

South Dakota

Definition of "Sexual Penetration" - Sexual penetration is an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or the intrusion of a body part or an object into the genitals or anal openings of another person's body.

In South Dakota, sexual assault is referred to as "sexual battery" and is defined as oral, anal, or vaginal penetration by the sexual organ of another, or the anal or vaginal penetration of another by any object. Sexual battery doesn't include an act done for a bona fide medical purpose. One of the most serious forms of sexual assault is the crime of rape.

Statutory Rape - An offender can be convicted of rape if the victim is less than 13 years old, or if the victim is 13 to 15 years old and the offender is at least three years older than the victim. In these situations the offender commits statutory rape because the victim isn't legally old enough to consent to the sexual act. The legal age of consent varies slightly between states, and is 16 in South Dakota. Therefore, if a 15-year-old girl voluntarily engages in sexual intercourse with her 19-year-old boyfriend, then the boyfriend can be charged with statutory rape in South Dakota.

Questions regarding the testing of the evidence collected should be directed to:

South Dakota Forensic Laboratory - Phone: 605-773-3673

22-22-26. County to pay for forensic medical examinations.

The county where an alleged rape or sexual offense occurred shall pay the cost of any forensic medical examination performed by a physician, hospital, or clinic on the victim of the alleged rape or sexual offense. For purposes of the provisions of §§ [22-22-26](#) to [22-22-26.2](#), inclusive, the term, forensic medical examination, includes:

- (1) Examination of physical trauma;
- (2) Patient interview, including medical history, triage, and consultation; and
- (3) Collection and evaluation of evidence, including any photographic documentation; preservation and maintenance of the chain of custody of evidence; medical specimen collection; and any alcohol- or drug-facilitated sexual assault assessment and toxicology screening deemed necessary by the physician, hospital, or clinic.

Source: SL 1986, ch. 182; SL 2005, ch 120, § 402; SL 2012, ch 126, § 1; SL 2013, ch 108, § 1; SL 2018, ch 131, § 1.

22-22-26.1. Cost of forensic medical examination--Convicted defendant to reimburse county.

A person who is convicted of a rape or sexual offense shall be required as part of the sentence imposed by the court to reimburse the county for the cost of any forensic medical examination performed under § 22-22-26 resulting from the rape or sexual offense for which the defendant is convicted. The cost of a forensic medical examination to be paid by the county under § 22-22-26 and reimbursed to the county under this section shall include:

- (1) Physician, hospital, or clinic services and fees directly related to the forensic medical examination, including integral forensic supplies;
- (2) Scope procedures directly related to the forensic medical examination, including anoscopy and colposcopy;
- (3) Laboratory testing directly related to the forensic medical examination, including drug screening, urinalysis, pregnancy screening, syphilis screening, chlamydia culture, gonorrhea coverage culture, blood test for HIV screening, hepatitis B and C, herpes culture, and any other sexually-transmitted disease testing directly related to the examination;
- (4) Any medication provided during the forensic medical examination; and
- (5) Any radiology service directly related to the forensic medical examination.

Source: SL 2018, ch 131, § 2.

22-22-26.2. Coordination of payment of cost of forensic medical examinations--Notice to victim--Victim not required to participate.

Each physician, hospital, and clinic conducting an examination under § 22-22-26 shall coordinate with the county to establish a payment process by which the county shall pay for the cost of any forensic medical examination performed under § 22-22-26 and to notify any victim of rape or sexual offense of the availability of a forensic medical examination at no cost to the victim. A victim of rape or sexual offense is not required to participate in the criminal justice system or to cooperate with law enforcement to be provided with a forensic medical examination without cost to the victim.

The amount paid to a physician, hospital, or clinic for a forensic medical exam performed under § 22-22-26 may not exceed the actual cost of the forensic medical examination or an amount established by the secretary of the Department of Social Services, whichever is less. The amount established by the secretary under this section shall be based on Medicaid payment methodology. A physician, hospital, or clinic may not maintain a claim against a county for any amount that exceeds the usual ordinary and reasonable charge for a forensic medical examination, including an amount that is less than the actual cost of the forensic medical examination. If the physician, hospital, or clinic performs forensic medical examinations, or any portion of a forensic medical examination, to persons who are medically indigent residing in the county in which the physician, hospital, or clinic is located at a cost less than the amount provided for in this section, the physician, hospital, or clinic shall furnish the forensic medical examination, or any applicable portion of the forensic medical examination, at the lower cost.

Source: SL 2018, ch 131, § 3.

22-22-26.3 . Forensic medical examination--Minors age sixteen or older--Consent--Notification.

A minor age sixteen or older may consent to a forensic medical examination, as defined under § 22-22-26. The consent is not subject to disaffirmance because of minority, and consent of a parent or guardian is not required under this section . The physician, hospital, or clinic shall take reasonable steps to notify a minor's parent or guardian that an examination has taken place, unless the parent or guardian is the suspected perpetrator.

Source: SL 2020, ch 85, § 1.

22-22-26.4 . Forensic medical examination--Informed Consent--Liability or discipline.

A physician, hospital, or clinic may provide a forensic medical examination, as defined under § 22-22-26, without the consent of a guardian of a protected person, as defined under § [29A-5-102](#) , to any protected person who provides informed consent. If a patient has a guardian, the physician, hospital, or clinic shall make a good faith effort to notify the guardian before the forensic medical examination that the patient provided informed consent for the examination and the examination will take place, unless the guardian is the suspected perpetrator.

A physician, hospital, or clinic who in good faith believes that a patient is incapable of giving informed consent under this section may not be subject to criminal prosecution, civil liability, or professional discipline for failing to follow the patient's direction or for making the determination.

A physician, hospital, or clinic who in good faith believes that a patient is capable of giving informed consent under this section may not be subject to criminal prosecution, civil liability, or professional discipline for following a patient's direction or for making the determination.

For purposes of this section, the term, informed consent, means consent voluntarily, knowingly, and competently given without any element of force, fraud, deceit, duress, threat, or other form of coercion after conscientious explanation of all information that a reasonable person would consider significant to the decision in a manner reasonably comprehensible to general lay understanding.

Source: SL 2020, ch 86, § 1.