

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

Ninety-Seventh Session SESSION
2022 South Dakota Legislature

House Bill 1287

An Act to revise certain provisions regarding the crime of rape and provide a penalty therefor.

A prison/jail population cost estimate statement is required for HB1287 because the bill would create a new felony.

SDCL 22-22-1 prohibits the crime of rape. Currently, SDCL 22-22-1 prohibits five forms of rape:

- If the victim is less than thirteen years old. This is a Class C felony;
- Through force, coercion, or threats of immediate and great bodily harm. This is a Class 1 felony;
- If the victim is incapable of giving consent because of physical or mental incapacity. This is a Class 2 felony;
- If the victim is incapable of giving consent because of intoxication, narcotic, anesthetic or hypnosis. This is a Class 2 felony; or
- If the victim is thirteen years old, but less than sixteen, and the perpetrator is at least three years old than the victim. This is a Class 3 felony.

In the last ten years, there have been 314 convictions resulting in penitentiary sentences and 16 convictions resulting in jail sentences under SDCL 22-22-1. SDCL 22-22-1(5), the final form of rape described above, saw the most convictions with 159.

The bill would create a new form of rape by prohibiting sexual penetration without the victim's consent. The bill would further define consent as "a person's positive cooperation in act or attitude pursuant to the person's exercise of free will." A violation for this form of rape would be a Class 4 felony.

The rape statutes of states surrounding South Dakota and those with similar population sizes were examined to determine from where to draw data for purposes of this estimate. These states include Minnesota, Iowa, Nebraska, Rhode Island, Montana, Delaware, North Dakota, Alaska, Vermont, and Wyoming. Minnesota and Vermont penalize forms of rape without a victim's consent where consent is defined in a similar manner to the bill. Of these two states, Minnesota responded to a data request.

In Minnesota, there have been 1,250 convictions for rape without consent in the last ten years. Minnesota's population is 5,706,494 as of the 2020 Census, while South Dakota's is 886,667. Accounting for the population difference, it is estimated that there would be about 194 convictions in South Dakota for rape without consent over the course of ten years, averaging out to about 19 convictions per year.

Currently, for Class 4 felonies, 14.6% of these sentences are carried out in jail facilities and 48.6% in low-medium security facilities.

The average time served in prison for a violent Class 4 felony is currently 908.8 days. Individuals serving time for Class 4 felonies in low-medium security facilities cost \$78.26 per day. The increased operating cost for prisons would be \$668,553 in the first year and up to \$6,685,533 every ten years for individuals sentenced to prison.

The average time served in jail for these offenses is currently 79 days. With a jail facilities' cost of \$96.30 per day, the increased operating cost in the first year would be \$21,302 and up to \$213,016 every ten years for individuals sentenced to jail.

APPROVED BY: /s/ Reed Holwegner
Director, Legislative Research Council

DATE: 2/9/2022
2022-FI1287A