

STATE OF SOUTH DAKOTA



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TO: Law Enforcement and Interested Persons

FROM: Charles D. McGuigan, Chief Deputy Attorney General

RE: **Legislation Passed in 2020**

The 2020 South Dakota Legislature considered 480 bills during the main run of session and an additional 12 bills on veto day in response to COVID-19. The House introduced 294 bills and an additional four bills during veto day and the Senate introduced 186 bills plus an additional eight on veto day. The Governor signed 240 bills into law. The Governor did two style and form vetoes and the Legislature concurred in the Governor's changes. The Governor vetoed two bills and the Legislature did not override either of the Governor's vetoes.

The Attorney General requested the introduction of six pieces of legislation during the 2020 Legislative Session. The Legislature adopted four of the bills and the Governor signed all four bills into law. **SB 6** would have revised certain conditions under which presumptive probation could have been applied and would have only allowed for presumptive probation if a defendant cooperated with law enforcement. The bill passed through the Senate but was deferred to the 41st Legislative day by the House Judiciary Committee. **SB 7** would have limited the number of presumptive probations a person could receive to two offenses within a ten-year period. This bill was tabled at the request of the Attorney General. **SB 25** establishes certain requirements to maintain state compliance with the Master Settlement Agreement by creating joint and several liability, establishing a surety bond process and by allowing the disclosure of certain information. This bill was adopted unanimously by both Chambers and signed into law by the Governor. **SB 26** increases the assessment of liquidated court costs by \$10. For one year the entire \$10 increase will be applied to the 911 Telecommunicator Training Fund. After the first year, the \$10 increase will be split with an additional \$7.50 going into the Law Enforcement Officer's Training Fund, \$1.50 going into the Court Appointed Attorney and Public Defender Payment Fund and an additional \$1.50 going into the 911 Telecommunicator Training Fund. **SB 27** establishes a missing person's clearinghouse within the Division of Criminal Investigation. The clearinghouse will consolidate missing person information and will allow for both law enforcement access and public access to the database information. **SB 47** revises certain provisions regarding sex offender registration. The bill makes felony use or

dissemination of visual recording or photographic device without consent a Tier 1 registerable offense. The bill also clarified that the age of the victim at the time of the photograph or recording determines if the offense is a felony.

During the 2020 Legislative Session, the Office of Attorney General monitored 121 bills, supported 14 bills and opposed 11 bills.

The following bills will become law on July 1, 2020, unless noted otherwise:

**HB 1008** – Legalizes the growth, production, and transportation of industrial hemp in the state. The bill defines hemp or industrial hemp as any part of the plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis. The bill contains 32 sections governing the permitting growth, testing and transportation of hemp and industrial hemp. The bill contained an emergency clause and became law upon the Governor's signature on **March 30, 2020**.

**HB 1009** – Revises provisions regarding failure to comply with outpatient commitment or treatment orders. The bill allows for both the chair of the county mental health board that issued the outpatient commitment or treatment and the chair of the board where the person is located along with their respective state's attorneys to proceed with supplemental hearings which may include ordering the apprehension and transportation of the person.

**HB 1010** – Revises provisions regarding testimony of qualified mental health professionals at involuntary commitment hearings.

**HB 1011** – Requires certain examinations of persons awaiting involuntary commitment hearings. The bill requires the qualified mental health professional to perform the examination for each 24-hour period during which the person is detained.

**HB 1014** – Places certain substances on the controlled substances schedule and declares an emergency. This is the annual bill brought by the Department of Health to update South Dakota's controlled substance schedules to match the federal controlled substance schedules. This year's bill adds five additional substances to the controlled substance schedules. The bill adds two new opiates in Schedule I, a new opiate in Schedule II and adds two new substances to Schedule IV. This bill became law upon the Governor's signature on **March 10, 2020**.

**HB 1033** – Provides for the prevention of aquatic invasive species contamination. The bill makes it a misdemeanor to possess, import, ship, or transport any aquatic invasive species. The bill makes it a misdemeanor to place a boat or similar conveyance into waters within the state without first meeting certain criteria to mitigate or remove aquatic species. The bill also allows for the creation of inspection stations and authorizes law enforcement to stop boats and other water conveyances at locations other than an inspection station. This bill became law upon the Governor's signature on **February 26, 2020**.

**HB 1047** – Revises certain provisions regarding human trafficking. This bill was brought at the request of the Governor. The bill clarifies that human trafficking

includes purchase and also that consent by a parent or guardian or mistake as to minor's age are not defenses.

**HB 1063** – Revises certain provisions regarding the purchase, distribution, and sale of tobacco products to persons under the age of 21. This bill raises the smoking age to 21 for tobacco products, e-cigarettes and vaping products.

**HB 1068** – Include out of state convictions for the basis of an enhanced penalty for the crime of stalking. This bill allows stalking violations committed in other states within the previous 10 years to be considered for stalking enhancement purposes.

**HB 1074** – Revises certain provisions regarding the required time that sexual assault kits be preserved. The bill extends the time that a Jane Doe sexual assault kit must be preserved from the current one year to seven years from the date of examination or until the victim reaches the age of 25, whichever is later.

