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TO: Law Enforcement and Interested Persons
FROM: Charles D. McGuigan, Chief Deputy Attorney General
RE: **Legislation Passed in 2014**

Charlie

The 2014 South Dakota Legislature considered 449 pieces of legislation. The House of Representatives introduced 261 bills and the Senate introduced 188 bills. The Governor signed 248 bills into law. The Governor vetoed one bill and the Legislature did not override the Governor's veto.

The Attorney General requested the introduction of six pieces of legislation during the 2014 Legislative Session. The Legislature adopted all six bills and the Governor signed all six bills into law. SB 21 revises certain provisions regarding the collection and setting of 24/7 Sobriety Program fees and the monitoring of ignition interlock testing. SB 22 authorizes the issuance of citations for certain livestock inspection violations. SB 23 revises certain provisions related to deceptive trade practices, the consumer protection statutes and organized retail crime. SB 24 establishes an electronic reporting system for pseudoephedrine retail sales. SB 25 establishes the procedure to forfeit personal property in child pornography, human trafficking, child solicitation or child exploitation cases. SB 26 establishes certain electronic crime victim notification procedure and is part of the implementation of the SAVIN program. During the 2014 Legislative Session, the Office of Attorney General monitored 97 bills, supported 12 bills and opposed 5 bills.

The following bills will become law on July 1, 2014, unless noted otherwise:

SB 2 - Provides the delayed arrest under certain circumstances, in regard to certain outstanding warrants for victims of domestic abuse with minor children. This bill was introduced at the request of the Domestic Abuse

Interim Committee. The bill gives law enforcement the discretion to not arrest a victim of domestic abuse for an outstanding warrant if the outstanding warrant is for a nonviolent misdemeanor offense and the victim is the custodial parent or immediate caregiver of a minor child. The bill gives the victim a 72 hour grace period to make arrangements for the care of the minor children.

SB 3 – Provides for continuity in the judicial review of certain lawsuits, complaints and petitions between parties to a petition for certain protection orders. This bill was brought at the request of the Domestic Abuse Interim Committee. This bill encourages that the same judge who previously handled other litigation involving the parties should also handle a request for a protection order.

SB 4 - An act to ensure notice to the respondent an opportunity for the respondent to be heard prior to enforcement of certain foreign domestic protection orders. This bill clarifies the process for recognizing a foreign domestic abuse protection order and extends the same process to a foreign stalking or foreign physical violence protection order. This bill was also brought at the request of the Domestic Abuse Interim Committee.

SB 5 – Permits the court reciprocal discretion to hear certain petitions for protections orders due to domestic abuse and for protections due to stalking or physical injury. This bill brought at the request of the Domestic Abuse Interim Committee allows a court to issue a protection order if the allegations do not support the existence of a domestic abuse but the allegations do support the existence of stalking or other physical injury meeting the criteria for the issuance of a protection order.

SB 7 – Modifies the persons eligible for protection from domestic abuse and revises certain terminology. This is the final bill brought at the request of the Domestic Abuse Interim Committee and reflects the primary focus of the Committee's work to update the definition of persons eligible to receive protection under the domestic abuse statutes. The new definition will cover persons involved in the following relationships: spouse or former spouse; persons in a significant romantic relationship; has a child or is expecting a child with the abusing party; parent and child; or siblings. Under the new definition persons who live together do not necessarily receive protection from domestic abuse.

SB 13 – Makes use of handheld mobile telephones while driving a commercial motor vehicle a serious traffic violation for commercial driver's license purposes and updates certain federal regulations regarding the issuance of commercial driver's licenses. For the purposes of maintaining a CDL, this bill considers the use of a handheld mobile telephone for any purpose, including texting, as a major violation if that use violates a federal, state or local law.

SB 21 – Revises certain provisions regarding the collection and setting of 24/7 Sobriety Program fees and the monitoring of ignition interlock testing. This bill was brought at the request of the Attorney General and the 24/7 Advisory Committee. The primary purpose of the bill is to shift the collection of all 24/7 fees, including SCRAM, from the Clerk of Court to the Sheriff. This bill was brought partially in response to the Unified Judicial System's implementation of the Odyssey Computer System. This bill also requires the inspection of an ignition interlock device every 30 days.

SB 22 – Authorizes the issuance of citations for certain livestock inspection violations. This bill was brought at the request of the Attorney General's Office and in cooperation with the South Dakota Brand Board. The bill will allow primarily DCI Agents who are brand investigators to issue citations for misdemeanor violations of the livestock inspection laws.

