles
22 may utilize the following standards in granting or denying paroles or in assisting inmates in an
23 assessment of their rehabilitation needs:

24 (1) The inmate's personal and family history;

- 1 (2) The inmate's attitude, character, capabilities, and habits;
- 2 (3) The nature and circumstances of the inmate's offense;
- 3 (4) The number, nature, and circumstances of the inmate's prior offenses;
- 4 (5) The successful completion or revocation of previous probation or parole granted to
- 5 the inmate;
- 6 (6) The inmate's conduct in the institution, including efforts directed towards
- 7 self-improvement;
- 8 (7) The inmate's understanding of his or her own problems and ~~his~~ the willingness to
- 9 work towards overcoming them;
- 10 (8) The inmate's total personality as it reflects on the possibility that ~~he~~ the inmate will
- 11 lead a law-abiding life without harm to society;
- 12 (9) The inmate's family and marital circumstances and the willingness of the family and
- 13 others to help the inmate upon release on parole from the institution;
- 14 (10) The soundness of the parole program and whether it will promote the rehabilitation
- 15 of the inmate;
- 16 (11) The inmate's specific employment and plans for further formal education or training;
- 17 (12) The inmate's plan for additional treatment and rehabilitation while on parole;
- 18 (13) The effect of the inmate's release on the community;
- 19 (14) The effect of the inmate's release on the administration of justice; and
- 20 (15) The effect of the inmate's release on the victims of crimes committed by the inmate.

21 Neither this section or its application may be the basis for establishing a constitutionally
22 protected liberty, property, or due process interest in any prisoner.

23 Section 47. That § 24-14-1 be amended to read as follows:

24 24-14-1. The Governor may, by executive order, delegate to the Board of Pardons and

1 Paroles the authority to hear applications for pardon, commutation, reprieve, or remission of
2 fines and forfeitures, and to make its recommendations to ~~him~~ the Governor.

3 Section 48. That § 24-14-2 be amended to read as follows:

4 24-14-2. The term "clemency" means either a pardon, commutation, reprieve, or remission
5 of a fine or forfeiture.

6 Section 49. That § 24-14-3 be amended to read as follows:

7 24-14-3. The applicant shall, upon notice of hearing from the board for clemency
8 consideration, serve the attorney who prosecuted the person applying for clemency, or ~~his~~ the
9 attorney's successor in office, a notice of the hearing ~~thereon~~, at least fifteen days before it
10 considers the application.

11 Section 50. That § 24-14-5 be amended to read as follows:

12 24-14-5. The Governor may submit an application for clemency to the Board of Pardons and
13 Paroles for its recommendation. The Governor may, by executive order, delegate to the board
14 the authority to consider applications for clemency and make recommendations to ~~him~~ the
15 Governor. The Governor is not bound to follow a any recommendation returned by the board.

16 Section 51. That § 24-15-1 be amended to read as follows:

17 24-15-1. If a defendant is sentenced to the state penitentiary, the Department of Corrections
18 shall develop a file which shall contain a complete history of ~~the defendant~~ that person. The
19 executive director of the Board of Pardons and Paroles shall generate an adequate case history
20 of each inmate of the state penitentiary to enable ~~him~~ the executive director to make
21 recommendations to the Board of Pardons and Paroles. The case history shall be transferred and
22 kept as a permanent record of the Department of Corrections, solely for the proper supervision
23 of the inmate by the Department of Corrections and as a guide to ~~his~~ the inmate's needs. Except
24 for the information authorized for release pursuant to § 24-2-20, ~~such file shall not be inspected~~

1 ~~by anyone~~ no person other than members of the Board of Pardons and Paroles, its executive
2 director, the secretary of corrections ~~and~~, or any person specifically delegated for such access
3 by the secretary of corrections, may inspect such file unless otherwise ordered by a circuit court.

4 Section 52. That § 24-15-1.1 be amended to read as follows:

5 24-15-1.1. Parole is the discretionary conditional release of an inmate from actual
6 penitentiary custody before the expiration of ~~his~~ the inmate's term of imprisonment. The
7 prisoner remains an inmate under the legal custody of the Department of Corrections until the
8 expiration of ~~his~~ the inmate's term of imprisonment. A prisoner is not required to accept a
9 conditional parole. A prisoner is never entitled to parole. However, parole may be granted if in
10 the judgment of the Board of Pardons and Paroles granting a parole would be in the best
11 interests of society and the prisoner.

