

**CHAPTER 22-18
ASSAULTS AND PERSONAL INJURIES**

SOURCE: https://sdlegislature.gov/Statutes/Codified_Laws/2047250

22-18-35. Disorderly conduct--Misdemeanor.

Any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by:

- (1) Engaging in fighting or in violent or threatening behavior;**
- (2) Making unreasonable noise;**
- (3) Disturbing any lawful assembly or meeting of persons without lawful authority; or**
- (4) Obstructing vehicular or pedestrian traffic;**

is guilty of disorderly conduct. Disorderly conduct is a Class 2 misdemeanor. However, if the defendant has been convicted of, or entered a plea of guilty to, three or more violations of this section, within the preceding ten years, the defendant is guilty of a Class 1 misdemeanor for any fourth or subsequent offense.

Source: SDC 1939, §§ 13.1401, 13.1409, 13.1421; SDCL §§ 22-13-2, 22-13-3; SL 1976, ch 158, § 13-1; SL 1984, ch 164; SDCL § 22-13-1; SL 2005, ch 120, §§ 130, 131; SL 2007, ch 142, § 1.

22-18-1. Simple assault--Violation as misdemeanor--Third or subsequent offense a felony--Violation in other states.

A person is guilty of simple assault, a Class 1 misdemeanor, if the person:

- (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.

If the defendant has been convicted of, or entered a plea of guilty to, two or more violations of simple assault under this section, simple assault or aggravated assault under § 22-18-1.05, aggravated assault under § 22-18-1.1, assault under § 22-18-26, intentional contact with bodily fluids under § 22-18-26.1, or assault under § 22-18-29, within ten years of committing the current offense, the defendant is guilty of a Class 6 felony for any third offense, a Class 5 felony for a fourth offense, and a Class 4 felony for a fifth or subsequent offense.

Any conviction for, or plea of guilty to, an offense in another state which, if committed in this state, would be a violation of a crime described in this section and occurring within ten years prior to the date of the violation being charged, shall be used to determine if the violation being charged is a subsequent offense. 2

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; SL 2019, ch 108, § 1; SL 2021, ch 92, § 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. 3

22-18-30. Third or subsequent offense--Offense in another state.

Any conviction for, or plea of guilty to, an offense in another state which, if committed in this state, would constitute a violation of simple assault under § 22-18-1, aggravated assault under § 22-18-1.1, assault under § 22-18-26, intentional contact with bodily fluids under § 22-18-26.1, or assault under § 22-18-29, and that occurs within ten years prior to the date of the violation being charged, shall be used to determine if the violation to be charged is a third or subsequent offense pursuant to § 22-18-1.

Source: SL 1999, ch 117, § 2; SL 2012, ch 124, § 1; SL 2020, ch 82, § 1.

22-18-1.5. Assaults with intent to cause serious permanent disfigurement--Felony.

Any person, who assaults another with the intent to cause serious permanent disfigurement and causes serious permanent disfigurement, is guilty of a Class 2 felony.

Assault with intent to cause serious permanent disfigurement as set forth in this section may be charged in the alternative as aggravated assault, as set forth in § 22-18-1.1.

Source: SL 2017, ch 96, § 1. 4

CHAPTER 22-16

HOMICIDE AND SUICIDE

22-16-1. Homicide defined.

Homicide is the killing of one human being, including an unborn child, by another. Homicide is either:

- (1) Murder;
- (2) Manslaughter;
- (3) Excusable homicide;
- (4) Justifiable homicide; or
- (5) Vehicular homicide.

Source: SDC 1939, § 13.2001; SL 1985, ch 176; SL 1995, ch 122, § 10; SL 2005, ch 120, § 150.

22-16-4. Homicide as murder in the first degree.

Homicide is murder in the first degree :

- (1) If perpetrated without authority of law and with a premeditated design to effect the death of the person killed or of any other human being, including an unborn child; or
- (2) If committed by a person engaged in the perpetration of, or attempt to perpetrate, any arson, rape, robbery, burglary, kidnapping, or unlawful throwing, placing, or discharging of a destructive device or explosive.

