

# Mandatory Reporter Laws

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## For child abuse:

26-8A-3. Persons required to report child abuse or neglected child--Intentional failure as misdemeanor. Any physician, dentist, doctor of osteopathy, chiropractor, optometrist, mental health professional or counselor, podiatrist, psychologist, religious healing practitioner, social worker, hospital intern or resident, parole or court services officer, law enforcement officer, teacher, school counselor, school official, nurse, licensed or registered child welfare provider, employee or volunteer of a domestic abuse shelter, employee or volunteer of a child advocacy organization or child welfare service provider, chemical dependency counselor, coroner, or any safety-sensitive position as defined in subdivision 23-3-64(2), who has reasonable cause to suspect that a child under the age of eighteen has been abused or neglected as defined in § 26-8A-2 shall report that information in accordance with §§ 26-8A-6, 26-8A-7, and 26-8A-8. Any person who intentionally fails to make the required report is guilty of a Class 1 misdemeanor. Any person who knows or has reason to suspect that a child has been abused or neglected as defined in § 26-8A-2 may report that information as provided in § 26-8A-8.

**Source:** SL 1964, ch 90, §§ 1, 5; SDCL § 26-10-13; SL 1973, ch 172, § 1; SL 1975, ch 179, § 2; SL 1976, ch 167; SL 1982, ch 201; SL 1984, ch 192, § 2; SL 1985, ch 215, § 1; SL 1986, ch 223; SL 1991, ch 217, § 112B; SDCL Supp, § 26-10-10; SL 1993, ch 203; SL 2000, ch 122, § 1; SL 2012, ch 146, § 1.

26-8A-6. Report of abuse or neglect by hospital personnel--Failure as misdemeanor--Written policy required. Any person who has contact with a child through the performance of services as a member of a staff of a hospital or similar institution shall immediately notify the person in charge of the institution or his designee of suspected abuse or neglect. The person in charge shall report the information in accordance with the provisions of § 26-8A-8. Any person required by this section to report shall also promptly submit to the state's attorney complete copies of all medical examination, treatment, and hospital records regarding the child. Any person who knowingly and intentionally fails to make a required report and to submit copies of records is guilty of a Class 1 misdemeanor. Each hospital or similar institution shall have a written policy on reporting of child abuse and neglect and submission of copies of medical examination, treatment, and hospital records to the state's attorney.

**Source:** SL 1964, ch 90, §§ 1, 5; SDCL, § 26-10-13; SL 1984, ch 192, § 5; SL 1985, ch 215, § 2; SL 1991, ch 217, § 115B; SDCL Supp, § 26-10-11.

26-8A-7. Child abuse or neglect reports by school personnel--Failure as misdemeanor--Written policy required. Any person who has contact with a child through the performance of services in any public or private school, whether accredited or unaccredited, as a teacher, school nurse, school counselor, school official or administrator, or any person providing services pursuant to § 13-27-3 shall notify the school principal or school superintendent or designee of suspected abuse or neglect. The school principal or superintendent shall report the information in accordance with the provisions of § 26-8A-8. Any person who knowingly and intentionally fails to make a

required report is guilty of a Class 1 misdemeanor. Each school district shall have a written policy on reporting of child abuse and neglect.

**Source:** SL 1984, ch 192, § 6; SL 1985, ch 215, § 3; SL 1991, ch 217, § 116B; SDCL Supp, § 26-10-11.1.

### **For reporting child pornography:**

22-24A-16. Internet service providers to report suspected violations of child pornography laws--Permitting subscriber to use service for child pornography prohibited--Misdemeanor. Any person working at or for an internet service provider or other electronic communication service who has knowledge of or observes, within the scope of the person's professional capacity or employment, a visual depiction that depicts a minor whom the person knows or reasonably should know to be under the age of eighteen, engaged in prohibited sexual acts or in the simulation of prohibited sexual acts, shall report the depiction to his or her employer or supervisor. The depiction shall then be reported to an appropriate law enforcement agency as soon as reasonably possible. The provider need not report to law enforcement depictions involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual acts. This section may not be construed to require a provider to review all visual depictions received by subscribers or handled by the provider within the provider's professional capacity or employment.

