

**South Dakota**

22-22-1.2. Minimum sentences for rape or sexual contact with child. If any adult is convicted of any of the following violations, the court shall impose the following minimum sentences:

- (1) For a violation of subdivision 22-22-1(1), ten years for a first offense and twenty years for a subsequent offense; and
- (2) For a violation of § 22-22-7 if the victim is less than ten years of age, five years for a first offense and ten years for a subsequent offense.

Source: SL 1992, ch 164, § 1.

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22-22-7. Sexual contact with child under sixteen--Felony or misdemeanor. Any person, sixteen years of age or older, who knowingly engages in sexual contact with another person, other than that person's spouse if the other person is under the age of sixteen years is guilty of a Class 3 felony. If the actor is less than three years older than the other person, the actor is guilty of a Class 1 misdemeanor. Notwithstanding § 23A-42-2, a charge brought pursuant to this section may be commenced at any time before the victim becomes age twenty-five or within seven years of the commission of the crime, whichever is longer.

Source: SL 1950 (SS), ch 3, §§ 1, 2; SL 1955, ch 27; SDC Supp 1960, § 13.1727; SDCL, § 22-22- 8; SL 1976, ch 158, § 22-3; SL 1977, ch 189, § 52; SL 1981, ch 176; SL 1982, ch 176, § 2; SL 1984, ch 165, § 2; SL 1985, ch 181, § 2; SL 1989, ch 194, § 1; SL 1989, ch 195, § 1; SL 1990, ch 162, § 2; SL 1994, ch 166, § 3.

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22-22-7.2. Sexual contact with person incapable of consenting--Felony. Any person, fifteen years of age or older, who knowingly engages in sexual contact with another person, other than his spouse if the other person is sixteen years of age or older and the other person is incapable, because of physical or mental incapacity, of consenting to sexual contact, is guilty of a Class 4 felony.

Source: SL 1985, ch 182.

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22-22-7.3. Sexual contact with child under sixteen years of age--Violation as misdemeanor. Any person, younger than sixteen years of age, who knowingly engages in sexual contact with another person, other than his spouse, when such other person is younger than sixteen years of age, is guilty of a Class 1 misdemeanor.

Source: SL 1989, ch 195, § 2; SL 1990, ch 163.

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22-22-7.4. Sexual contact without consent with person capable of consenting as misdemeanor. No person fifteen years of age or older may knowingly engage in sexual contact with another person other than his spouse who, although capable of consenting, has not consented to such contact. A violation of this section is a Class 1 misdemeanor.

Source: SL 1991, ch 189.

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22-22-7.5. Safety zone of child victim of sex crime. The court, upon the conviction of any person of a violation of the provisions of chapter 22-22 in which the victim was a child or upon an adjudication of a juvenile as a delinquent child for a violation of the provisions of chapter 22-22 in which the victim was a child, may, as a part of the sentence or adjudication, order that the defendant or delinquent child not:

- (1) Reside within one mile of the victim's residence unless the person is residing in a juvenile detention facility, jail, or state corrections facility;
- (2) Knowingly or willfully come within one thousand feet of the victim;

- (3) Attend the same school as the victim; or
- (4) Have any contact with the victim, whether direct or indirect or through a third party.

This section does not apply once the victim attains the age of majority. A violation of this section is a Class 6 felony.

Source: SL 1997, ch 137, § 1.

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22-22-24. Sale of child pornography as felony. Any person who sells, or displays for sale, any book, magazine, pamphlet, slide, photograph, film, or electronic or digital media image depicting a minor engaging in a prohibited sexual act, or engaging in an activity that involves nudity, or in the simulation of any such act is guilty of a Class 6 felony.

Source: SL 1978, ch 159, § 4; SL 2002, ch 109, § 4.

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22-22-24.1. Definitions. Terms used in §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22- 22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, mean:

- (1) "Adult," a person eighteen years of age or older;
- (2) "Child pornography," any image or visual depiction of a minor engaged in prohibited sexual acts;
- (3) "Child" or "minor," any person under the age of eighteen years;
- (4) "Computer," an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, including wireless communication devices such as cellular phones. The term also includes any on-line service, internet service, or internet bulletin board;
- (5) "Deviant sexual intercourse," sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva;
- (6) "Digital media," any electronic storage device, including a floppy disk or other magnetic storage device or any compact disc that has memory and the capacity to store audio, video, or written materials;
- (7) "Harmful to minors," any reproduction, imitation, characterization, description, visual depiction, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement if it:
  - (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;
  - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
  - (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

This term does not include a mother's breast-feeding of her baby;

- (8) "Masochism," sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death;

(9) "Nudity," the showing or the simulated showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state for the purpose of creating sexual excitement. This term does not include a mother's breast-feeding of her baby irrespective of whether or not the nipple is covered during or incidental to feeding;

(10) "Obscene," the status of material which:

(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

(b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

This term does not include a mother's breast-feeding of her baby;

