



2022 South Dakota Legislature

House Bill 1100

Introduced by: **Representative Reed**

1 **An Act to revise provisions related to the video recording of certain victim testimony**
 2 **at a preliminary hearing or deposition.**

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

4 **Section 1. That § 23A-12-9 be AMENDED:**

5 **23A-12-9.** ~~If~~ A prosecuting or defense attorney may apply for an order that a
 6 victim's testimony at a preliminary hearing or deposition, in addition to being
 7 stenographically recorded, be recorded and preserved on video, if a defendant has been
 8 charged with a violation of subdivision 22-22-1(1), (5), or (6) or § 22-22-7, where the
 9 victim is less than sixteen years of age, the prosecuting attorney or defense attorney may
 10 apply for an order that the victim's testimony at the preliminary hearing or at a deposition,
 11 in addition to being stenographically recorded, be recorded and preserved on videotape.:
 12 (1) Subdivision 22-22-1(1) or (5);
 13 (2) § 22-22-7; or
 14 (3) § 22-49-2, where the victim is less than eighteen years old.

15 The scope and manner of the examination and cross-examination ~~shall~~ must be
 16 such as would be allowed at the trial. Notice of any such deposition pursuant to this section
 17 ~~shall~~ must conform in all respects to the notice requirements contained in § 23A-12-2.

18 The application for the order ~~shall~~ must be in writing and made at least three days
 19 before the preliminary hearing or deposition.

20 Upon timely receipt of the application, the court may order that the testimony of
 21 the victim given at the preliminary hearing or deposition be taken and preserved on
 22 ~~videotape~~ video. The ~~videotape shall~~ video must be transmitted to the clerk of the court
 23 in which the action is pending.

24 If, at the time of trial, the court finds that the victim is otherwise unavailable within
 25 the meaning of subdivision 19-19-804(a), or that such testimony would in the opinion of
 26 the court be substantially detrimental to the well-being of the victim, the court may admit

1 the ~~videotape~~ video of the victim's testimony at the preliminary hearing or deposition as
2 former testimony under ~~subdivision~~ subsection 19-19-804(b)(1).

3 **Section 2. That § 23A-12-10 be AMENDED:**

4 **23A-12-10.** Upon timely receipt of a notice that additional evidence has been
5 newly discovered and for good cause shown, the court may order an additional hearing to
6 ~~videotape~~ record the victim's testimony relevant to the newly discovered evidence on
7 video.

8 **Section 3. That § 23A-28C-8 be AMENDED:**

9 **23A-28C-8.** The victim or witness assistant shall:

- 10 (1) Advise the victim about the legal proceedings in which the victim will be involved;
- 11 (2) Advise the victim concerning any required appearance at any proceeding and if the
12 proceeding is continued or postponed;
- 13 (3) Assist the state's attorney, court services officer, and the victim to determine the
14 amount of monetary damages suffered by the victim and advise the victim about
15 restitution;
- 16 (4) Advise, ~~if the victim is less than sixteen years of age and the victim of certain crimes~~
17 if the requirements of § 23A-12-9 are met, the victim and one of the victim's
18 immediate family that the preliminary hearing or deposition testimony of the victim
19 may be ~~videotaped pursuant to § 23A-12-9~~ video recorded; and
- 20 (5) Advise the victim or one of the victim's immediate family if the defendant is released
21 from custody and the defendant's bail conditions.

22 The victim or witness assistant may accompany the victim in any criminal
23 proceeding.