Homicide is also murder in the first degree if committed by a person who perpetrated, or who attempted to perpetrate, any arson, rape, robbery, burglary, kidnapping or unlawful throwing, placing or discharging of a destructive device or explosive and who subsequently effects the death of any victim of such crime to prevent detection or prosecution of the crime.

Source: SDC 1939, § 13.2007 (1); SL 1979, ch 160, § 2; SL 1980, ch 173, § 9; SL 1992, ch 161; SL 2005, ch 120, § 154.

22-16-7. Homicide as murder in the second degree.

Homicide is murder in the second degree if perpetrated by any act imminently dangerous to others and evincing a depraved mind, without regard for human life, although without any premeditated design to effect the death of any particular person, including an unborn child.

Source: SDC 1939, § 13.2007 (2); SL 1980, ch 173, § 10; SL 2005, ch 120, § 156.

22-16-15. Homicide as manslaughter in first degree--Felony.

Homicide is manslaughter in the first degree if perpetrated:

- (1) Without any design to effect death, including an unborn child, while engaged in the commission of any felony other than as provided in § 22-16-4(2);
- (2) Without any design to effect death, including an unborn child, and in a heat of passion, but in a cruel and unusual manner;
- (3) Without any design to effect death, including an unborn child, but by means of a dangerous weapon;
- (4) Unnecessarily, either while resisting an attempt by the person killed to commit a crime or after such attempt has failed.

Manslaughter in the first degree is a Class C felony.

Source: SDC 1939, §§ 13.2013, 13.2015; SDCL, §§ 22-16-16, 22-16-17, 22-16-19; SL 1976, ch 158, § 16-3; SL 1977, ch 189, § 41; SL 1995, ch 122, § 11; SL 2005, ch 120, § 160.

22-16-20. Manslaughter in the second degree.

Any reckless killing of one human being, including an unborn child, by the act or procurement of another which, under the provisions of this chapter, is neither murder nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree. Manslaughter in the second degree is a Class 4 felony.

Source: SDC 1939, §§ 13.2016, 13.2023; SDCL, § 22-16-29; SL 1968, ch 32; SL 1976, ch 158, § 16-4; SL 1977, ch 189, § 42; SL 1995, ch 122, § 12.

22-16-30. Excusable homicide--Lawful acts.

Homicide is excusable if committed by accident and misfortune in doing any lawful act, with usual and ordinary caution.

Source: SDC 1939, § 13.2002 (1); SL 1976, ch 158, § 16-5; SL 2005, ch 120, § 161.

22-16-31. Excusable homicide--Heat of passion--Provocation--Sudden combat--Limitations.

Homicide is excusable if committed by accident and misfortune in the heat of passion, upon sudden and sufficient provocation, or upon a sudden combat. However, to be excusable, no undue advantage may be taken nor any dangerous weapon used and the killing may not be done in a cruel or unusual manner.

Source: SDC 1939, § 13.2002 (2); SL 2005, ch 120, § 162.

22-16-32. Justifiable homicide-Law enforcement officers or at command of officer--Overcoming resistance--Capturing or arresting fleeing felons.

Homicide is justifiable if committed by a law enforcement officer or by any person acting by command of a law enforcement officer in the aid and assistance of that officer:

- (1) If necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or
- (2) If necessarily committed in retaking felons who have been rescued or who have escaped; or
- (3) If necessarily committed in arresting felons fleeing from justice.

Source: SDC 1939, § 13.2004; SL 1976, ch 158, § 16-9; SL 1977, ch 189, § 43; SL 2005, ch 120, § 163.

22-16-33. Justifiable homicide--Apprehending felon--Suppressing riot--Preserving peace.

Homicide is justifiable if necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Source: SDC 1939, § 13.2003 (3); SL 2005, ch 120, § 164.

22-16-41. Vehicular homicide.

