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April 3, 2018

TO: Law Enforcement and Interested Persons

FROM: Charles D. McGuigan, Chief Deputy Attorney General

RE: **Legislation Passed in 2018**

The 2018 South Dakota Legislature considered 535 pieces of legislation. The House introduced 320 bills and the Senate introduced 215 bills. The Governor signed 282 bills into law. The Governor vetoed three bills and the Legislature did not override any of the Governor's vetoes.

The Attorney General requested the introduction of five pieces of legislation during the 2018 Legislative Session. The Legislature adopted all five of the bills and the Governor signed all five bills into law. **SB 61** revises certain provisions regarding sex offender registration. **SB 62** provides for the notification of consumers related to a breach of certain data. **SB 63** revises certain prohibitions regarding methamphetamines, creates a mandatory penalty for a violation and revises certain sentencing criteria for methamphetamine and opioids. **SB 64** revises certain provisions related to attempted human trafficking in the first degree and provides a penalty. **SB 65** revises certain provisions regarding drug deliveries that result in death.

During the 2018 Legislative Session, the Office of Attorney General monitored bills, supported 13 bills and opposed 4 bills.

The following bills will become law on July 1, 2018, unless noted otherwise:

**SB 20** – Enacts the State and Province Emergency Management Assistance Memorandum of Understanding. This act will allow law enforcement and emergency management personnel to request assistance from the participating jurisdictions even if the Governor has not made an emergency declaration. The participating jurisdictions include Illinois, Indiana, Ohio, Michigan, Minnesota, Montana, North Dakota, Pennsylvania, New York, and Wisconsin, and the Canadian provinces of Alberta, Manitoba, Ontario, and Saskatchewan.

**SB 21** – Updates references to certain federal motor carrier regulations. This is the regular bill brought at the request at the Department of Public Safety to update the references in state code to reflect changes in the federal motor carrier regulations.

**SB 32** – Places certain substances on the controlled substances schedules and declares an emergency. This is the annual bill from the Department of Health to update South Dakota's controlled substances schedules. The bill adds two new substances to Schedule I both of which are analgesics. The bill provides a definition of a fentanyl analogue and adds five known fentanyl analogues to Schedule I. The bill adds the alcohol based formulation of dronabinol to Schedule II since it is a marijuana derivative that has accepted medical uses for the treatment of nausea and vomiting but the alcohol based formulation of dronabinol is easier to extract and manipulate the product and easier to smoke, vaporize, inject, or ingest. The bill left sesame oil formulation of dronabinol at Schedule III. The bill contained an emergency clause and therefore became law with the Governor's signature on **February 8, 2018**.

**SB 42** – Revises certain provisions regarding the issuance of a motor vehicle title. This bill removes the requirement that a certificate of title be in triplicate. It also adds two new circumstances in which a paper title may be issued.

**SB 61** – Revises certain provisions regarding sex offender registration. This bill was brought at the request of the Attorney General. The bill clarifies the definition of a community safety zone and the definition of a school for community safety zone purposes. The bill also modifies state law to come in to compliance with federal requirements for sex offenders who intend to travel outside of the United States.

**SB 62** – Provides for the notification related to a breach of certain data and to provide a penalty therefore. This bill was brought at the request of the Attorney General. South Dakota was the last state that did not require businesses to notify their customers if a data breach occurred. Under the bill, upon discovery of a data breach, the information holder must disclose the breach within 60 days of that discovery. If the breach exceeds 250 South Dakota residents, the Attorney General must also be informed within 60 days. A violation of the act will be treated as a deceptive act or practice.

**SB 63** – Revises certain prohibitions regarding methamphetamines, creates a mandatory penalty for a violation thereof, and revises certain sentencing criteria for methamphetamine and opioids. The bill makes it a Class 3 felony for any person to manufacture, distribute or dispense more than five grams of methamphetamine or to possess with intent to manufacture, distribute or dispense. It becomes a Class 2 felony if the person also has three aggravating factors. The first conviction shall have a mandatory minimum sentence of at

least one year in the penitentiary and a second or subsequent conviction shall have a mandatory sentence of at least ten years. Distribution of methamphetamine to a minor will be a Class 1 felony with a mandatory sentence for a first conviction of at least five years in the State Penitentiary and a second or subsequent conviction for distribution to a minor shall have a mandatory sentence of at least 15 years. The bill does not allow for the sentencing court to deviate from the mandatory sentence for distribution of methamphetamine or of an opiate unless the court makes written findings that six criteria are present including that the defendant truthfully provided information and evidence to law enforcement.

