

Jolene's Law Task Force

Sexual Abuse of Children in South Dakota

August 5, 2014

What is Sexual Abuse of Children?

- ▶ **26-10-29** "Childhood sexual abuse" defined. 26-10-29. "Childhood sexual abuse" defined. As used in §§ 26-10-25 to 26-10-29, inclusive, childhood sexual abuse is any act committed by the defendant against the complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 22-22 or prior laws of similar effect at the time the act was committed which act would have constituted a felony.

Who are the Abused Children?

- ▶ Some statistics show approximately 1 in 5 girls and 1 in 20 boys are sexually abused in childhood, however the numbers vary greatly.
 - ▶ 9.2% of victimized children were sexually abused *US DHHS Children's Bureau*
 - ▶ 90% of victims were abused by someone they knew.
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Protecting Children from Sexual Abuse

- ▶ State law requires background checks for persons working with, adopting, or caring for children and prohibits anyone with a conviction of a sex offense from participation.
 - Adoption 25-10
 - Foster care
 - State employees working with children Child welfare agency or registered or unregistered daycare *26-6-14.10 and 14.11*
 - Teachers *13-42-10*

Reporting Suspected Sexual Abuse

- ▶ State law requires mandatory reporting of sexual abuse by certain individuals:
 - Internet service providers, film processors, computer repair technicians required to report suspected violations of child pornography *22-24A-16-18*
 - Health care provider, court services officer, law enforcement officer, teacher, school counselor, school nurse, school official, domestic abuse shelter employee or volunteer, child advocacy organization employee or volunteer *26-8A-3,6,7*

Addressing Sexual Abuse of Children

- ▶ Chapter 26–8A provides for Department of Social Services investigation and intervention in the case of sexual abuse of children by a parent or guardian.
 - This chapter is generally targeted for abuse by a parent, guardian, or caretaker of a child.

Sexual Abuse of Minors is a Crime

- ▶ Felony sexual contact with a person under 16 if committed by an adult year minimum sentence *22-22-7-10*
- ▶ Incest if committed by an adult *22-22A-2 to 3.1*
- ▶ Possessing, manufacturing, or distributing child pornography *22-24A-3*
- ▶ Sale of child pornography *22-24A-1*
- ▶ Sexual Exploitation of a minor *22-22-24.3*
- ▶ Criminal pedophilia *22-22-30.1*

Offenses Continued

- ▶ Felony indecent exposure *22-24-1.3*
- ▶ Rape if victim is less than 13 years of age–
Class C Felony *22-22-1*
- ▶ Rape if victim is 13 years of age but less than
16 years of age and the perpetrator is at least
three years older than the victim–Class 3
felony–*22-22-1*

Offenses Continued

- ▶ Sexual contact with person at least 13 years old and perpetrator is less than 5 years older—Class 1 Misdemeanor *22-22-7*
- ▶ Sexual contact with child under 16 if perpetrator is under 16—Class 1 Misdemeanor *22-22-7.3*
- ▶ A subsequent sex offense against a child under 16 years old is a Class 2 Felony *22-22-7.7*
- ▶ Permitting sexual abuse of a child—Class 6 Felony *26-10-30*

Special Considerations for Victims

- ▶ On conviction of a sex offense against a child, the court can order a safety zone around the child—*22-22-7.5*
- ▶ Court can allow a minor victim of sexual abuse to testify outside the presence of a defendant and other persons *23-24A-6 and 26-8A-30*
- ▶ Certain out of court statements by child under 13 are admissible in any civil proceeding alleging abuse and neglect or proceeding for termination of parental rights. *19-16-39*
- ▶ Extended statute of limitations for certain offenses. Seven years or until victim is 25 years old.

Civil Remedies

- ▶ Civil remedies are available for damages resulting from childhood sexual abuse and must be commenced within 3 years of the act or 3 years from the date the injury was discovered. *26-10-25*
- ▶ The date of discovery may be computed by the last act or when the victim discovered the injury or reasonably should have discovered the injury. *26-10-25 and 26-10-26*

Legislation Across the Nation

- ▶ Erin's Law– age based sexual abuse education included in school curriculum.
 - ▶ Mandatory Reporting Laws enhanced.
 - ▶ State Task Forces to study sexual abuse.
 - ▶ Extend Statute of Limitations for sexually abused minors in civil cases.
 - ▶ Increased education and training opportunities.
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