

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

400M0643

## HOUSE ENGROSSED NO. **SB 208** - 02/15/2006

Introduced by: The Committee on Judiciary at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to establish and enhance criminal penalties regarding  
2 certain sex offenders.

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

4 Section 1. That § 22-22-1.2 be amended to read as follows:

5 22-22-1.2. If any adult is convicted of any of the following violations, the court shall impose  
6 the following minimum sentences:

7 (1) For a violation of subdivision 22-22-1(1), ~~ten~~ fifteen years for a first offense ~~and~~  
8 ~~twenty years for a subsequent offense~~; and

9 (2) For a violation of § 22-22-7 if the victim is less than thirteen years of age, ~~five~~ ten  
10 years for a first offense ~~and ten years for a subsequent offense~~.

11 Section 2. That § 22-22-1.3 be amended to read as follows:

12 22-22-1.3. Any person convicted of a felony violation as provided in § ~~22-22-1.2~~  
13 subdivisions 22-24B-1(1) to (15), inclusive, and (19) shall have included in the offender's  
14 presentence investigation report ~~an~~ a psycho-sexual assessment including the following  
15 information: the offender's sexual history; an identification of precursor activities to sexual  
16 offending; intellectual, adaptive and academic functioning; social and emotional functioning;



1 previous legal history; previous treatment history; victim selection and age; risk to the  
2 community; and treatment options recommended. If a presentence investigation is not prepared,  
3 the court shall order a psycho-sexual assessment which shall be made available to the court prior  
4 to sentencing. If the offender is sentenced to the state penitentiary, the psycho-sexual assessment  
5 shall be attached to the official statement and supplied to the Board of Pardons and Paroles and  
6 the warden.

7 Section 3. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 If an adult has a previous conviction for a felony sex crime as defined by § 22-24B-1, any  
10 subsequent felony conviction for a sex crime as defined by subdivisions 22-24B-1(1) to (15),  
11 inclusive, and (19) shall result in a minimum sentence of imprisonment equal to the maximum  
12 term allowable under § 22-6-1, up to twenty-five years. The court may suspend a portion of the  
13 prison sentence required under this section.

14 Section 4. That § 22-22-1.4 be amended to read as follows:

15 22-22-1.4. The sentencing court may impose a sentence other than that which is required by  
16 § 22-22-1.2 and section 3 of this Act if the court finds that mitigating circumstances exist which  
17 require a departure from the mandatory sentence imposed by § 22-22-1.2 or section 3 of this  
18 Act. The court's finding of mitigating circumstances and the factual basis relied upon by the  
19 court shall be in writing.

20 Section 5. That § 22-22-7 be amended to read as follows:

21 22-22-7. Any person, sixteen years of age or older, who knowingly engages in sexual contact  
22 with another person, other than that person's spouse if the other person is under the age of  
23 sixteen years is guilty of a Class 3 felony. If the actor is less than three years older than the other  
24 person, the actor is guilty of a Class 1 misdemeanor. If an adult has a previous conviction for

1 a felony violation of this section, any subsequent felony conviction for a violation under this  
2 section, is a Class 2 felony. Notwithstanding § 23A-42-2, a charge brought pursuant to this  
3 section may be commenced at any time before the victim becomes age twenty-five or within  
4 seven years of the commission of the crime, whichever is longer.

5 Section 6. That § 22-24A-3 be amended to read as follows:

6 22-24A-3. A person is guilty of possessing, manufacturing, or distributing child pornography  
7 if the person:

- 8 (1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in the  
9 simulation of such an act;
- 10 (2) Causes or knowingly permits the creation of any visual depiction of a minor engaged  
11 in a prohibited sexual act, or in the simulation of such an act; or
- 12 (3) Knowingly possesses, distributes, or otherwise disseminates any visual depiction of  
13 a minor engaging in a prohibited sexual act, or in the simulation of such an act.

14 Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or  
15 custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

16 A violation of this section is a Class 4 felony. If a person is convicted of a second or  
17 subsequent violation of this section within fifteen years of the prior conviction, the violation is  
18 a Class 3 felony.