It is unlawful for any owner or operator of a computer on-line service, internet service, or local internet bulletin board service knowingly to permit a subscriber to utilize the service to produce or reproduce visual depictions of prohibited sexual acts with a minor.

A violation of this section is a Class 1 misdemeanor. However, a violation of this section does not constitute grounds for a civil action for damages against any person.

**Source:** SL 2002, ch 109, § 23; SDCL, § 22-22-24.16; SL 2005, ch 120, § 407

22-24A-17. Film processors to report suspected violations of child pornography laws--Permitting use of services for child pornography prohibited--Misdemeanor. Any person working at or for a commercial film and photograph print processor who has knowledge of or observes, within the scope of the processor's professional capacity or employment, a film, photograph, video tape, negative, slide or other visual depiction that depicts a minor whom the processor knows or reasonably should know to be under the age of eighteen, engaged in prohibited sexual acts or in the simulation of prohibited sexual acts, shall report the depiction to his or her employer or supervisor. The depiction shall then be reported to an appropriate law enforcement agency as soon as reasonably possible. The processor need not report to law enforcement depictions involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual acts. This section may not be construed to require a processor to review all films, photographs, videotapes, negatives, or slides delivered to the processor within the processor's professional capacity or employment.

It is unlawful for any owner or operator of a photography or film studio, photograph or film developing service, photograph or film reproducing service, or video to film reproducing service knowingly to permit any person to utilize photograph or film

reproduction or development services to produce or reproduce visual depictions of prohibited sexual acts with a minor.

A violation of this section is a Class 1 misdemeanor. However, a violation of this section does not constitute grounds for a civil action for damages against any person.

**Source:** SL 2002, ch 109, § 24; SDCL, § 22-22-24.17; SL 2005, ch 120, § 407.

22-24A-18. Computer repair technicians to report suspected violations of child pornography laws--Misdemeanor. Any commercial computer repair technician who has knowledge of or observes, within the scope of the technician's professional capacity or employment, a film, photograph, video tape, negative, slide or other visual depiction of a minor whom the technician knows or reasonably should know to be under the age of eighteen, engaged in prohibited sexual acts or in the simulation of prohibited sexual acts, shall report the depiction to an appropriate law enforcement agency as soon as reasonably possible. The computer repair technician need not report to law enforcement depictions involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual acts. This section may not be construed to require a computer repair technician to review all data, disks, or tapes delivered to the computer repair technician within the computer repair technician's professional capacity or employment.

A violation of this section is a Class 1 misdemeanor. However, a violation of this section does not constitute grounds for a civil action for damages against any person.

**Source:** SL 2002, ch 109, § 25; SDCL, § 22-22-24.18; SL 2005, ch 120, § 407.

### **For Elder Abuse:**

22-46-9. Mandatory reporting of abuse or neglect to state's attorney, Department of Social Services, or law enforcement officer--Violation as misdemeanor. Any person who is a:

- (1) Physician, dentist, doctor of osteopathy, chiropractor, optometrist, podiatrist, religious healing practitioner, hospital intern or resident, nurse, paramedic, emergency medical technician, social worker, or any health care professional;
- (2) Long-term care ombudsman;
- (3) Psychologist, licensed mental health professional, or counselor engaged in professional counseling; or
- (4) State, county, or municipal criminal justice employee or law enforcement officer;

who knows, or has reasonable cause to suspect, that an elder or disabled adult has been or is being abused or neglected, shall, within twenty-four hours, report such knowledge or suspicion orally or in writing to the state's attorney of the county in which the elder or disabled adult resides or is present, to the Department of Social Services, or to a law enforcement officer. Any person who knowingly fails to make the required report is guilty of a Class 1 misdemeanor.

