

2022 South Dakota Legislature

Senate Bill 81**AMENDMENT 81C FOR THE INTRODUCED BILL**

1 **An Act to revise the definition of sexual contact for purposes of sexual contact with**
 2 **a child under eighteen by a person in a position of authority.**

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

4 **Section 1. That ~~§ 22-22-7.1~~ be AMENDED:**

5 ~~**22-22-7.1.** As used in this chapter, the term, sexual contact, means any touching~~
 6 ~~with the intent to arouse or gratify the sexual desire of either party, not amounting to~~
 7 ~~rape, whether or not through clothing or other covering, of the breasts of a female or the~~
 8 ~~genitalia or anus of any person with the intent to arouse or gratify the sexual desire of~~
 9 ~~either party.;~~

10 ~~(1) Breasts of a female; or~~

11 ~~(2) Genitalia, anus, buttocks, or inner thighs of any person.~~

12 ~~Practitioners of the healing arts lawfully practicing within the scope of their~~
 13 ~~practice, which determination shall be is conclusive as against the state and shall must be~~
 14 ~~made by the court prior to trial, are not included within the provisions of this section. In~~
 15 ~~any pretrial proceeding under this section, the prosecution has the burden of establishing~~
 16 ~~probable cause.~~

17 **Section 1. That ~~§ 22-22-7.8~~ be AMENDED:**

18 ~~**22-22-7.8.** A person is guilty of a Class 6 felony if the person:~~

19 (1) (a) Is at least eighteen years of age; and

20 (b) Is at least five years older than the victim;

21 (2) Is in a position of authority, as defined in this section; and

22 (3) Knowingly engages in sexual contact, or touches the buttocks or upper inner thighs
 23 with the intent to arouse or gratify the sexual desire of either party, with another
 24 who is:

- 1 (a) Less than eighteen years of age; and
2 (b) Not the person's spouse.

3 For purposes of this section, a person is in a position of authority if the person, at
4 the time of the sexual contact, or within the one-hundred-twenty-day period immediately
5 preceding the sexual contact, interacts, no matter how briefly, with the victim as a coach,
6 child care provider, disability services provider, guardian ad litem, health care provider,
7 law enforcement officer, mental health counselor, probation officer, religious leader,
8 school administrator, social worker, teacher, therapist, or youth leader.

9 Notwithstanding § 23A-42-2, a charge pursuant to this section may be brought at
10 any time before the victim reaches the age of twenty-five or within seven years from the
11 commission of the crime, whichever is longer.