

# State of South Dakota

## EIGHTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2012

912T0539

### HOUSE BILL NO. 1143

Introduced by: Representatives Nelson (Stace), Deelstra, Greenfield, Hansen (Jon), Hawley, Hubbel, Hunhoff (Bernie), Kloucek, Kopp, Liss, Miller, Olson (Betty), Sly, Tornow, and Venner and Senators Maher, Begalka, Lederman, and Novstrup (Al)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to a perpetrator's  
2 knowledge of a rape victim's age or capability to give consent.

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

4 Section 1. That § 22-22-1 be amended to read as follows:

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

7 (1) If the victim is less than thirteen years of age, regardless of whether or not the  
8 perpetrator knew or should have known the victim's age; or

9 (2) Through the use of force, coercion, or threats of immediate and great bodily harm  
10 against the victim or other persons within the victim's presence, accompanied by  
11 apparent power of execution; or

12 (3) If the victim is incapable, because of physical or mental incapacity, of giving consent  
13 to such act, regardless of whether or not the perpetrator knew or should have known  
14 that the victim was incapable of giving consent; or



1       (4)    If the victim is incapable of giving consent because of any intoxicating, narcotic, or  
2            anesthetic agent or hypnosis, regardless of whether or not the perpetrator knew or  
3            should have known that the victim was incapable of giving consent; or

4       (5)    If the victim is thirteen years of age, but less than sixteen years of age, and the  
5            perpetrator is at least three years older than the victim, regardless of whether or not  
6            the perpetrator knew or should have known the victim's age.

7       A violation of subdivision (1) of this section is rape in the first degree, which is a Class C  
8       felony. A violation of subdivision (2) of this section is rape in the second degree which is a  
9       Class 1 felony. A violation of subdivision (3) or (4) of this section is rape in the third degree,  
10      which is a Class 2 felony. A violation of subdivision (5) of this section is rape in the fourth  
11      degree, which is a Class 3 felony. Notwithstanding § 23A-42-2 a charge brought pursuant to this  
12      section may be commenced at any time prior to the time the victim becomes age twenty-five or  
13      within seven years of the commission of the crime, whichever is longer.