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TO: Law Enforcement and Interested Persons

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

RE: **Legislation Passed in 2019**

The 2019 South Dakota Legislature considered 463 pieces of legislation. The House introduced 272 bills and the Senate introduced 191 bills. The Governor signed 216 bills into law. The Governor vetoed two bills and the Legislature did not override either of the Governor's vetoes. The Governor did a style and form veto on two bills and the Legislature concurred in the Governor's changes.

The Attorney General requested the introduction of three pieces of legislation during the 2019 Legislative Session. The Legislature adopted two of the bills and the Governor signed both bills into law. **SB 20** updates certain provisions regarding consumer protection and the laws dealing with door to door sales. **SB 21** authorizes certain tobacco manufacturers to assign to the State the interest of the manufacturer in any money in a qualified escrow fund. **SB 19** would have repealed presumptive probation. The bill came out of Senate Judiciary Committee with a do pass recommendation however it failed on the Senate floor by a vote of 12 to 18.

During the 2019 Legislative Session, the Office of Attorney General monitored 107 bills, supported 10 bills and opposed 10 bills.

The following bills will become law on July 1, 2019, unless noted otherwise:

SB 8 – Provides for a statewide resource information system. This bill allows the Department of Social Services to cooperate with the counties in the development and maintenance of a statewide centralized resource information system. The system shall provide information for and referrals to persons in a

crises or disaster; resources for Social Services, Human Services, legal assistance, financial assistance or for other related needs; and assistance for mental health, physical or substance abuse.

SB 11 – Revises certain provisions regarding the granting of work permits to minors who refuse to submit to chemical analysis. This bill updates the statutory references for zero tolerance DUIs.

SB 12 – Revises certain provisions pertaining to the disqualification of commercial driver's license holders for failure to consent to chemical analysis for drugs or other bodily substances.

SB 22 – Places certain substances on the controlled substance schedule and declares an emergency. This bill is the annual bill from the Department of Health to update South Dakota's controlled substance schedules to reflect changes made in the federal controlled substance schedules. Section 1 clarifies the definition of Opiate to include Opioids. Section 2 adds four Opium derivatives and updates a list of trade and other names of currently scheduled Opiates/Opioids. Section 3 updates the list of trade and other names of currently scheduled hallucinogenic substances. Section 4 specifically lists Epidiolex, which contains cannabidiol (CBD) as a Schedule IV controlled substance. Because the bill contained an emergency clause, it became effective upon the Governor's signature on February 19, 2019.

SB 31 – Revises certain provisions regarding criminal background checks for assistant behavior analysts and paraprofessionals.

SB 47 – Repeals and revises certain provisions regarding permits to carry a concealed pistol. This bill adopts what is sometimes referred to as "constitutional carry" and removes the requirement for most persons to have a permit in order to conceal carry a pistol.

SB 54 – Regulates the use of care and maintenance funds by perpetual care cemeteries. This bill defines how funds may be used and grants the Attorney General the authority to investigate the use of funds by perpetual care cemeteries.

SB 56 – Revises certain provisions regarding the regulation of fireworks and declares an emergency. This bill updates references to federal regulations updates some definitions and industry standards and provides for a Class 1 misdemeanor for violation of the prohibitions regarding fireworks. Because the bill contained an emergency clause, it became effective upon the Governor's signature on March 20, 2019.

SB 59 – Revises certain provisions regarding public records. This bill restricts or prohibits the use of confidential settlement agreements by the state or by political subdivisions.

SB 63 – Increases the penalty for a subsequent conviction for trespass to hunt, fish, or trap. Under this bill a person's hunting, fishing, or trapping privileges shall be revoked for two-years following a second or subsequent conviction occurring within a ten-year period.

SB 68 – Defines certain acts as misbranding of food products. Under this act a food product shall be deemed to be misbranded if the product is labeled or branded in a false, deceptive or misleading manner that intentionally misrepresents the product as a meat food product, a meat by-product or as poultry.

SB 90 – Revises certain provisions regarding financial interest statements filed by persons elected to state or local office. The bill requires certain officials to file within 15 days of assuming office the required financial interest statements.

