

# **PRISON/JAIL POPULATION COST ESTIMATE STATEMENT**

Ninety-Seventh Session  
2022 South Dakota Legislature

## **Senate Bill 120**

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An Act to include intentionally manipulated images or recordings in the crime of invasion of privacy by recording.

A prison/jail population cost estimate statement is required for SB120 because the bill would establish additional circumstances triggering a violation under SDCL 22-21-4. Currently, this statute sets out violations for the invasion of privacy by taking photographs or visually recording another person in a depicted sexual act, without that person's consent, for the purposes of self-gratification. A violation under the statute results in a Class 1 misdemeanor, except in the instance where the victim is seventeen years of age or younger and the perpetrator is twenty-one years of age or older at the time of the offending incident. In the latter instance, a violation of the statute results in a Class 6 felony.

This bill would amend SDCL 22-21-4 by adding language regarding the dissemination or selling of photographic images or video recordings involving acts of a sexual nature, specifically those that present a false depiction of the individual's identity through manipulation of the medium. The bill would incorporate violations involving the intentional alteration of sexually explicit images or photographs specifically to portray another individual's identity, distinct from whom was captured in the original depiction.

There were 40 misdemeanor convictions under SDCL 22-21-4 from January 1, 2011, to December 31, 2021. All inmates were sentenced to jail and served an average of 58 days per inmate. Additionally, there were three Class 6 felony convictions under this statute during the same period. Of these, an average of 303 days were served in penitentiary, per inmate.

A review of other states does not reveal any other jurisdictions that have statutorily enacted felonies commensurate with conduct contemplated in the bill. In 2014, Virginia enacted a measure that was specifically amended in 2019 to incorporate substantially similar conduct to that contemplated under the bill. That measure establishes a misdemeanor offense for conduct related to manipulating the perceived identity of individuals recorded in sexually explicit acts. However, the commonwealth was unable to timely respond to the LRC's data request. Due to the nascency of that state's enactment, proportionately relevant projections would likely prove difficult.

It should be noted for cost estimation purposes that the existing provisions of the statute broadly encompass what the amended version attempts to specify. Therefore, the addition of the proposed language does not suggest historically disproportionate new conviction rates. The lack of available comparable data prevents the ability to forecast a cost impact. However, felony conviction data under the current statute suggests the bill's addition of a new violative circumstance would have a negligibly low impact on prison and jail costs.

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