

## State DUI Laws: South Dakota

**Legal Blood Alcohol Content Level: .08**

**Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes**

**Ignition Interlock Requirement upon Conviction: No**

**Felony Conviction for Repeat Offenses: Yes**

### South Dakota Codified Laws

#### § 23A-28C-1. Victims' rights -- Driving under the influence vehicle accidents

Consistent with § 23A-28C-4, victims of the crime, including victims of driving under the influence vehicle accidents, have the following rights:

- (1) To be notified of scheduled bail hearings and release from custody, to be notified by the prosecutor's office when the case is received and to whom the case is assigned, and to be notified in advance of the date of preliminary hearing and trial;
- (2) To be informed of what the charges mean and the elements necessary for conviction;
- (3) To testify at scheduled bail or bond hearings regarding any evidence indicating whether the offender represents a danger to the victim or the community if released;
- (4) To be protected from intimidation by the defendant, including enforcement of orders of protection;
- (5) To offer written input into whether plea bargaining or sentencing bargaining agreements should be entered into;
- (6) To be present during all scheduled phases of the trial or hearings, except where otherwise ordered by the judge hearing the case or by contrary policy of the presiding circuit judge;
- (7) To be prepared as a witness, including information about basic rules of evidence, cross-examination, objections, and hearsay;
- (8) To provide to the court a written or oral victim impact statement prior to sentencing regarding the financial and emotional impact of the crime on the victim and his or her family as well as recommendations for restitution and sentencing and § 23A-28-8 notwithstanding, the right to appear at any hearing during which a change in the plan of restitution is to be considered;
- (9) To receive restitution, whether the convicted criminal is probated or incarcerated, unless the court or parole board provides to the victim on the record specific reasons for choosing not to require it;

(10) To provide written input at parole hearings or with respect to commutations of sentences by the Governor, should those options be considered;

(11) In a case in which the death penalty may be authorized, to provide to the court or to the jury, as appropriate, testimony about the victim and the impact of the crime on the victim's family;

(12) To be notified of the defendant's release from custody, which notice includes:

(a) Notice of the defendant's escape from custody and return to custody following escape;

(b) Notice of any other release from custody, including placement in an intensive supervision program or other alternative disposition, and any associated conditions of release;

(c) Notice of parole; and

(d) Notice of pending release of an inmate due to expiration of sentence;

(13) To be notified of the victim's right to request testing for infection by blood-borne pathogens pursuant to § 23A-35B-2; and

(14) To be provided a copy of any report of law enforcement that is related to the crime, at the discretion of the state's attorney, or upon motion and order of the court. However, no victim may be given the criminal history of any defendant or any witness.

**§ 32-12-48. Revocation for certain driving under the influence offenses -- Commencement -- Investigation upon application for new license.**

If a defendant is convicted under § 32-23-2 or 32-23-3, the period of revocation shall commence on the date the driver license was surrendered to and received by the Department of Public Safety. However, the surrender to the court at the time of conviction is considered a surrender to the department. At the conclusion of the period of revocation ordered by the court and if future proof is filed with the Department of Public Safety as required by chapter 32-35, the defendant may submit an application for a driver license, accompanied by a fee of fifty dollars. The department may issue a driver license to the defendant, if, after an investigation of the character, habits and driving ability of the defendant, the department is satisfied it is safe to grant the privilege of driving a motor vehicle to the defendant. A driver license issued under the provisions of this section shall show the restrictions, if any, imposed by the court and the date when the restrictions are to cease.

**§ 32-12-52.1. Authority of department to revoke license for driving while under the influence violation**

The Department of Public Safety shall revoke the driver license or driving privilege of any driver upon receiving notice of that driver's conviction for a violation of the provisions of § 32-23-1 to the extent that the driver license or privileges should have been revoked, if the judgment and sentence of the trial court failed to invoke the mandatory provisions of § 32-23-2 to 32-23-4, inclusive, or the driver had been charged and convicted consistent with the records of the Department of Public Safety.

### **§ 32-12-65. Driving while license revoked, suspended or canceled -- Criminal penalties**

Any person who drives a motor vehicle on any public highway of this state at a time when his privilege is:

- (1) Revoked is guilty of a Class 1 misdemeanor;
- (2) Suspended is guilty of a Class 2 misdemeanor;
- (3) Canceled is guilty of a Class 2 misdemeanor.

### **§ 32-12-66. Driving while license revoked, suspended or disqualified -- Administrative penalties**

If the Department of Public Safety receives a record of the conviction of any person under § 32-12-65 or 32-12A-8 for driving a vehicle while that person's driver license or driving privilege was suspended, it shall extend the period of suspension for an additional like period. If the conviction was for driving while a license was revoked or disqualified, the department may not issue a new license until one year from the date the person would otherwise have been entitled to apply for a new license.