SB 91 – Revises certain provisions regarding open meeting requirements. The bill rewrites the open meeting chapter, SDCL Ch. 1-25 to update it for style and form. Significant changes in this rewrite primarily include clarifications that it is not an official meeting if members of a public body attend a press conference called by a representative of the public or for any event hosted by a non-governmental entity to which a quorum of the public body is invited and the public body does not control the agenda. In those circumstances, the public body may post a public notice of a quorum in lieu of an agenda that shall contain at a minimum the date, time and location of the event. The bill further clarifies the requirement for public comment and requires public comment at regularly scheduled official meetings. However public comment is not required at official meetings held solely for the purpose of an inauguration, swearing in of newly elected officials or presentation of an annual report to the governing body.

SB 115 – Authorizes the conditional carrying of a concealed pistol in the state capitol by certain persons including by a qualified law enforcement officer or a qualified retired law enforcement officer. The bill also allows a person possessing an enhanced concealed carry permit to carry within the capitol if they provide at least twenty-four hours' notice to the Division of Highway Patrol and include the date or range of dates during which the person intends to possess a concealed pistol in the state capitol. In no circumstance may the range of dates exceed 30 consecutive days.

SB 143 – Revises visitation rights of a person causing conception by rape or incest. This bill creates a rebuttable presumption that it is not in the best interest of the child for the court to place the child in the custody of or to grant visitation rights to a person that the court has found committed an act of rape or incest that resulted in the conception of the child.

SB 163 – Revises certain provisions regarding jury lists to include persons with state issued non-driver identification cards.

SB 164 – An act to establish procedures for the investigation of certain missing and murdered indigenous persons. This bill requires the Division of Criminal Investigation to include training and guidelines on missing and murdered indigenous women and children and to collect and share information with other governments and law enforcement agencies.

SB 167 – Establishes a legislative study to study offenses regarding controlled substances. This bill establishes a legislative study comprised of 15 members to study and evaluate alternatives to imprisonment for any person charged and convicted of controlled substance offenses and possible funding alternatives as well as the financial ramifications of controlled substance offenses on the state, counties, law enforcement, substance abuse treatment facilities and any other interested persons.

SB 187 – Defines electric bicycles and provides for the regulation of electric bicycles. This bill establishes three classes of electric bicycles and provides where and how electric bicycles can be used.

SB 189 – Establishes a fund to receive civil recoveries to offset costs incurred by riot boosting. This bill allows a state or a political subdivision to bring a damage action against persons who participate in a riot or directs, advises, encourages or solicits other persons participating in a riot to use acts of force or violence. The bill also establishes the riot boosting recovery fund which shall be administered by the Department of Public Safety. The bill contained an emergency clause so it became effective upon the Governor's signature on March 29, 2019.

SB 190 – This bill creates the pipeline engagement activity coordination expenses fund (PEACE fund) which may be used to pay administrative costs and extraordinary expenses incurred by the state or a political subdivision arising out of or in connection with pipeline construction. The fund shall be administered by the Department of Public Safety. This bill contained an emergency clause and became effective upon the Governor's signature on March 29, 2019.

HB 1002 – Provides for criminal background checks for certain applicants and employees of the Department of Public Safety.

HB 1003 – Revises eligibility for a deferred imposition of sentence. The bill excludes defendants serving a sentence under the supervision of the executive branch, including persons who received fully suspended penitentiary sentence and were placed on parole.

HB 1004 – Revises parole date calculation provisions. The bill subtracts any suspended time from the calculation of parole eligibility. The bill further clarifies the application of the violent or non-violent column of the grid is based upon the current sentence. Further, any prior felony shall be considered regardless of whether it is violent or non-violent when determining which percentage to apply to the inmates' parole date calculation.

HB 1005 – Authorizes a hearing panel of the Board of Pardons and Paroles to make clemency recommendations. This bill removes the requirement that a majority vote of all members of the Board of Pardons and Paroles is required in order to make a recommendation for the commutation of a sentence. This bill now allows the recommendation of clemency with the concurrence of two board members. Further, a denial of a pardon recommendation by a panel shall be reviewed by the entire board. The board may adopt, modify or reject the denial and recommend a pardon.

