

STATE OF SOUTH DAKOTA



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TO: Law Enforcement and Interested Persons

FROM: Charles D. McGuigan, Chief Deputy Attorney General *mcg*

RE: **Legislation Passed in 2016**

The 2016 South Dakota Legislature considered 419 pieces of legislation. The House introduced 247 bills and the Senate introduced 172 bills. The Governor signed 235 bills into law. The Governor vetoed five bills and the Legislature did not override any of the Governor's vetoes.

The Attorney General requested the introduction of four pieces of legislation during the 2016 Legislative Session. The Legislature adopted three of the bills and the Governor signed all three bills into law. **SB 24** prohibits the sale of fetal body parts and provides a penalty. The bill adds a penalty to existing 34-23A-17. Any person who knowingly and for consideration provides, acquires, receives or otherwise transfers any fetal tissue organ or body part will be guilty of a Class 6 felony. **SB 25** revises certain provisions concerning forfeiture of property interests of persons convicted of federal child sex crimes. This bill will allow for the forfeiture of assets and proceeds involved in child sex crimes even if the offender is prosecuted federally. **SB 26** updates certain provisions of the sex offender registration requirement and requires an offender to notify of intended foreign travel. The bill updates South Dakota law so that South Dakota remains compliant with SORNA. In addition, the Attorney General introduced **SB 44** which would have made vehicular manslaughter a crime of violence. Two versions of the bill were passed by the two houses of the Legislature. The bill was killed in conference committee because the two houses could not come to an agreement as to which form to adopt.

During the 2016 Legislative Session, the Office of Attorney General monitored 93 bills, supported 11 bills and opposed 10 bills.

The following bills will become law on July 1, 2016, unless noted otherwise:

**SB 6** – Revises certain performance security requirements for public improvement contracts. This bill will allow for the waiver of a performance security if the procurement meets the requirements for an emergency procurement pursuant to SDCL 5-18A-9.

**SB 8** – Revises certain provisions regarding background investigations for prospective employees of postsecondary technical institutes. This bill repeals the exemption for criminal history checks of instructors at the vo-tech schools.

**SB 19** – Revises certain mandatory reporting requirements for elder and disabled adult abuse and neglect. Specifically the bill removes the requirement that a long term care ombudsman be a mandatory reporter. The bill is a result of new federal regulations handed down by the federal administration on aging. Long term care ombudsmen remain a discretionary reporter.

**SB 20** – Revises certain provisions related to behavioral health. Specifically this bill modifies state law to reflect a previous Governor's Executive Order consolidating boards and commissions in the Department of Social Services and the Department of Human Services and updates terminology to reflect current practices. Further, for persons convicted of certain DUIs who have to undergo a court ordered evaluation, the bill replaces the requirement that an evaluation be done by a chemical dependency counselor and updates the section to reflect the current terminology of an addiction counselor.

**SB 22** – Adds emergency medical technicians and paramedics to the list of mandatory reporters. This bill came at the request of the Jolene's Law Task Force.

**SB 24** – Prohibits the sale of fetal body parts and makes it a Class 6 felony for any person to knowingly and for consideration provide, acquire, receive or otherwise transfer any fetal tissue, organ, or body part in violation of SDCL 34-23A-17. This bill was brought at the request of the Attorney General

**SB 25** – Revises certain provisions concerning forfeiture of property interests of persons convicted of certain federal crimes. This bill was brought at the request of the Attorney General and adds federal sex crimes involving children to SDCL 22-24A-15. This modification will allow for the forfeiture of assets and proceeds involved in child sex crimes even if the offender is prosecuted federally.