**Source:** SL 2011, ch 119, § 1.

22-46-10. Mandatory reporting of abuse or neglect by staff and by person in charge of residential facility or entity providing services to elderly or disabled adult--Violation as misdemeanor. Any staff member of a nursing facility, assisted living facility, adult day care center, or community support provider, or any residential care giver, individual

providing homemaker services, victim advocate, or hospital personnel engaged in the admission, examination, care, or treatment of elderly or disabled adults who knows, or has reasonable cause to suspect, that an elderly or disabled adult has been or is being abused or neglected, shall, within twenty-four hours, notify the person in charge of the institution where the elderly or disabled adult resides or is present, or the person in charge of the entity providing the service to the elderly or disabled adult, of the suspected abuse or neglect. The person in charge shall report the information in accordance with the provisions of § 22-46-9. Any person who knowingly fails to make the required report is guilty of a Class 1 misdemeanor.

**Source:** SL 2011, ch 119, § 2.

## Child Abuse and Sexual Assault

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### Sexual Abuse/Rape:

22-22-1. Rape--Degrees--Felony--Statute of limitations. Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:

- (1) If the victim is less than thirteen years of age; or
- (2) 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; or
- (3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or
- (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or
- (5) If the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.

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

**Source:** SDC 1939, §§ 13.2801, 13.2803; SDCL § 22-22-5; SL 1972, ch 154, § 21; SL 1975, ch 169, §§ 1, 5; SL 1976, ch 158, § 22-1; SL 1977, ch 189, § 51; SL 1978, ch 158, § 10; SL 1980, ch 175; SL 1982, ch 176, § 1; SL 1984, ch 165, § 1; SL 1984, ch 167, § 2; SL 1985, ch 179; SL 1985, ch 181, § 1; SL 1988, ch 187; SL 1989, ch 194, § 2; SL 1990, ch 161, § 2; SL 1990, ch 162, § 1; SL 1991, ch 24, § 8; SL 1994, ch 165, § 2; SL 1994, ch 166, § 2; SL 2000, ch 100, § 1; SL 2005, ch 120, § 390; SL 2012, ch 125, § 1.

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 victim is at least thirteen years of age and the actor is less than five years older than the victim, 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; SL 2006, ch 121, § 5; SL 2010, ch 115, § 1.

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

- (1) Is harmful to minors;
- (2) Involves nudity; or
- (3) Is obscene.

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.

The court shall order an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section.

**Source:** SL 2002, ch 109, § 8; SL 2005, ch 120, § 401; SL 2006, ch 121, § 7.

22-22A-3. Aggravated incest--Related child--Felony. Any person who knowingly engages in an act of sexual penetration with a person who is less than eighteen years of age and is either:

- (1) The child of the perpetrator or the child of a spouse or former spouse of the perpetrator; or
  - (2) Related to the perpetrator within degrees of consanguinity within which marriages are, by the laws of this state, declared void pursuant to § 25-1-6;
- is guilty of aggravated incest. Aggravated incest is a Class 3 felony.

**Source:** SL 2005, ch 120, § 21; SL 2008, ch 109, § 1.

## Child Abuse

26-8A-2. Abused or neglected child defined. In this chapter and chapter 26-7A, the term, abused or neglected child, means a child:

- (1) Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;
- (2) Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian;
- (3) Whose environment is injurious to the child's welfare;

(4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being;

(5) Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian;

(6) Who is threatened with substantial harm;

(7) Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;

(8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care;

(9) Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or

(10) Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.

**Source:** SDC 1939, § 43.0301 (12) as enacted by SL 1968, ch 164, § 1; SL 1984, ch 192, § 1; SL 1990, ch 170, § 4; SL 1991, ch 217, § 111B; SDCL Supp, § 26-8-6; SL 1998, ch 204, § 2; SL 2004, ch 181, § 1; SL 2005, ch 141, § 1; SL 2008, ch 137, § 1.

26-9-1. Contributing to abuse, neglect, or delinquency or causing child to become child in need of supervision as misdemeanor. Any person who, by any act, causes, encourages, or contributes to the abuse, the neglect, or the delinquency of a child, or any person, other than a parent who, by any act, causes a child to become a child in need of supervision, as such phrases with reference to children are defined by chapters 26-7A, 26-8A, 26-8B, and 26-8C, or who is, in any manner, responsible therefor, is guilty of a Class 1 misdemeanor.