12 Neither this section or its application may be the basis for establishing a constitutionally
13 protected liberty, property, or due process interest in any prisoner.

14 Section 53. That § 24-15-2 be amended to read as follows:

15 24-15-2. The executive director of the Board of Pardons and Paroles in preparing each case
16 history shall:

- 17 (1) Adopt and implement a procedure by which a report shall be completed to contain
18 the life history of each inmate;
- 19 (2) Receive from the Department of Corrections a copy of the true record of each inmate
20 which specifies each infraction of rules and the disciplinary action taken; and
- 21 (3) Enlist the services of any sheriff, state's attorney, circuit judge, or other officer who
22 may have knowledge concerning each inmate, or circumstances surrounding the
23 commission of the crime for which ~~he~~ the inmate was sentenced, or ~~his~~ the inmate's
24 previous history.

1 Section 54. That § 24-15-3 be amended to read as follows:

2 24-15-3. ~~If~~ Whenever any person becomes an inmate of the penitentiary, the director shall
3 immediately establish in the record the date when the inmate will be eligible for consideration
4 for parole. Such consideration for a parole eligibility date ~~shall be~~ is subject to change upon
5 receipt of information regarding a change in the number of prior felony convictions or any
6 subsequent felony convictions. Any inmate who is aggrieved by the established parole
7 consideration eligibility date may apply for a hearing before the Board of Pardons and Paroles
8 for a final determination of the true and correct parole consideration eligibility date. Between
9 the date a person becomes an inmate of the penitentiary and the date on which such person
10 becomes eligible for consideration for parole, the director shall complete the history of the
11 inmate and shall study the life, habits, previous environment, and nature of the inmate to
12 determine the advisability of recommending ~~him~~ the inmate for parole when ~~he~~ the inmate
13 becomes eligible to be considered. At least ten days before the date of eligibility the director
14 shall submit to the board the findings regarding the inmate.

15 If the victim of the inmate's crime requests in writing to be notified by the Board of Pardons
16 and Parole when the inmate will be eligible for consideration for parole, the director shall send
17 a notice at least ten days before the date of eligibility, of the inmate's parole consideration
18 eligibility by first class mail to the address provided by the victim. The notice shall provide the
19 inmate's parole consideration eligibility date; and the parole hearing date, and ~~it~~ the board shall
20 advise the victim that he or she may be present at the hearing and may state his or her opinion
21 regarding the possible parole of the inmate.

22 Section 55. That § 24-15-4 be amended to read as follows:

23 24-15-4. ~~A person~~ No inmate sentenced to life imprisonment is ~~not~~ eligible for parole by the
24 Board of Pardons and Paroles.

1 Section 56. That § 24-15-5 be amended to read as follows:

2 24-15-5. ~~A person~~ An inmate is eligible for parole, subject to § 24-15-4, after deducting
3 from ~~his~~ the inmate's sentence the statutory time granted for good conduct pursuant to § 24-5-1:

4 (1) If convicted of a felony for the first time, when ~~he~~ the inmate has served one-fourth
5 of the time remaining;

6 (2) If convicted of a felony for the second time, when ~~he~~ the inmate has served
7 three-eighths of the time remaining; or

8 (3) If convicted of a felony three or more times, when ~~he~~ the inmate has served one-half
9 of the time remaining.

10 Section 57. That § 24-15-8.1 be amended to read as follows:

11 24-15-8.1. The victim may request in writing to be notified by the Board of Pardons and
12 Parole when an inmate who was convicted of committing the crime is granted parole, the
13 inmate's parole is revoked, an offender is granted a clemency hearing, or clemency is
14 recommended. The board shall send the notice by first class mail to the address provided by the
15 victim. However, the board is not liable for any damages to the victim if ~~it~~ the board fails to
16 mail the notice.