**SB 26** – Revises certain provisions concerning sex offender registration and requires an offender to notify of intended foreign travel. The bill was brought at the request of the Attorney General in order to keep South Dakota SORNA

compliant. Specifically, the bill adds conspiracy to commit a sex crime or solicitation to commit a sex crime as a registerable offense. It adds comparable court martial offenses and tribal offenses. It requires the sex offender to provide their date of birth. It requires an offender to provide and allow for the photocopying of their driver's license or identification card. It requires the collection of license plate numbers of any vehicle regularly operated by the offender. It requires the collection and photocopying of the offender's passport or immigration documents. Finally, it requires a sex offender to report his or her intention to travel outside of the United States at least 21 days in advance of the travel. Law enforcement shall then notify the Division of Criminal Investigation who shall then notify the United States Marshall's Service National Sex Offender Targeting Center.

**SB 30** – Provides that Department of Correction employees are excluded from concealed weapons permit requirements when on duty and acting under the color of authority.

**SB 31** – Revises certain provisions regarding the sentencing and supervision of prison inmates and parolees with suspended sentences. The bill was brought at the request of the Department of Corrections in response to the South Dakota Supreme Court's decision in *State v. Orr*, 2015 S.D. 89, 871 N.W.2d 834. The bill clarifies that a person serving a suspended sentence is treated as a parolee unless the entire sentence is suspended. Specifically it reinforces that DOC can impose conditions on persons with suspended sentences, reinforces that DOC can subject those persons to the same supervision and revocation requirements as a parolee and it provides a mechanism to deal with low level felonies committed by parolees in accordance with SB 70.

**SB 33** – Revises certain provisions regarding chemical testing and revocation of driver's license for persons under the age of 21. The bill statutorily authorizes the Department of Public Safety's practice of not revoking the driver's license of a person who pleads guilty to a zero tolerance offense after they had refused to submit to chemical testing.

**SB 34** – Revises certain provisions regarding the chemical testing of commercial drivers. This bill requires Department of Public Safety to revoke the commercial driver's license of an individual who refuses a chemical test in a non-commercial driving situation. This bill was brought to remain compliant with federal commercial driver regulations and to safeguard federal highway funds.

**SB 38** – Revises certain provisions regarding bail bondspersons. This bill will prohibit bail bondspersons from posting a bond for them self. It requires a nationwide criminal background check to apply for a license and it imposes reporting requirements including a requirement that a bail bondsperson report any felony criminal prosecution taken against them in any jurisdiction.

**SB 54** – Adopt the Elder Abuse Task Force’s statutory recommendation in order to protect South Dakota’s seniors and adults with disabilities from abuse, neglect and exploitation. This bill was brought at the request of the Chief Justice and results from the Chief Justice’s Elder Abuse Task Force. The bill adds an emotional and psychological abuse aspect to existing SDCL 22-46-2. Any person who emotionally or psychologically abuses an elder or adult with a disability will be guilty of a Class 1 misdemeanor. The bill creates a civil right of action and protection order process. It makes it clear that voluntary caretakers can be criminally liable. It defines standards for reporting abuse and requires the Attorney General to be notified if reasonable suspicion exists that abuse occurred. The bill will allow for recovery of damages for elder abuse. The bill creates durable power of attorney for financial decisions. It clarifies that court approved guardianship trumps a power of attorney. The bill will require the preparation of training materials and will require training for guardians and conservators. Guardians and conservators will have to undergo a nationwide criminal background check and felons will be prohibited from acting as a conservator or guardian without court approval. Finally, the bill requires bond surety to serve notice on the court and the protected person if a bond is not renewed.

**SB 58** – Revises certain restrictions for the use of night vision equipment for hunting under certain circumstances.

**SB 72** – Prohibits the abortion of an unborn child who is capable of experiencing pain and provides a penalty therefore. This bill will make it a Class 1 misdemeanor to perform an abortion after approximately the 20<sup>th</sup> week of pregnancy.

**SB 73** – Clarifies certain provisions regarding open meetings. The bill defines an official meeting as any meeting of a quorum of a public body at which official business is discussed or decided whether in person or by means of a teleconference. The bill also defines a teleconference to include electronic or internet communication such as e-mail.

**SB 74** – Authorizes members of certain governing bodies who are displaced by a natural disaster to continue their term of office.

