

STATE OF SOUTH DAKOTA



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April 9, 2024

TO: Law Enforcement and Interested Persons

FROM: Charles D. McGuigan, Deputy Attorney General

A handwritten signature in blue ink, appearing to read "m'j", is written over the name "Charles D. McGuigan".

RE: **Legislation Passed in 2024**

The 2024 South Dakota Legislature considered 479 pieces of legislation. The House introduced 259 bills and the Senate introduced 220 bills. The Governor signed 233 bills into law. The Governor did not veto any legislation in 2024.

The Attorney General requested the introduction of five pieces of legislation during the 2024 Legislative Session. The Legislature adopted all five of the bills and the Governor signed all five bills into law.

SB 24 increases the maximum user fee for a participant submitting to wear a drug patch under the 24/7 Sobriety Program. The bill increases the user fee from \$50.00 to \$70.00. The final fee will be vetted through the administrative rule making process. **SB 25** revises provisions regarding processing, manufacturing, or distributing child pornography and includes language to cover the use of artificial intelligence and computer-generated pornography. Three different bills on this topic were introduced during the legislative session. Working in cooperation with Senator Wheeler and Representative Deutsch, the language of SB 25 was incorporated into **SB 79**. **SB 26** clarified the membership of the Open Meeting Commission to allow the Attorney General to appoint Deputy State's Attorneys to the Open Meeting Commission. **SB 27** modified the criteria for removal from the Sex Offender Registry. Specifically, it addressed a conflict between SDCL 22-24B-19 and SDCL 22-24B-2.1. **HB 1028** classifies xylazine as a Schedule III controlled substance and was brought as a joint bill with the Department of Health. The bill contained an emergency clause and became effective upon the Governor's signature on February 12, 2024.

During the 2024 Legislative Session, the Office of Attorney General monitored 109 bills. The Office of Attorney General supported thirteen bills and opposed

three bills during the 2024 Legislative Session. This was the fewest bills opposed by the Attorney General in recent memory.

The following bills will become law on July 1, 2024, unless noted otherwise:

SB 6 – Revises provisions related to death by distribution of a Schedule I or II controlled substance. This bill amends SDCL 22-42-2 to cover deaths caused by the distribution of fentanyl, making the penalty Class 1 felony.

SB 9 – Limits applications for clemency for violent crime offenders sentenced to life imprisonment. This bill limits certain inmates serving a life sentence to only reapply for clemency after at least four years have elapsed from the previous denial of clemency.

SB 10 – Requires that a notification of medical cannabis certification be provided to a patient's primary or referring practitioner. The bill requires a patient's primary care provider to include the cannabis certification in the patient's medical file.

SB 11 – Prohibits a practitioner from referring a patient to a medical cannabis clinic with which the practitioner or an immediate family member has a financial relationship. A violation would be a Class 2 misdemeanor.

SB 12 – Authorizes certain employer actions regarding the use of cannabis by an employee or a prospective employee. This bill provides protections for employers who hire persons employed in a safety sensitive job. This bill allows an employer to refuse to hire a person in a safety sensitive job based solely on a positive test for cannabis metabolites. It further creates a defense against employment discrimination or wrongful termination arising from an employer's enforcement of a drug free workplace policy.

SB 14 – Expands authorization for the conditional taking of coyotes from snowmobiles.

SB 15 – Requires a convicted defendant to reimburse the cost of digital forensic examination fees. This bill requires any person convicted of a felony or misdemeanor to reimburse the cost of any digital forensic examination performed on any personal electronic device as part of the investigation and prosecution. The fee assessed may not exceed \$95.00 per device. The fees collected shall be placed into the Internet Crimes Investigation fund.

SB 24 – Increases the maximum user fee for a participant submitting to wear a drug patch under the 24/7 Sobriety Program. This bill was brought at the request of the Attorney General and increases the current \$50.00 drug patch fee to a possible maximum fee of \$70.00 for each drug patch attached. The

final cost of the patch will be established through the rule making process and set by the Administrative Rules.

