

STATE OF SOUTH DAKOTA



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March 27, 2012

TO: Law Enforcement and Interested Persons
FROM: Charles McGuigan, Chief Deputy Attorney General
RE: Legislation Passed in 2012

Charlie McD

The 2012 South Dakota Legislature considered 471 pieces of legislation. The House introduced 274 bills and the Senate introduced 197 bills. The Governor signed 250 bills into law. The Governor vetoed 4 bills and the Legislature overrode one of the Governor's vetos.

The Attorney General requested the introduction of six pieces of legislation during the 2012 Legislative Session. The Legislature adopted five of the bills and the Governor signed all five bills into law. Senate Bill 39 expands the definition of a victim for the purposes of certain written victim impact statements. Senate Bill 40 would have permitted a county to authorize temporary fencing within rights-of-way subject to the county's jurisdiction. This bill was killed by Senate Local Government at the request of the Attorney General. Senate Bill 41 authorizes retailers to choose whether to submit pseudoephedrine purchase records electronically or in writing. Senate Bill 42 revises certain provisions regarding habeas corpus. Senate Bill 43 adopts Caylee's Law and criminalizes the failure to report the death or disappearance of a child. Finally, Senate Bill 44 was incorporated into Senate Bill 130 during the conference committee process and requires school districts to adopt a bullying policy and establishes a model bullying policy. During the 2012 Legislative Session, the Office of Attorney General monitored 128 bills, supported 11 bills and opposed two bills.

The following bills will become law on July 1, 2012 unless noted otherwise.

SB 10 - Revises certain provisions pertaining to boating while under the influence. This bill brings boating under the influence (BUI) up to date and in-line with the existing DUI statutes. Sections 1 to 5 of the bill clean up existing BUI language so that it mirrors the DUI statutes especially dealing with prescription drugs and ingested substances. Section 6 requires a mandatory blood draw for persons arrested for BUI and mirrors the language adopted in 2005 for DUI.

SB 14 - Revises certain provisions regarding alcohol or drug commitments. The bill clarifies that commitments be based upon the examination of either a physician or a chemical dependency counselor. The bill also authorizes the committing court to order law enforcement to transport the committed person to an approved treatment facility.

SB 15 - Revises certain provisions related to the treatment of persons with mental illness including consent to treatment. This bill arose from work by the Behavioral Task Force chaired by the Lt. Governor and expands who can do the analysis for a mental health commitment. It allows involuntary commitment to outpatient treatment facilities and it streamlines the commitment process for persons with a dual diagnosis of both mental health and substance abuse issues.

SB 23 - Places certain substance on the controlled substance schedule and declares an emergency. This bill is the annual bill by the Department of Health to update South Dakota's list of controlled substances to match the federal controlled substance schedule. In addition, SB 23 attempts to address the growing problem with synthetic or designer drugs such as "bath salts", K2, spice, nightlights and other similar substances. Rather than attempting to list the multitude of designer drugs and their various derivatives, this bill attempts to categorize and schedule entire families of substances as Schedule I controlled substances. The intent is to capture and schedule all of the known existing synthetic or designer drugs currently available. This bill contained an emergency clause and became law with the Governor's signature on February 24, 2012.

SB 39 - Expands the definition of victim for the purposes of certain written victim impact statements. This bill was brought at the request of the Attorney General and is intended to clarify and expand who can submit a written victim impact

statement to include anyone adversely impacted emotionally, physically or monetarily by the defendant's crime.

SB 41 - Authorizes retailers to choose whether to submit pseudoephedrine purchase records electronically or in writing. This bill was brought at the request of the Attorney General and provides retailers and pharmacies with the option of submitting their monthly pseudoephedrine sales records electronically or in writing.