**SB 75** – Establishes a grant program for adult community residential services designed to reduce the risk of recidivism.

**SB 79** – Expands the list of professionals authorized to perform certain examinations required for a plea of guilty but mentally ill. This bill will now allow for the use of a court approved licensed psychologist in addition to a psychiatrist.

**SB 90** – Requires public bodies to allow members of the public to audio or video record the public body’s meetings as long as the recording is “reasonable, obvious, and not disruptive.”

**SB 97** – Provides for the automatic removal of all petty offenses, municipal ordinance violations and Class 2 misdemeanor charges or convictions from background check records after 10 years. The bill requires the automatic removal from the public record if the person has complied with all court ordered conditions. The bill does allow the case record to remain available to court personnel or as otherwise authorized by order of the court.

**SB 107** – Clarifies certain safety zone restrictions on hunting. The bill only authorizes small game hunting in a right of way within 660 feet of an occupied dwelling, church or school house or livestock, if the person has written permission from the owner of the occupied dwelling, church or schoolhouse or the owner of the livestock. An adjoining landowner can no longer provide permission to allow someone to hunt within the road right-of-way within a safety zone.

**SB 118** – Exempts certain purchases from certain bidding requirements. The bill will allow political subdivisions to purchase equipment involving the expenditure of less than \$50,000.

**SB 140** – This bill eliminates life sentences for juvenile defendants under the age of 18 at the time of the crime. Under this bill the only possible sentence is a term of years in the state penitentiary.

**SB 142** – Authorizes certain disclosures of mental health information to law enforcement. This bill will allow healthcare officials to provide notice to law enforcement if an arrest warrant has been issued or to return a person to custody.

**SB – 158** - Revises provisions related to restitution in cases involving juveniles and declares an emergency. This bill gives the court the discretion to require a child to pay restitution if the court finds payment can be enforced without serious hardship or injustice to the child. Because this bill contained an emergency clause, it became effective with the Governor’s signature on **March 25, 2016**.

**SB 162** – Creates the State Board of Internal Control and declares an emergency. The State Board of Internal Control will develop an adopt a uniform system of internal control to be utilized throughout state agencies and also local government agencies who are the recipient or sub recipient of a grant or other financial award or pass through. The bill contained an emergency clause and became law with the Governor’s signature on **March 16, 2016**.

**SB 168** – Revises provisions related to human trafficking and provides a penalty therefore. This bill increases the age of a victim for first degree human trafficking from under the age of 16 to under 18 years of age. The bill also makes it a Class 6 felony for a person to hire or attempt to hire another person for a fee to engage in sexual activity if the person knew or should have known the other person was being forced to engage in the sexual activity through human trafficking.

**SB 169** – Revises provisions related to the selling of child pornography in SDCL 22-24A-1 to increase the penalty from the current Class 6 felony to a Class 4 felony. The bill further clarifies that distribution includes any electronic means.

**HB 1021** – Allows child advocacy centers in tribal agencies that provide child placement services to obtain results from a check of the central registry for abuse and neglect.

**HB 1025** – Places certain substances on the controlled substance schedule and declares an emergency. This is the Department of Health's annual legislation to update South Dakota's controlled substance list to reflect changes in the federal controlled substance list. The bill updates the list of anabolic steroids to include additional designer anabolic steroids. The bill adds Acetyl fentanyl as a Scheduled I controlled substance. The bill adds Naloxegol to the list of controlled substances not specifically controlled by SDCL 34-20B-16. It removes Ioflupane from Schedule II. It adds Eluxadoline to Schedule IV. Because the bill contained an emergency clause it became law with the Governor's signature on **February 18, 2016**.

**HB 1051** – Prohibits the use of certain automated sales suppression devices and provides penalties for their use. This bill outlaws the use of sales suppression devices or software, called Zappers, which cause an underreporting of sales for sales tax purposes. This bill makes use or possession of a Zapper, a Class 5 felony. The bill further authorizes the assessment of civil penalties and allows for the forfeiture of cash registers or other items which contain a Zapper.