SB 26 – Clarifies the membership of the Open Meeting Commission. This bill was brought at the request of the Attorney General and allows the Attorney General to appoint Deputy State's Attorneys to the Open Meeting Commission.

SB 27 – Modifies the criteria for removal from the Sex Offender Registry. Two statutes govern the eligibility for removal from the Sex Offender Registry as a Tier I offender. The necessary waiting period between the two statutes conflicted. SDCL 22-24B-19 required a Tier 1 offender to wait ten years before applying for removal. SDCL 22-24B-2.1 required a Tier I offender to wait ten years. The Attorney General brought this bill to resolve the conflict between the two statutes. The Attorney General requested a ten-year waiting period however the Legislature adopted a 5-year period.

SB 38 – Amends the amount a merchant or place of business may assess against returned checks. This bill increases the current \$40.00 amount to a maximum of \$60.00.

SB 42 – Modifies provisions related to medical cannabis. The bill removes extracts from the definition of edible cannabis products, prohibits a patient from giving away any medical cannabis, increases the time given to the Department of Health to issue a renewal certificate, updates testing requirements, clarifies language requiring a dispensary to verify a patient has not exceeded the limit of medical cannabis allowed, allows the Department of Health to place establishments on probationary status for violations, and provides for the submission of the names of those individuals who have a medical cannabis card to the prescription drug monitoring program.

SB 54 – Updates hunting and fishing residency requirements. This bill clarifies the definition of domicile to clearly require that the applicant physically lives at the location designated as their domicile and clarifies that documentation showing a mailing address, ownership of property or a business, or employment in the state is not sufficient, by itself, to prove that a person has a domicile in or is a resident of South Dakota for hunting and fishing purposes.

SB 59 – Provides for the downgrading of commercial driver's licenses and commercial learners permits upon notice of certain drug and alcohol violations. This bill requires the Department of Public Safety to downgrade certain commercial driver's licenses and permits to a noncommercial motor vehicle operator's license upon certain drug and alcohol violations. Once notified the Department has sixty days to complete and record the information on the commercial driver's license information system.

SB 71 – Removes a prohibition on the ability of law enforcement and various governmental entities to inspect, search, seize, prosecute, or impose disciplinary action on cannabis dispensaries, cultivation facilities, manufacturing facilities and testing facilities. This bill repeals the restrictions found in SDCL 34-20G-8 through 34-20G-11 and SDCL 34-20G-16.

SB 79 – Revises provisions related to the possession, distribution, and manufacture of child pornography. This bill includes computer generated child pornography and the use of artificial intelligence to create child pornography or to age regress adult pornography. The bill divides the possession the distribution, and the manufacturing of child pornography into separate sections with separate statutory violations. Possession of child pornography will be a Class 4 felony. Distribution of child pornography will be Class 3 felony. Manufacturing of child pornography will be a Class 2 felony.

SB 98 – Establishes the admissibility of evidence of similar crimes in child molestation cases.

SB 108 – Revises a provision related to retrocession of jurisdiction over federal enclaves. This bill amends SDCL 1-1-1.1 to allow retrocession of jurisdiction over federal enclaves for juvenile offenses. In order to establish concurrent jurisdiction a State or local agency would need to enter into a reciprocal agreement or memorandum of understanding with the United States.

SB 117 – Revises provisions regarding industrial hemp. This bill adds a definition for “industrial hemp stock bale”. The bill changes the requirement that licensees undergo yearly fingerprint-based background checks and now requires such checks every three years. The bill also provides any processor license is valid up to three years from the date of issuance.

SB 146 – Revises and repeals provisions related to threatening persons holding statewide office, judicial officers and elected officers and provides a penalty. The bill makes it a Class 4 felony for a person to knowingly and intentionally communicate any written or electronic threat to take the life or to inflict serious bodily harm upon a judicial officer, person holding statewide office or their immediate family. The bill makes it a Class 1 misdemeanor for a person to knowingly and intentionally communicate any written or electronic threat upon an elected officer or immediate family of the elected officer.

SB 148 – Provides permissive authority to a governing body of a municipality or county to deny reissuance of an on-sale liquor license not actively used.

