



2022 South Dakota Legislature

House Bill 1287

Introduced by: **Representative Reed**

1 **An Act to revise certain provisions regarding the crime of rape and provide a penalty**
 2 **therefor.**

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

4 **Section 1. That § 22-22-1 be AMENDED:**

5 **22-22-1.** Rape is an act of sexual penetration accomplished with any person under
 6 any of 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 and the perpetrator knows or reasonably should know of the victim's
 13 incapacity; ~~or~~
- 14 (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or
 15 anesthetic agent or hypnosis and the perpetrator knows or reasonably should know
 16 the victim is incapable of giving consent; ~~or~~
- 17 (5) If the victim is thirteen years of age, but less than sixteen years of age, and the
 18 perpetrator is at least three years older than the victim; ~~or~~ or
- 19 (6) Without the victim's consent.

20 A violation of subdivision (1) of this section is rape in the first degree, which is a
 21 Class C felony. A violation of subdivision (2) of this section is rape in the second degree
 22 which is a Class 1 felony. A violation of subdivision (3) or (4) of this section is rape in the
 23 third degree, which is a Class 2 felony. A violation of subdivision (5) of this section is rape
 24 in the fourth degree, which is a Class 3 felony. A violation of subdivision (6) of this section
 25 is rape in the fifth degree, which is a Class 4 felony. Notwithstanding the provisions of
 26 § 23A-42-2, no statute of limitations applies to any charge brought pursuant to

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

5 **Section 2. That chapter 22-22 be amended with a NEW SECTION:**

6 Terms used in this chapter mean:

- 7 (1) "Consent," a person's positive cooperation in act or attitude pursuant to the
8 person's exercise of free will;
9 (2) "Force," the use of physical effort sufficient to overcome, restrain, injure, or
10 prevent escape;
11 (3) "Mental incapacity," a mental or developmental disease or disability that renders a
12 person incapable of appraising the nature of the person's conduct;
13 (4) "Physical incapacity," a person's incapability of resisting because the person is
14 unconscious, asleep, or is subject to another physical condition that prevents the
15 person from giving consent or resisting.

16 **Section 3. That § 22-24B-19 be AMENDED:**

17 **22-24B-19.** To be eligible for removal from the registry as a Tier I offender, the
18 petitioner shall show, by clear and convincing evidence, that all of the following criteria
19 have been met:

- 20 (1) At least five years have elapsed since the date the petitioner first registered
21 pursuant to this chapter;
- 22 (2) The crime requiring registration was for:
- 23 (a) Statutory rape under subdivision 22-22-1(5), or an attempt to commit
24 statutory rape under subdivision 22-22-1(5), but only if the petitioner was
25 twenty-one years of age or younger at the time the offense was committed
26 or attempted;
- 27 (b) A juvenile adjudication for a sex crime as defined in subdivision 22-24B-1(1);
- 28 (c) Sexual contact under § 22-22-7 if the victim was between the ages of thirteen
29 and sixteen and the petitioner was at least three years older than the victim,
30 but only if the petitioner was twenty-one years of age or younger at the
31 time the offense was committed;
- 32 (d) Felony use or dissemination of visual recording or photographic device
33 without consent under § 22-21-4; ~~or~~

- 1 (e) An out-of-state, federal or court martial offense that is comparable to the
2 elements of the crimes listed in (a), (b), or (c); or
3 (f) Rape under subdivision 22-22-1(6), or an attempt to commit rape under
4 subdivision 22-22-1(6);
- 5 (3) The circumstances surrounding the crime requiring registration did not involve a
6 child under the age of thirteen;
- 7 (4) The petitioner is not a recidivist sex offender;
- 8 (5) The petitioner has substantially complied in good faith with the registration and re-
9 registration requirements imposed under chapter 22-24B; and
- 10 (6) Petitioner demonstrates to the satisfaction of the court that he or she does not pose
11 a risk or danger to the community.

12 For purposes of this section, any period of time during which the petitioner was
13 incarcerated or during which the petitioner was confined in a mental health facility does
14 not count toward the five-year calculation, regardless of whether such incarceration or
15 confinement was for the sex offense requiring registration or for some other offense.