

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

Ninety-Seventh Session SESSION
2022 South Dakota Legislature

Senate Bill 77

An Act to enhance the penalty on registered sex offenders who commit sexual contact without consent from a person capable of consenting.

A prison/jail population cost estimate statement is required for SB77 because the bill would create a new Class 6 felony.

SDCL 22-22-7.4 prohibits a person who is fifteen or older from engaging in sexual contact with another person who is not that person's spouse, is capable of consenting, but has not consented to sexual contact. Currently, a violation of SDCL 22-22-7.4 is a Class 1 misdemeanor. The bill would enhance the penalty for a violation to a Class 6 felony if the defendant was a registered sex offender at the time of the offense. A person is required to register as a sex offender if they have committed an offense enumerated in any of the 25 subdivisions of SDCL 22-24B-1. SDCL 22-22-7.4 is not a registerable offense.

In the last ten years, there have been 181 convictions under SDCL 22-22-7.4. Of those 181 convictions, seven individuals were identified as having prior convictions for offenses that would have made them a registered sex offender.

This may not represent the total number of individuals convicted under SDCL 22-22-7.4 in the last ten years who were registered sex offenders at the time of the offense. The seven individuals were identified by determining who had a prior conviction under SDCL 22-22-1, 22-22-7, 22-22-7.2, 22-24A-3, 22-24A-1, 22-22-24.3, 22-22-30.1, 22-24-1.2, 22-24A-5, 22-24-1.3, 22-22-42, 22-18-31(1), or 22-21-4, representing 13 subdivisions of SDCL 22-24B-1.

Under SDCL 22-24B-1, certain provisions do not represent convictions that are feasibly tracked because they do not represent convictions under South Dakota law. Rather, they are violations in other jurisdictions. These represent 3 subdivisions: SDCL 22-24B-1(16), (17), and (18).

The offenses cited in the 9 remaining subdivisions of SDCL 22-24B-1 could not be cross-referenced at this time with individuals convicted under SDCL 22-22-7.4 because the offenses have never been charged, certain elements required to make it a registerable offense are not feasibly tracked, or other circumstances made cross-referencing infeasible.

It is estimated there would be, on average, approximately one Class 6 felony conviction each year under the bill. Currently, for Class 6 felonies, 21.6% of these sentences are carried out in jail facilities and 26.1% in minimum security facilities. For Class 1 misdemeanors, 35.7% of these sentences are carried out in jail facilities and a negligible amount (.03%) in minimum security facilities.

The average time served in prison for a non-violent Class 6 felony is currently 163.5 days. Individuals serving time for Class 6 felonies in minimum security facilities cost \$52.53 per

day. Assuming two individuals would be sentenced to time in prison every ten years, the increased operating cost for prisons would be \$1,718 on an annual basis and up to \$17,177 every ten years.

The average time served in jail for a Class 1 misdemeanor is currently 12 days, while the time served for a Class 6 felony is 168 days. Assuming, every ten years, three people were sentenced to time in jail and two people would be sentenced to jail after amendment of the statute, with a jail facilities' cost of \$96.30 per day, the increased operating cost in the first year would be \$2,889 on an annual basis and up to \$28,890 every ten years.

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DATE: 1/25/2022
2022-FI77A