SB 42 - Revises certain provisions regarding habeas corpus. This bill was brought at the request of the Attorney General and brings South Dakota in line with the majority of states concerning habeas corpus. Primarily this bill creates a two-year statute of limitation in order to bring a state habeas corpus action. The bill removes the requirement for court appointed counsel in every habeas action and now allows the judge to appoint habeas counsel if the judge finds that such appointment is necessary to ensure a full, fair and impartial proceeding. The bill clarifies that the ineffectiveness or incompetence of habeas counsel is not a grounds for habeas relief. Finally, the bill limits a person to one state habeas corpus action and prevents the filing of repetitive habeas corpus cases. The bill does allow for a second or subsequent habeas corpus if a reviewing court finds that new evidence exists or that there is a new rule of constitutional law made retroactive by either the United States Supreme Court or South Dakota Supreme Court.

SB 43 - Criminalizes the failure to report the death or disappearance of a child within a specified time by certain persons responsible for the care of the child. This bill was brought at the request of the Attorney General and is modeled after Caylee's Law, named after Caylee Anthony from Florida. Section 1 makes it a class 1 misdemeanor for a parent, legal guardian or caretaker to knowingly fail to notify law enforcement within 48 hours of learning that a child under the age of 13 is missing. Section 2 makes it a class 5 felony for a parent, legal guardian or caretaker to knowingly fail to notify law enforcement within six hours of learning of the death of a minor child in his or her care.

SB 53 - Permits the Department of Public Safety to require certain accident reports to be filed by electronic means. Beginning July 1, 2013, the bill will require the electronic filing of traffic accident reports by agencies that submit more than 60 reports during a calendar year.

SB 58 - Revises certain provisions concerning elections conducted at voting centers and declares an emergency. This bill was signed by the Governor on February 24, 2012, and became law upon his signature.

SB 62 - Allows certain alcoholic beverage licensees to charge a corkage fee for serving wine supplied by customers and allows customers to remove a partially consumed bottle of wine from certain alcoholic beverage licensees. This bill adds two new provisions to South Dakota's on-sale sales law. The bill allows a customer to bring a sealed and unopened bottle of wine onto a premises licensed to sell wine on sale. This section also allows a licensee to charge a corkage fee for serving the wine supplied by the customer. This bill allows a customer to carry out the unconsumed portion of a bottle of wine if the licensee securely reseals the bottle of wine with a cork or other similar cap, places the bottle in a sealed bag or container and attaches a receipt for the meal. A wine bottle that is re-corked, sealed and has the receipt attached is not a violation of the open container statutes.

SB 68 - Provides that no statute of limitations applies to certain rape offenses. Specifically, this bill removes the statute of limitations for first degree and second degree rape. For the other degrees of rape, the statute of limitations remains the same.

SB 75 - Revises the determination of fees that may be charged for certain public records. Specifically, this bill prohibits the charging of a fee for the electronic transfer of minutes recorded in the last three years.

SB 78 - Allows an arrest to be expunged when the criminal case is dismissed. This bill clarifies that an expungement can only occur after one year from the date of arrest if no accusatory instrument was filed or at any time after an acquittal. The bill also establishes a third criteria which allows an expungement with the consent of the prosecuting attorney at any time after the prosecutor formerly dismisses the entire criminal case.

SB 99 - Prohibits certain licensees or employees of a licensed alcohol establishment from entering the licensed premises. The bill prohibits a licensee or an employee who is charged with a felony offense involving a minor, a crime of violence, or a

felony drug offense from entering onto the licensed premises of an establishment serving alcohol.

SB 106 - Requires the disclosure of certain public employee contracts. This bill adds new language allowing for the public inspection or copying of any current or prior contract with any public employee and any related documents that specifies the consideration to be paid to the employee.

SB 128 - Revises certain provisions concerning elections. This bill deals with how the county auditor may retain and preserve voter registration records and what information must be contained from the voter's registration card. The bill also clarifies the duties of the Secretary of State regarding guidance and direction the Secretary of State must provide to the county auditor.

SB 130 - Requires the school board of each school district to adopt a policy prohibiting bullying. The Attorney General brought SB 44 which encouraged each school district to adopt a policy prohibiting bullying. During the conference committee process, the provisions of SB 44 were merged with the provisions of SB 130 to result in the final language of SB 130. The bill requires that school districts that do not have a bullying policy, must adopt a bullying policy or use the default policy set forth in the bill. The bill also establishes a uniform definition of what constitutes bullying.

