



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

MARK W. BARNETT
CHIEF DEPUTY

April 6, 2023

TO: State's Attorneys, Law Enforcement and Interested Persons

FROM: Charles D. McGuigan, Deputy Attorney General *CDM*

RE: **Legislation Passed in 2023**

The 2023 South Dakota Legislature considered 451 pieces of legislation. The House introduced 241 bills and the Senate introduced 210 bills. The Governor signed 209 bills into law. The Governor vetoed five pieces of legislation and the Legislature sustained all five of the Governor's vetoes.

The Attorney General requested the introduction of six pieces of legislation during the 2023 Legislative Session. The Legislature adopted four of the bills and the Governor signed all four bills into law.

SB 46 enhances the penalty for petition circulation perjury. The bill makes it a Class 6 felony for any person to falsely attest to the circulators verification on a petition for a ballot question or for a candidate's nominating petition. **SB 47** would have made any election violation without a penalty a Class 2 misdemeanor. The bill did not pass the Senate on a vote of 13-21. **SB 48** enhances the penalty for attempted first degree murder of a law enforcement officer. The bill raises the felony classification from its current Class 2 felony to a Class 1 felony. **SB 49** would have prohibited the improper storage and disposal of paper records. The bill would have extended many of the protections for digital information to paper documents. The bill was withdrawn at the request of the Attorney General so we could continue to work with our business partners on mutually agreeable protections for paper documents. **SB 50** revises the crime of witness tampering. The bill amends the current crime of witness tampering at SDCL 22-11-19 to include conduct that corruptly persuades or corruptly influences another person to tamper with a witness. The bill defines corruptly as wrongful or immoral and done with an intent to impede the administration of justice.

SB 207 provides a penalty for the expenditure of public funds to influence of the outcome of an election. The bill adds a penalty to SDCL 12-27-20 which prohibits a governmental entity from expending public funds for the purposes of influencing an election. Under the bill, it is a Class 1 misdemeanor if the public agency expends \$1,000 or more in public funds. It will be a Class 6 felony if \$10,000 or more in public funds is expended in violation of the statute.

During the 2023 Legislative Session, the Office of Attorney General monitored 86 bills. The Office of Attorney General supported 15 bills and opposed 12 bills during the 2023 Legislative Session.

The following bills will become law on July 1, 2023, unless noted otherwise:

SB 4 – Modifies a court’s authority to commit a habitual juvenile offender to the Department of Corrections. This bill was brought at the request of the Study Committee on Juvenile Justice. The bill allows a court to commit a child to the Department of Corrections if the child has been previously adjudicated delinquent for separate delinquent acts, arising out of separate and distinct criminal episodes, three or more times within the preceding 12 month period.

SB 5 – Extends the termination date of the Juvenile Justice Oversight Council and modifies its membership requirements. The bill extends the Oversight Council through June 30, 2031. The bill requires that the Council meet semi-annually, at the call of its chair or at the request of a majority of its members. The bill expands the Council’s oversight to include changes that improve public safety, reduce recidivism, hold youth accountable, provide better outcomes for children and families and control juvenile justice costs. It allows the Council to review evidence based programs and practices involving cognitive behavioral health and family therapy, review training related to juvenile justice for educators, law enforcement, probation, attorneys, corrections, program providers, and judges, and review proven truancy and diversion models and best practice and make recommendations for statewide implementation. The bill also changes the make-up of the Juvenile Justice Oversight Council and reduces its membership from 20 to 19 members.

SB 6 – Authorizes community response teams to recommend alternative community based resources for children alleged to be delinquent and children alleged to be in need of supervision prior to adjudication. This bill was brought at the request of the Study Committee on Juvenile Justice. The bill expands the coverage to include children alleged to be delinquent and children alleged to be in need of supervision. The bill also adds representative of a public school district to the membership of a community response team. The bill

allows the court to seek recommendations for community-based interventions and rehabilitative resources from the team.

SB 7 – Clarifies emergency commitments of severely mentally ill persons by appropriate regional facilities. The bill allows for the commitment of individuals from state licensed hospitals and the Human Services Center to also include appropriate regional facilities.

SB 27 – Places certain substances on the controlled substances schedule and declares an emergency. This bill is the annual bill brought by the Department of Health to update South Dakota’s controlled substance schedules. Section 1 of the bill amends the definition of marijuana to remove cannabidiol from the exception for drug products approved by the United States Food and Drug Administration. Section 2 updates the definition of tetrahydrocannabinol to include a drug product approved by the United States Food and Drug Administration. It adds six synthetic cathinones, five synthetic cannabinoids, adds para-methoxymethamphetamine (PMMA) which is a drug similar to methamphetamine and adds methoxetamine (MXE) which is a drug similar to PCP. Section 3 adds Daridorexant and Ganaxolone to Schedule IV. Daridorexant is used for the treatment of insomnia in adults and Ganaxolone is used for the treatment of seizures. The bill contained an emergency clause and became law upon the Governor’s signature on **February 9, 2023**.

