

2023 South Dakota Legislature

Senate Bill 94**AMENDMENT 94A
FOR THE INTRODUCED BILL**

1 **An Act to establish the crime of grooming and provide a penalty therefor.**

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

3 **Section 1. That chapter 22-22 be amended with a NEW SECTION:**

4 A person is guilty of grooming if the person, being eighteen years or older and at
5 least four years older than the child, ~~knowingly~~ engages in a course of conduct to
6 persuade, induce, entice, or coerce that involves or results in the person building trust, a
7 relationship, or an emotional connection with ~~the a child, known or believed to be~~ under
8 the age of eighteen, ~~who is not the person's spouse,~~ with the intent to engage in sexual
9 contact or penetration with the child or prepare the child for sexual contact or penetration.
10 For the purposes of sections 1 and 2 of this Act, a course of conduct means three or more
11 separate incidents, ~~in isolation or collectively, in a twelve-month period~~ found to be
12 inappropriate, ~~in isolation or collectively,~~ given the nature and circumstances of the
13 relationship between the person and the child, including:

14 (1) Showing, offering, or sending the child sexually explicit materials, including
15 images, videos, audio recordings, or any other depiction of sexual activity;

16 (2) Exposing the child to sexually explicit language ~~to arouse or gratify the sexual~~
17 desire of the child;

18 ~~(3) Making comments to the child about the child's sexual or physical development;~~

19 ~~(4)(3) Providing the child with an intoxicating substance, special privilege, or other~~
20 financial or material benefit as an incentive for the child to engage in sexual contact
21 or penetration; or

22 ~~(5)(4) Committing or attempting to commit any sexual offense prohibited under chapter~~
23 22-22 with the child.

24 A violation of this section is a Class 4 felony. A second and any subsequent violation
25 of this section is a Class 2 felony. A charge brought pursuant to this section may be

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

3 **Section 2. That chapter 22-22 be amended with a NEW SECTION:**

4 For the purposes of section 1 of this Act, a conviction is not required for any
5 predicate act relied upon to establish a course of conduct. A conviction for any predicate
6 act relied upon to establish a course of conduct does not preclude prosecution under
7 section 1 of this Act. Nothing in section 1 of this Act precludes a separate charge,
8 conviction, and sentence for any other crime.

9 **Section 3. That chapter 22-22 be amended with a NEW SECTION:**

10 It is not a defense to prosecution for grooming, as provided in section 1 of this Act,
11 that no sexual contact or penetration with the child occurred.

12 **Section 4. That § 22-24B-19.1 be AMENDED:**

13 **22-24B-19.1.** To be eligible for removal from the registry as a Tier II offender,
14 the petitioner shall show, by clear and convincing evidence, that all of the following criteria
15 have been met:

- 16 (1) At least twenty-five years have elapsed since the date the petitioner first registered
17 pursuant to this chapter;
- 18 (2) The crime requiring registration was for:
- 19 (a) Incest as defined in § 22-22A-2; or
- 20 (b) An out-of-state, federal or court martial offense that is comparable to the
21 elements of incest as defined in § 22-22A-2;~~or~~
- 22 (c) Bestiality as set forth in § 22-22-42; or
- 23 (d) Grooming as set forth in section 1 of this Act;
- 24 (3) The circumstances surrounding the crime requiring registration did not involve a
25 child under the age of thirteen;
- 26 (4) The petitioner is not a recidivist sex offender;
- 27 (5) The petitioner has substantially complied in good faith with the registration and re-
28 registration requirements imposed under chapter 22-24B; and
- 29 (6) Petitioner demonstrates to the satisfaction of the court that he or she does not
30 pose a risk or danger to the community.

1 For purposes of this section, any period of time during which the petitioner was
2 incarcerated or during which the petitioner was confined in a mental health facility does
3 not count toward the twenty-five—year calculation, regardless of whether such
4 incarceration or confinement was for the sex offense requiring registration or for some
5 other offense.

