

AN ACT

ENTITLED, An Act to abolish the doctrine of abatement ab initio of a criminal proceeding and to provide for the posthumous sentencing of certain criminal defendants.

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

Section 1. That chapter 23A-27 be amended by adding thereto a NEW SECTION to read as follows:

Upon the death of a defendant who has not been sentenced but who has entered a plea of guilty or nolo contendere or has been found guilty at trial, the court shall enter a judgment of conviction pursuant to § 23A-27-4. Any sentence imposed shall be limited to restitution, court costs, and costs of prosecution.

Section 2. That chapter 23A-27 be amended by adding thereto a NEW SECTION to read as follows:

If a defendant dies following the entry of a plea of guilty or nolo contendere or a finding of guilt at trial and the time for taking an appeal has not expired, the court may order substitution of the proper parties for the purpose of an appeal. The personal representative of the defendant's estate may make a motion for substitution, together with a notice of hearing, and shall serve the same on the prosecuting attorney.

Section 3. That chapter 23A-32 be amended by adding thereto a NEW SECTION to read as follows:

The personal representative of a deceased defendant's estate, if substituted as a party pursuant to chapter 23A-27, may commence an appeal on behalf of the defendant subject to the time limits of § 23A-32-15.

Section 4. That chapter 23A-32 be amended by adding thereto a NEW SECTION to read as follows:

The personal representative of a deceased defendant, if substituted as a party, may continue a pending appeal on behalf of the deceased defendant to the extent that the claim is not extinguished by the death. The personal representative of the defendant's estate may make a motion for substitution, together with a notice of hearing, and shall serve the same on the prosecuting attorney and the attorney general within sixty days of the defendant's death. The court may dismiss any appeal of a deceased defendant in which a motion for substitution, together with notice of hearing and proof of service has not been filed with the clerk of the Supreme Court within sixty days of the defendant's death.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1271

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1271
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State