



2025 South Dakota Legislature

House Bill 1207

Introduced by: **Representative Ismay**

1 **An Act to revise and repeal provisions related to rape in the first degree and to**
 2 **provide a penalty therefor.**

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

4 **Section 1. That § 22-22-1 be AMENDED:**

5 **22-22-1.** Rape is an act of sexual penetration accomplished with any person under
 6 any of the following circumstances:

- 7 (1) If the victim is less than thirteen years of age;
- 8 (2) Through the use of force, coercion, or threats of immediate and great bodily harm
 9 against the victim or other persons within the victim's presence, accompanied by
 10 apparent power of execution;
- 11 (3) If the victim is incapable, because of physical or mental incapacity, of giving
 12 consent to such act and the perpetrator knows or reasonably should know of the
 13 victim's incapacity;
- 14 (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or
 15 anesthetic agent or hypnosis and the perpetrator knows or reasonably should know
 16 the victim is incapable of giving consent;
- 17 (5) If the victim is thirteen years of age, but less than sixteen years of age, and the
 18 perpetrator is at least three years older than the victim; or
- 19 (6) Without the victim's consent and the perpetrator knows or reasonably should know
 20 the victim is not consenting.

21 A violation of subdivision (1) is rape in the first degree, which is a Class-~~C~~B felony.
 22 A violation of subdivision (2) is rape in the second degree, which is a Class 1 felony. A
 23 violation of subdivision (3) or (4) is rape in the third degree, which is a Class 2 felony. A
 24 violation of subdivision (5) or (6) is rape in the fourth degree, which is a Class 3 felony.

25 Notwithstanding the provisions of § 23A-42-2, no statute of limitations applies to
 26 any charge brought pursuant to subdivision (1) or (2). Otherwise, a charge brought

1 pursuant to this section may be commenced at any time before the victim reaches age
2 twenty-five or within seven years from the commission of the crime, whichever is longer.

3 **Section 2. That § 22-22-1.4 be AMENDED:**

4 **22-22-1.4.** The sentencing court may impose a sentence other than that which is
5 required by ~~§§ 22-22-1.2 and 22-6-1.2 and 22-22-7~~ if the court finds ~~that~~ mitigating
6 circumstances exist ~~which~~ that require a departure from the mandatory sentence imposed
7 by ~~§§ 22-22-1.2 or 22-6-1.2 or 22-22-7~~. The court's finding of mitigating circumstances
8 and the factual basis relied upon by the court shall be in writing.

9 **Section 3. That § 22-22-7 be AMENDED:**

10 **22-22-7.** Any person, sixteen years of age or older, who knowingly engages in
11 sexual contact with another person, other than that person's spouse if the other person is
12 under the age of sixteen years, is guilty of a Class 3 felony. If the victim is at least thirteen
13 years of age and the actor is less than five years older than the victim, the actor is guilty
14 of a Class 1 misdemeanor. Notwithstanding § 23A-42-2, a charge brought pursuant to this
15 section may be commenced at any time before the victim becomes age twenty-five or
16 within seven years of the commission of the crime, whichever is longer.

17 If an adult is convicted of a violation of this section and the victim is less than
18 thirteen years of age, the court must impose a minimum sentence of ten years for a first
19 offense.

20 **Section 4. That § 22-22-1.2 be REPEALED.**

21 ~~If any adult is convicted of any of the following violations, the court shall impose~~
22 ~~the following minimum sentences:~~

- 23 ~~(1) For a violation of subdivision 22-22-1(1), fifteen years for a first offense; and~~
24 ~~(2) For a violation of § 22-22-7 if the victim is less than thirteen years of age, ten~~
25 ~~years for a first offense.~~