



2020 South Dakota Legislature  
**Senate Bill 47**  
**ENROLLED**

AN ACT

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

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

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

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

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

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

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

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

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

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

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

in § 22-24B-1, regardless of when those convictions or adjudications occurred. For purposes of this subdivision and subdivision (1) of this section, a conviction or adjudication includes a verdict or plea of guilty; a verdict or plea of guilty but mentally ill; a plea of nolo contendere; a suspended imposition of sentence granted under § 23A-27-13, regardless of whether it has been discharged; a deferred prosecution agreement entered by a prosecutor; and a determination made in another state, federal jurisdiction, or courts martial that is comparable to any of these events;

- (3) That the petitioner has completely and truthfully complied with the registration and reregistration requirements imposed under this chapter;
- (4) That the petitioner has actually resided in South Dakota at least ten consecutive years immediately prior to the filing of the petition. Residence as used in this subdivision does not mean the registration address of an incarcerated sex offender; and
- (5) The circumstances of the crime subjecting the offender to community safety zone restrictions did not involve a child under age thirteen.

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

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

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

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

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

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

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

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

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

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I certify that the attached Act originated in the:  
  
Senate as Bill No. 47

Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_,  
2020 at \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of the Senate

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_  
President of the Senate

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 2020

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
Speaker of the House

Attest:

Filed \_\_\_\_\_, 2020  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Secretary of State

Senate Bill No. 47  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State