

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

274B0482

## SENATE BILL NO. 107

Introduced by: Senators Nelson, Curd, DiSanto, Ewing, Greenfield (Brock), Jensen (Phil), Kolbeck, Monroe, Otten (Ernie), Russell, Schoenbeck, Smith (VJ), Stalzer, Sutton, and Wismer and Representatives Frye-Mueller, Bordeaux, Brunner, Dennert, Duba, Finck, Goodwin, Gosch, Greenfield (Lana), Hammock, Howard, Jensen (Kevin), Latterell, Marty, Mulally, Peterson (Kent), Peterson (Sue), Pischke, Randolph, Rasmussen, Reimer, Schoenfish, Sullivan, and Weis

1 FOR AN ACT ENTITLED, An Act to revise provisions regarding rape.

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

3 Section 1. That § 22-22-1 be amended to read:

4 22-22-1. Rape is an act of sexual penetration ~~accomplished~~ with any another person under  
5 any of the following circumstances:

6 (1) ~~If the~~ The victim is less than thirteen years of age; ~~or~~

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

10 (3) ~~If the~~ The victim is incapable, because of physical or mental incapacity, of giving  
11 consent to such act; ~~or~~

12 (4) ~~If the~~ The victim is incapable of giving consent because of any intoxicating, narcotic,



1 or anesthetic agent or hypnosis; or

2 (5) ~~If the~~ The victim is thirteen years of age, but less than sixteen years of age, and the  
3 perpetrator is at least three years older than the victim.

4 A violation of subdivision (1) ~~of this section~~ is rape in the first degree, which is a Class C  
5 felony. A violation of subdivision (2) ~~of this section~~ is rape in the second degree which is a  
6 Class 1 felony. A violation of subdivision (3) or (4) ~~of this section~~ is rape in the third degree,  
7 which is a Class 2 felony. A violation of subdivision (5) ~~of this section~~ is rape in the fourth  
8 degree, which is a Class 3 felony.

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

14 A violation under this section does not include as an element that the defendant knew or  
15 should have known the victim's age or that the victim was incapable of giving consent.