**HB 1062** – Permits an order changing the name of a minor child without prior publication in certain instances.

**HB 1063** – Revises provisions regarding required notice of relocation of a minor child when a protection order is in place.

**HB 1064** – Applies certain penalties regarding damages, tampering and malicious acts to certain railroads that carry passengers. This bill makes it a Class 6 felony to either maliciously destroy or maliciously obstruct the railroad tracks of a railroad line belonging to a tourist railroad carrier.

**HB 1066** – Revises certain provisions regarding the public notice of a meeting of a public body. This bill requires state agencies, boards and commissions to post their proposed agendas for at least two continuous days as that time is computed pursuant to SDCL 15-6-6(A).

**HB 1071** – Revises certain provisions regarding the annual conference between county commissioners and the Director of Equalization. This bill now requires that such meeting occur at the first meeting of April.

**HB 1078** – Grants limited immunity from arrest and prosecution for certain alcohol related offenses to persons who assist a person in need of emergency assistance or who are themselves in need of emergency assistance. This bill provides that no person may be arrested or prosecuted for any misdemeanor offense of underage consumption, open container, or public intoxication, arising from alcohol, if that person contacts any law enforcement or emergency medical services and reports a person is in need of emergency medical assistance due to alcohol consumption. The bill further requires the person to assist the person in need of emergency medical assistance and to remain and cooperate with emergency medical services and law enforcement.

**HB 1079** – Permits prescription and possession of an opioid antagonist in certain circumstances. This bill will allow family members, friends or other close third parties to be prescribed, possess, distribute or administer an opioid antagonist for a person at risk for an opioid related drug overdose.

**HB 1088** – Revises and consolidates certain civil forfeiture provisions. This bill consolidates and standardizes the drug forfeiture provisions in SDCL Ch. 34-20B and the child pornography forfeiture provisions in SDCL Ch. 22-24A to a single new chapter of the code. The bill also makes the procedure and time frames the same for both types of civil forfeiture provisions.

**HB 1091** – establishes certain requirements regarding insurance for vehicles used to provide rides for a transportation network company and to exempt vehicles used to provide rides from certain commercial licensing requirements. This bill authorizes ride sharing services such as Uber and Lyft. The bill requires drivers to undergo criminal history checks, sex offender registry checks and driving history checks.

**HB 1092** – Revises requirements for local permits for the sale and consumption of alcoholic beverages on certain property abutting licensed establishments. This bill expands the number of establishments which can request permission to sell and consume alcohol on a sidewalk or walkway subject to a public right-of-way abutting a licensed premises by removing the requirement that the license holder derive more than 50% of its gross receipts from the sale of food.

**HB 1099** – Revises certain campaign finance provisions.

**HB 1100** – Sets a minimum size for a sign about zoning changes or conditional use permits.

**HB 1102** – Allows for additional time to review certain competitive sealed bids. This bill extends the period for some bids under SDCL Ch. 5-18A from 30 days to 45 days.

**HB 1105** – Gives the court the discretion to grant a continuance of a protection order in certain circumstances. This bill will allow the court the discretion to grant a continuance if the court finds good cause for the continuance and the parties stipulate to a continuance or the court finds that law enforcement is unable to locate the respondent for purposes of service of the ex parte protection order.

**HB 1123** – Requires the Department of Health to include certain information regarding the inspection of an abortion facility on the Department's website.

**HB 1125** – Limits the ability of a person to obtain a concealed pistol permit related to the restoration of civil rights and to declare an emergency. This bill repeals SDCL 23-7-52 which was adopted in 2014 and gave certain felons the ability to receive a concealed pistol permit. This bill contained an emergency clause so became law with the Governor's signature on **March 3, 2016**.

