



## 2026 South Dakota Legislature

# House Bill 1031

Introduced by: **Representative Ismay**

1 **An Act to revise and repeal provisions related to rape offenses and to increase the**  
 2 **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~~ must 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.~~