

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

837Y0361

SENATE BILL NO. 91

Introduced by: Senators Nelson, Curd, Greenfield (Brock), Langer, Monroe, Netherton, Peters, Russell, Stalzer, Tidemann, and Wiik and Representatives Latterell, Brunner, Gosch, Greenfield (Lana), Kaiser, May, Rozum, Soli, and Tieszen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions 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 to read:

4 22-22-1. Rape is an act of sexual penetration accomplished with any person under any of
5 the following circumstances:

6 (1) If the victim is less than thirteen years of age; or

7 (2) Through the use of force, coercion, or threats of immediate and great bodily harm
8 against the victim or other persons within the victim's presence, accompanied by
9 apparent power of execution; or

10 (3) If the victim is incapable, because of physical or mental incapacity, of giving consent
11 to such act; or

12 (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or
13 anesthetic agent or hypnosis; or

14 (5) If the victim is thirteen years of age, but less than sixteen years of age, and the



1 perpetrator is at least three years older than the victim.

2 A violation of subdivision (1) of this section is rape in the first degree, which is a Class C
3 felony. A violation of subdivision (2) of this section is rape in the second degree which is a
4 Class 1 felony. A violation of subdivision (3) or (4) of this section is rape in the third degree,
5 which is a Class 2 felony. A violation of subdivision (5) of this section is rape in the fourth
6 degree, which is a Class 3 felony. It is not an element of any of the above crimes that the
7 defendant knew or should have known the victim's age or that the defendant knew or should
8 have known that the victim was incapable of giving consent. Notwithstanding the provisions
9 of § 23A-42-2, no statute of limitations applies to any charge brought pursuant to subdivisions
10 (1) or (2) of this section. Otherwise a charge brought pursuant to this section may be
11 commenced at any time prior to the time the victim becomes of age twenty-five or within seven
12 years of the commission of the crime, whichever is longer.