SB 31 – Creates an off-road vehicle decal for non-residents visiting the state. The bill provides for a \$50 state issued decal available from the Department of Revenue or the county treasurer allowing non-resident off-road vehicles meeting the necessary requirement to be used for non-commercial uses on public highways.

SB 46 – Enhances the penalty for petition circulation perjury. This bill makes it a Class 6 felony to falsely attest to the verification provisions on a petition for a ballot question or for a nominating petition of a candidate.

SB 48 – Enhances the penalty for attempted first degree murder of a law enforcement officer. This bill raises the felony level from a Class 2 felony to a Class 1 felony.

SB 50 – Revises the crime of witness tampering. The bill clarifies the current witness tampering provision to include actions to corruptly persuade or corruptly influence a witness.

SB 51 – Revises certain provisions regarding the reimbursement of county expenses in detaining parole violators. This bill raises the reimbursement from the current \$70 per day to \$95 per day.

SB 53 – Exempts records regarding jail inmate disciplinary matters from public inspection and copying. This bill adds an exception to SDCL 1-27-1.5 providing that records regarding jail inmate disciplinary matters pursuant to SDCL 24-11-23 are not subject to disclosure under the public record statutes.

SB 61 – Revises driver's license suspensions for restricted permit holders over the age of 16. This bill changes the current suspension of licenses for persons under the age of 18 to the age of 16.

SB 67 – Revises provisions related to emergency and involuntary commitment for alcohol and drug abuse. This bill repeals the definition of a designated prevention or treatment facility and provides for a definition of the term "next of kin". The bill also expands the commitment provisions from an intoxicated person to also include a person receiving treatment for withdrawal management. The bill makes changes to notice and procedural aspects of the commitment proceeding and allows the court to appoint legal counsel for the person whose commitment is sought.

SB 70 – Revises provisions related to courtroom modifications for child witnesses. Under the bill if a court makes a specific finding that the child will suffer substantial emotional distress that will impair the ability of the child to communicate due to the presence of the jury, the court may exclude the jury from the room in which the child is testifying. The testimony of the child must be televised at the same time to the courtroom by close circuit television equipment. If the child is under the age of 16, the court may provide any of the following accommodations to the child:

- (1) To be addressed, asked questions, and read the oath or affirmation to testify truthfully in an age-appropriate manner;
- (2) To be free of nuisance or harassing tactics in the proceeding;
- (3) To have a person who would contribute to the well-being of the child present;
- (4) To have sufficient breaks in the proceedings; or
- (5) To have a certified therapeutic dog present in the room.

SB 72 – Revises provisions related to the discharge of a defendant restored to competency. The bill directs that the director of the facility under which the defendant is being treated, makes the determination that the defendant has recovered to the extent that the defendant is able to understand the nature and consequences of the proceedings against the defendant and to assist properly in the defense. The director shall promptly file a certificate to that effect with the clerk of court and defendant shall be discharged from the facility where the defendant is hospitalized, if applicable. Upon discharge the defendant is subject to the provisions of Ch. 23A-43. The bill removes the requirement for a court order to discharge the defendant.

SB 89 – Increases the daily maximum award for the alternative care program administered by the Unified Judicial System. This bill raises the current maximum award of \$30 per day to \$50 per day.

SB 90 – Provides certain definitions related to the crime of rape. This bill adds definitions to Ch. 22-22 for “consent”, “force”, “mental incapacity” and “physical incapacity”.

SB 92 – Revises certain provisions regarding the crime of rape and provides a penalty therefore. The bill adds a requirement that the perpetrator knows or reasonably should know of a victim’s incapacity and adds a new subdivision (6) to include rape without the victim’s consent and the perpetrator knows or reasonable should know victim is not consenting. A violation of the new subdivision (6) is rape in the fourth degree, a Class 3 felony.

SB 103 – Creates a pilot program in the Unified Judicial System for risk and lethality assessments for certain persons accused of assault or protection order violations. The pilot program allows a committing magistrate judge or circuit court judge to review a risk and lethality assessment conducted by law enforcement for a person charged with assaulting a person in a relationship or with violating a protection order, when determining if bond or other conditions of release are necessary for the protection of the alleged victim. The pilot program will expire on December 31, 2024.