19 The court shall order ~~a mental examination~~ an assessment pursuant to § 22-22-1.3 of any  
20 person convicted of violating this section. ~~The examiner shall report to the court whether~~  
21 ~~treatment of the person is indicated.~~

22 Section 7. That § 22-22-24.3 be amended to read as follows:

23 22-22-24.3. A person is guilty of sexual exploitation of a minor if the person causes or  
24 knowingly permits a minor to engage in an activity or the simulation of an activity that:

- 1 (1) Is harmful to minors;
- 2 (2) Involves nudity; or
- 3 (3) Is obscene.

4 Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or  
5 custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

6 A violation of this section is a Class 6 felony. If a person is convicted of a second or  
7 subsequent violation of this section within fifteen years of the prior conviction, the violation a  
8 Class 5 felony.

9 The court shall order ~~a mental examination~~ an assessment pursuant to § 22-22-1.3 of any  
10 person convicted of violating this section. ~~The examiner shall report to the court whether~~  
11 ~~treatment of the person is indicated.~~

12 Section 8. That § 22-24A-5 be amended to read as follows:

13 22-24A-5. A person is guilty of solicitation of a minor if the person eighteen years of age  
14 or older:

- 15 (1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in  
16 a prohibited sexual act; or
- 17 (2) Knowingly compiles or transmits by means of a computer; or prints, publishes or  
18 reproduces by other computerized means; or buys, sells, receives, exchanges or  
19 disseminates, any notice, statement or advertisement of any minor's name, telephone  
20 number, place of residence, physical characteristics or other descriptive or identifying  
21 information for the purpose of soliciting a minor or someone the person reasonably  
22 believes is a minor to engage in a prohibited sexual act.

23 The fact that an undercover operative or law enforcement officer was involved in the  
24 detection and investigation of an offense under this section does not constitute a defense to a

1 prosecution under this section.

2 Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or  
3 custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

4 A violation of this section is a Class 6 felony. If a person is convicted of a second or  
5 subsequent violation of this section within fifteen years of the prior conviction, the violation is  
6 a Class 5 felony.

7 The court shall order ~~a mental examination~~ an assessment pursuant to § 22-22-1.3 of any  
8 person convicted of violating this section. ~~The examiner shall report to the court whether~~  
9 ~~treatment of the person is indicated.~~

10 Section 9. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 If any person is convicted of a sex crime as defined in § 22-24B-1 that is subject to sex  
13 offender registration requirements as defined in §§ 22-24B-2 to 22-24B-14, inclusive, the  
14 prosecuting attorney shall prepare a summary description of the offense and forward this to the  
15 Division of Criminal Investigation for inclusion on the sex offender registry.

16 Any person who, at the time of the effective date of this Act, is subject to sex offender  
17 registration or is subject to sex offender registration as a result of a foreign criminal conviction,  
18 may have a summary description of the offense developed by the Division of Criminal  
19 Investigation and entered on the registry, if the information is available.

20 The term, foreign criminal conviction, as used in this section and section 11 of this Act,  
21 means any conviction issued by a court of competent jurisdiction of another state, federal court,  
22 Indian tribe, the District of Columbia, or a commonwealth, territory, or possession of the United  
23 States which is enforceable as if the order was issued by a court in this state.

24 Nothing in this section allows the release of the name of the victim of the crime to any

1 person other than law enforcement agencies, and the name of the victim is confidential.

2 Section 10. That chapter 22-24B be amended by adding thereto a NEW SECTION to read  
3 as follows:

4 Any person required to register pursuant to §§ 22-24B-1 to 22-24B-14, inclusive, who is  
5 incarcerated or is a juvenile offender committed to the Department of Corrections, shall register  
6 within five days of admission to the correctional facility or commitment to the Department of  
7 Corrections.

8 The Department of Corrections or administering authority of the county or city jail or  
9 juvenile detention center shall submit required sex offender registrations to the Division of  
10 Criminal Investigation.