17 Section 58. That § 24-15-8.2 be amended to read as follows:

18 24-15-8.2. The victim or the sentencing judge may request in writing to be notified by the
19 Department of Corrections if the inmate who was convicted of committing the crime escapes
20 or is released from the penitentiary, or placed on regularly scheduled furlough or work release
21 pursuant to chapter 24-2, 24-4, or 24-5, or is returned from escape or removed from work
22 release. The Department of Corrections may either telephone the victim or the sentencing judge
23 or send the notice by first class mail to the address provided by the victim or the sentencing
24 judge. However, the Department of Corrections is not liable for any damages to the victim or

1 the sentencing judge if ~~it~~ the board fails either to notify the victim or the sentencing judge by
2 telephone or to mail the notice.

3 Section 59. That § 24-15-10 be amended to read as follows:

4 24-15-10. If ~~his~~ an inmate's application for parole is denied, ~~an~~ the inmate may not again
5 present ~~his~~ an application before the board for a period of eight months. A continuance of an
6 application for parole ~~shall~~ is not ~~be considered~~ a denial. An application for clemency may not
7 be heard for one year after the date of the judgment. If an application for clemency is denied,
8 an inmate may not again present an application for clemency for a period of one year.

9 Section 60. That § 24-15-12 be amended to read as follows:

10 24-15-12. When the Board of Pardons and Paroles grants a parole to an inmate, the
11 Department of Corrections shall provide the parolee, if ~~he is~~ not already provided for, with
12 necessary clothing not exceeding a cost of one hundred dollars, with necessary traveling
13 expenses not exceeding fifty dollars, and with transportation to the county of commitment or
14 an equivalent distance.

15 Section 61. That § 24-15-13 be amended to read as follows:

16 24-15-13. ~~Parolees~~ Each parolee shall at all times be considered confined, in the legal
17 custody of the Department of Corrections, and shall remain under conviction for the crime for
18 which ~~they were~~ the parolee was convicted and sentenced.

19 Section 62. That § 24-15-15 be amended to read as follows:

20 24-15-15. The Board of Pardons and Paroles; may, ~~in its~~ the board's discretion, permit a
21 parolee to leave this state and go to any other state, if satisfied that suitable employment or
22 beneficial occupation of the parolee's time has been secured in the other state where ~~he~~ the
23 parolee will be free from criminal influences, and that a parole agency or department of the
24 other state will undertake supervision of the parolee within the other state in conformity with

1 the laws of South Dakota relating to parolees. The parolee ~~shall be~~ is subject to all the laws of
2 South Dakota relating to parolees, in the same manner and to the same extent as if ~~he~~ the parolee
3 had not been permitted to leave this state.

4 Section 63. That § 24-15-16 be amended to read as follows:

5 24-15-16. Nothing in this chapter ~~shall affect~~ affects the authority of the Governor to enter
6 into compacts with other states, through their duly constituted authorities, for reciprocal
7 supervision of persons placed on probation or released on parole and for the reciprocal return
8 of such persons to the contracting states for violation of the terms of their parole or probation.

9 Section 64. That § 24-15-20 be amended to read as follows:

10 24-15-20. The executive director of the Board of Pardons and Paroles may issue an order
11 to show cause why parole should not be revoked whenever ~~he~~ the executive director or the
12 board is satisfied that:

- 13 (1) A parolee is violating or has violated the regulations or restrictions ~~that are~~ placed
14 upon ~~him~~ the parolee by the board;
- 15 (2) A parolee has failed to report ~~himself~~ to his or her assigned parole agent;
- 16 (3) A parolee has failed to answer inquiries made by a parole agent; or
- 17 (4) The purposes or objects of parole are not being served.

18 Section 65. That § 24-15-24 be amended to read as follows:

19 24-15-24. If the Board of Pardons and Paroles is satisfied that any provision of § 24-15-20
20 has been violated, it may revoke the parole and reinstate the terms of the original sentence and
21 conviction or it may modify conditions of parole and restore parole status. In addition, the board
22 ~~is authorized to~~ may order the reduction of time in full or in part for good conduct granted under
23 § 24-5-1. If the board does not find that the provisions of § 24-15-20 have been violated, it the
24 board may restore the parolee to the original or modified terms and conditions of ~~his~~ parole.