SB 140 - Repeals certain provisions regarding glazing material on motorcycle windshields and wind deflectors. This bill repeals SDCL 32-15-4.

SB 146 - Provides for an affirmative defense of compulsion for the crime of prostitution. This bill provides that it is an affirmative defense to a charge of prostitution if the defendant proves by a preponderance of the evidence that the defendant is a victim of human trafficking or acted only under compulsion of the threat of bodily harm.

SB 148 - Revises certain provisions relating to battery committed against infants and unborn children. The primary purpose of this bill is to gather the various statutes involving the injury to an infant or unborn child into the assault chapter, SDCL Ch. 22-18. The bill further changes the terminology of these statutes from "assault" to a "battery".

SB 149 - Revises certain provisions relating to the conditional release of persons charged with domestic abuse. This bill clarifies that the court can require the posting of a bond pursuant to SDCL 25-10-23 as a condition of release in order to protect the alleged victim of domestic abuse.

SB 154 - Revises certain statutes pertaining to persons required to report child abuse and neglect. This bill expands who qualifies as a mandatory reporter of child and abuse and neglect to include employees or volunteers of a child advocacy organization or a child welfare service provider.

SB 156 - Establishes strangulation as one element of the crime of aggravated assault. This bill adds a new subdivision to the aggravated assault statute to include a definition to include strangulation as a form of aggravated assault.

SB 161 - Revises certain provisions concerning public meetings held by teleconference or video conference. This bill provides that any official meeting held by teleconference, which has less than a quorum of the members of the public body participating present at the location open to the public, arrangements shall be provided for the public to listen to the meeting via telephone or internet. This bill addresses the situation where some members of a public body are participating in the public meeting by conference call rather than participating by attending the actual meeting. The bill clarifies that in that circumstance arrangements must be made that would allow the public to listen to the meeting via telephone or internet.

SB 174 - Increases the 911 emergency surcharge, revises the collection and distribution of the surcharge revenue, provides for point of sale collection of the prepaid wireless 911 emergency surcharge and provides funding for the upgrade of 911 emergency services. This bill increases the monthly 911 surcharge from .75 cents to \$1.25 per service user line. The bill also creates a system to impose a prepaid wireless 911 surcharge of 2% upon the gross receipts of each purchase of prepaid wireless telecommunication services.

SB 183 - Establishes the elements of the offense of juvenile sexting and provides a penalty therefore. This bill came from a group of states attorneys and academia to address the issue of juvenile sexting. This bill makes it a class 1 misdemeanor for a juvenile to participate in juvenile sexting. The bill also creates an affirmative defense if the minor did not solicit the sexting image and does not subsequently distribute or

disseminate the image and deletes or destroys the image. The bill also creates an affirmative defense if the picture is a picture by that minor and the minor does not disseminate the image.

HB 1014 - Prohibits false statements on applications for certain loans, grants or other financial assistance and provides a penalty therefore. This bill makes it a class 6 felony to knowingly make a material false statement or to willfully over-value security for the purposes of obtaining certain government loans, grants or other financial assistance for business or agricultural purposes.

HB 1021 - Revises certain provisions regarding the rights of victims of crime. This bill was brought at the request of the Department of Corrections and adds three new areas that a crime victim may be notified of as a part of their victim's rights. The bill allows a victim to be notified of their right to request testing for infection by blood borne pathogens, to be provided a copy of certain law enforcement report related to the crime and to be notified of a petition by a sex offender for removal from the sex offender registry.

HB 1025 - Makes aggravated incest a violent crime for purposes of setting an initial parole date. The effect of this bill is to require an offender convicted of aggravated incest to serve at least 50% of the sentence before becoming parole eligible.

HB 1029 - Authorizes the publication of the names of certain delinquent tax payers. This bill allows the secretary of revenue to prepare a list of at least 100 delinquent persons who owe the largest amount of tax and allow for the publication on the internet of said list.