### **§ 32-23-1. Driving or physical control of vehicle with impermissible alcohol level or while under the influence prohibited**

No person may drive or be in actual physical control of any vehicle while:

- (1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other bodily substance;
- (2) Under the influence of an alcoholic beverage;
- (3) Under the influence of marijuana or any controlled drug or substance to a degree which renders the person incapable of safely driving; or
- (4) Under the combined influence of an alcoholic beverage and marijuana or any controlled drug or substance to a degree which renders the person incapable of safely driving.

#### **§ 32-23-1.1. Warrantless arrest authority**

A law enforcement officer may, without a warrant, arrest a person for a violation of the provisions of § 32-23-1 when he has probable cause to believe that the person to be arrested has been involved in a traffic accident and has violated the provisions of § 32-23-1 and that such violation occurred prior to or immediately following such traffic accident.

#### **§ 32-23-1.2. Submission to requested breath or chemical tests**

Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a law enforcement officer, submit to a breath test to be administered by such officer. If such test indicates that such operator has consumed alcohol, the law enforcement officer may require such operator to submit to a chemical test in the manner set forth in this chapter.

### **§ 32-23-1.3. Restrictions on reduction or dismissal of charge under Section 32-23-1**

Any person arrested for driving or being in actual physical control of a vehicle while the weight of alcohol in the blood of the arrested person is 0.08 percent or greater, shall be charged with a violation of § 32-23-1. The charge may be reduced or dismissed only if the prosecuting attorney states the reasons for reduction or dismissal in writing and on the record and files the reasons with the clerk of courts.

### **§ 32-23-2. Penalties for first conviction under Section 32-23-1**

If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less than thirty days. However, the court may in its discretion issue an order permitting the person to operate a motor vehicle for purposes of the person's employment or attendance at court-ordered counseling programs during the hours of the day and the days of the week as set forth in the order. The court may also order the revocation of the defendant's driving privilege for a further period not to exceed one year or restrict the privilege in such manner as it sees fit for a period not to exceed one year.

#### **§ 32-23-2.1. Conviction pursuant to Section 32-23-2 -- Blood alcohol level of 0.17 or greater -- Mandatory evaluation of possible alcohol addiction**

Any person convicted of a first offense pursuant to § 32-23-2 with a 0.17 percent or more by weight of alcohol in his blood shall, in addition to the penalties provided in § 32-23-2, be required to undergo a court-ordered evaluation to determine if the defendant has an addiction to alcohol. The cost of such evaluation shall be paid by the defendant.

### **§ 32-23-3. Penalties for second conviction under Section 32-23-1**

If conviction for a violation of § 32-23-1 is for a second offense, such person is guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally revoke the defendant's driving privilege for a period of not less than one year. However, upon the successful completion of a court-approved alcohol treatment program, the court may permit the person to drive for the purpose of employment and may restrict the privilege by the imposition of such conditions as the court sees fit. If such person is convicted of driving without a license during that period, the person shall be sentenced to the county jail for not less than three days, which sentence may not be suspended.

### **§ 32-23-4. Penalties for third conviction under Section 32-23-1**

If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty of a Class 6 felony, and the court, in pronouncing sentence, shall unconditionally revoke the defendant's driving privileges for such period of time as may be determined by the court, but in no event less than one year from the date sentence is imposed or one year from the date of discharge from incarceration, whichever is later. If the person is convicted of driving without a license during that period, he shall be sentenced to the county jail for not less than ten days, which sentence may not be suspended.

#### **§ 32-23-4.1. Limitation on use of prior conviction under Section 32-23-1**

No previous conviction for, or plea of guilty to, a violation of § 32-23-1 occurring more than ten years prior to the date of the violation being charged may be used to determine that the violation being charged is a second, third, or subsequent offense. However, any period of time during which the defendant was incarcerated for a previous violation may not be included when calculating if the time period provided in this section has elapsed.

#### **§ 32-23-4.2. Separate supporting information to allege former conviction or convictions -- Limitation on permitting accused to drive for purpose of employment**

In any criminal case brought pursuant to the provisions of § 32-23-3, 32-23-4, or 32-23-4.6, whether brought by information or indictment, a separate supporting information shall allege, in addition to the principal offense charged, a former conviction or convictions. If the information is in two separate parts, each shall be signed by the prosecutor. In the first part the particular offense with which the accused is charged shall be set out, and in the other part the former conviction or convictions shall be alleged. Except as provided in § 32-23-3, the court may not permit an accused with any prior conviction to drive for the purpose of employment even if the prosecutor dismisses the second part of the information.