SB 23 – Revises certain provisions relating to deceptive trade practices, including unordered property or services, lodging reservation and cancellation, violation penalties, attorney fees, entry rights for landlords and tenants, debit card theft, and organized retail crime. This bill was brought at the request of the Attorney General's Office and is the result of the work done by the Attorney General's Consumer Protection Task Force. South Dakota Consumer Protection and Deceptive Trade Practices Act had not been reviewed or updated since 1971. The Task Force studied our existing statutes and made recommendations to the Attorney General which resulted in this bill. Currently, state law requires an offender to both knowingly and intentionally employ deceptive act or practice. This bill removes the intentional requirement while maintaining the knowledge element. The bill updates several provisions of the consumer protection statutes dealing with mail to clarify that modern methods of sending information are now covered. The bill requires a written refund policy for lodging establishments. The bill increases the current Class 2 misdemeanor to a Class 1 misdemeanor if the amount involved is under \$1,000. The bill makes a violation over \$1,000 but under \$100,000 a Class 6 felony and each violation over \$100,000 will be a Class 5 felony. The bill creates the new crime of organized retail crime concerning the organized theft of retail merchandise for the purpose of reselling or otherwise distributing the merchandise in commerce. The bill makes organized retail crime a Class 1 misdemeanor if the aggregate merchandise stolen is under \$1,000, a Class 6 felony if the aggregate merchandise involved is over \$1,000 but under \$100,000, a Class 5 felony if the merchandise is over a \$100,000.

SB 24 – Revises certain provisions relating to pseudoephedrine, ephedrine, or phenylpropanolamine sales to require the entry of an electronic record into an electronic record keeping system. This bill was brought at the request of the Attorney General with the cooperation of the South Dakota Pharmacists and the South Dakota Retailers Association. This bill will allow retailers to enroll in the NPLEX System. The NPLEX System allows for the real time electronic

reporting and monitoring of pseudoephedrine sales and alerts a retail establishment if a sale would be in violation of state law thus stopping the sale at the retail level.

SB 25 – Establishes the procedure to forfeit personal property in child pornography, human trafficking, child solicitation or child exploitation cases. This bill was brought at the request of the Attorney General and was designed to provide a statutory procedure which would allow prosecutors to use existing authority to forfeit certain assets and personal property from offenders involved in child pornography, child solicitation or child exploitation. This bill also expands the ability to forfeit property to cases involving human trafficking.

SB 26 – Establishes certain electronic notification procedures. This bill was brought at the request of the Attorney General and is designed to help implement the Statewide Automated Victim Information and Notification System (SAVIN). This bill consolidates the various statutes providing notification to victims into the South Dakota Crime Victims' Rights Act, SDCL Ch. 23A-28C. The bill also updates state law to cover additional forms of modern communication such as e-mail, text and other electronic communication.

SB 39 – Revises certain provisions regarding the regulation of certain open containers of alcoholic beverages.

SB 46 – Revises certain provisions regarding animal welfare and provides a felony penalty for cruelty to animal. This bill creates the new crime of felony animal cruelty. Animal cruelty will be a Class 6 felony. The bill defines animal cruelty as the intentional, wilful and malicious infliction of gross physical abuse on an animal that causes prolonged pain, serious physical injury or death. The neglect, abandonment or mistreatment of an animal will remain a Class 1 misdemeanor. The bill expands the violation of dog fighting to cover the training or use of any animal for the purposes of fighting. Animal fighting will be a Class 6 felony while a spectator to an animal fight would be a subject to a Class 1 misdemeanor. The bill exempts normal veterinarian, animal husbandry, hunting, trapping, fishing, animal damage control and the destruction of dangerous animal practices from being a violation of this act.

SB 59 – Increases the penalty for the trafficking of vehicle license plates and decals, prohibits the unauthorized transfer of a vehicle license plate or decal and poses a penalty for altering or forging certain vehicle registration cards. This bill increases the current penalty from a Class 2 misdemeanor to a Class 1 misdemeanor. Further, it makes it a Class 6 felony for any person to alter or forge a motor vehicle registration card or other temporary registration device.

SB 75 – Prohibits local government from enacting, maintain or enforcing regulations on certain dog breeds. The bill prohibits local ordinances which are breed specific.

SB 77 – Repeals certain outdated and obsolete provisions regarding county prisoners. Specifically this bill repeals SDCL 24-11-34 which allowed prisoners in solitary confinement to be fed just bread and water.

