

# State of South Dakota

EIGHTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2013

718U0662

## SENATE BILL NO. 173

Introduced by: Senators Lederman, Buhl, and Peters and Representatives Stevens, Gibson, Hajek, and Hoffman

1 FOR AN ACT ENTITLED, An Act to provide that a defendant is strictly liable under criminal  
2 law for raping certain victims incapable of consenting.

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

4 Section 1. That § 22-22-1 be amended to read as follows:

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

- 7 (1) If the victim is less than thirteen years of age; or
- 8 (2) Through the use of force, coercion, or threats of immediate and great bodily harm  
9 against the victim or other persons within the victim's presence, accompanied by  
10 apparent power of execution; or
- 11 (3) If the victim is incapable, because of physical or mental incapacity, of giving consent  
12 to such act; or
- 13 (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or  
14 anesthetic agent or hypnosis; or
- 15 (5) If the victim is thirteen years of age, but less than sixteen years of age, and the



1 perpetrator is at least three years older than the victim.

2 In any prosecution pursuant to subdivision (4) of this section, the defendant's assessment of  
3 the victim's capacity to give or withhold consent is not an element of the crime, and the  
4 prosecution need not prove that the defendant knew or reasonably should have known that the  
5 victim's intoxicated condition rendered the victim incapable of consenting.

6 A violation of subdivision (1) of this section is rape in the first degree, which is a Class C  
7 felony. A violation of subdivision (2) of this section is rape in the second degree which is a  
8 Class 1 felony. A violation of subdivision (3) or (4) of this section is rape in the third degree,  
9 which is a Class 2 felony. A violation of subdivision (5) of this section is rape in the fourth  
10 degree, which is a Class 3 felony. Notwithstanding the provisions of § 23A-42-2, no statute of  
11 limitations applies to any charge brought pursuant to subdivisions (1) or (2) of this section.  
12 Otherwise a charge brought pursuant to this section may be commenced at any time prior to the  
13 time the victim becomes of age twenty-five or within seven years of the commission of the  
14 crime, whichever is longer.