HB 1006 – Revises the time requirements for parole reports and plans. This bill provides that if an award of earned discharge credit moves an inmate's initial parole date to within 30 days, the compliance report shall be completed no later than 7 calendar days from the date of the application of the credits and the inmate shall submit the release plan upon completion of the plan.

HB 1013 – Requires criminal background investigations for certain vital records employees.

HB 1017 – Provides for the destruction of certain contraband cigarettes.

HB 1029 – Revises certain provisions regarding criminal background checks for adults working in childcare institutions.

HB 1043 – Requires the Department of Social Services to collect and report certain information regarding the military affiliation of a parent whose child is subject to a report of abuse or neglect. The Department shall notify the United States Department of Defense Family Advocacy Program of the allegations relating to a military parent or guardian.

HB 1047 – Revises certain provisions regarding recommendations for treatment as a condition of probation. This bill allows a licensed psychologist to make a recommendation regarding treatment as a condition of probation for a defendant found guilty but mentally ill.

HB 1048 – Authorizes a public body to conduct certain deliberations in an executive or closed meeting. This bill will allow for the public body to go into executive session to discuss security and cyber security issues.

HB 1049 – Revises certain provisions regarding driving after consuming certain drugs or substances. The bill will allow a person under the age of 21 to drive, operate or be in actual physical control of any vehicle if they are using a controlled drug or substance lawfully prescribed for the person and they are not otherwise impaired.

HB 1050 – Revised certain provisions regarding the use and possession of scanning devices and reencoders. The bill updates existing restrictions on scanning and reencoding devices to include chipped credit cards. The bill also makes it a Class 6 felony for someone to own or possess a scanning device or reencoder with knowledge that someone other than an authorized user intends to use the scanning device or reencoder to obtain information encoded or embedded on a payment card without permission.

HB 1052 – Revises certain provisions regarding the notice given to county commissions for special sessions. This bill allows a county commission, in addition to the notice by mail, to also provide notice telephonically or through electronic communication to each county commissioner.

HB 1054 – Revises certain provisions regarding the possession of firearms on certain vehicles. This bill exempts utility-terrain vehicles (UTV) from certain firearm restrictions.

HB 1056 – Prohibits certain local ordinances regarding firearms. This bill requires the Attorney General to send a cease and desist letter to any local or governmental entity that has an ordinance that violates SDCL 7-18A-36, SDCL 8-5-13 or SDCL 9-19-20. If the local entity fails to comply with a cease and desist order the Attorney General shall bring an action in the name of the state for injunctive relief. Further, this bill allows a defendant charged with an ordinance violation to receive reasonable costs, expenses and attorney fees if a court finds the local ordinances violated the above state statutes.

HB 1061 – Provides for a court order to test for HIV at the request of victims of certain crimes. This bill creates an additional HIV testing method for a victim who was compelled to engage in sexual activity. This section is in addition to the existing blood borne pathogen testing provisions located in SDCL Ch. 23A-35B.

HB 1063 – Revises certain provisions regarding engaging in sexual activity for a fee or other compensation. This bill allows the use of the CHINS process for a person who engages in prostitution for a fee or other compensation if they are under the age of 18. It limits the Class 1 misdemeanor for persons engaging in prostitution to persons who are 18 years or older and clarifies that a person who hires a person to engage in sexual activity for a fee or other compensation is guilty of prostitution.

HB 1073 – Revises provisions regarding the locating and spotting of predators or varmints from a drone. This bill allows a landowner or a drone operator with permission of the land owner to operate a drone over their private property for the purpose of locating or spotting predators or varmints.

HB 1074 – Provides a privilege for journalists and newscasters regarding the disclosure of information. This bill adopts a reporter shield law. It allows the journalist or newscaster to prevent disclosure of any information obtained or received in confidence or the identity of the source of the information. The bill prohibits a journalist from being found in contempt. It provides that any information obtained in violation of the reporter shield law is inadmissible in any action, proceeding, or hearing before the legislature, any court, or any other agency or public body in the state.

HB 1082 – Revises certain provisions regarding scrap metal purchases. This bill requires a scrap metal business to photo copy the seller's current driver's license or other government issued picture identification if the scrap metal dealer purchases more than \$100 of nonferrous metal.

