

Sex Crimes: Definitions and Penalties

South Dakota

Last Updated: April 2023

Rape in the First Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • An act of sexual penetration if the victim is under 13 years old. SD Codified Laws § 22-22-1.2.
What are the punishments for this crime?	<ul style="list-style-type: none"> • For a violation of SDCL § 22-22-1.2, 15 years for a first offense. • Class C Felony: Maximum life imprisonment in the state penitentiary. In addition, a fine of \$50,000 may be imposed. S.D. Codified Laws § 22-6-1(3). • If an adult has a previous conviction for a felony sex crime, any subsequent felony conviction for a sex crime as defined by subdivisions 22-24B-1(1) to (15), inclusive, and (19) shall result in a minimum sentence of imprisonment equal to the maximum term allowable under § 22-6-1, up to 25 years. S.D. Codified Laws § 22-6-1.2. • The court, in the event the victim is a child, may as part of the sentence, order that the defendant not reside within 1 mile of the victim's residence (unless the person is residing in a juvenile detention facility, jail, or state corrections facility), knowingly or willfully come within 1,000ft of the victim, attend the same school as the victim, or have any contact with the victim, whether direct or indirect or through a third party. Conditions will no longer apply once the victim reaches the age of majority. Violation of such a condition is a Class 6 felony: maximum penalty of 2 years imprisonment and \$4,000 fine. S.D. Codified Laws § 22-22-7.5.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Sexual penetration” means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. All of the foregoing acts of sexual penetration, except sexual intercourse, are also defined as sodomy.
Statutory citation(s):	<ul style="list-style-type: none"> • S.D. Codified Laws § 22-22-1(1)

Rape in the Second Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • An act of sexual penetration through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution. SD Codified Laws § 22-22-1.2.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Class 1 Felony. Maximum penalty of 50 years imprisonment and \$50,000 fine. S.D. Codified Laws § 22-6-1(4). • If an adult has a previous conviction for a felony sex crime, any subsequent felony conviction for a sex crime as defined by subdivisions 22-24B-1(1) to (15), inclusive, and (19) shall result in a minimum sentence of imprisonment equal to the maximum term allowable under § 22-6-1, up to 25 years. S.D. Codified Laws § 22-6-1.2. • The court, in the event the victim is a child, may as part of the sentence, order that the defendant not reside within 1 mile of the victim's residence (unless the person is residing in a juvenile detention facility, jail, or state corrections facility), knowingly or willfully come within 1,000ft of the victim, attend the same school as the victim, or have any contact with the victim, whether direct or indirect or through a third party. Conditions will no longer apply once the victim reaches the age of majority. Violation of such a condition is a Class 6 felony: maximum penalty of 2 years imprisonment and \$4,000 fine. S.D. Codified Laws § 22-22-7.5.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Sexual penetration” means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. All of the foregoing acts of sexual penetration, except sexual intercourse, are also defined as sodomy.
Statutory citation(s):	<ul style="list-style-type: none"> • S.D. Codified Laws § 22-22-1(2).

Rape in the Third Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • An act of sexual penetration if: <ul style="list-style-type: none"> • the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or • the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis and the perpetrator knows or reasonably should know the victim is incapable of giving consent. SD Codified Laws § 22-22-1.2.

What are the punishments for this crime?	<ul style="list-style-type: none"> • Class 2 Felony. Maximum penalty of 25 years imprisonment and \$50,000 fine. S.D. Codified Laws § 22-6-1(5). • If an adult has a previous conviction for a felony sex crime, any subsequent felony conviction for a sex crime as defined by subdivisions 22-24B-1(1) to (15), inclusive, and (19) shall result in a minimum sentence of imprisonment equal to the maximum term allowable under § 22-6-1, up to 25 years. S.D. Codified Laws § 22-6-1.2. • The court, in the event the victim is a child, may as part of the sentence, order that the defendant not reside within 1 mile of the victim's residence (unless the person is residing in a juvenile detention facility, jail, or state corrections facility), knowingly or willfully come within 1,000ft of the victim, attend the same school as the victim, or have any contact with the victim, whether direct or indirect or through a third party. Conditions will no longer apply once the victim reaches the age of majority. Violation of such a condition is a Class 6 felony: maximum penalty of 2 years imprisonment and \$4,000 fine. S.D. Codified Laws § 22-22-7.5.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Sexual penetration” means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. All of the foregoing acts of sexual penetration, except sexual intercourse, are also defined as sodomy.
Statutory citation(s):	<ul style="list-style-type: none"> • S.D. Codified Laws § 22-22-1(3) & (4).