**SB 64** – Revises certain provisions related to attempted human trafficking in the first degree and provides a penalty. This bill was brought at the request of the Attorney General to address an issue arising during human trafficking and sex exploitation undercover operations. The bill allows that any attempt to commit a violation of human trafficking in the first degree against a victim who was a minor may be punished in the same manner as the completed violation rather than the normal half sentence for an attempt.

**SB 65** – Revises certain provisions regarding drug deliveries that results in death and provides a penalty. This bill was brought at the request of the Attorney General. Under the bill, any person who, for consideration, intentionally and unlawfully distributes or manufactures a controlled substance and another person dies as a result of using that substance shall have their sentence enhanced by two levels. In no circumstance may the enhancement exceed the sentence for a Class C felony.

**SB 67** – Permits a victim of child sex trafficking or exploitation to expunge any criminal or delinquency record obtained as a result of the victimization. The bill allows for a person over the age of 18 to petition the court for the expungement of a delinquency record that resulted from the person being a victim of human trafficking or sexual exploitation.

**SB 69** – Allows certain registration and permit documents to be stored and presented electronically.

**SB 86** – Revises certain requirements when a local unit of government sells surplus property through a real estate broker.

**SB 88** – Revises certain provisions regarding disinterment permits. The bill requires notice to the tribal chairperson if the disinterment is for an enrolled tribal member.

**SB 93** – Revises certain provisions regarding the intentional exposure of others to certain diseases. The bill increases the penalty for any person who

intentionally exposes another person to a venereal disease from a Class 2 misdemeanor to a Class 1 misdemeanor. The bill also allows for civil damages.

**SB 98** – Revises certain provisions regarding the 911 emergency surcharge, the public safety 911 emergency fund and revenue distribution, and repeals the 911 emergency surcharge sunset clause. The bill requires the Department of Revenue to distribute the surcharges to the Department of Public Safety who shall then remit 70% of the revenue to the public agency where the surcharges were collected conditioned on the public safety answering point being in compliance with appropriate standards. The bill also repealed sunset provisions that were to begin in 2018 and 2019.

**SB 99** – Authorizes the release of certain 911 emergency surcharge information to a governing body or public safety answering point.

**SB 100** – Establishes certain provisions related to grant monitoring and to review certain record retention policies. The bill requires that any local governmental entity that receives an independent audit shall make the audit report available on the entities website. The bill requires sub-recipient evaluation reports, program evaluation reports, and conflict of interests to be displayed on the open government website. The bill also establishes certain retention requirements for information.

**SB 105** – Authorizes a healthcare practitioner to administer a toxicology test to an infant under certain circumstances. The bill allows a health care provider who has reason to believe based on a medical assessment of a mother or a newborn that the mother used a controlled substance for a non-medical purpose, the practitioner may administer a toxicology test on the newborn infant. If the results are positive, the information shall be reported pursuant to SDCL 26-8A-8. The bill shields a health care practitioner from both civil and criminal liability for their decision to administer or to not administer a toxicology test.

**SB 114** – Revises certain provisions regarding the removal and storage of abandoned vehicles. The bill replaces the term “towing company” with the term “removal agency.”

**SB 137** – Revises certain provisions regarding the minimum hunting age. This bill removes the requirement that a person has to be at least 10 years old in order to possess a hunting license.

**SB 153** – Requires disclosure of certain fees being imposed by overnight lodging accommodations. This bill makes it a deceptive act or practice for any lodging establishment to knowingly fail to disclose the amount of any mandatory fee including but limited to any resort fee or parking fee.

**SB 155** – Revises certain provisions regarding the liability of the cost of jail confinement. The bill now allows for the recovery of transportation costs where transporting the prisoner is required.

**SB 164** – Prohibits certain instances of inserting a urinary catheter without consent of the patient. The bill requires parental consent in order to insert a catheter into a patient under the age of 16.

**SB 165** - Revises certain provisions regarding child custody and visitation and the enforcement of those provisions.

**SB 169** – Revises certain provisions regarding confections that contain alcohol and declares an emergency. The bill allows a person to sell or offer for sale any confection or candy that contains less than one-half of a percent alcohol by weight. The bill contained an emergency clause so it became effective with the Governor's signature on **March 9, 2018**.

**SB 185** – Revises certain provisions regarding criminal record expungement. The bill allows for an arrested person who successfully completes a diversion program to receive a dismissal of all charges related to that arrest and to receive an expungement without going through the normal expungement process. The bill does not require a state's attorney to place an arrested person into a diversion program or to otherwise create or implement a diversion program.