Any person who, while under the influence of alcohol, drugs, or substances in a manner and to a degree prohibited by § 32-23-1, without design to effect death, operates or drives a vehicle of any kind in a negligent manner and thereby causes the death of another person, including an unborn child, is guilty of vehicular homicide. Vehicular homicide is a Class 3 felony. In addition to any other penalty prescribed by law, the court shall order that the driver's license of any person convicted of vehicular homicide be revoked for a period of not less than ten years from the date sentence is imposed or ten years from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation.

Source: SL 1983, ch 176, § 1; SL 1988, ch 186; SL 1993, ch 174, § 1; SL 1995, ch 122, § 8; SL 2000, ch 97, § 1; SL 2000, ch 98, § 1; SL 2006, ch 165, § 5; SL 2006, ch 168, § 16; SL 2009, ch 115, § 1.

SOUTH DAKOTA STATE LAWS ON THE USE OF FORCE
SOURCE: https://sdlegislature.gov/Statutes/Codified_Laws/2047250

22-18-3.1. Definitions.

Terms used in §§ 22-18-4 to 22-18-4.9, inclusive, mean:

- (1) "Deadly force," force that is likely to cause death or great bodily harm;
- (2) "Dwelling," a building or structure of any kind, whether temporary or permanent, that is designed to be occupied by people lodging therein at night, together with any attached garage or porch, and which includes:
 - (a) A tent;
 - (b) A camper or motorhome; and
 - (c) Any other conveyance, whether mobile or immobile;
- (3) "Forcible felony," arson, assault, burglary, kidnapping, manslaughter, murder, rape, and robbery, and any other felony that involves the use of or the threat of physical force or violence against a person;
- (4) "Residence," a dwelling in which a person:
 - (a) Resides, either temporarily or permanently; or
 - (b) Is an invited guest; and
- (5) "Unlawful force," an act of force that is employed without the consent of the person against whom it is directed and without legal justification or excuse;
- (6) "Vehicle," a conveyance of any kind, whether motorized or not, which is designed to transport people or property.

Source: SL 2021, ch 93, § 1. https://sdlegislature.gov/Statutes/Codified_Laws/2079070_5

22-18-4. Force--Defense of person.

A person is justified in using or threatening to use, force, other than deadly force, against another if the person reasonably believes that using or threatening to use force is necessary to defend against the other's imminent use of unlawful force.

A person who uses or threatens to use force in accordance with this section does not have a duty to retreat before using or threatening to use force.

Source: SDC 1939, § 13.2402 (3); SL 2005, ch 120, § 8; SL 2006, ch 116, § 2; SL 2021, ch 93, § 2.

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22-18-4.1. Deadly force--Defense of person.

A person is justified in using or threatening to use deadly force if the person reasonably believes that using or threatening to use deadly force is necessary to prevent imminent death or great bodily harm to himself, herself, or another, or to prevent the imminent commission of a forcible felony.

A person who uses or threatens to use deadly force in accordance with this section does not have a duty to retreat and has the right to stand his or her ground, if the person using or threatening to use the deadly force is:

- (1) Not engaged in a criminal activity; and
- (2) In a place where the person has a right to be.

Source: SL 2021, ch 93, § 3.

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22-18-4.2. Defense of dwelling or residence--Force--Deadly force.

A person who is in a dwelling or residence, in which the person has a right to be:

- (1) Has no duty to retreat;
- (2) Has the right to stand his or her ground; and
- (3) Has the right to use or threaten to use:
 - (a) Force against another, if the person reasonably believes that using or threatening to use force is necessary to defend himself, herself, or another against the imminent use of unlawful force; and
 - (b) Deadly force, if the person reasonably believes that using or threatening to use deadly force is necessary to prevent imminent death or great bodily harm to himself, herself, or another, or to prevent the imminent commission of a forcible felony.

Source: SL 2021, ch 93, § 4.

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22-18-4.3. Imminent death--Great bodily injury--Reasonable fear.

For purposes of § 22-18-4.2, a person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm, to himself, herself, or another, when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm if:

(1) The person against whom the defensive force was used or threatened:

(a) Was in the process of unlawfully entering a dwelling, residence, or occupied vehicle;

(b) Had unlawfully entered, a dwelling, residence, or occupied vehicle; or

(c) Had removed or was attempting to remove another against the other's will from a dwelling, residence, or occupied vehicle; and

(2) The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful entry or an unlawful and forcible act was occurring or had occurred.

