

## 2021 South Dakota Legislature

**House Bill 1150****AMENDMENT 1150B FOR THE INTRODUCED BILL**

1 **An Act to revise certain provisions regarding the crime of rape and provide**  
2 **definitions regarding the crime of rape.**

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--Penalty--Statute of limitations.**

6 Rape is an act of sexual penetration accomplished with any person under any of  
7 the following circumstances:

- 8 (1) If the victim is less than thirteen years of 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, but if the victim is incapable of giving consent because of mental  
14 incapacity, the perpetrator knows or reasonably should know of the victim's mental  
15 incapacity; or  
16 (4) If the victim is incapable of giving consent because ~~of any intoxicating, narcotic, or~~  
17 ~~anesthetic agent or hypnosis~~ the victim is incapacitated and the perpetrator knows  
18 or reasonably should know the victim is incapacitated; ~~or~~  
19 (5) If the victim is thirteen years of age, but less than sixteen years of age, and the  
20 perpetrator is at least three years older than the victim; ~~or~~  
21 (6) If the victim is not aware, does not know, does not perceive, or is not cognizant of  
22 the essential characteristics of the act based upon fraud or misrepresentation.

23 A violation of subdivision (1) of this section is rape in the first degree, which is a Class  
24 C felony.

25 A violation of subdivision (2) of this section is rape in the second degree which is a  
26 Class 1 felony.

1 A violation of subdivision (3), ~~or (4), or (6)~~ of this section is rape in the third degree,  
2 which is a Class 2 felony.

3 A violation of subdivision (5) of this section is rape in the fourth degree, which is a  
4 Class 3 felony.

5 To any charge brought pursuant to subdivisions (1) or (5) of this section, it is not a  
6 defense that the perpetrator did not know the victim's age or was misinformed regarding  
7 the victim's age.

8 Notwithstanding the provisions of § 23A-42-2, no statute of limitations applies to any  
9 charge brought pursuant to subdivisions (1) or (2) of this section. Otherwise a charge  
10 brought pursuant to this section may be commenced at any time ~~prior to the time~~ before  
11 ~~the victim becomes of~~ reaches the age twenty-five or within seven years ~~of from~~ the  
12 commission of the crime, whichever is longer.

13 **Section 2.** That a NEW SECTION be added:

14 **22-22-1.5. Definitions.**

15 Terms used in § 22-22-1 mean:

16 (1) "Coercion," the use of express or implied threats of violence, or reprisal, or other  
17 intimidating behavior, which put a person in reasonable fear of the consequences,  
18 in order to compel that person to act against the person's will;

19 (2) "Consent," positive cooperation in act or attitude, pursuant to an exercise of free  
20 will, which requires words or overt actions, by a person, indicating a freely given  
21 agreement, provided:

22 (a) The person acts freely and voluntarily and has knowledge of the nature of  
23 the act or transaction involved;

24 (b) It is an affirmative, unambiguous, and voluntary agreement to engage in a  
25 specific sexual activity, during a sexual encounter, and that can be revoked  
26 at any time; and

27 (c) Lack of consent- Consent, or lack thereof, may be inferred based on all the  
28 surrounding circumstances and must be considered in determining whether  
29 a person gave consent;

30 (d) No person under the age of sixteen is capable of consenting to sexual  
31 activity; and

32 (e) It is not a defense that the offender did not know the person's age or was  
33 misinformed regarding the person's age;

- 1       (3) "Force," ~~making a person do something against the person's will and without the~~  
2       ~~person's consent~~ the use of physical effort sufficient to overcome, restrain, injure,  
3       or prevent escape;
- 4       (4) "Incapacitated," temporarily incapable of appraising or controlling one's conduct,  
5       due to the influence of a narcotic, an anesthetic, an intoxicating substance, or  
6       hypnosis, ~~if the condition was known or reasonably should have been known to the~~  
7       ~~offender;~~
- 8       (5) "Mental incapacity," a mental or developmental disease or disability, which renders  
9       a person incapable of appraising the nature of the person's conduct, ~~if the condition~~  
10      ~~was known or reasonably should have been known to the offender;~~
- 11      (6) "Physical incapacity," a victim's incapability ~~of resisting to consent~~ because the  
12      victim was:
- 13      ~~(a) Unconscious or asleep;~~
- 14      ~~(b) Not aware, knowing, perceiving, or cognizant that the act occurred;~~
- 15      ~~(c) Not aware, knowing, perceiving, or cognizant of the essential characteristics of the~~  
16      ~~act, due to the perpetrator's fraud or misrepresentation; or~~
- 17      ~~(d) Not aware, knowing, perceiving, or cognizant of the essential characteristics of the~~  
18      ~~act, due to the perpetrator's fraudulent representation that the sexual penetration~~  
19      ~~served a professional purpose when it served no professional purpose. unconscious~~  
20      ~~or asleep.~~
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