



## 2022 South Dakota Legislature

# House Bill 1100

SENATE JUDICIARY ENGROSSED

Introduced by: **Representative Reed**

1 **An Act to revise provisions related to the video recording of certain victim testimony**  
 2 **at a preliminary hearing or deposition.**

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

4 **Section 1. That § 23A-12-9 be AMENDED:**

5 **23A-12-9.** If a victim is less than sixteen years of age at the time of a preliminary  
 6 hearing or deposition, a prosecuting or defense attorney may apply for an order that the  
 7 victim's testimony at the preliminary hearing or deposition, in addition to being  
 8 stenographically recorded, be recorded and preserved on video, if a defendant has been  
 9 charged with a violation of ~~subdivision 22-22-1(1), (5), or (6) or § 22-22-7,~~ where the  
 10 victim is less than sixteen years of age, the prosecuting attorney or defense attorney may  
 11 apply for an order that the victim's testimony at the preliminary hearing or at a deposition,  
 12 in addition to being stenographically recorded, be recorded and preserved on videotape.:

13 (1) Subdivision 22-22-1(1) or (5);

14 (2) § 22-22-7; or

15 (3) § 22-49-2.

16 The scope and manner of the examination and cross-examination ~~shall~~ must be  
 17 such as would be allowed at the trial. Notice of any such deposition pursuant to this section  
 18 ~~shall~~ must conform in all respects to the notice requirements contained in § 23A-12-2.

19 The application for the order ~~shall~~ must be in writing and made at least three days  
 20 before the preliminary hearing or deposition.

21 Upon timely receipt of the application, the court may order that the testimony of  
 22 the victim given at the preliminary hearing or deposition be taken and preserved on  
 23 ~~videotape~~ video. The ~~videotape shall~~ video must be transmitted to the clerk of the court  
 24 in which the action is pending.

25 If, at the time of trial, the court finds that the victim is otherwise unavailable within  
 26 the meaning of subdivision 19-19-804(a), or that such testimony would in the opinion of

1 the court be substantially detrimental to the well-being of the victim, the court may admit  
2 the ~~videotape~~ video of the victim's testimony at the preliminary hearing or deposition as  
3 former testimony under ~~subdivision~~ subsection 19-19-804(b)(1).

4 **Section 2. That § 23A-12-10 be AMENDED:**

5 **23A-12-10.** Upon timely receipt of a notice that additional evidence has been  
6 newly discovered and for good cause shown, the court may order an additional hearing to  
7 ~~videotape-record~~ the victim's testimony relevant to the newly discovered evidence on  
8 video.

9 **Section 3. That § 23A-28C-8 be AMENDED:**

10 **23A-28C-8.** The victim or witness assistant shall:

- 11 (1) Advise the victim about the legal proceedings in which the victim will be involved;
- 12 (2) Advise the victim concerning any required appearance at any proceeding and if the  
13 proceeding is continued or postponed;
- 14 (3) Assist the state's attorney, court services officer, and the victim to determine the  
15 amount of monetary damages suffered by the victim and advise the victim about  
16 restitution;
- 17 (4) Advise, ~~if the victim is less than sixteen years of age and the victim of certain crimes~~  
18 if the requirements of § 23A-12-9 are met, the victim and one of the victim's  
19 immediate family that the preliminary hearing or deposition testimony of the victim  
20 may be ~~videotaped pursuant to § 23A-12-9~~ video recorded; and
- 21 (5) Advise the victim or one of the victim's immediate family if the defendant is released  
22 from custody and the defendant's bail conditions.

23 The victim or witness assistant may accompany the victim in any criminal  
24 proceeding.