11 The administering authority of the correctional facility shall notify the Division of Criminal  
12 Investigation if a person required to register changes status from an inmate to parolee or  
13 probationer or if an inmate is transferred to a different address, informing the division of the  
14 date of transfer and address of the new location.

15 Section 11. That chapter 22-24B be amended by adding thereto a NEW SECTION to read  
16 as follows:

17 Any person with a foreign criminal conviction, which requires the person to register either  
18 as a sex offender pursuant to § 22-24B-2, pursuant to the laws of the state where the conviction  
19 took place, or pursuant to any court order, shall be required to register within five days of their  
20 arrival in South Dakota. A violation of this section is a Class 4 felony.

21 Section 12. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as  
22 follows:

23 Any person who knowingly assists, harbors, or conceals a sex offender in eluding law  
24 enforcement or provides false information regarding the residence or whereabouts of a sex

1 offender is guilty of a Class 5 felony.

2 Section 13. That chapter 24-15A be amended by adding thereto a NEW SECTION to read  
3 as follows:

4 Upon recommendation of sex offender treatment program staff and following a review of  
5 the inmate's history, treatment status, risk of re-offense, and psycho-sexual assessment, the  
6 warden may, at any time prior to the inmate's final discharge, recommend to the Board of  
7 Pardons and Paroles that parole eligibility pursuant to § 24-15A-32 be withheld on an inmate  
8 convicted of a felony sex offense as defined in § 22-24B-1.

9 The board may, after a hearing, determine if parole eligibility is to be withheld. The decision  
10 of the board to withhold parole eligibility is final.

11 Section 14. 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 or determined to be ineligible for parole as authorized in section 13 of this Act, shall have an  
15 initial parole date set by the department. This date shall be calculated by applying the percentage  
16 indicated in the following grid to the full term of the inmate's sentence pursuant to § 22-6-1. The  
17 following crimes or an attempt to commit, or a conspiracy to commit, any of the following  
18 crimes shall be considered a violent crime for purposes of setting an initial parole date: murder,  
19 manslaughter, rape, aggravated assault, riot, robbery, burglary in the first or second degree,  
20 arson, kidnapping, felony sexual contact as defined in §§ 22-22-7 and 22-22-19.1, child abuse,  
21 felony sexual contact as defined in § 22-22-7.2, felony stalking as defined in §§ 22-19A-2 and  
22 22-19A-3, photographing a child in an obscene act, felony assault as defined in § 22-18-26,  
23 felony simple assault as defined in § 22-18-1, commission of a felony while armed as defined  
24 in §§ 22-14-12 and 22-14-13.1, discharging a firearm at an occupied structure or motor vehicle

1 as defined in § 22-14-20, discharging a firearm from a moving vehicle as defined in § 22-14-21,  
 2 ~~and~~ criminal pedophilia as defined in § 22-22-30.1, and threatening to commit a sexual offense  
 3 as defined in section 15 of this Act:

Felony Convictions				
Felony Class	First	Second	Third	
Nonviolent				
Class 6	.25	.30	.40	
Class 5	.25	.35	.40	
Class 4	.25	.35	.40	
Class 3	.30	.40	.50	
Class 2	.30	.40	.50	
Class 1	.35	.40	.50	
Violent				
Class 6	.35	.45	.55	
Class 5	.40	.50	.60	
Class 4	.40	.50	.65	
Class 3	.50	.60	.70	
Class 2	.50	.65	.75	
Class 1	.50	.65	.75	
Class B	1.0	1.0	1.0	
Class A	1.0	1.0	1.0	

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

27 Section 15. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person who has been convicted of a felony sex offense as defined in § 22-24B-1 who  
3 directly threatens or communicates specific intent to commit further felony sex offenses is guilty  
4 of threatening to commit a sexual offense. Threatening to commit a sexual offense is a Class 4  
5 felony.

6 Section 16. No law enforcement agency, employee of a law enforcement agency, employee  
7 or official of a state or county agency and any individual contracting or appointed to perform  
8 services under this Act may be civilly liable for good faith conduct under this Act.