Rape in the Fourth Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • An act of sexual penetration if: <ul style="list-style-type: none"> • the victim is 13-15 years old and the perpetrator is at least three years older than the victim. • Without the victim's consent and the perpetrator knows or reasonably should know the victim is not consenting. Codified Laws § 22-22-1.2.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Class 3 Felony for first violation: maximum penalty of 15 years imprisonment and \$30,000 fine. S.D. Codified Laws § 22-6-1(6). • If an adult has a previous conviction for a felony sex crime, any subsequent felony conviction for a sex crime as defined by subdivisions 22-24B-1(1) to (15), inclusive, and (19) shall result in a minimum sentence of imprisonment equal to the maximum term allowable under § 22-6-1, up to 25 years. S.D. Codified Laws § 22-6-1.2. • Class 2 Felony for subsequent violations of this provision or of sexual contact with a child under 16 years

	<p>old: maximum penalty of 25 years imprisonment and \$50,000 fine. S.D. Codified Laws § 22-22-7.7.</p> <ul style="list-style-type: none"> • The court, in the event the victim is a child, may as part of the sentence, order that the defendant not reside within 1 mile of the victim's residence (unless the person is residing in a juvenile detention facility, jail, or state corrections facility), knowingly or willfully come within 1,000ft of the victim, attend the same school as the victim, or have any contact with the victim, whether direct or indirect or through a third party. Conditions will no longer apply once the victim reaches the age of majority. Violation of such a condition is a Class 6 felony: maximum penalty of 2 years imprisonment and \$4,000 fine. S.D. Codified Laws § 22-22-7.5.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Sexual penetration” means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. All of the foregoing acts of sexual penetration, except sexual intercourse, are also defined as sodomy.
Statutory citation(s):	<ul style="list-style-type: none"> • S.D. Codified Laws § 22-22-1(5) and (6).

Sexual Contact with a Person Incapable of Consenting

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Knowingly engaging in sexual contact with a person who is 16 or older who is incapable because of physical or mental incapacity of consenting to sexual contact, where the actor is 15 or older.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Class 4 Felony. Maximum penalty of 10 years imprisonment and \$20,000 fine. S.D. Codified Laws § 22-6-1(7). • The court, in the event the victim is a child, may as part of the sentence, order that the defendant not reside within 1 mile of the victim's residence (unless the person is residing in a juvenile detention facility, jail, or state corrections facility), knowingly or willfully come within 1,000 ft of the victim, attend the same school as the victim, or have any contact with the victim, whether direct or indirect or through a third party. Conditions will no longer apply once the victim reaches the age of majority. Violation of such a condition is a Class 6 felony: maximum penalty of 2 years imprisonment and \$4,000 fine. S.D. Codified Laws § 22-22-7.5.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Sexual contact” means any touching, not amounting to rape, whether or not through clothing or other covering, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party. Practitioners of the healing arts lawfully practicing within the

	scope of their practice, which determination shall be conclusive as against the state and shall be made by the court prior to trial, are not included within the provisions of this section. S.D. Codified Laws § 22-22-7.1.
Statutory citation(s):	<ul style="list-style-type: none"> • S.D. Codified Laws § 22-22-7.2

Sexual Contact Without Consent With Person Capable of Consenting

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Knowingly engaging in sexual contact with a person, other than the actor's spouse, who is capable of consenting but has not consented to such contact, where the actor is 15 or older.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Class 1 Misdemeanor. Maximum penalty of 1 year imprisonment and \$2,000 fine. S.D. Codified Laws § 22-6-2(1). • The court, in the event the victim is a child, may as part of the sentence, order that the defendant not reside within 1 mile of the victim's residence (unless the person is residing in a juvenile detention facility, jail, or state corrections facility), knowingly or willfully come within 1,000ft of the victim, attend the same school as the victim, or have any contact with the victim, whether direct or indirect or through a third party. Conditions will no longer apply once the victim reaches the age of majority. Violation of such a condition is a Class 6 felony: maximum penalty of 2 years imprisonment and \$4,000 fine. S.D. Codified Laws § 22-22-7.5.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • "Sexual contact" means any touching, not amounting to rape, whether or not through clothing or other covering, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party. S.D. Codified Laws § 22-22-7.1.
Statutory citation(s):	<ul style="list-style-type: none"> • S.D. Codified Laws § 22-22-7.4