SB 81 – Prohibits the possession of certain items in jails and revises the penalty for the procurement of certain items into a jail. The bill clarifies that cellular telephones, tobacco products or any other item not authorized by the operator of a jail facility is contraband. The bill further makes it a violation for an inmate to alter an item or to use an item other than for its intended purpose. A violation would be a Class 1 misdemeanor. The bill defines “prescription” to include nonprescription medication that has not been authorized by the sheriff. Finally the bill makes penalties for a person who smuggles contraband to an inmate the same as an inmate receives for possesses of the contraband.

SB 85 – Revises certain provisions regarding confidential criminal justice information. This bill was originally introduced last year at the request of the Governor, Attorney General and the Open Government Task Force. This bill clarifies that police logs or information about calls for service are public record.

SB 102 – Provides that, upon completion of certain proceedings, magistrate judges may return or dispose of property taken in as evidence.

SB 104 – Authorizes the use of night vision equipment for hunting under certain conditions.

SB 118 – Revises certain criminal penalties for intentional damage to private property. This bill brings the monetary penalty levels for intentional damage to private property in line with the current requirements for theft. Therefore, intentional damage to property under \$400 would be a Class 2 misdemeanor; \$400 to \$1,000 will be a Class 1 misdemeanor; \$1,000 to \$2,500 would be a Class 6 felony; \$2,500 to \$5,000, a Class 5 felony; \$5,000 to \$100,000, a Class 4 felony; \$100,000 to \$500,000, a Class 3 felony; and damage over \$500,000, a Class 2 felony.

SB 125 – Prohibits registered sex offenders from loitering in certain areas. This bill prohibits registered sex offenders from loitering in a public library. The bill allows an offender to use and be in a public library but prohibits the offender from loitering in the library. A violation is a Class 6 felony and a subsequent violation is a Class 5 felony. Current law defines loitering at SDCL 22-24B-22(2) and requires an offender to remain for a period of time and under

circumstances that a reasonable person would be determine is for the primary purpose of observing or contacting minors.

SB 154 – Establishes the Jolene’s Law Task Force to study the impact of sexual abuse of children in this state and to make recommendations to the legislature on policies to affectively address the issue. The Task Force will consist of 15 members. The Task Force will study the impact of sexual abuse of children in this state and make a report to the Legislature on the prevalence of sexual abuse of children and make policy recommendations to address sexual abuse of children. The Task Force has until January 1, 2015, to make their report and recommendations.

SB 164 – Prohibits a social host from permitting the underage consumption of alcoholic beverage on the social host premises and provides a penalty therefore. This bill prohibits a social host from knowingly allowing persons under the age of 21 from illegally consuming alcoholic beverages on or at the premises of the social host. A violation will be a Class 1 misdemeanor if the persons involved are under the age of 18 and a Class 2 misdemeanor if the persons involved are 18, 19 or 20. The act creates a defense to the social host if the social host took prompt and appropriate action upon learning of the illegal consumption of alcohol. It is not a defense if the social host was not physically present at the time of the illegal consumption. The bill defines a social host as anyone who hosts a social gathering and knowingly condones the illegal consumption of alcohol by underage persons on property that the host controls.

SB 181 – Define vapor products as tobacco products for the purpose of regulating the use of products by minors places restriction on the sale of vapor products. This bill prohibits the use, possession and sale of e-cigarettes or other electronic vapor products containing nicotine to a person under the age of 18. A violation would be a Class 2 misdemeanor.

HB 1024 – Places certain substances on the controlled substances schedule and declares an emergency. This is the annual bill from the Department of Health updating South Dakota’s controlled substance schedule to mirror new items placed upon the federal controlled substance schedule. This year’s bill adds 8 new substances to Schedule I all of which are synthetic drugs. The bill also adds one new substance to Schedule III. Because the bill contained an emergency clause, it became law on **February 10, 2014**, with the Governor’s signature.

HB 1028 – Revises the amount counties may be reimbursed for the detainment of parole violators. This bill implements that portion from last year’s SB 70 dealing with the counties detainment of parole violators. The bill increases the amount of reimbursement from the current \$50 per day to \$70 per day.

HB 1063 – Revises certain provisions relating to jury selection. The bill makes several modifications to existing statutes in order to reflect current methods used by county auditors to select a jury pool and especially to reflect the creation of jury pools using random electronic means.