**HB 1088** – Creates a penalty for violation of a vulnerable adult protection order and revises certain provisions regarding protection orders. This bill is brought at the request of the Chief Justice and makes it a class 1 misdemeanor for a person to violate a vulnerable adult protection order. The bill also makes it a class 6 felony if an assault was committed while violating the protection order or if the person has two previous violations of protection orders within the past 10 years.

**HB 1089** – Provides for the discharge of certain persons who received a suspended imposition of sentence for a misdemeanor.

**HB 1090** – This bill was brought at the request of the Chief Justice and will allow for the evaluation for the feasibility of the use of telehealth services within the criminal justice system to include the use of telehealth for mental health assessment and services in jails; crisis consultations for law enforcement; crisis response for people who have encounters with law enforcement; probation and parole mental health services; and to provide statewide training related to mental health services for the criminal justice population. The bill became law upon the Governor's signature on **March 18, 2020**.

**HB 1094** – Repeals certain provisions regarding permits for concealed pistols. This bill repealed the requirement to have a concealed carry permit in order to possess a pistol on motorcycles, off-road vehicles and snowmobiles.

**HB 1117** – Repeals and revises certain provisions regarding riot, establishes the crime of incitement to riot and revises provisions regarding civil liability for riot and riot boosting. The bill creates a class 5 felony violation of incitement to riot.

**HB 1119** – Includes certain offenses committed in another state for purposes of an enhanced penalty for the crime of simple assault, aggravated assault or slinging.

**HB 1129** – Authorizes the provision of telecommunications device location information to law enforcement agencies. This bill allows a law enforcement agency to request from a wireless telecommunications carrier information regarding the location of a telecommunication device if certain requirements are met.

**HB 1131** – Prohibits the use of misleading identification for telephonic communications. This bill makes it a deceptive trade practice for someone to cause misleading information to be transmitted to users of caller identification technologies or otherwise block or misrepresent the identity of the caller and requires callers to display the authentic name and telephone number of the caller. A violation is a misdemeanor and can increase to a felony if there is a monetary loss exceeding \$1,000.

**HB 1138** – Establishes shooting course requirements for current or former law enforcement officers seeking an enhanced permit to carry a concealed pistol.

**HB 1169** – Prohibits the use of certain electronic devices while driving. This bill makes it a primary offense and a class 2 misdemeanor for any person to operate a motor vehicle while using a mobile electronic device. The bill does include several exceptions from this prohibition.

**HB 1170** – Revises provisions regarding the use of certain lights by tow truck vehicles and Department of Transportation authorized vehicles. This bill allows those vehicles to use a blue light.

**HB 1182** – Provides for the renewal of an enhanced permit to carry a concealed pistol.

**HB 1195** – Provides for the dismissal of charges against pregnant women for certain controlled substance offenses under certain circumstances. The bill requires the dismissal of a drug possession or drug ingestion charge if a pregnant woman provides evidence that she received adequate prenatal care from a licensed health care professional during her pregnancy, actively enrolled in an addiction recovery program before the child was born, remained in the program after delivery and completed the addiction recovery program.

**HB 1199** – Revises civil liability for riot and incitement to riot. The bill defines incitement to riot for liability purposes and creates joint and several liability. Incitement to riot occurs when any person who with the intent to cause a riot, commits an act or engages in conduct that urges three or more people, acting together and without authority of law, to use force or violence to cause any injury to any person or any damage to property under circumstances in which the force or violence is imminent and the urging is likely to incite or produce the use of force or violence, incites riot. Urging includes instigating, inciting or directing but does not include the oral or written advocacy of ideas or expression of belief that does not urge the commission of an act or conduct of imminent force or violence.

**HB 1242** – Provides for the reissuance of certain enhanced permits to carry a concealed pistol. This bill requires persons holding an enhanced concealed carry permit issued from July 1, 2015, to December 31, 2016, inclusive to undergo a fingerprint background check and a national instant criminal background check and clarifies that it is valid for five years from the date of its original issuance. This bill became law upon the Governor's signature on **March 25, 2020**.

**HB 1257** – Revises certain provisions regarding hunting, fishing or trapping on private property without permission. The bill establishes a mandatory fine of \$500 and a mandatory loss of hunting, trapping or fishing privileges for one year for any person

convicted for knowingly entering or remaining on private property for the purpose of hunting, fishing or trapping.

**HB 1295** – Revises provisions regarding contagious disease control and enforcement. This bill adds coronavirus to the list of contagious diseases and gives the Department of Health the authority to seek a court order if they believe the person is a health threat to others. This bill became law upon the Governor's signature on **March 31, 2020**.

**HB 1296** – Revises the authority of the Governor in times of a disaster, act of terrorism or emergency. The bill allows the Governor to suspend the provisions of any regulatory statute prescribing the conduct of state business or the business of a local subdivision if following those statutes would prevent action to address a pandemic. The bill became law upon the Governor's signature on **March 31, 2020**.

