

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0205

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB20** - 1/19/99

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to provide for court-ordered restitution at the time a
2 defendant is sentenced to the state penitentiary.

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

4 Section 1. That § 23A-28-3 be amended to read as follows:

5 23A-28-3. If the sentencing court orders the defendant to the county jail, suspended
6 imposition of sentence, suspended sentence, or probation, the court may require as a condition
7 that the defendant, in cooperation with the court services officer assigned to the defendant,
8 promptly prepare a plan of restitution, including the name and address of each victim, a specific
9 amount of restitution to each victim and a schedule of restitution payments. If the defendant is
10 presently unable to make any restitution, but there is a reasonable possibility that the defendant
11 may be able to do so at some time during his the defendant's probation ~~or parole~~ period, the plan
12 of restitution shall also state the conditions under which or the event after which the defendant
13 will make restitution. If the defendant believes that no person suffered pecuniary damages as a
14 result of the defendant's criminal activities, the defendant shall so state. If the defendant contests
15 the amount of restitution recommended by the court services officer, the defendant is entitled to
16 a hearing at which the court shall determine the amount. If the sentencing court orders the

1 defendant to the state penitentiary and does not suspend the sentence, ~~the Board of Pardons and~~
2 ~~Paroles shall require as a condition of parole that the defendant, in cooperation with the~~
3 ~~executive director of the Board of Pardons and Paroles, prepare the plan of restitution as~~
4 ~~described in this section~~ the court shall set forth in the judgment the names and specific amount
5 of restitution owed each victim. The Department of Corrections shall establish the collection
6 schedule for court-ordered restitution while the defendant is in the penitentiary and on parole.
7 The Board of Pardons and Paroles shall require, as a condition of parole, that the defendant pay
8 restitution ordered by the court.

9 Section 2. That § 23A-28-5 be amended to read as follows:

10 23A-28-5. The court services officer when assisting the defendant in preparing the plan of
11 restitution and the court before approving or modifying the plan of restitution shall consider the
12 physical and mental health and condition of the defendant, the defendant's age, the defendant's
13 education, the defendant's employment circumstances, the defendant's potential for employment
14 and vocational training, the defendant's family circumstances, the defendant's financial condition,
15 the number of victims, the pecuniary damages of each victim, what plan of restitution will most
16 effectively aid the rehabilitation of the defendant, and each victim, and such other factors as may
17 be appropriate.

18 ~~— For a defendant serving a sentence in the state penitentiary the board of pardons and paroles~~
19 ~~shall consider these factors when preparing the plan of restitution.~~

20 Section 3. That § 23A-28-6 be amended to read as follows:

21 23A-28-6. The court services officer shall provide each known victim a copy of the court's
22 order approving or modifying the plan of restitution for any defendant not serving his sentence
23 in the state penitentiary. The executive director of the board of pardons and paroles shall provide
24 each known victim a copy of the plan schedule of restitution ~~approved or modified by the board~~
25 ~~of pardons and paroles~~ for each inmate placed on parole. If the victim is not satisfied with the

- 1 approved or modified plan of restitution, the victim's exclusive remedy is a civil action against
- 2 the defendant, which, if successful, may include attorney's fees.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Judiciary. S.J. 18

3 1/15/99 Scheduled for Committee hearing on this date.

4 1/16/99 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 59