Statutory Rape

Question	Answer
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<p>How is it defined?</p>	<ul style="list-style-type: none"> • Rape in the first degree: Engaging in an act of sexual penetration if the victim is under 13 years old. • Rape in the fourth degree: Engaging in an act of sexual penetration if the victim is 13-15 years old and the perpetrator is at least three years older than the victim. • Felony sexual contact with a child under 16: Knowingly, engaging in sexual contact with a person, other than the actor's spouse, under the age of 16 if the actor is 16 or older. The act of pressing an erect penis against a child's buttocks amounts to "sexual contact", even if both defendant and child are fully clothed. <u>State v. Bariteau</u>, 2016 S.D. 57, 884 N.W.2d 169. (S.D. 2016) • Misdemeanor sexual contact with a child under 16: Knowingly, engaging in sexual contact with a person 13-15 years old and the actor is less than five years older. The act of pressing an erect penis against a child's buttocks amounts to "sexual contact", even if both defendant and child are fully clothed. <u>State v. Bariteau</u>, 2016 S.D. 57, 884 N.W.2d 169 (S.D. 2016). • Sexual contact with child under 16 years of age: Knowingly, engaging in sexual contact when both parties are under 16 years old and not each other's spouse. • Sexual exploitation of a minor: Causing or knowingly permitting a minor to engage in an activity or the simulation of an activity that is harmful to minors, involves nudity or is obscene. • Sexual contact or sexual penetration by a psychotherapist: Knowingly engage in sexual contact or sexual penetration by a psychotherapist with a person who is not his or her spouse and who is a patient who is emotionally dependent on the psychotherapist at the time of contact or penetration.
<p>What are the punishments for this crime?</p>	<ul style="list-style-type: none"> • Rape in the first degree: Class C Felony. Minimum penalty of 15 years imprisonment for the first offense by an adult. Maximum penalty of life imprisonment and \$50,000 fine. • Rape in the fourth degree: Class 3 Felony for first violation: maximum penalty of 15 years imprisonment and \$30,000 fine. Class 2 Felony for subsequent violations or of sexual contact with a child under 16: maximum penalty of 25 years imprisonment and \$50,000 fine. • Felony sexual contact with a child under 16: Class 3 Felony for first violation: minimum sentence of 10 years for the first offense if the victim is under 13 and maximum sentence of 15 years imprisonment and \$30,000 fine. Class 2 Felony for subsequent violations of this provision or Rape in the fourth degree: maximum penalty of 25 years imprisonment and \$50,000 fine. • Misdemeanor sexual contact with a child under 16: Class 1 misdemeanor for first violation: maximum penalty 1 year imprisonment and \$2000 fine. Class 2 felony for subsequent violations, as an adult of "felony sexual contact with a child under 16" or Rape in the fourth degree: maximum penalty of 25 years imprisonment and \$50,000 fine. • Sexual contact with a child under 16 years of age: Class 1 misdemeanor: maximum penalty 1 year imprisonment and \$2000 fine. • Sexual exploitation of a minor: Class 6 felony for first violation: maximum penalty of 2 years imprisonment and \$4,000 fine. Class 5 felony for second or subsequent violations within 15 years of prior conviction: maximum penalty of 5 years imprisonment and \$10,000 fine. • Sexual contact or sexual penetration by a psychotherapist: Sexual contact by a psychotherapist is a Class 5 felony: maximum penalty of 5 years imprisonment and \$10,000 fine. Sexual penetration by a psychotherapist is a Class 4 felony: maximum penalty of 10 years imprisonment and \$20,000 fine. The court, in the event the victim is a child, may as part of the sentence, order that the defendant not reside within 1 mile of the victim's residence (unless the person is residing in a juvenile detention facility, jail, or

	<p>state corrections facility), knowingly or willfully come within 1,000ft of the victim, attend the same school as the victim, or have any contact with the victim, whether direct or indirect or through a third party. Conditions will no longer apply once the victim reaches the age of majority. Violation of such a condition is a Class 6 felony: maximum penalty of 2 years imprisonment and \$4,000 fine. S.D. Codified Laws § 22-22-7.5.</p>
<p>Anything else I should know?</p>	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Sexual penetration” means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. All of the foregoing acts of sexual penetration, except sexual intercourse, are also defined as sodomy. • “Sexual contact” means any touching, not amounting to rape, whether or not through clothing or other covering, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party. • “Emotional dependency” means a condition of the patient brought about by the nature of the patient's own emotional condition or the nature of the treatment provided by the psychotherapist which is characterized by significant impairment of the patient's ability to withhold consent to sexual acts or contact with the psychotherapist and which the psychotherapist knows or has reason to know exists. • “Patient” means any person who seeks or obtains psychotherapeutic services from a psychotherapist on a regular and ongoing basis. • “Psychotherapist” means any physician, psychologist, nurse, chemical dependency counselor, social worker, member of the clergy, marriage and family therapist, mental health service provider, or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy. • “Psychotherapy” means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.
<p>Statutory citation(s):</p>	<ul style="list-style-type: none"> • S.D. Codified Laws §§ 22-22-1, 22-22-7, 22-22-7.3, 22-22-7.5, 22-22-7.7, 22-22-24.3, 22-22-28, 22-22-29

Sodomy

Question	Answer
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How is it defined?	<ul style="list-style-type: none"> • South Dakota does not prohibit sodomy. Anal sex is included in the definition of “sexual penetration”. • South Dakota defines sodomy as an act, however slight, of cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. • Any state laws that outright prohibit sodomy are unconstitutional under <i>Lawrence v. Texas</i>, 539 U.S. 588 (2003).
What are the punishments for this crime?	<ul style="list-style-type: none"> • N/A
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Sexual penetration” means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. All of the foregoing acts of sexual penetration, except sexual intercourse, are also defined as sodomy. S.D. Codified Laws §§ 22-22-2.
Statutory citation(s):	<ul style="list-style-type: none"> • N/A