SB 169 – Revises provisions regarding drones. The bill prohibits any person from intentionally or willfully operating a drone in a careless manner, that endangers persons or property, or for voyeuristic or harassment purposes. A violation is a Class 1 misdemeanor. Section six of the bill also allows political

subdivisions to enact and enforce ordinances related to the operation of drones within the political subdivisions jurisdiction which are consistent with federal and state law.

SB 172 – Allows a person to temporarily take responsibility of a feral cat for the purposes of spaying or neutering the animal. This bill amends SDCL 40-1-2.3, to clarify that it is not an abandonment of an animal if a person temporarily takes responsibility of a feral cat for the purpose of spaying or neutering.

SB 175 – Adds a domestic abuse shelter to the definition of a community safety zone. This bill would add domestic abuse shelters and sexual assault shelters to the definition of community safety zone for sex offender registration purposes.

SB 191 – Restricts the use of medical cannabis for individuals on probation or conditional release. This bill requires an individual's medical practitioner to attest that the use of medical cannabis is consistent with the medical standard of care or treatment of individual's debilitating medical condition, is reasonable in light of the practitioner's observation and reasonable in light of the risks and benefits of medical cannabis in comparison to other treatment options.

SB 203 – Expands certain privileges for individuals who hold an unrestricted enhanced concealed carry permit. This bill amends SDCL 13-32-7 to allow persons who have an enhanced permit and who has written permission from the principal of the school, to carry or possess a firearm at a public school or on public school property.

SB 219 – Modifies provisions related to the control of counties and municipalities over medical marijuana establishments within their jurisdictions. This bill allows municipalities to impose restrictions on medical marijuana establishments governing the time, place and manner of operation, a limit on the number establishments within a municipality, reasonable setbacks, limitations on the proximity of a medical cannabis facility to certain land uses and structures. The bill also allows counties to establish similar ordinances outside the boundaries of the municipality.

HB 1024 – Requires that an application for a medical marijuana registry identification card include a notice of federal law regarding firearms and the unlawful use of a controlled substance including marijuana.

HB 1027 – Modifies the substances listed on the controlled substances schedule and declares an emergency. This is the Department of Health's annual bill to update South Dakota's controlled substances schedules to reflect changes made to Federal DEA scheduling. The bill adds three central nervous systems stimulants to the list of Schedule I controlled substances. It adds Zipeprol to the lists of opioids in Schedule I. It updates Schedule IV controlled

substances, by removing fenfluramin from the controlled substance's list and adding zuranolone which is a treatment for postpartum depression. The bill contained an emergency clause, so it became effective upon the Governor's signature on February 15th, 2024.

HB 1028 – Classifies xylazine as a Schedule III controlled substance. This bill was jointly brought by the Department of Health and the Attorney General to add the large animal sedative xylazine as a Schedule III controlled substance. This bill contained an emergency clause, so it became effective upon the Governor's signature on February 12th, 2024.

HB 1035 – Extends the period of renewal for an enhanced permit to carry a concealed pistol. This bill extends the renewal period for enhanced permit to carry a concealed weapon from the existing 180 days to twelve months.

HB 1038 – Excludes certain habitual DUI offenders from eligibility for presumptive probation. This bill removes fourth offense DUI's from presumptive probation.

HB 1046 – Prohibits the intentional disarming of a law enforcement officer. This bill makes it a Class 4 felony for any person, through the use of force or threat, to intentionally disarm or attempt to disarm a law enforcement officer.

HB 1047 – Enhances the penalties for eluding law enforcement. The bill adds a third degree of eluding law enforcement and makes the new first degree eluding a Class 4 felony.

