



## 2021 South Dakota Legislature

# House Bill 1150

Introduced by: **Representative Reed**

1 **An Act to provide definitions regarding the crime of rape.**

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

3 **Section 1.** That § 22-22-1 be AMENDED.

4 **22-22-1. Rape--Penalty--Statute of limitations.**

5 Rape is an act of sexual penetration accomplished with any person under any of  
6 the following circumstances:

- 7 (1) If the victim is less than thirteen years of age; or  
8 (2) Through the use of force, coercion, or threats of immediate and great bodily harm  
9 against the victim or other persons within the victim's presence, accompanied by  
10 apparent power of execution; or  
11 (3) If the victim is incapable, because of physical or mental incapacity, of giving consent  
12 to such act; or  
13 (4) If the victim is incapable of giving consent because of ~~any intoxicating, narcotic, or~~  
14 ~~anesthetic agent or hypnosis~~ the victim is incapacitated; or  
15 (5) If the victim is thirteen years of age, but less than sixteen years of age, and the  
16 perpetrator is at least three years older than the victim.

17 A violation of subdivision (1) of this section is rape in the first degree, which is a Class  
18 C felony.

19 A violation of subdivision (2) of this section is rape in the second degree which is a  
20 Class 1 felony.

21 A violation of subdivision (3) or (4) of this section is rape in the third degree, which is  
22 a Class 2 felony.

23 A violation of subdivision (5) of this section is rape in the fourth degree, which is a  
24 Class 3 felony.

25 Notwithstanding the provisions of § 23A-42-2, no statute of limitations applies to any  
26 charge brought pursuant to subdivisions (1) or (2) of this section. Otherwise a charge

1 brought pursuant to this section may be commenced at any time ~~prior to the time~~ before  
2 the victim ~~becomes of~~ reaches the age twenty-five or within seven years ~~of~~ from the  
3 commission of the crime, whichever is longer.

4 **Section 2.** That a NEW SECTION be added:

5 **22-22-1.5. Definitions.**

6 Terms used in § 22-22-1 mean:

- 7 (1) "Coercion," the use of express or implied threats of violence, reprisal, or other  
8 intimidating behavior, which put a person in fear of the consequences, in order to  
9 compel that person to act against the person's will;
- 10 (2) "Consent," positive cooperation in act or attitude, pursuant to an exercise of free  
11 will, which requires words or overt actions, by a person, indicating a freely given  
12 agreement, provided:
- 13 (a) The person acts freely and voluntarily and has knowledge of the nature of  
14 the act or transaction involved;
- 15 (b) It is an affirmative, unambiguous, and voluntary agreement to engage in a  
16 specific sexual activity, during a sexual encounter, and can be revoked at  
17 any time;
- 18 (c) Lack of consent may be inferred based on all the surrounding circumstances  
19 and must be considered in determining whether a person gave consent;
- 20 (d) No person under the age of sixteen is capable of consenting to sexual  
21 activity; and
- 22 (e) It is not a defense that the offender did not know the person's age or was  
23 misinformed regarding the person's age;
- 24 (3) "Force," making a person do something against the person's will and without the  
25 person's consent;
- 26 (4) "Incapacitated," temporarily incapable of appraising or controlling one's conduct,  
27 due to the influence of a narcotic, an anesthetic, an intoxicating substance, or  
28 hypnosis, if the condition was known or reasonably should have been known to the  
29 offender;
- 30 (5) "Mental incapacity," a mental or developmental disease or disability, which renders  
31 a person incapable of appraising the nature of the person's conduct, if the condition  
32 was known or reasonably should have been known to the offender;
- 33 (6) "Physical incapacity," a victim's incapability of resisting because the victim was:
- 34 (a) Unconscious or asleep;

- 1            (b) Not aware, knowing, perceiving, or cognizant that the act occurred;  
2            (c) Not aware, knowing, perceiving, or cognizant of the essential characteristics  
3            of the act, due to the perpetrator's fraud or misrepresentation; or  
4            (d) Not aware, knowing, perceiving, or cognizant of the essential characteristics  
5            of the act, due to the perpetrator's fraudulent representation that the sexual  
6            penetration served a professional purpose when it served no professional  
7            purpose.