**HB 1014** – Revises certain provisions regarding the application of the intra-state exemption for certain commercial vehicles from the federal motor carrier regulations.

**HB 1015** – Repeals the use of explosives, pyrotechnics and fireworks for the protection of sunflower crops from depredating birds.

**HB 1052** – Authorizes the Executive Director of the Board of Pardons and Paroles to issue a warrant in the event of any escape from extended confinement. This bill clarifies that the Executive Director may issue a warrant if an inmate under parole supervision, including extended confinement, has escaped.

**HB 1053** – Provides certain earned discharge credit for inmates. This bill allows the Department of Corrections to grant an inmate up to 90 days of earned discharge credit for each program completion, up to 180 days of earned discharge credit for completion of satisfactory work during a 12 month period and up to 365 days of earned discharge credit for heroic acts in life threatening situations.

**HB 1054** – Revises certain provisions regarding crimes that are considered violent for parole calculation purposes. The bill adds to the classification aggravated criminal battery of an unborn child, aggravated battery of an infant, and assault with intent to cause serious permanent disfigurement.

**HB 1066** – Revises certain provisions regarding the issuance of vehicle license plates and stickers. This bill will allow the Department of Revenue, in addition to the county treasurer, to issue certain license plates and stickers.

**HB 1069** – Establishes an unladen motor vehicle permit for certain proportionally registered commercial motor vehicles. This bill will allow the owner of an unladen commercial vehicle to operate the vehicle for a period not to exceed 30 days if certain conditions are met.

**HB 1077** – Update certain language regarding capital punishment and revises the mandatory sentence for persons with an intellectual disability convicted of murder in the first degree. This bill replaces the term “mentally retarded” and “mental retardation” with the terms “intellectually disabled and intellectual disability.”

**HB 1078** – Revises certain provisions regarding the removal of security freezes. This bill removes a seven year limitation on security freezes.

**HB 1081** – Repeals the sunset clause regarding the recreational use of nonmeandered water. This bill repeals the June 30, 2018 sunset for the nonmeandered water statutes that were passed during the special session of 2017.

**HB 1083** – Revises certain provisions regarding permits to carry a concealed pistol and declares an emergency. This bill changes several provisions regarding the enhanced permit to carry a concealed pistol. The bill prohibits a sheriff from charging an additional fee to the applicant if the sheriff secures the fingerprints. The bill restricts the issuance of an enhanced permit to persons 21 years of age or older. The bill allows for a sheriff to issue a temporary restricted enhanced permit for persons 18 to 21 years of age. When permit holder reaches the age of 21 they may submit a written request to the Secretary of State for an unrestricted enhanced permit. The bill requires a person holding a concealed pistol permit to maintain current information and to notify the Secretary of State in writing if the person’s name changes due to marriage or court order or if there is a change in physical address. This bill contained an emergency clause so it became law upon the Governor’s signature on **March 9, 2018**.

**HB 1085** – Adopts the Uniform Unsworn Domestic Declaration Act. This bill allows for the use of unsworn declarations in certain circumstances. An

unsworn declaration is a declaration in a signed record not given under oath but is given under the penalty of perjury.

**HB 1095** – Revises certain provisions regarding clerk magistrate jurisdiction. This bill was brought at the request of the Chief Justice and is primarily a clean-up bill to address changes that were made to a clerk magistrate’s jurisdiction several years ago.

**HB 1096** – Provides jurisdiction to magistrate judges for HOPE probation programs and declares an emergency. This bill was brought at the request of the Chief Justice and allows a magistrate judge, upon assignment of the presiding judge, to act in lieu of a circuit court judge to administer and preside over an established HOPE probation program. The bill contained an emergency clause so it became effective with the Governor’s signature on **March 1<sup>st</sup>, 2018**.

**HB 1097** – Revises certain provisions regarding magistrate court jurisdiction over vulnerable adult protective or restraining orders. This bill was brought at the request of the Chief Justice and basically creates a cross reference within chapter 16-12B dealing with magistrate jurisdiction to chapter 21-65 dealing with vulnerable adult protective or restraining orders.

**HB 1102** – Revises certain provisions regarding the use and display of the great seal of South Dakota. This bill requires any use of the state’s seal greater than one inch in diameter to be a representation of the full and complete seal and include the state motto “Under God The People Rule.”

