

# State of South Dakota

EIGHTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2014

400V0384

## SENATE BILL NO. 26

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to establish certain electronic crime victim notification  
2 procedures.

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

4 Section 1. That chapter 23A-28C be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 For the purposes of this chapter, the term, notice, means either written notification or  
7 electronic notification.

8 Section 2. That chapter 23A-28C be amended by adding thereto a NEW SECTION to read  
9 as follows:

10 For the purposes of this chapter, the term, electronic notification, means any telephonic,  
11 electronic mail, text messaging, and facsimile transmittal notification or any notification as  
12 produced by the statewide automated notification system as established pursuant to § 23A-28C-  
13 10.

14 Section 3. That chapter 23A-28C be amended by adding thereto a NEW SECTION to read  
15 as follows:



1       Upon the scheduling of a clemency hearing pursuant to chapter 24-14, the Department of  
2       Corrections shall provide notice to the victim. Notice of a clemency hearing shall be made at  
3       least two weeks prior to the hearing. The notice shall provide the offender's clemency hearing  
4       date, time, and location and shall advise the victim that the victim may be present at the hearing  
5       and may state an opinion regarding clemency. The victim shall be notified if clemency is  
6       recommended.

7       Section 4. That chapter 23A-28C be amended by adding thereto a NEW SECTION to read  
8       as follows:

9       The Department of Corrections shall provide notice to the victim at least ten days before the  
10      date of a discretionary parole hearing. The notice shall provide the inmate's parole eligibility  
11      date and the parole hearing date. The notice shall advise the victim that the victim may be  
12      present at the hearing and may state an opinion regarding the possible parole of the inmate.

13      Section 5. That chapter 23A-28C be amended by adding thereto a NEW SECTION to read  
14      as follows:

15      The victim may request to be notified by the Department of Corrections if:

- 16      (1)   An early final discharge or partial early final discharge from parole is considered;
- 17      (2)   The offender is placed on or removed from work release, a global positioning system,  
18           or a community transition program; or
- 19      (3)   An offender on parole absconds supervision.

20      Section 6. That chapter 23A-28C be amended by adding thereto a NEW SECTION to read  
21      as follows:

22      If the victim is a minor, the victim's parent or guardian may request notification pursuant to  
23      this chapter.

24      Section 7. That § 23A-28C-2 be amended to read as follows:

1       23A-28C-2. At the commencement of a criminal proceeding subject to the terms of this  
2 chapter, the prosecutor, by first class mail or electronic mail notification, shall advise the victim  
3 of the rights set forth in this chapter. In order to take advantage of such rights, the victim shall  
4 advise the prosecutor of the desire to participate. A victim may choose to participate only in  
5 certain enumerated phases of the proceedings. A victim wishing to participate shall advise the  
6 prosecutor or the Department of Corrections of the place where notifications, including  
7 electronic notification, required under this chapter are to be made, and of any changes in the  
8 place of notification. A prosecutor receiving notification of a victim's wish to participate shall  
9 keep record of that notification and most recent place of notification through the time of the  
10 defendant's final discharge from the criminal justice system. If the defendant is sentenced to the  
11 state prison system, the prosecutor shall forward the information to the Department of  
12 Corrections and the Department of Corrections shall keep record of the request for notification  
13 and the most recent place of notification until the defendant's final discharge from prison and  
14 parole. The request for notification and the place of notification is confidential and may not be  
15 disclosed to the defendant.

16       Section 8. That § 23A-28C-5 be amended to read as follows:

17       23A-28C-5. Any institution under the control of the Department of Corrections or the  
18 Department of Human Services or the Department of Social Services, or any jail or other facility  
19 where a person is incarcerated due to the commission of a crime, shall provide notice, as soon  
20 as possible, if any of the following occur:

- 21       (1) Upon the person's escape from custody and return to custody following escape;
- 22       (2) Of any release from custody, including placement in an intensive supervision  
23             program or other alternative disposition, such notice to include associated conditions  
24             of release;

- 1 (3) Upon the granting of parole or revocation of parole;
- 2 (4) Prior to the defendant's release from custody due to expiration of sentence; ~~and~~
- 3 (5) Of any removal from an intensive supervision program or other alternative
- 4 disposition;
- 5 (6) Of any furlough; and
- 6 (7) Of the offender's death.

7 Section 9. That § 23A-28C-9 be amended to read as follows:

8 23A-28C-9. No person, other than in the performance of official duties, may disclose the  
9 identity and biographical information concerning a victim of a crime of violence or of a  
10 violation of § 22-22-7 until reasonable efforts have been made to ~~notify~~ provide notice to one  
11 of the immediate family.