HB 1057 – Creates the Commission on Indigent Legal Services and Office of Indigent Legal Services, makes an appropriation for reimbursing county indigent legal services, and declares an emergency. This bill brought at the request of the Chief Justice creates the Commission on Indigent Legal Services and will consists of nine members. The Commission shall oversee indigent representation services to ensure effective assistance of counsel and shall oversee the Office of Indigent Legal Services. The Office of Indigent Legal Services shall provide statewide indigent representation services and direct appeals in criminal cases, habeas corpus appeals, and abuse or neglect of a child appeal cases. The office may expand its scope of indigent representation services to include additional case types as approved by the Commission. The bill appropriated \$3,000,000.00 to fund the Commission and Office of Indigent Legal Services. The bill contained an emergency clause, so it became effective upon the Governor's signature on March 18, 2024.

HB 1083 – Permits a convicted person of certain driving under the influence offenses to drive for certain purposes. This bill allows a judge to issue a permit to operate a vehicle for the purposes of health appointments, attendance at court, probation appointments, or treatment or after care.

HB 1084 – Repeals a provision related to habeas corpus proceedings. This bill repeals SDCL 21-27-6.

HB 1085 – Specifies the venue of appeal to circuit court for persons committed to a mental health facility. This bill clarifies that if the appellant is committed to a mental health facility, the appeal shall be to the circuit court for the county in which the mental health facility is located.

HB 1086 – Establishes an enhanced penalty for probationers who intentionally cause contact with bodily fluids or human waste with a Unified Judicial System employee. This bill makes it a Class 4 felony for any person under probationary supervision to slime an employee of Unified Judicial System.

HB 1087 – Modifies the definitions of a child in need of supervision and a delinquent child. This bill clarifies how the court should handle tobacco violations by persons under the age of eighteen and persons over the age of eighteen.

HB 1089 – Excludes certain crimes from presumptive probation. This bill excludes the theft of a firearm from presumptive probation.

HB 1095 – Establishes provisions for operation of automated motor vehicles. This bill adds thirteen sections to Title 32 in anticipation of the use and operation of automated motor vehicles in South Dakota.

HB 1096 – Provides that a temporary restraining order may extend beyond thirty days in certain circumstances involving stalking. This bill adds a new section to SDCL ch. 22-19A allowing an ex parte temporary protection order to remain effective until the court holds a hearing, and a final protection order is issued.

HB 1104 – Enhances the penalty for accessory to first- or second-degree murder. This bill raises the felony level for an accessory to the crime of murder to a Class 4 felony.

HB 1116 – Makes fraudulent solicitation of charitable contributions a deceptive act or practice. This bill amends SDCL 34-24-6 and the Deceptive Trade Practices Act to include solicitation of contributions for charitable purposes.

HB 1125 – Prohibits the chemical modification or conversion of industrial hemp and the sale or distribution of chemically modified or converted industrial hemp and provides a penalty. This bill makes it a Class 2 misdemeanor to chemically modify or convert industrial hemp into delta-8 THC, delta-10 THC, or any other tetrahydrocannabinol isomer, analog or

derivative. It specifically excludes from the definition of industrial hemp products containing chemically derived cannabinoids including delta-8 THC, delta-10 THC, tetrahydrocannabinol acetate also known as THC-O, hexahydrocannabinol, also known as HHC or tetrahydrocannabiphoral also known as THCP.

HB 1195 – Provides authority for a court to order offenders convicted of vehicular homicide to pay restitution to a victim's children until age eighteen. This bill will allow courts to order persons convicted of vehicular homicide to pay restitution to each of the victim's children until the child reaches age eighteen or age nineteen if the child is a fulltime student. The setting of the restitution shall consider factors similar to the establishment of child support.

HB 1225 – Defines a multi-passenger quadricycle and provides for the regulation of multi-passenger quadricycles. This bill specifically allows local governments to regulate quadricycles such as "Sip & Cycles."

HB 1245 – Revises provisions related to the custody of an alleged delinquent child before and after a temporary custody hearing. This bill amends SDCL 26-8C-3 and SDCL 26-7A-21 to allow detention of the child if there are specific, articulated circumstances that justify detention, not to exceed five days, for the protection of the child from potentially immediate harm to the child or to others.

Please feel free to contact me if you need additional information. You can access all the bills introduced by the 2024 Legislature at the South Dakota Legislative Research Council website. The web address for the 2024 Session is at this location:

<https://sdlegislature.gov/>