

2022 South Dakota Legislature

House Bill 1100**AMENDMENT 1100B FOR THE HOUSE JUDICIARY
ENGROSSED 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~~ sixteen 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 the victim's testimony at the preliminary hearing or deposition, in addition to
8 being stenographically recorded, be recorded and preserved on video, if a defendant has
9 been charged with a violation of ~~subdivision 22-22-1(1), (5), or (6) or § 22-22-7,~~ where
10 the victim is less than sixteen years of age, the prosecuting attorney or defense attorney
11 may apply for an order that the victim's testimony at the preliminary hearing or at a
12 deposition, in addition to being stenographically recorded, be recorded and preserved on
13 videotape.;

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

15 (2) § 22-22-7; or

16 (3) § 22-49-2.

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.