#### **§ 32-23-4.6. Penalties for four or more convictions under Section 32-23-1**

If conviction for a violation of § 32-23-1 is for a fourth offense, or subsequent offenses thereafter, and the person has previously been convicted of a felony under § 32-23-4, the person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall unconditionally revoke the defendant's driving privileges for such period of time as may be determined by the court, but in no event less than two years from the date sentence is imposed or two years from the date of discharge from incarceration, whichever is later. If the person is convicted of driving without a license during that period, he shall be sentenced to the county jail for not less than twenty days, which sentence may not be suspended.

#### **§ 32-23-6. Limitation of defenses -- Entitlement to use drug under laws of state**

The fact that any person charged with a violation of § 32-23-1 is or has been entitled to use a drug under the laws of this state shall not constitute a defense against any charge of violating said section.

#### **§ 32-23-7. Presumptions arising from amount of alcohol in blood**

In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle while under the influence of intoxicating liquor, a violation of § 22-16-41, or a violation of § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance gives rise to the following presumptions:

(1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, it is presumed that the defendant was not under the influence of intoxicating liquor;

(2) If there was at that time in excess of five hundredths percent but less than eight hundredths percent by weight of alcohol in the defendant's blood, such fact does not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;

(3) If there was at that time eight hundredths percent or more by weight of alcohol in the defendant's blood, it is presumed that the defendant was under the influence of intoxicating liquor.

Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

### **§ 32-23-8. Under the influence evidence not limited to chemical analysis results**

The provisions of § 32-23-7 shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

### **§ 32-23-10. Implied consent -- Statements of officer upon request for submission to chemical analysis.**

Any person who operates any vehicle in this state is considered to have given consent to the withdrawal of blood or other bodily substance and chemical analysis of the person's blood, breath, or other bodily substance to determine the amount of alcohol in the person's blood and to determine the presence of marijuana or any controlled drug or substance.

The person shall be requested by the officer to submit to the withdrawal of blood or other bodily substance for chemical analysis or chemical analysis of the person's breath and shall be advised by the officer that:

(1) If the person refuses to submit to the withdrawal or chemical analysis, no withdrawal or chemical analysis may be required unless the person has been arrested for a third, fourth, or subsequent violation of § 32-23-1, constituting a felony offense under § 32-23-4 or 32-23-4.6; has been arrested for vehicular homicide under § 22-16-41 or vehicular battery under § 22-16-42; or has been involved in an accident resulting in death or serious bodily injury of another person;

(2) If the person refuses to submit to the withdrawal or chemical analysis, the person's driver's license shall be revoked for one year, unless pursuant to § 32-23-11.1 the person pleads guilty to a violation of § 32-23-1 or 32-23-21, prior to a revocation order being issued; and

(3) The person has the right to have a chemical analysis performed by a technician of the person's own choosing at the person's own expense, in addition to the test requested by the officer.

#### **§ 32-23-10.1. Evidence of refusal admissible at trial**

If a person refuses to submit to chemical analysis of the person's blood, urine, breath, or other bodily substance, or allow the withdrawal of blood or other bodily substance for chemical analysis as provided in § 32-23-10, and that person subsequently stands trial for violation of § 32-23-1 or § 32-23-21, such refusal may be admissible into evidence at the trial.

### **§ 32-23-11. Contest of license revocation under authority of implied consent law -- Length of revocation -- Eligibility to drive for purpose of employment**

Any person subject to license revocation for failure to submit to the withdrawal and chemical analysis required in § 32-23-10, and wishing to contest the revocation, shall demand a hearing pursuant to chapter 1-26 within one hundred twenty days of arrest. If the Secretary of Public Safety finds that the law enforcement officer complied with the law and the refusal was made by the person, the Secretary shall revoke that person's license to drive and any nonresident operating privileges for one year. The Secretary shall determine if the person is eligible to drive for the purpose of employment and may promulgate rules pursuant to chapter 1-26 for determining that eligibility.

The Secretary of Public Safety may promulgate rules for restricted licenses as follows:

- (1) Eligibility;
- (2) Application;
- (3) Determination;
- (4) Limitations; and
- (5) Grounds for revocation.

#### **§ 32-23-11.1. When license not subject to revocation**

A person's license to drive is not subject to revocation as provided in § 32-23-11 or 32-23-18 if that person pleads guilty to violating § 32-23-1, or if the charge of violating § 32-23-1 is dismissed by the state prior to the departmental hearing and the person is not convicted of a violation of § 32-24-1 or 32-24-8, or, if a hearing is not requested, prior to a revocation order being issued.