**SB 1** – Provides for the use of electronic communication in the involuntary commitment process. The bill allows for examinations to be conducted either in person or through real time interactive audio and video. This bill became law upon the Governor's signature on **March 12, 2020**.

**SB 21** - Authorizes temporary variable speed limits on state highways under certain circumstances. The bill allows for segments of the interstate highway system to have variable speeds based upon monitored traffic, weather or road surface conditions. Temporary reduced speed limits must be conspicuously posted on appropriate fixed or variable signs.

**SB 26** - Increases the assessment of liquidated court costs by \$10 to a fee of \$50. This bill was brought at the request of the Attorney General to address shortfalls in both the 911 Telecommunicator Training Fund and the Law Enforcement Training Fund.

**SB 27** - Establishes a missing person's clearinghouse. The bill was brought at the request of the Attorney General and is in response to SB 164 passed during the 2019 Legislative Session requiring the Attorney General to collect data on missing and murdered indigenous persons. This bill establishes the missing person's clearinghouse and requires its use by law enforcement. The missing person's clearinghouse will serve as a repository for missing person information and will allow for access by both law enforcement entities and by the public.

**SB 44** - Authorizes the use of crime victims' compensation funds to reimburse law enforcement for certain emergency expenses incurred for victims. If a law enforcement officer or a law enforcement agency expends funds for the payment of emergency expenses including food and shelter on behalf of a crime victim, the officer or agency can seek reimbursement from the South Dakota Crime Victims' Compensation Fund

**SB 46** - Revises provisions related to the restoration to competency of criminal defendants. This bill will allow, under limited circumstances, that a defendant be placed on outpatient status for restoration to competency if the court makes a written finding that the defendant is not a danger to the health and safety of others.

**SB 47** - Revises certain provisions regarding sex offender registration statutes. This bill was brought at the request of the Attorney General and adds felony use or

dissemination of visual recording or photographic device without consent as a Tier 1 sex offense. It also clarifies that the victim must be 17 years of age or younger and the perpetrator at least 21 years of age at the time the photograph or recording is made.

**SB 89** - Revise provisions regarding victims' rights. The bill clarifies that victims' rights may apply to a vehicle accident resulting in death.

**SB 91** - Revises provisions regarding the salary for state's attorneys. In counties with a population less than 50,000, the bill allows for a state's attorney to switch from full time to part time or vice versa with the consent of the both the state's attorney and the county commission.

**SB 96** - Prohibits the denial of benefits based solely on a controlled substance felony.

**SB 98** - Extends the notification period for possession of a concealed pistol in the state capitol. The bill allows for notification to be valid for up to one year.

**SB 113** - Revises certain provisions regarding instruction permits and restricted minors driving permits. This bill adds additional requirements and restrictions on persons operating under a restricted minor permit. The bill also requires drivers under the age of 18 to hold a restricted minor's permit for at least six months prior to receiving an operator's license.

**SB 120** - Establishes exceptions regarding the possession of a pistol by a minor. The exception allows for a minor to possess a pistol if the minor had the prior written consent of the minor's parent or guardian.

**SB 136** - Authorizes certain witnesses to be accompanied by a certified therapeutic dog in a criminal proceeding.

**SB 151** - Defines critical infrastructure and revises certain crimes for the trespass or damage to critical infrastructure. The bill establishes a lengthy definition of what a critical infrastructure facility is for the purposes of criminal trespass under SDCL 22-35-5 and for the crime of creating a substantial interruption or impairment under SDCL 22-34-28. The bill also creates a class 4 felony if damage or tampering to critical infrastructure causes physical injury to another person.

**SB 162** - Allows for additional use of night vision equipment and artificial light while hunting and also allows for limited use of spotlights while hunting.

**SB 164** - Revises the penalties and provisions regarding approaching stopped vehicles. The bill requires a vehicle to slow down or move over at least 300 feet before the stopped emergency vehicle and establishes a minimum fine of \$270. The bill also creates a class 1 misdemeanor if a person does not move over and slow down and causes an accident with a stopped emergency vehicle.

**SB 169** - Authorizes the possession of a concealed pistol by employees in county courthouses. The bill requires the county commission to waive the prohibition for county employees and does not apply in any area in use under the supervision of the Unified Judicial System.

**SB 176** - Provides for the seizure and holding of real property as evidence. The bill allows for the owner of real property to request the return of real property after 30 days absent good cause shown that the real property contains exculpatory evidence which is incapable of being preserved by other means or that the prosecuting attorney makes a showing that the continued seizure of the real property is necessary to the prosecution of the case.

**SB 190** - Revises certain driver's licensing requirements to allow for an extension during a statewide emergency or disaster. The bill allows for the extension of the expiration date for driver's licenses for the duration of the Governor's emergency or disaster declaration plus an additional 90 days after the end of the declaration. This bill became law upon the Governor's signature on **March 31, 2020**.

Please feel free to contact me if you need additional information. You can access all the bills introduced by the 2020 Legislature at the [South Dakota Legislative Research Council](#) website. The web address for the 2020 Session is at this location: