

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

Ninety-Eighth Session SESSION

2023 South Dakota Legislature

Senate Bill 91

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 SB91 because it would establish a new felony under South Dakota law.

The bill would make three substantive changes to SDCL 22-22-1, which defines the elements of rape. The first two cover subdivisions (3) and (4).

Subdivisions (3) and (4) would define rape in the third degree, which involves a victim incapable of giving consent either because of a physical or mental incapacity or any intoxicating agent or hypnosis. Rape in the third degree is a Class 2 felony. The bill would add the requirement to both subdivisions that the "perpetrator knows or reasonably should know" of the victim's incapacity. The addition to SDCL 22-22-1(3) would likely increase the state's burden of proof and possibly reduce the number of convictions under said statute. It is unlikely the bill would affect the prosecution of cases under SDCL 22-22-1(4).

The cost estimate will instead focus solely on the addition of a new subdivision to SDCL 22-22-1. The bill would add a new definition of rape, including sexual penetration with any person "without the victim's consent." Such an act constitutes rape in the fourth degree, which is a Class 3 felony.

Several states make sexual penetration without consent a felony crime. One such state is Minnesota (Minn. Stat. Ann. § 609.3451.1). The Court Research Office of the Minnesota State Court Administrator's Office was able to provide the number of charges under Minn. Stat. Ann. § 609.3451.1 over the last ten years. For this cost estimate, the LRC assumes all people charged were convicted. From 2013 onward, 248 people were charged with engaging in nonconsensual sexual penetration, or about 24.8 people a year.

Per the U.S. Census Bureau, the population of Minnesota is estimated to be 5,717,184 as of July 1, 2022. The population of South Dakota is estimated to be 909,824. Scaling down for differences in population, it is estimated 3.9 people a year would be convicted in South Dakota per the new definition of rape in the fourth degree proposed in the bill.

Currently, for Class 3 felonies, 57.0% of these sentences are served in low-medium security prisons, while 10.8% are served in jails. The average time served in prison for a violent Class 3 felony is 1,158 days. Individuals serving time for Class 3 felonies in low-medium security facilities cost \$90.61 per day as of FY 2024. Thus, the projected increased operating cost for the Department of Corrections would be \$66,145.30 (assuming about two people serve 365 days each). If, on average, 2.2 people were convicted every year over ten years, the total impact to the Department of Corrections is projected to be \$2,052,425.

The average time served in jail for a Class 3 felony is 130 days. With an estimated daily jail rate of \$96.30 per day, the increased ongoing cost to counties in the first year is projected to be \$12,519 (assuming one person serves 130 days). If, on average, 0.4 people were convicted every year over ten years, the total impact to the counties is projected to be \$52,730.03.

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

DATE: 2/2/2023
2023-FI91A