#### **§ 32-23-13. Failure to invoke provision permitting refusal of test -- Consent and authority to administer test no matter age of operator**

If any operator of a motor vehicle in this state who has been requested to submit to a chemical test fails to invoke the provision in § 32-23-11 which permits him to refuse to submit to a test, then the failure to invoke the provision permitting a refusal to submit to a test shall constitute consent and authority to administer a test notwithstanding the age of the operator of the motor vehicle.

#### **§ 32-23-14. Authority for blood withdrawal**

Only a physician, laboratory technician, registered nurse, physician's assistant, phlebotomist, expanded role licensed practical nurse, medical technician or medical technologist may withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of a breath or other bodily substance specimen. Such authorized persons, acting on the presumption of consent, and any hospital employing such persons, are not liable and may not be held to pay damages to the party from whom the blood sample is withdrawn, if the withdrawal is administered with usual and ordinary care.

#### **§ 32-23-14.1. Validity of withdrawal or chemical analysis -- Requirements**

To be considered valid under the provisions of this chapter, the withdrawal or chemical analysis shall be performed at the direction of a law enforcement officer having lawfully arrested the person for a violation of § 32-23-1 or § 32-23-21 and the chemical test analysis of the person's breath, if one is performed, shall be performed according to methods approved by the director of laboratories and by a person possessing a valid permit issued by the director of laboratories for this purpose. The director of laboratories may approve satisfactory techniques or methods to ascertain the qualifications and competence of anyone to conduct such analysis and issue permits which are subject to termination or revocation at the discretion of the director of laboratories.

#### **§ 32-23-15. Second test option**

The person tested pursuant to §§ 32-23-13 and 32-23-14 shall be permitted to have a physician, laboratory technician,

registered nurse, physician's assistant or medical technologist of his own choosing administer the chemical analysis in addition to the one administered at the direction of the law enforcement officer.

### **§ 32-23-16. Request for test results**

Upon the request of the person who was tested pursuant to §§ 32-23-13 and 32-23-14, or upon the request of his attorney, the results of such analysis shall be made available to him or to his attorney.

### **§ 32-23-17. Test costs -- Assignment**

In the case of a conviction under this chapter the costs accrued for the withdrawal and chemical analysis of blood or other bodily substance, and witness fees and expenses in connection therewith, shall be taxed by the court as costs in the action and shall, if the county is to have a lien for fees paid to counsel for an indigent, be included in the lien filed; otherwise it shall, with such other costs as the court imposes, be entered in the judgment as provided in chapter 23A-27.

### **§ 32-23-18. Revocation of license -- General authority**

The Department of Public Safety shall revoke the license of any person arrested for violating § 32-23-1 or 32-23-21, who refuses to submit to a chemical analysis as directed by a law enforcement officer pursuant to § 32-23-10.

### **§ 32-23-19. Revocation of license -- Procedure/**

A law enforcement officer shall serve the notice of intent to revoke, on behalf of the Department of Public Safety and shall take possession of any driver's license issued by this state held by the person if the arrested driver refuses to submit to a chemical analysis as directed by the officer pursuant to § 32-23-10. A copy of the completed notice of intent to revoke form, and any South Dakota driver's license taken into possession shall be forwarded to the department by the officer. If a valid South Dakota driver's license is surrendered, the notice of intent to revoke shall function as a temporary license which is valid for one hundred twenty days. Upon receipt of a petition for a hearing, the department may extend the temporary license thirty days following the scheduled date of the hearing.

### **§ 32-23-21. Under the age of twenty-one -- Additional offenses -- Penalties**

It is a Class 2 misdemeanor for any person under the age of twenty-one years to drive, operate, or be in actual physical control of any motor vehicle:

(1) If there is physical evidence of 0.02 percent or more by weight of alcohol in the person's blood as shown by chemical analysis of the person's breath, blood, or other bodily substance; or

(2) After having consumed marijuana or any controlled drug or substance for as long as physical evidence of the consumption remains present in the person's body.

If a person is found guilty of or adjudicated for a violation of this section, the Unified Judicial System shall notify the Department of Public Safety. Upon conviction or adjudication, the court shall suspend that person's driver's license or operating privilege for a period of six months for a first offense or one year for any second or subsequent offense. However, the court may, in its discretion, issue an order permitting the person to operate a motor vehicle during the hours and days of the week set forth in the order for purposes of the person's employment, attendance at school, or attendance at court-ordered counseling programs.