HB 1074 – Revises certain provisions concerning actions prohibited near polling places. The bill prohibits a campaign office within 100 feet from any entrance leading into a polling place and modifies the definition of a polling place to include a designated place voters may go to vote on the day of the election or go to vote absentee.

HB 1079 – Authorize certain lighting on vehicles operated by ambulance service personnel. The bill allows ambulance personnel to use a blue light on their personal vehicle in the same fashion as allowed for a member of a volunteer fire department.

HB 1080 – Clarifies that emergency personnel driving records are not to include motor vehicle accidents resulting while engaged in the performance of their official duties.

HB 1082 – Revise the conditions causing the suspension of a probationary period. This bill was brought at the request of the Chief Justice and is designed to implement some of the provisions dealing with probation enacted as part of last year's SB 70.

HB 1084 – Revises certain provisions regarding the list of persons who may be excluded from a licensed gaming establishment and provides a penalty for violation of the exclusion. The bill adds to the persons who may be excluded from a licensed gaming establishment to include persons that engage in conduct that would adversely affect publicly confidence that gaming is conducted honestly. The bill also makes it a Class 1 misdemeanor for any person who is on the exclusion list to be present in a licensed gaming establishment. The bill also allows for the suspension and revocation of a gaming license if a licensed establishment fails to eject an excluded person from the premises.

HB 1100 – Prohibits the use of certain photo monitoring devices to detect red light violations. This bill prohibits the use of red light cameras.

HB 1118 – Clarifies certain provisions about discharging firearms in safety zones. Current law prohibits the discharge of a firearm in a safety zone only for the purposes of hunting. This bill expands the prohibition to any discharge of any firearm for any purpose.

HB 1119 – Revises certain provisions relating to preliminary hearings for persons charged with Class 1 misdemeanors. This bill was brought at the

request of the State's Attorneys Association and is part of the implementation SB 70. This bill amends SDCL 23A-6-3 to only require the filing of an Information for a felony offense.

HB 1120 – Provides for alternative documentation of financial responsibility for vehicles. The bill will allow the use of an electronic copy or an electronic document issued by an insurer.

HB 1122 – Provides limitations relating to the collection of civil fines pursuant to interstate compacts. This bill places restrictions on the ability of other states to use South Dakota administrative processes in order to collect civil fines imposed by that state for violations involving red light cameras and violations involving speed cameras.

HB 1129 – Prohibits the use of certain explosive targets in the Black Hills Forest Fire Protection District. This bill makes it a Class 2 misdemeanor for any person to use a target designed to explode upon a bullet's impact within the Black Hills Forest Fire Protection District. The bill also makes a violator liable for any damages caused by a resulting fire. An exception exists for use within a designated shooting range.

HB 1130 – Authorizes the use of crossbows for hunting big game animals during the firearm season.

HB 1161 – Establishes a cause of action for wrongful human trafficking.

HB 1177 – Prohibits certain use of handheld electronic wireless communication devices while driving and provides a penalty therefore. This bill prohibits the use of a handheld electronic wireless communication device to write, send or read a text base communication while driving a motor vehicle. The bill makes enforcement a secondary offense. The bill excepts texting while the vehicle is lawfully parked, used to contact emergency personnel, to enter a telephone number or name for the purposes of making a telephone call, or when using hands-free technology. The bill prohibits law enforcement from seizing the handheld electronic wireless communication device unless a search warrant has been obtained. Finally, the bill makes the texting ban a petty offense with the potential penalty of up to \$100.

HB 1229 – Provides the reporting of certain persons names to the National Instant Criminal Background Check System. This bill requires a Board of Mental Illness to forward to the Attorney General orders for involuntary commitment based upon finding that a person is a danger to self or a danger to others. The Attorney General shall then forward that information to the National Instant Criminal Background Check System. The bill also requires a prosecuting attorney to report to the Attorney General persons who are acquitted of a crime by reason of insanity or if a defendant is determined to be

incompetent to stand trial. The bill allows for a person who has been prohibited from possessing a firearm for mental health reasons to petition the circuit court in the county where they reside for an order restoring their right to possess a firearm. The Attorney General shall then forward the court's restoration order to the NICS program.

Please feel free to contact me if you need additional information. You can access all of the bills introduced by the 2014 Legislature at the South Dakota Legislative Research Council website. The web address for the 2014 Session is at this location:

http://legis.sd.gov/Legislative_Session/Default.aspx?Session=Eighty-Ninth