

2024 South Dakota Legislature

House Bill 1045**AMENDMENT 1045B
FOR THE INTRODUCED BILL**

1 **An Act to revise provisions relating to the possession, manufacture, and distribution**
2 **of child pornography.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 22-24A-3 be REPEALED:**

5 ~~A person is guilty of possessing, manufacturing, or distributing child pornography~~
6 ~~if the person:~~

7 ~~(1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in~~
8 ~~the simulation of such an act;~~

9 ~~(2) Causes or knowingly permits the creation of any visual depiction of a minor~~
10 ~~engaged in a prohibited sexual act, or in the simulation of such an act; or~~

11 ~~(3) Knowingly possesses, distributes, or otherwise disseminates any visual depiction~~
12 ~~of a minor engaging in a prohibited sexual act, or in the simulation of such an act.~~

13 ~~Consent to performing these proscribed acts by a minor or a minor's parent,~~
14 ~~guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of~~
15 ~~violating this section.~~

16 ~~A violation of this section is a Class 4 felony. If a person is convicted of a second~~
17 ~~or subsequent violation of this section within fifteen years of the prior conviction, the~~
18 ~~violation is a Class 3 felony.~~

19 ~~The court shall order an assessment pursuant to § 22-22-1.3 of any person~~
20 ~~convicted of violating this section.~~

21 **Section 2. That chapter 22-24A be amended with a NEW SECTION:**

22 A person is guilty of manufacturing child pornography if the person:

23 (1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in
24 the simulation of such an act; or

1 (2) Causes or knowingly permits the creation of any visual depiction of a minor
2 engaged in a prohibited sexual act, or in the simulation of such an act.

3 A violation of this section is a Class 3 felony, and the court may not sentence the
4 person to a term of imprisonment of less than seven and one-half years. The court may
5 not suspend this sentence. A second or subsequent violation of this section ~~within fifteen~~
6 years of a prior conviction is a Class 2 felony, and the court may not sentence the person
7 to a term of imprisonment of less than twelve and one-half years. The court may not
8 suspend this sentence.

9 **Section 3. That chapter 22-24A be amended with a NEW SECTION:**

10 A person is guilty of distributing child pornography if the person knowingly sells or
11 distributes any visual depiction of a minor engaging in a prohibited sexual act, or in the
12 simulation of such an act. A violation of this section is a Class 4 felony, and the court may
13 not sentence the person to a term of imprisonment of less than five years. The court may
14 not suspend this sentence. A second or subsequent violation of this section ~~within fifteen~~
15 years of a prior conviction is a Class 3 felony, and the court may not sentence the person
16 to a term of imprisonment of less than seven and one-half years. The court may not
17 suspend this sentence.

18 **Section 4. That chapter 22-24A be amended with a NEW SECTION:**

19 A person is guilty of possessing child pornography if the person knowingly
20 possesses any visual depiction of a minor engaging in a prohibited sexual act, or in the
21 simulation of such an act. A violation of this section is a Class 4 felony. A second or
22 subsequent violation of this section ~~within fifteen years of a prior conviction~~ is a Class 3
23 felony, and the court may not sentence the person to a term of imprisonment of less than
24 ~~seven and one-half five~~ years. The court may not suspend this sentence.

25 **Section 5. That chapter 22-24A be amended with a NEW SECTION:**

26 Any conviction for, or plea of guilty to, an offense in another state which, if
27 committed in this state, would be a violation of sections 2 to 4, inclusive, of this Act, must
28 be used to determine if the violation being charged is a second or subsequent offense.

29 **Section 6. That chapter 22-24A be amended with a NEW SECTION:**

1 Consent to performing the proscribed acts by a minor or a minor's parent,
2 guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of
3 violating sections 2 to 4, inclusive, of this Act.

