

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

358R0146

SENATE BILL NO. 12

Introduced by: Senators Abdallah and Jerstad and Representatives Gosch, Engels, Gibson,
and Sly at the request of the Interim Sex Offender Registry Committee

1 FOR AN ACT ENTITLED, An Act to provide for a tiered sex offender registry and to establish
2 certain criteria for eligibility to petition for removal or reassignment.

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

4 Section 1. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The sex offender registry shall consist of three tiers as provided for in this Act. Placement
7 in Tier III requires registrants to register throughout their lifetime. Placement in Tier II requires
8 registrants to register for a minimum of twenty-five years. Placement in Tier I requires
9 registrants to register for a minimum of ten years.

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

12 At the time of sentencing, the court shall assign each person convicted of a sex crime, as
13 provided in § 22-24B-1, to a tier classification according to the following schedule:

14 TIER III

15 (1) Rape as set forth in subdivisions 22-22-1(1), (2), (3), or (4);



- 1 (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if
- 2 committed by an adult;
- 3 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- 4 (4) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- 5 (5) Criminal pedophilia as previously set forth in § 22-22-30.1;
- 6 (6) If the victim is a minor:
 - 7 (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-
 - 8 7.6;
 - 9 (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
 - 10 (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;

11 TIER II

- 12 (1) Incest if committed by an adult;
- 13 (2) Possessing, manufacturing, or distributing child pornography as set forth in § 22-
- 14 24A-3;
- 15 (3) Sale of child pornography as set forth in § 22-24A-1;
- 16 (4) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- 17 (5) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- 18 (6) Solicitation of a minor as set forth in § 22-24A-5;
- 19 (7) Intentional exposure to HIV infection as set forth in subdivision 22-18-31(1);

20 TIER I

- 21 (1) Felony indecent exposure as previously set forth in former § 22-24-1 or indecent
- 22 exposure as set forth in § 22-24-1.2;
- 23 (2) Felony indecent exposure as set forth in § 22-24-1.3;
- 24 (3) Bestiality as set forth in § 22-22-42;

1 (4) Statutory rape as set forth in subdivision 22-22-1(5).

2 However, the court, at its discretion, based on a psycho-sexual evaluation or other credible
3 evidence, may assign such person to a higher tier if the court is of the opinion that a higher
4 assignment is appropriate to public safety and the interests of justice.

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

7 Any person who has committed any sex crime pursuant to subdivisions 22-24B-1(15), (16),
8 (17), or (18) shall be deemed to have been assigned to the tier consistent with the elements of
9 the underlying offense. If no equivalent offense exists in South Dakota law, the person shall be
10 deemed to have been assigned to Tier III, but has the right to petition the court, pursuant to § 22-
11 24B-17, for appropriate reassignment.

12 Section 4. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Any person who is on the state sex offender registry on the effective date of this Act shall
15 be deemed to have been assigned to Tier III. However, any such person may petition the court,
16 pursuant to § 22-24B-17, for appropriate reassignment in accordance with the provisions of this
17 Act.

18 Section 5. That § 22-24B-17 be amended to read as follows:

19 22-24B-17. Any person required to register under this chapter who is eligible to seek
20 removal from the registry as provided for in § 22-24B-19 or who is eligible to seek reassignment
21 to a lower tier pursuant to sections 3 or 4 of this Act may petition the circuit court in the county
22 where the person resides for an order terminating the person's obligation to register or for an
23 order reassigning the person to a lower tier. If the person seeking removal from the registry is
24 not a resident of this state, but is required to register under other requirements of § 22-24B-2,

1 then the person may petition the circuit court of any county of this state where the person is
2 currently registered. The offender shall serve the petition and all supporting documentation on
3 the state's attorney in the county where the offender is currently registered, the office of the
4 prosecutor in the jurisdiction where the offense occurred, and the Attorney General. The
5 Attorney General's office shall respond to each petition to request removal from the sex offender
6 registry or reassignment to a lower tier.

7 No person petitioning the court under this section for an order terminating the person's
8 obligation to register or for reassignment to a lower tier is entitled to court appointed counsel,
9 experts, or publicly funded witnesses.

10 Section 6. That § 22-24B-18 be amended to read as follows:

11 22-24B-18. The petition and documentation to support the request for removal from the sex
12 offender registry or for reassignment to a lower tier shall include:

- 13 (1) The information required for registration of convicted sex offenders in § 22-24B-8;
- 14 (2) A detailed description of the sex crime that was the basis for the offender to register;
- 15 (3) A certified copy of judgment of conviction or other sentencing document; and
- 16 (4) The offender's criminal record and a detailed description of those offenses.