

## 2022 South Dakota Legislature

**House Bill 1100****AMENDMENT 1100A FOR THE INTRODUCED BILL**

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

14 (1) Subdivision 22-22-1(1) or (5);

15 (2) § 22-22-7; or

16 (3) § 22-49-2, where the victim is less than eighteen years old.

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

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

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

1           If, at the time of trial, the court finds that the victim is otherwise unavailable within  
2           the meaning of subdivision 19-19-804(a), or that such testimony would in the opinion of  
3           the court be substantially detrimental to the well-being of the victim, the court may admit  
4           the ~~videotape~~ video of the victim's testimony at the preliminary hearing or deposition as  
5           former testimony under ~~subdivision~~ subsection 19-19-804(b)(1).

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

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

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

12          **23A-28C-8.** The victim or witness assistant shall:

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

25          The victim or witness assistant may accompany the victim in any criminal  
26          proceeding.