**HB 1104** – Revises certain provisions regarding the arrest of certain victims of domestic abuse. This bill amends SDCL 25-10-36.1 and removes the requirement that the victim also be custodial parent or immediate caregiver of a minor child.

**HB 1107** – Revises and repeals various provisions regarding the construction and maintenance of county and township highways and bridges. This is a 63 section bill that revises, amends, and repeals various sections within title 31 dealing with county and township highways and bridges.

**HB 1109** – Provides for parole eligibility for certain inmates. This bill creates a system of compassionate parole for inmates who meet certain age and illness requirements. The system is modeled on the existing medical clemency provisions. Compassionate parole would be at the discretion of the Board of Pardons and Paroles.

**HB 1110** – Increases the penalty for certain subsequent convictions of hiring for sexual activity or promoting prostitution. If the person has been convicted of hiring for sexual activity or promoting prostitution in the previous ten years, the defendant will now be guilty of a Class 6 felony.

**HB 1113** – Revises certain provisions regarding the vehicles required to stop at a state weighing station. The bill amends the existing 8,000 pounds gross vehicle weight requirement to 10,000 pounds gross vehicle weight, clearly exempts recreational vehicles and provides a definition for a combination vehicle.

**HB 1126** – Revises certain provisions regarding forensic medical examination for victims of rape or sexual offense. This bill requires the county where an alleged rape or sexual offense occurred to pay the cost of any forensic medical examination performed on the victim. The bill creates a definition of forensic medical examination. The cost of a forensic medical examination to be paid by the county shall include physician hospital or clinic services and fees directly related to the examination, including supplies, scope procedures directly related to the examination, laboratory testing directly related to the examination, any required medication and any radiology services directly related to the examination. The bill requires the defendant, if convicted, to reimburse the county for these costs.

**HB 1127** – Revises certain provisions relating to fees charged for security freezes. This bill prohibits a consumer reporting agency from charging a fee for a placement or removal of a security freeze.

**HB 1131** – Authorizes certain road district trustees and employees to receive compensation under a district contract.

**HB 1140** – Revises certain provisions regarding access to public water. This bill extends the prohibition against vacating a road that provides public access to public lands to also include a prohibition against vacating a road that goes to public waters embracing an area of 40 acres or more.

**HB 1146** – Revises certain provisions regarding the consumption of alcoholic beverages by passengers aboard vehicles operated by licensed carriers. This bill allows a passenger aboard a vehicle operated by a licensed carrier to consume alcohol aboard the conveyance.

**HB 1147** – Revises certain provisions concerning property tax collections, delinquent property taxes, tax certificates and tax deeds. This is a 58 page bill containing 155 sections. This bill represents a two-year effort by county treasurers to clean up the code provisions dealing with tax sales and tax deeds.

**HB 1160** – Transfers Victims Services from the Department of Social Services to the Department of Public Safety, increases the surcharge to increase revenue to the Crime Victims Compensation Fund and revises certain provisions regarding the awarding of claims from the fund. This includes the South Dakota Crime Victims Compensation Commission. The bill increases the



existing \$2.50 surcharge to \$5.00. Finally, the bill exempts from the contributory conduct requirement victims of a sex offense, human trafficking, domestic abuse, child abuse, neglect or exploitation, or abuse, neglect or exploitation of an elder adult with a disability.

**HB 1162** – Provides for the placement of a proposed constitutional amendment on the ballot at a special election held at the same time as the next primary election, to make an appropriation therefore, and to declare an emergency. This bill allows for voters to vote on the proposed constitutional amendments to Marcy's Law at the primary election held on June 5, 2018.

**HB 1172** – Revises certain provisions regarding meetings of certain public bodies. The bill requires the chair of a public body to reserve at every official meeting a period of time for public comment, limited at the chair's discretion, but not so limited as to provide for no public comment.

**HB 1174** – Revises certain provisions regarding the rights for crime victims. This bill expands the crimes subject to statutory crime victim rights under SDCL Ch. 23A-28C. The bill allows for a victim to seek injunctive relief in order to enforce the victim's constitutional rights provided by Marcy's Law. Finally, the bill clarifies that nothing in the act prevents inter-agency sharing of information pursuant to a memorandum of understanding and confidentiality agreement.

**HB 1178** – Provides a penalty for the failure to complete timely audits by certain entities. This bill allows for the Auditor General to impose a penalty of \$10 per day for each day an audit report is delinquent and the Attorney General may collect the penalty.

**HB 1183** – Revises the deadline for the certification of certain municipal ballot language to the county auditor. This bill changes the submission date from the second Tuesday in August to the first Tuesday in August.