4 **Section 7. That § 22-6-11 be AMENDED:**

5 **22-6-11.** The sentencing court shall sentence an offender convicted of a Class 5
6 or Class 6 felony, except those convicted under §§ 22-11A-2.1, 22-14-15, 22-18-1, 22-
7 18-1.05, 22-18-26, 22-18-29, 22-19A-1, 22-19A-2, 22-19A-3, 22-19A-7, 22-19A-16, 22-
8 22A-2, 22-22A-4, ~~22-24A-3~~, 22-22-24.3, subdivision 22-23-2(2), 22-24-1.2, 22-24B-2,
9 22-24B-12, 22-24B-12.1, 22-24B-23, 22-30A-46, 22-42-7, subdivision 24-2-14(1), 32-
10 34-5, and any person ineligible for probation under § 23A-27-12, to a term of probation.
11 If the offender is under the supervision of the Department of Corrections, the court ~~shall~~
12 must order a fully suspended state incarceration sentence pursuant to § 23A-27-18.4. The
13 sentencing court may impose a sentence other than probation or a fully suspended state
14 incarceration sentence if the court finds aggravating circumstances exist that pose a
15 significant risk to the public and require a departure from presumptive probation under
16 this section. If a departure is made, the judge ~~shall~~ must state ~~on the record at the time~~
17 ~~of sentencing the aggravating circumstances and the same shall be stated on the record~~
18 at the time of sentencing and in the dispositional order. Neither this section nor its
19 application may be the basis for establishing a constitutionally protected liberty, property,
20 or due process interest.

21 **Section 8. That § 22-24-1.2 be AMENDED:**

22 **22-24-1.2.** A person commits the crime of indecent exposure if, with the intent to
23 arouse or gratify the sexual desire of any person, the person exposes his or her genitals
24 in a public place, or in the view of a public place, under circumstances in which that person
25 knows that person's conduct is likely to annoy, offend, or alarm another person. A violation
26 of this section is a Class 1 misdemeanor. However, if ~~such the~~ person has been previously
27 convicted of a felony violation of § 22-22-1, 22-22-7, or ~~22-24A-3~~ sections 2 to 4,
28 inclusive, of this Act, that person is guilty of a Class 6 felony. Any person convicted of a
29 third or subsequent violation of this section is guilty of a Class 6 felony.

30 **Section 9. That § 22-24A-20 be AMENDED:**

1 **22-24A-20.** The provisions of §§ 22-22-24.3, 22-24A-1, 22-24A-1.1, ~~22-24A-3~~
 2 sections 2 to 4, inclusive, of this Act, 22-24A-3.1, and 22-24A-5 do not apply to the selling,
 3 lending, distributing, exhibiting, giving away, showing, possessing, or making of films,
 4 photographs, or other materials involving only nudity, if the materials are made for and
 5 have a serious literary, artistic, educational, or scientific value.

6 **Section 10. That § 22-24B-1 be AMENDED:**

7 **22-24B-1.** For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime
 8 is any of the following crimes regardless of the date of the commission of the offense or
 9 the date of conviction:

- 10 (1) Rape as set forth in § 22-22-1;
- 11 (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if
 12 committed by an adult;
- 13 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- 14 (4) Incest if committed by an adult;
- 15 (5) Possessing, manufacturing, or distributing child pornography as set forth in ~~§ 22-~~
 16 ~~24A-3~~ sections 2 to 4, inclusive, of this Act;
- 17 (6) Sale of child pornography as set forth in § 22-24A-1;
- 18 (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- 19 (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- 20 (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- 21 (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- 22 (11) Felony indecent exposure as previously set forth in former § 22-24-1 or felony
 23 indecent exposure as set forth in § 22-24-1.2;
- 24 (12) Solicitation of a minor as set forth in § 22-24A-5;
- 25 (13) Felony indecent exposure as set forth in § 22-24-1.3;
- 26 (14) Bestiality as set forth in § 22-22-42;
- 27 (15) An attempt, conspiracy, or solicitation to commit any of the crimes listed in this
 28 section;
- 29 (16) Any crime, court martial offense, or tribal offense committed in a place other than
 30 this state that constitutes a sex crime under this section if committed in this state;
- 31 (17) Any federal crime, court martial offense, or tribal offense that constitutes a sex
 32 crime under federal law;
- 33 (18) Any crime committed in another state if that state also requires anyone convicted
 34 of that crime register as a sex offender in that state;

- 1 (19) If the victim is a minor:
- 2 (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-
- 3 22-7.6;
- 4 (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
- 5 (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- 6 (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31;
- 7 (21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor;
- 8 (22) Second degree human trafficking as set forth in § 22-49-3 involving the
- 9 prostitution of a minor;
- 10 (23) Felony use or dissemination of visual recording or photographic device without
- 11 consent and with intent to self-gratify, harass, or embarrass as set forth in § 22-
- 12 21-4;
- 13 (24) Manufacturing or distributing a child-like sex doll as set forth in § 22-24A-1.1; or
- 14 (25) Felony conviction of purchasing or possessing a child-like sex doll as set forth in
- 15 § 22-24A-3.1.