SB 115 – Revises certain provisions regarding consideration of out-of-state convictions for driving under the influence. This bill adds out-of-state DUI state convictions to the 25 year look-back requirement under SDCL 32-23-4.9.

SB 146 – Limits parole for violent offenders. Under this bill, persons convicted of manslaughter in the first degree, kidnaping in the first degree, first or second degree rape, torture of a human trafficking victim, commission of a felony while armed with a firearm, aggravated assault against law enforcement, aggravated battery of an infant, assault with intent to cause serious permanent disfigurement, robbery in the first degree, first degree burglary, first degree arson or first degree human trafficking are not eligible for parole and must serve their entire sentence. For persons convicted of a vehicular homicide, aggravated assault, aggravated criminal battery of an unborn child, kidnaping in the second degree, second degree burglary, riot, second degree manslaughter, second degree human trafficking, felony child abuse or an attempt to commit or a conspiracy to commit or a solicitation to commit any of these offenses must serve the full term of imprisonment and is not eligible for parole. However, the inmate may earn discharge credits to reduce an inmate’s sentence by up to 15% of the sentence imposed and must serve the remaining sentence on parole.

The bill also defines as a crime of violence for parole purposes felony stalking, felony assault, felony simple assault, discharge of a firearm at an occupied structure or motor vehicle, discharging a firearm from a moving vehicle, threatening to commit a sexual offense, abuse or neglect of a disabled adult and aggravated incest.

SB 176 – Modifies certain requirements for removal from the Sex Offender Registry. This bill allows an offender who was required to register in this state because of a crime committed in another state to petition to be removed from the registry if the offender is eligible to be removed under the laws of the jurisdiction where the conviction occurred. The bill requires the offender to petition the circuit court with appropriate notice and requires a hearing. The court may enter an order terminating the petitioner’s obligation to register if the court finds the criteria are satisfied. This bill allows persons convicted of juvenile sex offenses in another state or persons convicted of sex offenses in another state which would be misdemeanors in South Dakota to seek removal from the South Dakota Sex Offender Registry.

SB 207 – Provides a penalty for the expenditure of public funds to influence the outcome of an election. This bill adds penalty to SDCL 12-27-20 which prohibits the expending of public funds in order to influence nomination or election of a candidate or of a ballot question. A violation is a Class 1 misdemeanor if a \$1,000 or more in public funds are expended. It is a Class 6 felony if \$10,000 or more in public funds is expended in violation of this section.

HB 1003 – Repeals provisions requiring prison or jail costs estimates and declares an emergency. Because this bill contained an emergency clause it became law upon the Governor’s signature on **February 9, 2023**.

HB 1018 – Repeals the authorized forfeiture of property used in the illegal capture of fish.

HB 1041 – Provides an exception to the definition of drug paraphernalia. This bill removes from the definition of drug paraphernalia a product that detects the presence of fentanyl or a fentanyl analogue in a controlled substance, fentanyl testing strips.

HB 1064 – Requires the Unified Judicial System to assemble a task force to address the provisions of legal services to indigent parties within the South Dakota court system and declares an emergency. This bill was brought at the request of the Chief Justice and requires the Unified Judicial System to assemble a task force consisting of 13 members to examine the delivery of legal services to indigent parties. The task force will examine how legal services are delivered to indigent parties in criminal, juvenile and child abuse and neglect

proceedings; recommend ways to improve the delivery of legal services to indigent parties; recommend methods to provide services for conflict cases where local public defenders may be unable to take cases; address how to ensure competent representation is provided to indigent parties; and identify potential funding options. The task force must present its findings to the Governor and the Legislature no later than November 15, 2023. Because the bill contains an emergency clause, it became law upon the Governor's signature on **February 22, 2023**.

HB 1162 – Authorizes employers to acquire and make available opioid antagonists. This bill allows a licensed health care professional to dispense an opioid antagonist to employers and the employer may have available on the employer's premises Narcan or a similar product.

HB 1170 – Establishes mandatory sentences for certain driving while under the influence convictions. Under this bill a court must sentence a person convicted of a fourth DUI to at least two years in a state correctional facility. One of which must be served on parole with certain parole conditions involving alcohol monitoring. The court may suspend the sentence only if the person participates in and completes a drug court program. The court must sentence a person to at least four years in a state correctional facility if a person is convicted of a fifth or subsequent DUI. At least one year must be on parole with conditions. If a person is convicted of an aggravated violation and the person has at least six convictions occurring within 15 years, the court must sentence the person to at least six years in a state correctional facility, one of which must be served on parole with conditions. The court may suspend this sentence only if the court orders the person to participate in and complete a problem solving court.