**HB 1195** – Revises certain provisions regarding refunds of motor vehicle license fees.

**HB 1209** – Requires a National Instant Criminal Background Check for certain concealed carry permits. For purposes of verifying the qualifications of an applicant, prior to issuing a permit, the sheriff shall execute, and the applicant shall pass, a background investigation including a computer check of available online records and the National Instant Criminal Background Check.

**HB 1219** – Revises certain provisions regarding the use of night vision equipment in hunting. The bill will allow a land owner or occupant to provide written permission to no more than two guests who may hunt unaccompanied by the landowner and may use night vision equipment with a firearm using a

cartridge with a bullet diameter below .225 for the taking of jackrabbits, coyotes, beaver, foxes, raccoons, possums, badgers, skunks or rodents.

**HB 1249** – Authorizes the training of tribal law officers at the Law Enforcement Training Center.

**HB 1252** – Prohibits certain government entities from restricting the wearing of tribal regalia during certain events.

**HB 1257** – Designates certain highways by townships and counties as no maintenance highways. On a designated no maintenance highway, the governing body will not have any responsibility or duty of care except upon knowledge of a manmade obstruction. The governing body must remove or remediate the manmade obstruction if needed to maintain public access. The beginning and end of the no maintenance highway must be designated and must have signs posted. The sign must notify the public that it is a no maintenance highway, that no travel is advised, and that the public travels at its own risk.

**HB 1270** – Adjusts the period of time requiring the use of lighted front and rear lamps on motor vehicles. This bill will require the use of lamps from sunset to sunrise.

**HB 1271** – Revises certain provisions regarding the carrying of certain guns on certain premises. The bill allows the use of a firearm or air gun at a firing range, gun show, supervised school or session for training in the use of firearms, ceremonial presence of unloaded weapons at color guard ceremonies, at any non-public school, at any church or other house of worship, or any non-public school located on the premises of a church or other house of worship.

**HB 1278** – Revises certain provisions regarding the extradition of fugitives by Indian tribes. This bill removes the requirement that extraditions can only occur between the state and an Indian tribe if there is an existing extradition agreement or compact.

**HB 1280** – Revises certain provisions regarding the calculations of suspended prison sentences. The bill clarifies that the total sentence length is the sum of imprisonment time and any suspended time. If the entire sentence is suspended, the total sentence length is the term of imprisonment that has been suspended.

**HB 1281** – Revises certain provisions regarding persons on probation and declares an emergency. Under the bill, if a defendant is serving a probationary sentence under the supervision of the judicial branch and has a sentence imposed requiring supervision by the executive branch, the probationary supervision by the judicial branch is immediately terminated. This bill was in

response to the decision of *State v. Humpal*, 2017 S.D. 82. The bill contained an emergency clause so became law upon the Governor's signature on **March 9, 2018**.

**HB 1285** – Revises certain provisions regarding community safety zones. This bill requires a registered sex offender who travels to a secondary registered location to verbally notify local law enforcement if that location is within a community safety zone and if the offender will be there for more 24 hours. A violation will be a Class 1 misdemeanor.

**HB 1292** – Revises the process by which courts consider appeals of decisions regarding conditional use requests.

**HB 1293** – Increase the penalty for certain assaults committed against fire fighters, ambulance service, or health care facility personnel while engaged in the performance of their duties. This bill amends SDCL 22-18-1.05, assault on a law enforcement officer, to include fire fighters and ambulance service personnel. The bill adds new language stating that the penalties also apply to a simple assault or aggravated assault if committed against any healthcare facility personnel while the personnel was engaged in patient care.

**HJR 1004** – Proposes and submits to the electors a constitutional amendment to revise certain provisions relating to the rights of crime victims. This Joint Resolution allows for the voters to potentially amend the existing Marsy's Law Victims' Rights located in Article VI, section 29 of the Constitution of the State of South Dakota. If adopted by the voters, the amendment will clarify that Marsy's Law rights only apply upon request of the victim. The amendment would also clarify that sharing of information is not limited and that a violation does not create a cause of action for damages. Pursuant to HB 1162, this amendment will be presented to the voters in a special election held at the same time as the primary election scheduled for June 5, 2018.

Please feel free to contact me if you need additional information. You can access all of the bills introduced by the 2018 Legislature at the South Dakota Legislative Research Council website. The web address for the 2018 Session is at this location:

[2018 Legislative Research Council Bill Introduced](#)