12 Section 10. That chapter 24-1 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 The sentencing judge may request to be notified by the Department of Corrections if the  
15 inmate who was convicted of committing a crime escapes, is released from prison, is placed on  
16 furlough or work release pursuant to chapter 24-8, is returned from escape, or is removed from  
17 work release. The notice may be by means of written communication, telephonic, electronic  
18 mail, text messaging, or facsimile transmittal.

19 Section 11. That § 24-14-4.1 be repealed.

20 ~~24-14-4.1. Upon the scheduling of a clemency hearing, the Board of Pardons and Paroles~~  
21 ~~shall notify the victim pursuant to §§ 24-15-8.1 and 24-15A-22. Notice of a clemency hearing~~  
22 ~~shall be made at least two weeks prior to the hearing. The notice shall provide the offender's~~  
23 ~~clemency hearing date, time, and location and shall advise the victim that the victim may be~~  
24 ~~present at the hearing and may state an opinion regarding clemency.~~

1 Section 12. That § 24-15-3 be amended to read as follows:

2 24-15-3. Whenever any person becomes an inmate of the penitentiary, the director shall  
3 immediately establish in the record the date when the inmate will be eligible for consideration  
4 for parole. Such consideration for a parole eligibility date is subject to change upon receipt of  
5 information regarding a change in the number of prior felony convictions or any subsequent  
6 felony convictions. Any inmate who is aggrieved by the established parole consideration  
7 eligibility date may apply for a hearing before the Board of Pardons and Paroles for a final  
8 determination of the true and correct parole consideration eligibility date. Between the date a  
9 person becomes an inmate of the penitentiary and the date on which ~~such~~ the person becomes  
10 eligible for consideration for parole, the director shall complete the history of the inmate and  
11 shall study the life, habits, previous environment, and nature of the inmate to determine the  
12 advisability of recommending the inmate for parole when the inmate becomes eligible to be  
13 considered. At least ten days before the date of eligibility the director shall submit to the board  
14 the findings regarding the inmate.

15 ~~— If the victim of the inmate's crime requests in writing to be notified by the Board of Pardons  
16 and Parole when the inmate will be eligible for consideration for parole, the director shall send  
17 a notice at least ten days before the date of eligibility, of the inmate's parole consideration  
18 eligibility by first class mail to the address provided by the victim. The notice shall provide the  
19 inmate's parole consideration eligibility date and the parole hearing date, and the board shall  
20 advise the victim that he or she may be present at the hearing and may state his or her opinion  
21 regarding the possible parole of the inmate.~~

22 Section 13. That § 24-15-8.1 be repealed.

23 ~~— 24-15-8.1. The victim may request in writing to be notified by the Board of Pardons and  
24 Parole when an inmate who was convicted of committing the crime is granted parole, the~~

1 inmate's parole is revoked, an early final discharge or partial early final discharge is considered,  
2 an offender is granted a clemency hearing, or clemency is recommended. The board shall send  
3 the notice by first class mail to the address provided by the victim. However, the board is not  
4 liable for any damages to the victim if the board fails to mail the notice.

5 Section 14. That § 24-15-8.2 be repealed.

6 ~~—24-15-8.2. The victim or the sentencing judge may request in writing to be notified by the~~  
7 ~~Department of Corrections if the inmate who was convicted of committing the crime escapes~~  
8 ~~or is released from the penitentiary, or placed on regularly scheduled furlough or work release~~  
9 ~~pursuant to chapter 24-2, 24-4, or 24-5, or is returned from escape or removed from work~~  
10 ~~release. The Department of Corrections may either telephone the victim or the sentencing judge~~  
11 ~~or send the notice by first class mail to the address provided by the victim or the sentencing~~  
12 ~~judge. However, the Department of Corrections is not liable for any damages to the victim or~~  
13 ~~the sentencing judge if the board fails either to notify the victim or the sentencing judge by~~  
14 ~~telephone or to mail the notice.~~

15 Section 15. That § 24-15-8.3 be repealed.

16 ~~—24-15-8.3. If the victim is a minor, the victim's parent or guardian may request notification.~~

17 Section 16. That § 24-15A-22 be repealed.

18 ~~—24-15A-22. The victim may request in writing to be notified by the board when an inmate~~  
19 ~~who was convicted of committing the crime is released on parole, the inmate's parole is revoked,~~  
20 ~~an early final discharge or a partial early final discharge is considered, an offender is granted a~~  
21 ~~clemency hearing, or clemency is recommended. The board shall send the notice by first class~~  
22 ~~mail to the address provided by the victim. However, the board is not liable for any damages to~~  
23 ~~the victim if the board fails to mail the notice.~~