HB 1038 - Increases the penalty for leaving the brand inspection area without necessary inspection and authorization. This bill raises the current Class 2 misdemeanor to a Class 1 misdemeanor.

HB 1039 - Exempt certain impaired driving violations from the statutory limitation on enhanced penalties for second, third or subsequent violations. During the criminal code revision process, the Legislature adopted the current language limiting the use of second or subsequent offenses to only those offenses where a conviction had occurred. Since that time, there has been an ongoing debate as to whether this provision only applied to crimes under Title 22 or if it also extended to DUI offenses under Title 32. This bill clarifies that a conviction does not

need to occur in order to count the DUI for penalty enhancement purposes.

HB 1060 - To permit a probationer who is a registered sex offender to reside in an assigned half-way house or supervised living center within a community safety zone. This bill amends the current community safety zone exception for parolees to also include persons who are on probation. This bill was brought at the request of the Chief Justice.

HB 1061 - An act to amend certain provisions related to interpreter services in the court system. This bill implements some of the recommendations of the Chief Justice's Interpreter Services Task Force.

HB 1063 - Repeals certain statutes related to the testimony of sex offense victims. As part of the Supreme Court's rulemaking process, the Court adopted Federal Rule of Evidence 412 relating to the relevance of past sexual behavior of an alleged victim in sex offense cases. As a result of the adoption of FRE 412, existing SDCL 23A-22-15 and 23A-22-15.1 are not necessary. This bill repeals those two sections.

HB 1064 - An act to allow the Supreme Court to establish certain rules for the use of interactive audio visual equipment and to provide for the collection of fees for the use thereof. This bill grants the Supreme Court the authority to establish rules for the use of interactive audio visual equipment for non-court proceedings. Any fees collected will be deposited in the state court automation fund.

HB 1066 - Allows for the cremation of deceased persons who are indigent and provides that funeral expenses are the financial responsibility of the county.

HB 1088 - Revises certain requirements for the charging and collecting certain fees for confining certain people in the county jail. This bill was brought in response to an audit issue involving prisoners housed by one county at the request of another county. This bill allows the county with the jail to deposit any fees collected into the fund that the county desires rather than having to deposit the fee in the special jail building fund.

HB 1094 - An act to require the filing of certain documents relating to the vacation, location or changing of highways with the Register of Deeds. This bill requires that a certified copy

of the resolution and order vacating, changing or locating a highway shall be filed with the county Register of Deeds.

HB 1114 - Amends provision limiting the time used to determine if a violation is a third or subsequent assault offense. This bill changes the look back period to determine if an assault is a felony from 5 to 10 years.

HB 1117 - Provides for the taking of muskrats by shooting under certain conditions.

HB 1119 - Revises certain provisions concerning mechanical pull-tab devices. This bill authorizes bill operated mechanical pull-tab dispensing devices and also allows local civic or service club and volunteer fire departments to use mechanical pull-tab dispensing devices. Currently only coin operated devices can be used.

HB 1130 - Revises the fee schedule for certain documents filed with the county Register of Deeds, creates a county and statewide fund for the purpose of modernizing and preserving records and distributes certain revenue. This bill increases many of the fees that the Register of Deeds can charge for filing documents.

HB 1131 - Revises certain provisions relating to posting of public notice for meetings of public bodies. This bill revises the open meeting laws to require that agendas be posted in a manner that is "visible, readable and accessible for at least an entire 24 hours before any meeting". If a public body has a website, the notice shall also be posted on that website. The bill also authorizes the use of e-mail in order to notify the public of special or rescheduled meetings.

HB 1138 - Declares that any person who maintains or provides roll your own cigarette machines at retail establishments is a cigarette manufacturer. This bill will require retail establishments that have roll your own cigarette machines to comply with the tax, escrow, stamping, packaging and fire safe requirements of a cigarette manufacturer.