Source: SL 2021, ch 93, § 5.

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22-18-4.4. Presumption of fear--Exceptions.

The presumption set forth in § 22-18-4.3 does not apply if:

(1) The person against whom the defensive force is used or threatened:

(a) Has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, including as an owner, lessee, or titleholder; and

(b) Is not the subject of a protection order, including a temporary protection order;

(2) The person sought to be removed is the child, grandchild, or otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used or threatened;

(3) The person who uses or threatens to use defensive force is engaged in a criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity; or

(4) The person against whom the defensive force is used or threatened is a law enforcement officer, who enters or attempts to enter a dwelling, residence, or vehicle in the performance of official duties and:

(a) The officer identified himself or herself as a law enforcement officer; or

(b) The person using or threatening to use force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

Source: SL 2021, ch 93, § 6.

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22-18-4.5. Unlawful entry--Presumption.

A person who unlawfully enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

Source: SL 2021, ch 93, § 7.

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22-18-4.6. Force--Defense of property other than a dwelling.

A person is justified in using or threatening to use force, other than deadly force, against another if and to the extent the person reasonably believes that using or threatening to use force is necessary to prevent or terminate another's trespass on, or criminal interference with:

- (1) Real property other than a dwelling;
- (2) Personal property that is lawfully:
 - (a) In the person's possession;
 - (b) In the possession of a member of the person's immediate family or household; or
 - (c) In the possession of one whose property the person has a legal duty to protect.

A person who uses or threatens to use force in accordance with this section does not have a duty to retreat before using or threatening to use such force.

Source: SL 2021, ch 93, § 8.

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22-18-4.7. Deadly force--Defense of property other than a dwelling.

A person is justified in using or threatening to use deadly force only if the person reasonably believes that the use of deadly force is necessary to prevent the imminent commission of a forcible felony.

A person who uses or threatens to use deadly force in accordance with this section does not have a duty to retreat and has the right to stand his or her ground, if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where the person has a right to be.

Source: SL 2021, ch 93, § 9.

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22-18-4.8. Immunity--Burden of proof.

A person who uses or threatens to use force, as permitted in §§ 22-18-4 to 22-18-4.7, inclusive, is justified in such conduct and is immune from criminal prosecution and from civil liability for the use or threatened use of such force brought by the person against whom force was used or threatened, or by any personal representative or heir of the person against whom force was used or threatened, unless:

- (1) (a) The person against whom force was used or threatened is a law enforcement officer, who was acting in the performance of official duties; and
- (b) The officer identified himself or herself; or
- (2) The person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer who was acting in the performance of official duties.

The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by a defendant in the defense of any civil action brought by a plaintiff, if the court finds that the defendant is immune from prosecution in accordance with this section.

In a criminal prosecution, once a prima facie claim of self-defense immunity has been raised by the defendant, the burden of proof, by clear and convincing evidence, is on the party seeking to overcome the immunity from criminal prosecution provided for in this section. As used in this section, the term, criminal prosecution, includes arresting, detaining in custody, and charging or prosecuting the defendant.

Source: SL 2021, ch 93, § 10; SL 2022, ch 62, § 1.

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22-18-4.9. Aggressor--Use of force--Justification not available.

Any justification for the use or the threatened use of either force or deadly force is not available to a person who:

- (1) Is attempting to commit, committing, or escaping after the commission of a forcible felony; or
- (2) Initially provokes the use or threatened use of force against himself or herself, unless:
 - (a) Such force or threat of force is so great that the person reasonably believes he or she is in imminent danger of death or great bodily harm and that every reasonable means to escape such danger has been exhausted, other than the use or threatened use of force that is likely to cause death or great bodily harm to the assailant; or
 - (b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use or threatened use of force, but the assailant continues or resumes the use or threatened use of force.

Source: SL 2021, ch 93, § 11.

https://sdlegislature.gov/Statutes/Codified_Laws/2079079