

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

970R0170

## HOUSE BILL NO. 1075

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to credit against unpaid  
2 fines and costs for time served and to disallow credit for time served against unpaid victim  
3 restitution.

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

5 Section 1. That § 23A-27-25.5 be amended to read as follows:

6 23A-27-25.5. No defendant may be imprisoned or jailed for failure to pay a fine, costs, or  
7 restitution or have ~~his or her~~ any suspended prison or jail sentence revoked without a prior  
8 hearing. At the hearing, the defendant has the burden of proof to establish to the reasonable  
9 satisfaction of the magistrate or circuit judge that the defendant did not willfully fail to pay the  
10 fine, costs, or restitution or that the defendant did make a bona fide effort to pay the fine, costs,  
11 or restitution.

12 Failure by the defendant to make such a showing is grounds for being imprisoned or jailed.  
13 If the sentence provided for payment of fine; or costs; ~~or restitution~~ only, the term of jail or  
14 imprisonment may be no longer than the number of days equal to the total amount of the fine;  
15 or costs; ~~and restitution~~ imposed divided by ~~forty~~ sixty. For purposes of making this



1 computation, any fraction of less than one day shall be dropped from the term of imprisonment.  
2 In no event may such imprisonment for failure to pay the fine, costs, and restitution together  
3 with all other time served or to be served exceed the maximum allowed by statute.

4 If the defendant establishes that nonpayment was not willful; or that the defendant did make  
5 a bona fide effort to pay, the defendant may not be imprisoned or jailed for nonpayment. The  
6 magistrate or circuit judge shall consider other alternatives which take into account the state's  
7 interest in punishment and deterrence.

8 The court shall make findings in its decision.