HB 1173 - Revises certain provisions regarding the administration of the County Legal Expense Relief Fund. This bill changes the current quarterly reimbursements to a single annual reimbursement and it also authorizes a supplemental assessment if it is determined that the County Legal Expense Relief Fund reserve is likely to be completely depleted.

HB 1177 - Establishes provisions to exempt breast-feeding mothers or new parents from jury duty. This bill allows an exemption from jury duty for a parent of a child expected to be born during or immediately prior to a scheduled jury duty, exempts a breast-feeding mother of a baby younger than one year and exempts a parent who has a child who is less than six weeks old.

HB 1178 - Revises certain provisions relating to the disposal of local government property. This bill expands both the entities that a government can distribute surplus property to and also authorizes the loaning of surplus property.

HB 1179 - Requires certain campaign finance requirements to apply to all counties and municipalities.

HB 1186 - Prohibits registered sex offenders from circulating petitions and provides a penalty for the violation thereof. This bill makes it a class 1 misdemeanor for a registered sex offender to circulate any petition in any place frequented by the public or door to door on private property. This bill does allow a registered sex offender to circulate or assist circulating petitions where the sex offender is under the immediate supervision of another person and where the circumstances limit any contact with children. The bill authorizes a sex offender to circulate a nominating petition on the offender's behalf for election to any federal, state or local office for which the sex offender is qualified.

HB 1194 - Revises certain provisions regarding the payment for rape and sexual offense examinations. This bill repeals the requirement that the victim of the alleged offense reports the offense to law enforcement.

HB 1198 - Revises the definition of firearm to include certain antique, muzzle loading and black powder weapons. This bill defines firearm to include any antique firearm, any muzzle loading firearm or firearm using black powder as a firearm for the purposes of disqualification from possession pursuant to SDCL 22-14-15 and 22-14-15.1.

HB 1202 - Repeals certain provisions regarding reckless and unsafe driving. This bill repeals SDCL 32-24-2 which makes it a Class 2 misdemeanor to coast downhill with a vehicle in neutral or with the clutch disengaged.

HB 1245 - Revises certain provisions regarding the suspension of a driver's license for certain alcoholic beverage violations. This bill repeals the mandatory revocation of the driver's license of a person who sells alcohol to an underage person.

HB 1247 - Revises certain provisions regarding the voting rights of persons convicted of a felony or serving time in the state penitentiary. The bill extends the period of disqualification of voting rights from the current period of actual incarceration to also include any period of parole or probation.

HB 1253 - Prohibits the judicial enforcement of any religious codes.

HB 1263 - Provides for the mandatory HIV testing for any person convicted of prostitution or solicitation of prostitution. This bill also allows any person who may have been exposed to that person's bodily fluids to petition the court to receive the results of any HIV test. The bill prohibits the test results from being used as evidence in any criminal prosecution.

HB 1273 - Prohibits the sale of loose leaf incense to minors, prohibits certain marketing techniques, regulates the sale of certain types of incense, provides a penalty and declares an emergency. This bill is another effort to address the issue of synthetic or designer drugs. The bill makes it a class 1 misdemeanor for any retailer to sell in a single transaction one quarter of a gram or more of loose leaf incense. The bill makes it a class 1 misdemeanor for a retailer to willfully and knowingly sell any amount of loose leaf incense to a person under the age of 21. The bill requires that a retailer display or offer loose leaf incense from behind the counter or in a locked case so that the customer wanting access must ask a store employee for assistance. The bill requires the retailer to record the identification of the person purchasing the product and submit a report to the Office of Attorney General on a monthly basis. The bill makes it a class 1 misdemeanor for any manufacturer, distributor or retailer to directly or indirectly indicate that loose leaf incense can be ingested. The bill requires a retailer to label each package with a warning label and with each ingredient present in the product including all chemicals and additives. Because the bill contained an emergency clause, it became law with the Governor's signature on March 2, 2012.

Please feel free to contact me if you need additional information. You can access all of the bills introduced by the 2012 Legislature at the South Dakota Legislative Research Council website. The web address is:
<http://legis.state.sd.us/sessions/2012/index.aspx>