(11) "Person," includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations;

(12) "Sadism," sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death;

(13) "Sadomasochistic abuse," flagellation or torture by or upon a minor, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself;

(14) "Sexual battery," oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. This term does not include an act done for a bona fide medical purpose;

(15) "Sexual bestiality," any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other;

(16) "Prohibited sexual act," actual or simulated sexual intercourse, deviant sexual intercourse, sadism, masochism, sexual bestiality, incest, masturbation, or sadomasochistic abuse; actual or simulated exhibition of the genitals or the pubic or rectal area in a lewd or lascivious manner; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; defecation or urination for the purpose of creating sexual excitement in the viewer; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. The term includes encouraging, aiding, abetting or enticing any person to commit any such acts as provided in this subdivision. The term does not include a mother's breast-feeding of her baby;

(17) "Sexual excitement," the condition of the human male or female genitals if in a state of sexual stimulation or arousal;

(18) "Sexually oriented material," any book, article, magazine, publication, visual depiction or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and

animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this section that creates the appearance of such conduct and that exhibits any uncovered portion of the breasts, genitals, or anus;

(20) "Visual depiction," any developed and undeveloped film, photograph, slide and videotape, and any photocopy, drawing, printed or written material, and any data stored on computer disk, digital media, or by electronic means that are capable of conversion into a visual image.

Source: SL 2002, ch 109, § 6.

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22-22-24.2. Possessing, manufacturing or distributing child pornography--Penalties--Mental examination. A person is guilty of possessing, manufacturing, or distributing child pornography if the person:

(1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act;

(2) Causes or knowingly permits the creation of any visual depiction of a minor engaged in a prohibited sexual act, or in the simulation of such an act; or

(3) Knowingly possesses, distributes, or otherwise disseminates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act.

Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 4 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 3 felony. Further, the court shall order a mental examination of the person. The examiner shall report to the court whether treatment of the person is indicated.

Source: SL 2002, ch 109, § 7.

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22-22-24.3. Sexual exploitation of a minor--Penalties--Mental examination. A person is guilty of sexual exploitation of a minor if the person causes or knowingly permits a minor to engage in an activity that:

(1) Is harmful to minors, or in the simulation of such an activity;

(2) Involves nudity, or in the simulation of such an activity; or

(3) Is obscene, or in the simulation of such an activity.

Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation a Class 5 felony. Further, the court shall order a mental examination of the person. The examiner shall report to the court whether treatment of the person is indicated.

Source: SL 2002, ch 109, § 8.

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22-22-24.4. "Minor" and "solicit" defined. Terms used in § 22-22-24.5 mean:

(1) "Minor," a person fifteen years of age or younger; and

(2) "Solicit," to seduce, lure, entice or persuade, or attempt to seduce, lure, entice or persuade a specific person by telephone, in person, by letter, by using a computer or any other electronic means.

Source: SL 2002, ch 109, § 9.

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22-22-24.5. Solicitation of a minor--Penalties--Mental examination. A person is guilty of solicitation of a minor if the person eighteen years of age or older:

(1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in a prohibited sexual act; or

(2) Knowingly compiles or transmits by means of a computer; or prints, publishes or reproduces by other computerized means; or buys, sells, receives, exchanges or disseminates, any notice, statement or advertisement of any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information for the purpose of soliciting a minor or someone the person reasonably believes is a minor to engage in a prohibited sexual act.

The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section does not constitute a defense to a prosecution under this section.

Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 5 felony. Further, the court shall order a mental examination of the person. The examiner shall report to the court whether treatment of the person is indicated.

Source: SL 2002, ch 109, § 10.

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22-22-24.6. Nonresident violating child protection laws subject to state court jurisdiction-- Secretary of State as agent for service of process--Personal service. Any person, not a citizen or resident of this state, whose actions or conduct constitute a violation of §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, and whose actions or conduct involve a child residing in this state, or someone the person reasonably believes is a child residing in this state, is for the purpose of §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, deemed to be transacting business in this state and by that act:

(1) Submits to the jurisdiction of the courts of this state in any civil proceeding commenced under §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27- 14.1, and 43-43B-1 to 43-43B-3, inclusive; and

(2) Constitutes the secretary of state as agent for service of legal process in any civil proceeding commenced under §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22- 25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive; and consents that service of legal process shall be made by serving a copy upon the secretary of state or by filing a copy in the secretary of state's office, and that this service shall be sufficient service if, within one day after service, notice of the service and a copy of the process are sent by registered mail by plaintiff to the person at the person's last-known address and proof of such mailing filed with the clerk of court within one day after mailing.

The service of legal process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may also be made by personally serving the summons upon the person outside this state with the same force and effect as though summons had been personally served within this state. Such service shall be made in like manner as service within this state. No order of court is required. An affidavit of the server shall be filed stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether service has been properly made.

Source: SL 2002, ch 109, § 13.

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