**Source:** SDC 1939, § 43.9901; SL 1988, ch 214; SL 1993, ch 206, § 1.

26-10-1. Abuse of or cruelty to minor as felony--Reasonable force as defense--Limitation of action. Any person who abuses, exposes, tortures, torments, or cruelly punishes a minor in a manner which does not constitute aggravated assault, is guilty of a Class 4 felony. If the victim is less than seven years of age, the person is guilty of a Class 3 felony. The use of reasonable force, as provided in § 22-18-5, is a defense to an offense under this section. Notwithstanding § 23A-42-2, a charge brought pursuant to this section may be commenced at any time before the victim becomes age twenty-five.

If any person convicted of this offense is the minor's parent, guardian, or custodian, the court shall include as part of the sentence, or conditions required as part of suspended execution or imposition of such sentence, that the person receive instruction on parenting approved or provided by the Department of Social Services.

**Source:** SDC 1939, §§ 13.3301, 13.3303; SDCL § 26-10-5; SL 1969, ch 32; SL 1975, ch 179, § 1; SL 1977, ch 189, § 96; SL 1983, ch 211, § 2; SL 1998, ch 162, § 3; SL 2001, ch 145, § 1; SL 2008, ch 140, § 1.

22-18-1. Simple assault--Misdemeanor--Felony for subsequent offenses. Any person who:

- (1) Attempts to cause bodily injury to another and has the actual ability to cause the injury;
- (2) Recklessly causes bodily injury to another;
- (3) Negligently causes bodily injury to another with a dangerous weapon;
- (4) Attempts by physical menace or credible threat to put another in fear of imminent bodily harm, with or without the actual ability to harm the other person; or
- (5) Intentionally causes bodily injury to another which does not result in serious bodily injury;

is guilty of simple assault. Simple assault is a Class 1 misdemeanor. However, if the defendant has been convicted of, or entered a plea of guilty to, two or more violations of § 22-18-1, 22-18-1.1, 22-18-26, or 22-18-29 within ten years of committing the current offense, the defendant is guilty of a Class 6 felony for any third or subsequent offense.

**Source:** SDC 1939, §§ 13.2401, 13.2403; SDCL § 22-18-8; SL 1973, ch 147; SL 1976, ch 158, § 18-1; SL 1980, ch 173, § 2; SL 1981, ch 174; SL 1998, ch 132, § 1; SL 1999, ch 117, § 1; SL 2005, ch 120, § 1; SL 2011, ch 115, § 1.

22-18-1.1. Aggravated assault--Felony. Any person who:

- (1) Attempts to cause serious bodily injury to another, or causes such injury, under circumstances manifesting extreme indifference to the value of human life;
- (2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous weapon;
- (3) Deleted by SL 2005, ch 120, § 2;
- (4) Assaults another with intent to commit bodily injury which results in serious bodily injury;
- (5) Attempts by physical menace with a deadly weapon to put another in fear of imminent serious bodily harm; or
- (6) Deleted by SL 2005, ch 120, § 2;
- (7) Deleted by SL 2012, ch 123, § 4;
- (8) Attempts to induce a fear of death or imminent serious bodily harm by

impeding the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck, or by blocking the nose and mouth; is guilty of aggravated assault. Aggravated assault is a Class 3 felony.

**Source:** SDC 1939, §§ 13.1601, 13.2101, 13.2202, 13.2302, 13.2404; SL 1941, ch 46; SDCL §§ 22-18-9 to 22-18-11, 22-18-15, 22-18-21; SL 1976, ch 158, § 18-2; SL 1977, ch 189, §§ 46, 47; SL 1980, ch 173, § 3; SL 1981, ch 13, § 5; SL 1986, ch 180; SL 1997, ch 130, § 4; SL 2002, ch 106, § 1; SL 2005, ch 120, § 2; SL 2012, ch 122, § 1; SL 2012, ch 123, § 4.

22-18-1.4. Aggravated battery of an infant--Felony. Any person who intentionally or recklessly causes serious bodily injury to an infant, less than three years old, by causing any intracranial or intraocular bleeding, or swelling of or damage to the brain, whether caused by blows, shaking, or causing the infant's head to impact with an object or surface is guilty of aggravated battery of an infant. Aggravated battery of an infant is a Class 2 felony. A second or subsequent violation of this section is a Class 1 felony.

**Source:** SL 2012, ch 123, § 1.