HB 1174 – Provides for appropriate civil commitment of certain persons. The bill allows that any person with a felony sexual offense charge that has been dismissed due to a developmental disability, is subject to civil commitment proceedings. The state's attorney within 30 days after the dismissal, may file a petition for civil commitment of the person charged in the circuit court that dismissed the charge. The petition must allege the criteria for commitment and must include facts supporting the allegation. At the commitment hearing, the court must determine the person committed one or more felony sexual offenses, the person's developmental disability which rendered the person incompetent makes it seriously difficult for the person to control their behavior, likely that the person will commit other sexual offenses and necessary or advisable for the person to receive appropriate supports or services, or the person needs and is likely to benefit from treatment and the court must determine the person is a danger to themselves or others due to the developmental disability. The court shall review any commitment order at least

annually to make a determination of the continued need and supporting justification for commitment.

HB 1191 – Clarifies the duties of truancy officers. This bill clarifies that under SDCL 13-27-20, the truancy officers' authority to make and file truancy complaints only applies to children who are enrolled in the school district.

HB 1215 – Revises certain provisions regarding the operation of a golf cart on a state or county highway. This bill allows a person to operate a golf cart on a state or county highway if the posted speed limit is 25 miles per hour or less and they have met the statutory requirements associated with motor vehicle operation.

HB 1220 – Provides that a female who undergoes an unlawful abortion may not be held criminally liable.

MEDICAL MARIJUANA

SB 1 – Modifies debilitating medical conditions for medical cannabis use. This bill adds amyotrophic lateral sclerosis, multiple sclerosis, cancer, Crohn's disease, epilepsy and post-traumatic stress disorder to the medical conditions for which a medical marijuana card can be issued.

SB 134 – Revises membership of a Medical Marijuana Oversight Committee. This bill completely revises the membership of the Medical Marijuana Oversight Committee to now include two members of the Senate, two members of the House of Representatives, one physician, one physician assistant, one certified nurse practitioner, one chief of police, one sheriff, one professional counselor and one qualifying patient.

HB 1053 – Prohibits the issuance of a written certification to a pregnant woman or breast feeding mother for purposes of medical cannabis use.

HB 1154 – Modifies acceptable conduct for practitioners related to medical cannabis. This bill makes it a Class 2 misdemeanor for a medical practitioner to knowingly refer a patient to a specific medical cannabis establishment in exchange for financial consideration, advertise in a medical cannabis establishment, issue written certifications while holding a financial interest in a medical cannabis establishment, offer discounts or other financial incentive for making an appointment, conduct the medical assessment in a space licensed for the sale of alcoholic beverages or charge a patient based on the term of a written certification. The bill also makes it a Class 2 misdemeanor for an entity to offer a discount for making an appointment with a practitioner or charge a practitioner's patient based on the duration of the written certification.

MISCELLANEOUS

SB 162 – Revises public meeting requirements. This bill clarifies that a public body can limit the time allowed for each topic during the public comment period and also for the total time allowed for public comment. The bill also provides that public comment is not required at an official meeting held solely for the purpose of meeting in executive session.

SB 189 – Prohibits purchasing agents from contracting with companies owned or controlled by certain foreign entities or foreign governments. This bill prohibits governmental entities from contracting with companies or other business associations controlled by a foreign parent entity from the Peoples Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic Peoples Republic of Korea, the Russian Federation or the Bolivarian Republic of Venezuela.

HB 1029 – Revises certain provisions regarding the county zoning and appeals process. This bill revises the county process to align with municipal zoning and board of adjustments. It removes the requirement that a quorum be present and only requires a majority vote of the members of the approving authority who are present and voting. The bill also clarifies that the two-year period for completion does not begin until end of any final appeal of the county zoning decision and any provision addressing timely completion commences only upon the start of actual construction.

HB 1057 – Allows for the appointment of county coroners by all counties.

ELECTIONS

SB 139 – Revises residency requirements for the purposes of voter registration. The bill adds a domicile requirement as shown by an actual fixed permanent dwelling and adds a requirement that a person has maintained residence for at least 30 days prior to submitting a registration form.

SB 140 – Revises certain provisions relating to voter registration. This 18 section bill clarifies responsibilities between the Secretary of State, the county auditor and the clerk of courts. It also adds four new sections to SDCL Ch. 12-4.

SB 160 – Establishes post-election audits.

HB 1114 – Revises the qualifications to be a member of a county recount board.

HB 1124 – Modifies provisions pertaining to the testing of automatic tabulating equipment.

HB 1165 – Modifies certain provisions pertaining to absentee voting.

Please feel free to contact me if you need additional information. You can access all the bills introduced by the 2023 Legislature at the South Dakota Legislative Research Council website. The web address for the 2023 Session is at this location:

<https://sdlegislature.gov/>