HB 1103 – Establishes a lemon law for certain farm machinery.

HB 1110 – Establishes a penalty for certain persons who fail to file a birth certificate or who fail to provide the notice required for the filing of a death certificate. This bill makes it a Class 2 misdemeanor to fail to file a birth certificate within one year of a birth. It also makes it a Class 2 misdemeanor for someone to fail to notify the county coroner and the sheriff of a death within a 24-hour period.

HB 1155 – Provides certain privileged communication between social workers and students. This bill adds school social workers to the privilege created by SDCL 19-19-508.1.

HB 1159 – Repeals the prohibition of hunting mourning doves on public roads and highways.

HB 1180 – Revises certain provisions regarding the collection and storage of sexual assault kit evidence. This bill prohibits a health care facility from requiring a victim to report a rape or sexual assault in order to receive an examination or treatment. The healthcare facility must inform the victim that the sexual assault kit will be preserved by law enforcement for a period of at least one year from the date of examination. Any examination or treatment under this bill shall include the preservation of confidentiality of any tests, procedure or sample that may serve as evidence in the prosecution for the rape or sexual assault. The healthcare facility must assign a code number to the sexual assault kit and provide the code number to the victim as well as information identifying the law enforcement agency where the kit will be stored. The code and the kit must be maintained for least one-year. Once a victim decides to officially report the rape or sexual assault, the law enforcement agency must deliver the sexual assault kit to the Division of Criminal Investigation within 14 days.

HB 1186 – Repeals the termination of the juvenile detention cost-sharing fund. The payments to the counties from the juvenile detention cost-sharing fund were to sunset on June 30, 2019. This bill repeals the sunset provision effective June 28, 2019.

HB 1189 – Provides for a period to cure certain campaign finance violations. Class 2 misdemeanor violations of SDCL Ch. 12-27 now requires a period, not in excess of seven days, to allow the person to cure the violation before the filing of criminal charges.

HB 1193 – Provides a criminal penalty for causing an abortion against a pregnant mother's will. This bill makes it a Class B felony for any person to threaten a homicide, aggravated assault, or kidnapping in order to cause a pregnant mother to undergo an abortion. A charge brought under this bill may be commenced at any time prior to the time the victim attains age 25 or within seven years of the commission of the crime, whichever is longer.

HB 1198 – Defines activities that constitute human trafficking. For purposes of human trafficking, the term, coercion, may include:

- (1) The use of a plan, statement, or pattern of behavior, with the intent of causing a person to believe that failure to perform an act will result in the use of physical force or violence against the person or will result in the person's restraint, isolation, confinement, or abduction;
- (2) Inducing a person to provide commercial sexual activity as payment toward or in satisfaction of a real or purported debt; and
- (3) The use of a person's physical or mental impairment, if that impairment has a substantial adverse effect on the person's cognitive or volitional function.

This definition is not meant to be all inclusive.

HB 1209 – Revises certain provisions regarding vapor products. This bill extends the existing public smoking ban for tobacco products to also include electronic smoking, e-cigarettes or vapor products. A violation remains a petty offense.

HB 1215 – Revises provisions regarding the posting of county and municipal ordinances. This bill requires local governments to ensure that the ordinances on official websites are the most current version of the ordinance.

HB 1216 – Increases certain civil penalties for fleeing from police. This bill increases the civil penalty imposed by SDCL 32-33-20 from the current \$250 to \$700. The bill also amends SDCL 32-33-21 to allow for a civil in rem proceeding and lien against the vehicle involved in the amount of up to \$1,000.

HB 1242 – Includes opossums within the definition of predator and declares an emergency. This bill adds opossums to the state predator and varmint list. Further, it removes the requirement for a person to have a furbearer license to trap opossums. The bill contained an emergency clause so it became effective upon the Governor's signature on March 11, 2019.

Please feel free to contact me if you need additional information. You can access all of the bills introduced by the 2019 Legislature at the South Dakota Legislative Research Council website. The web address for the 2019 Session is at this location:

http://sdlegislature.gov/Legislative_Session/Bills/Default.aspx?Session=2019