## **State of South Dakota**

## NINETY-SECOND SESSION LEGISLATIVE ASSEMBLY, 2017

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## SENATE BILL NO. 91

Introduced by: Senators Nelson, Curd, Greenfield (Brock), Langer, Monroe, Netherton, Peters, Russell, Stalzer, Tidemann, and Wiik and Representatives Latterell, Brunner, Gosch, Greenfield (Lana), Kaiser, May, Rozum, Soli, and Tieszen

FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the crime of 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: 22-22-1. Rape is an act of sexual penetration accomplished with any person under any of 5 the following circumstances: (1) 6 If the victim is less than thirteen years of age; or (2) 7 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 victim is incapable, because of physical or mental incapacity, of giving consent 11 to such act; or 12 (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or

If the victim is thirteen years of age, but less than sixteen years of age, and the

anesthetic agent or hypnosis; or

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

2 A violation of subdivision (1) of this section is rape in the first degree, which is a Class C 3 felony. A violation of subdivision (2) of this section is rape in the second degree which is a 4 Class 1 felony. A violation of subdivision (3) or (4) of this section is rape in the third degree, 5 which is a Class 2 felony. A violation of subdivision (5) of this section is rape in the fourth 6 degree, which is a Class 3 felony. It is not an element of any of the above crimes that the 7 defendant knew or should have known the victim's age or that the defendant knew or should 8 have known that the victim was incapable of giving consent. Notwithstanding the provisions 9 of § 23A-42-2, no statute of limitations applies to any charge brought pursuant to subdivisions 10 (1) or (2) of this section. Otherwise a charge brought pursuant to this section may be 11 commenced at any time prior to the time the victim becomes of age twenty-five or within seven 12 years of the commission of the crime, whichever is longer.