1 Section 66. That § 24-15-29 be amended to read as follows:

2 24-15-29. In order to obtain reimbursement pursuant to § 24-15-28, the ~~chairman~~ chair of
3 the board of county commissioners of the county shall present a claim on a voucher to be
4 approved by the secretary of corrections for detention expenses paid by the county, not to exceed
5 ~~forty~~ fifty dollars per day. When the voucher is presented to the state auditor, the state auditor
6 shall examine it and if the claim is just and valid, the state auditor shall issue a warrant for
7 payment to be made from funds appropriated for that purpose, and the state treasurer shall then
8 pay the sum to the treasurer of the county.

9 Section 67. That § 24-15A-9 be amended to read as follows:

10 24-15A-9. The ~~chairman~~ chair of the board may designate individual parole board members
11 as hearing officers who may conduct hearings pursuant to this chapter and chapters 24-13 and
12 24-15, take testimony, and make recommendations to the board regarding the granting, denial,
13 revocation, or rescission of a parole. The recommendation shall be in writing and reviewed by
14 the board or a panel of the board who may adopt, modify, or reject the recommendations.

15 Section 68. That § 24-15A-10 be amended to read as follows:

16 24-15A-10. The ~~chairman~~ chair of the board may designate panels of two or more board
17 members to conduct hearings pursuant to this chapter and chapters 24-13 and 24-15, take
18 testimony, and take final action regarding the granting, denial, revocation, or rescission of a
19 parole.

20 Section 69. That § 24-15A-14 be amended to read as follows:

21 24-15A-14. If a defendant is sentenced to prison, the department shall develop a file which
22 shall contain a complete history of ~~the defendant~~ that person. Except for the information
23 authorized for release pursuant to § 24-2-20, the record shall be a permanent record of the
24 department, solely for the proper supervision of the inmate by the department and as a guide to

1 the inmate's needs. ~~The file may not be inspected by anyone~~ No person other than members of
2 the board, its executive director, the secretary, and any person specifically delegated for such
3 access by the secretary, may inspect the file unless otherwise ordered by a circuit court.

4 Section 70. That § 24-15A-28 be amended to read as follows:

5 24-15A-28. If the board is satisfied that any provision of § 24-15A-27 has been violated, it
6 may revoke the parole and reinstate the terms of the original sentence and conviction or it may
7 modify conditions of parole and restore parole status. In addition, the board may order the denial
8 of credit for time served on parole. If the board does not find that the provisions of § 24-15A-27
9 have been violated, it the board may restore the parolee to the original or modified terms and
10 conditions of the parolee's parole.

11 Section 71. That § 24-15A-32 be amended to read as follows:

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

1 vehicle as defined in § 22-14-21, and criminal pedophilia as defined in § 22-22-30.1:

2 Felony Convictions

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

23 Each inmate shall serve at least sixty days prior to parole release. ~~Inmates with life sentences~~
 24 ~~are not~~ No inmate with a life sentence is eligible for parole. An initial parole date through the
 25 application of this grid may be applied to a life sentence only after the sentence is commuted
 26 to a term of years. A Class A or B felony commuted to a number of years shall be applied to the
 27 Class 1 violent column of the grid.

28 Section 72. That § 26-11A-1.1 be repealed.

29 ~~—26-11A-1.1. The Department of Corrections may establish and operate a program in Custer~~
 30 ~~County, for the rehabilitation of selected adjudicated female juveniles. The program is named~~

1 ~~the Lamont Youth Development Center.~~

2 Section 73. That § 26-11A-1.3 be repealed.

3 ~~—26-11A-1.3. The Department of Corrections may establish and operate two youth forestry~~
4 ~~camps in the Black Hills area of the State of South Dakota for the rehabilitation of selected~~
5 ~~youthful offenders.~~

6 Section 74. That § 1-15-1.4 be amended to read as follows:

7 1-15-1.4. The Department of Corrections, under the direction and control of the secretary
8 of corrections, shall govern the ~~state training school, the youth forestry camps, the Lamont~~
9 ~~Youth Development Center~~ juvenile corrections programs established subject to § 26-11A-1,
10 the state penitentiary, and other state correctional facilities, parole services, the Board of
11 Pardons and Paroles, and such other agencies as may be created by statute, executive order, and
12 administrative action and placed under the Department of Corrections.