

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

400T0427

## SENATE BILL NO. 42

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding habeas corpus.

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

3 Section 1. That § 21-27-3.1 be amended to read as follows:

4 21-27-3.1. ~~An application for relief~~ Proceedings under this chapter ~~may be filed at any time~~  
5 ~~except that proceedings thereunder~~ cannot be maintained while an appeal from the applicant's  
6 conviction and sentence is pending or during the time within which such appeal may be  
7 perfected.

8 Section 2. That § 21-27-3.2 be repealed.

9 ~~— 21-27-3.2. An application under this chapter may be dismissed if it appears that the state or~~  
10 ~~the applicant's custodian has been prejudiced in its ability to respond to the application by delay~~  
11 ~~in its filing, unless the applicant shows that the application is based on grounds of which he~~  
12 ~~could not have had knowledge by the exercise of reasonable diligence before the circumstances~~  
13 ~~causing the prejudice occurred. It shall be presumed that the state or the applicant's custodian~~  
14 ~~has been prejudiced if the application is filed more than five years after signing, attestation and~~  
15 ~~filing of the judgment or order under which the applicant is held. This presumption is rebuttable~~



1 ~~pursuant to § 19-11-1.~~

2 Section 3. That chapter 21-27 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 A one-year statute of limitation applies to all applications for relief under this chapter by a  
5 person in custody under a judgment, order, or sentence of a court of this state or any other state  
6 or the United States. This limitation period shall run from the latest of:

7 (1) The date on which the judgment became final by the conclusion of direct review or  
8 the expiration of the time for seeking such review;

9 (2) The date on which the impediment to filing an application under this chapter created  
10 by state action in violation of the constitution or laws of the United States or of this  
11 state is removed, if such impediment prevented the applicant from filing;

12 (3) The date on which the constitutional right asserted in the application under this  
13 chapter was initially recognized by the Supreme Court of the United States or the  
14 Supreme Court of this state if the right has both been newly recognized and made  
15 retroactively applicable to cases on collateral review; or

16 (4) The date on which the factual predicate of the claim or claims presented could have  
17 been discovered through the exercise of due diligence.

18 The time during which the applicant has pending a properly filed application for any state  
19 post-conviction or other state collateral review of the pertinent judgment or claim may not be  
20 counted toward the period of limitation under this section.

21 Section 4. That § 21-27-4 be amended to read as follows:

22 21-27-4. If a person has been committed, detained, imprisoned, or restrained of ~~his~~ liberty,  
23 under any color or pretense whatever, civil or criminal, and if upon application made in good  
24 faith to the court or judge thereof, having jurisdiction, for a writ of habeas corpus, it is

1 satisfactorily shown that the person is without means to prosecute the proceeding, the court or  
2 judge ~~shall~~ may, if the judge finds that such appointment is necessary to ensure a full, fair, and  
3 impartial proceeding, appoint counsel for the indigent person pursuant to chapter 23A-40. Such  
4 counsel fees or expenses shall be a charge against and be paid by the county from which the  
5 person was committed, or for which the person is held as determined by the court. Payment of  
6 all such fees or expenses shall be made only upon written order of the court or judge issuing the  
7 writ. Appointment of counsel under this section and pursuant to chapter 23A-40 does not grant  
8 to any person any right to counsel beyond those rights to counsel established by the Constitution  
9 of the United States and the Constitution of the State of South Dakota. The ineffectiveness or  
10 incompetence of counsel during any collateral post-conviction proceeding is not grounds for  
11 relief under this chapter.

12 Section 5. That chapter 21-27 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 A claim presented in a second or subsequent habeas corpus application under this chapter  
15 that was presented in a prior application under this chapter or otherwise to the courts of this state  
16 by the same applicant shall be dismissed.