

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

358R0146

## SENATE JUDICIARY ENGROSSED NO. **SB 12** - 2/11/2010

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

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 § 22-24B-19 be amended to read as follows:

5 22-24B-19. To be eligible for removal from the registry as a Tier I offender, the petitioner  
6 shall show, by clear and convincing evidence, that all of the following criteria have been met:

7 (1) At least ten years have elapsed since the date the petitioner first registered pursuant  
8 to this chapter. ~~For purposes of this subdivision, any period of time during which the~~  
9 ~~petitioner was incarcerated or during which the petitioner was confined in a mental~~  
10 ~~health facility does not count toward the ten-year calculation, regardless of whether~~  
11 ~~such incarceration or confinement was for the sex offense requiring registration or~~  
12 ~~for some other offense;~~

13 (2) The crime requiring registration was for:

14 (a) Statutory rape under subdivision 22-22-1(5), or an attempt to commit statutory



- 1 rape under subdivision 22-22-1(5), but only if the petitioner was twenty-one  
2 years of age or younger at the time the offense was committed or attempted;
- 3 (b) A juvenile adjudication for a sex crime as defined in § 22-24B-1(1), 22-24B-  
4 1(9), or 22-22-7.2; ~~or~~
- 5 (c) Sexual contact under § 22-22-7 if the victim was between the ages of thirteen  
6 and sixteen and the petitioner was at least three years older than the victim, but  
7 only if the petitioner was twenty-one years of age or younger at the time the  
8 offense was committed;
- 9 (d) Misdemeanor indecent exposure under § 22-24-1.2; or
- 10 (e) An out-of-state, federal or court martial offense that is comparable to the  
11 elements of the crimes listed in (a) ~~or~~, (b), (c), or (d);
- 12 (3) The circumstances surrounding the crime requiring registration did not involve a  
13 child under the age of thirteen;
- 14 (4) The petitioner is not a recidivist sex offender. ~~A recidivist sex offender is a person~~  
15 ~~who has been convicted or adjudicated for more than one sex crime listed in~~  
16 ~~subdivisions 22-24B-1(1) to (17), inclusive, regardless of when those convictions or~~  
17 ~~adjudications occurred. For purposes of this subdivision, a conviction or adjudication~~  
18 ~~includes a verdict or plea of guilty; a verdict or plea of guilty but mentally ill; a plea~~  
19 ~~of nolo contendere; a suspended imposition of sentence granted under § 23A-27-13,~~  
20 ~~regardless of whether it has been discharged; a deferred prosecution agreement~~  
21 ~~entered by a prosecutor; and a determination made in another state, federal~~  
22 ~~jurisdiction, or courts martial that is comparable to any of these events; and;~~
- 23 (5) The petitioner has ~~completely and truthfully~~ substantially complied in good faith with  
24 the registration and re-registration requirements imposed under chapter 22-24B; and

1       (6)   Petitioner demonstrates to the satisfaction of the court that he or she does not pose  
2            a risk or danger to the community.

3       For purposes of this section, any period of time during which the petitioner was incarcerated  
4       or during which the petitioner was confined in a mental health facility does not count toward  
5       the ten-year calculation, regardless of whether such incarceration or confinement was for the sex  
6       offense requiring registration or for some other offense.

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

9       To be eligible for removal from the registry as a Tier II offender, the petitioner shall show,  
10 by clear and convincing evidence, that all of the following criteria have been met:

- 11       (1)   At least twenty-five years have elapsed since the date the petitioner first registered  
12            pursuant to this chapter;
- 13       (2)   The crime requiring registration was for:
  - 14            (a)   Incest as defined in § 22-22A-2; or
  - 15            (b)   An out-of-state, federal or court martial offense that is comparable to the  
16                elements of incest as defined in § 22-22A-2; or
  - 17            (c)   Bestiality as set forth in § 22-22-42;
- 18       (3)   The circumstances surrounding the crime requiring registration did not involve a  
19            child under the age of thirteen;
- 20       (4)   The petitioner is not a recidivist sex offender;
- 21       (5)   The petitioner has substantially complied in good faith with the registration and re-  
22            registration requirements imposed under chapter 22-24B; and
- 23       (6)   Petitioner demonstrates to the satisfaction of the court that he or she does not pose  
24            a risk or danger to the community.

1 For purposes of this section, any period of time during which the petitioner was incarcerated  
2 or during which the petitioner was confined in a mental health facility does not count toward  
3 the twenty-five year calculation, regardless of whether such incarceration or confinement was  
4 for the sex offense requiring registration or for some other offense.

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

7 Any person, who is on the sex offender registry and who is not eligible for removal pursuant  
8 to sections 1 and 2 of this Act, is a Tier III offender.

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

11 A recidivist sex offender is a person who has been convicted or adjudicated for more than  
12 one sex crime listed in § 22-24B-1, regardless of when those convictions or adjudications  
13 occurred. However, no person is a recidivist sex offender unless the person committed the  
14 second sex crime after having been convicted or adjudicated of a previous sex crime. For  
15 purposes of this section, a conviction or adjudication includes a verdict or plea of guilty; a  
16 verdict or plea of guilty but mentally ill; a plea of nolo contendere; a suspended imposition of  
17 sentence granted under § 23A-27-13, regardless of whether it has been discharged; a deferred  
18 prosecution agreement entered by a prosecutor; and a determination made in another state,  
19 federal jurisdiction, or courts martial that is comparable to any of these events.

20 Section 5. That § 22-24B-20 be amended to read as follows:

21 22-24B-20. If the court finds that all of the criteria described in § 22-24B-19 or in section  
22 2 of this Act have been met and that the petitioner is not likely to offend again, then the court  
23 may, in its discretion, enter an order terminating the petitioner's obligation to register in this  
24 state and require the removal of petitioner's name from the registry. However, if the court finds

1 that the offender has provided false, misleading, or incomplete information in support of the  
2 petition, or failed to serve the petition and supporting documentation upon the respondent, then  
3 the petition may be denied. If the petition is denied, the petitioner may not file a subsequent  
4 petition for at least two years from the date the previous petition was denied.

5 Section 6. That § 22-24B-17 be amended to read as follows:

6 22-24B-17. Any person required to register under this chapter who is eligible to seek  
7 removal from the registry as provided for in § 22-24B-19 or in section 2 of this Act may petition  
8 the circuit court in the county where the person resides for an order terminating the person's  
9 obligation to register. If the person seeking removal from the registry is not a resident of this  
10 state, but is required to register under other requirements of § 22-24B-2, then the person may  
11 petition the circuit court of any county of this state where the person is currently registered. The  
12 offender shall serve the petition and all supporting documentation on the state's attorney in the  
13 county where the offender is currently registered, the office of the prosecutor in the jurisdiction  
14 where the offense occurred, and the Attorney General. The Attorney General's office shall  
15 respond to each petition to request removal from the sex offender registry.

16 No person petitioning the court under this section for an order terminating the person's  
17 obligation to register is entitled to court appointed counsel, experts, or publicly funded  
18 witnesses.

19 Section 7. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as  
20 follows:

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