**HB 1132** – Requires the submission of sexual assault kits for testing. This bill requires a healthcare facility administering a sexual assault exam to notify law enforcement within 24 hours after obtaining the victim's consent. If the victim does not consent to the release of the rape kit, the health care facility must store the rape kit for at least one year. A law enforcement agency that receives notice from a healthcare facility has 14 days to take possession of the rape kit from the healthcare facility. The law enforcement agency then has 14 days to submit the rape kit to the South Dakota Forensic Laboratory or another accredited laboratory for analysis. The laboratory then has 90 days to conduct an analysis of the rape kit.

**HB 1138** – Revises provisions related to the enhanced permit to carry a concealed pistol. The bill increases the time period that the application form needs to be preserved from the current four years to five years. The bill also clarifies that the application fee or the renewal fee for the enhanced carry permit shall be split 50-50 between the sheriff and the Secretary of State.

**HB 1140** – Revise certain provisions regarding county zoning.

**HB 1153** – Allows parties to agree to resolve an eminent domain dispute by mediation.

**HB 1167** – Revises certain provisions regarding the use of a suspended imposition of sentence for a misdemeanor and a felony. This bill clarifies SDCL 23A-27-13 and limits the use of this section to one suspended imposition of a sentence for a felony. Section 2 of the bill creates a new section which grants a suspended imposition of sentence for one misdemeanor. The result is that an offender may now receive one suspended imposition of sentence for a felony and one suspended imposition of sentence for a misdemeanor.

**HB 1183** – Revises certain provisions regarding the jurisdiction of magistrate courts to issue protection orders. This bill grants a magistrate court with a magistrate judge concurrent jurisdiction with the circuit court to try and to determine any action for a protective order, restraining order or injunctive relief involving domestic violence or stalking.

**HB 1190** – Enhanced customer convenience in firearm transactions, improve public safety and provide for the issuance of an additional concealed pistol permit. This bill creates a gold card permit to carry a concealed pistol. A gold card permit is an additional step above an enhanced concealed carry permit. The bill places additional limitations and requirements upon a holder of a gold card and requires a gold card holder to return the permit if the holder commits a disqualifying offense. Violations of the gold card permit provisions would be a Class 1 misdemeanor. The intent of the bill is to meet all of the requirements under federal law to allow a gun purchaser to purchase a firearm without undergoing a NICS check.

**HB 1210** – Revises certain provisions regarding on sale alcohol beverage licenses for municipal auditoriums and convention halls and to declare an emergency. This bill repeals the requirement that the municipality have a population in excess of 35,000 and it expands the ability to sell alcohol to sporting events. This bill contained an emergency clause so became law with the Governor's signature on **February 19, 2016**.

**HB 1230** – Requires lights on certain animal drawn vehicles while operating on a highway. This bill will require an amber flashing light on the front of a horse drawn vehicle and a red flashing light on the rear of a horse drawn vehicle if operating in low light conditions. A violation will be a Class 2 misdemeanor.

**HB 1236** – Defines a halfway house.

**HB 1242** – Authorizes certain persons to request a security freeze on the credit report of a protected consumer. The bill allows a parent, guardian or conservator to request a security freeze on the credit report of a person who is under the age of 16, incapacitated person or a protected person.

**HB 1243** – Prohibits the unauthorized sharing of a certain private images on the internet. This bill amends SDCL 22-21-4 to prohibit “revenge porn.” The bill requires the consent of all persons in a qualifying image to consent prior to its dissemination.

**HB 1244** – Revises provisions related to the Sex Offender Registry. This bill amends SDCL 22-24B-19 to reduce the time period that qualifying sex offenders may petition the court for removal from the Sex Offender Registry from the existing 10 year period to five years. The bill requires the court to find by clear and convincing that the evidence that the sex offender does not pose a risk or danger to the community.

Please feel free to contact me if you need additional information. You can access all of the bills introduced by the 2016 Legislature at the South Dakota Legislative Research Council website. The web address for the 2016 Session is at this location:

[http://legis.sd.gov/Legislative\\_Session/Default.aspx?Session=Ninety-First](http://legis.sd.gov/Legislative_Session/Default.aspx?Session=Ninety-First)