



2020 South Dakota Legislature

Senate Bill 47

SENATE JUDICIARY ENGROSSED

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 **An Act to revise certain provisions regarding sex offender registration statutes.**

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

3 **Section 1.** That § 22-24B-1 be AMENDED:

4 **22-24B-1. Sex crimes determined.**

5 For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of the
6 following crimes regardless of the date of the commission of the offense or the date of
7 conviction:

- 8 (1) Rape as set forth in § 22-22-1;
- 9 (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if
10 committed by an adult;
- 11 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- 12 (4) Incest if committed by an adult;
- 13 (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-
14 24A-3;
- 15 (6) Sale of child pornography as set forth in § 22-24A-1;
- 16 (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- 17 (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- 18 (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- 19 (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- 20 (11) Felony indecent exposure as previously set forth in former § 22-24-1 or felony
21 indecent exposure as set forth in § 22-24-1.2;
- 22 (12) Solicitation of a minor as set forth in § 22-24A-5;
- 23 (13) Felony indecent exposure as set forth in § 22-24-1.3;
- 24 (14) Bestiality as set forth in § 22-22-42;
- 25 (15) An attempt, conspiracy, or solicitation to commit any of the crimes listed in this
26 section;

- 1 (16) Any crime, court martial offense, or tribal offense committed in a place other than
 2 this state that constitutes a sex crime under this section if committed in this state;
- 3 (17) Any federal crime, court martial offense, or tribal offense that constitutes a sex
 4 crime under federal law;
- 5 (18) Any crime committed in another state if that state also requires anyone convicted
 6 of that crime register as a sex offender in that state;
- 7 (19) If the victim is a minor:
- 8 (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-
 9 22-7.6;
- 10 (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
- 11 (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- 12 (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31;
- 13 (21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor; ~~or~~
- 14 (22) Second degree human trafficking as set forth in § 22-49-3 involving the prostitution
 15 of a minor; or
- 16 (23) Felony use or dissemination of visual recording or photographic device without
 17 consent and with intent to self-gratify, harass, or embarrass as set forth in § 22-
 18 21-4.

19 **Section 2.** That § 22-24B-27 be AMENDED:

20 **22-24B-27. Community Safety Zone--Exemption--Eligibility.**

21 To be eligible for exemption from the community safety zone restrictions, the
 22 petitioner shall show, by clear and convincing evidence, the following:

- 23 (1) That at least ten years have elapsed since the date the petitioner was convicted of
 24 the offense that subjected the petitioner to community safety zone restrictions
 25 pursuant to §§ 22-24B-22 to 22-24B-28, inclusive. For purposes of this subdivision,
 26 any period of time during which the petitioner was incarcerated or during which the
 27 petitioner was confined in a mental health facility or during which the petitioner was
 28 on probation or parole supervision does not count toward the ten-year calculation,
 29 regardless of whether such incarceration, confinement or community supervision
 30 was for the sex offense requiring registration or for some other offense;
- 31 (2) That the petitioner is not a recidivist sex offender. A recidivist sex offender is a
 32 person who has been convicted or adjudicated for more than one sex crime listed
 33 in ~~subdivisions 22-24B-1(1) to (19), inclusive § 22-24B-1,~~ regardless of when those
 34 convictions or adjudications occurred. For purposes of this subdivision and

- 1 subdivision (1) of this section, a conviction or adjudication includes a verdict or plea
 2 of guilty; a verdict or plea of guilty but mentally ill; a plea of nolo contendere; a
 3 suspended imposition of sentence granted under § 23A-27-13, regardless of
 4 whether it has been discharged; a deferred prosecution agreement entered by a
 5 prosecutor; and a determination made in another state, federal jurisdiction, or
 6 courts martial that is comparable to any of these events;
- 7 (3) That the petitioner has completely and truthfully complied with the registration and
 8 reregistration requirements imposed under this chapter;
- 9 (4) That the petitioner has actually resided in South Dakota at least ten consecutive
 10 years immediately prior to the filing of the petition. Residence as used in this
 11 subdivision does not mean the registration address of an incarcerated sex offender;
 12 and
- 13 (5) The circumstances of the crime subjecting the offender to community safety zone
 14 restrictions did not involve a child under age thirteen.

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

16 **22-24B-19. Criteria for removal from registry as Tier I offender.**

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

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

- 1 (3) The circumstances surrounding the crime requiring registration did not involve a
2 child under the age of thirteen;
- 3 (4) The petitioner is not a recidivist sex offender;
- 4 (5) The petitioner has substantially complied in good faith with the registration and re-
5 registration requirements imposed under chapter 22-24B; and
- 6 (6) Petitioner demonstrates to the satisfaction of the court that he or she does not pose
7 a risk or danger to the community.

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

12 **Section 4.** That § 22-21-4 be AMENDED:

13 **22-21-4. Use or dissemination of visual recording or photographic device--**
14 **Violation as misdemeanor or felony.**

15 No person may use or disseminate in any form any visual recording or photographic
16 device to photograph or visually record any other person without clothing or under or
17 through the clothing, or with another person depicted in a sexual manner, for the purpose
18 of viewing the body of, or the undergarments worn by, that other person, without the
19 consent or knowledge of that other person, with the intent to self-gratify, to harass, or
20 embarrass and invade the privacy of that other person, under circumstances in which the
21 other person has a reasonable expectation of privacy. A violation of this section is a Class
22 1 misdemeanor. However, a violation of this section is a Class 6 felony if the victim is
23 seventeen years of age or younger and the perpetrator is at least twenty-one years ~~old~~ of
24 age at the time the photograph or recording is made.