

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

277P0719

HOUSE BILL NO. 1271

Introduced by: Representatives Engels, Cutler, Feinstein, Gillespie, Kirkeby, Lust, Moore, and Willadsen and Senators Albers, Abdallah, Bartling, Gant, Heidepriem, Koetzle, Olson (Ed), Peterson (Jim), and Turbak Berry

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

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

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

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

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

12 If a defendant dies following the entry of a plea of guilty or nolo contendere or a finding of
13 guilt at trial and the time for taking an appeal has not expired, the court may order substitution
14 of the proper parties for the purpose of an appeal. The personal representative of the defendant's



1 estate may make a motion for substitution, together with a notice of hearing, and shall serve the
2 same on the prosecuting attorney.

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

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

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

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