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TO: Law Enforcement and Interested Persons

FROM: Charles D. McGuigan, Chief Deputy Attorney General 

RE: **Legislation Passed in 2021**

The 2021 South Dakota Legislature considered 478 pieces of legislation. The House introduced 283 bills and the Senate introduced 195 bills. The Governor signed 247 bills into law. The Governor offered one style and form veto which the Legislature did not concur with and then the Legislature did not override the veto.

The Attorney General requested the introduction of two pieces of legislation during the 2021 Legislative Session. The Legislature adopted both of the bills and the Governor signed both bills into law. **SB 60** revises the membership of the Law Enforcement Officers Standards Commission. The bill adds two civilians to the Commission appointed by the Governor after consultation with the Attorney General. The bill defines civilians as a person who is not currently or ever has been a certified law enforcement officer. **SB 62** revises certain provisions regarding appeals by the prosecution. The bill clarifies that the prosecution can appeal the dismissal of any one or more counts of an indictment or information. This section is in response to the Supreme Court's Opinion in *State v. Steffensen*, 2020 S.D. 33. The bill also clarifies that the prosecution can file an appeal regarding a suppression order as long as a defendant has not been put in risk of double jeopardy. This clarifying language was suggested by the court in *State v. Sharpfish*, 2019 S.D. 49.

During the 2021 Legislative Session, the Office of Attorney General monitored 114 bills, supported 14 bills, and opposed 10 bills.

The following bills will become law on July 1, 2021, unless noted otherwise:

SB 5 – Includes a child’s legal parents and guardians in the list of parties who may receive information related to reports of the child’s abuse or neglect. This bill was introduced at the request of the Department of Social Services and amends SDCL 26-8A-13(5) to add a parent or guardian to the list of parties who may receive information.

SB 7 - Permits a government agency to qualify as a victim for the purposes of restitution in criminal cases. The bill was brought at the request of the Department of Social Services for the specific purpose of qualifying Medicaid as a victim for restitution purposes. The bill amends the definition of a victim to include any government agency who has by contract or by statute undertaken to indemnify another or to pay or provide a specified or determinable amount or benefit upon determinable contingencies.

SB 14 - Limits the time children in need of supervision are held in detention under certain circumstances. This bill was brought at the request of the Department of Corrections and requires the court to issue a written order identifying the violated court order, determining detention is the best available placement, specifies the length of time the child is to be held in detention, and outlines the plan for release of the child.

SB 15 – Revises the voting requirements necessary for the board to grant or deny parole or recommend clemency. Bill clarifies that a concurrence of two board members of a parole panel may reach a decision. The bill also clarifies that a concurrence of the majority of the full parole board is necessary to make a decision in a case heard by the full board.

SB 16 - Revises the requirements of setting discretionary parole dates by the board. The bill requires the parole board to establish a discretionary parole date of not more than two years from the date of revocation of an offender’s parole or suspended sentence. Further, if a suspended sentence is revoked and imposed prior to the initial parole date, a new initial parole date shall be calculated on the newly imposed incarceration term.

SB 20 – Places certain substances on the controlled substances schedule and declares an emergency. This bill is the Department of Health’s annual bill to update the State schedules to be consistent with the Federal schedules. The bill adds three synthetic opioids and four hallucinogenics to schedule I. The bill adds four opioids antagonists and two new opioids to schedule II. The bill removes epidiolex from schedule IV and adds four new substances to schedule IV. Finally, the bill contained an emergency clause and became law upon the Governor’s signature on **February 17, 2021**.

SB 31 – Provides for the release of adult abuse case information to certain parties to assist in the provision of adult protective services. This bill was

brought at the request of the Department of Human Services and adds a new statutory section which may allow investigative case records and files relating to reports of abuse, neglect or exploitation of adults to be released to seven sets of parties including law enforcement, protective services and the courts.

SB 44 – Authorizes, regulates and taxes wagering on sporting events within the city limits of Deadwood. At the last general election, the voters adopted Amendment B to allow sports wagering. This bill was introduced and enacted to carry out the provisions of Amendment B.

SB 60 - Revises the membership of the Law Enforcement Officers Standards Commission and was introduced at the request of the Attorney General.

SB 62 – Revises certain provisions regarding appeals by the prosecution and was introduced at the request of the Attorney General.

SB 79 – Makes certain uses of laser pointers unlawful. This bill makes it a Class 1 misdemeanor to intentionally direct light from a laser pointer at a law enforcement officer.

SB 95 – Provides protection for assisting an impaired lawyer or judge.

SB 100 – Limitations related to firearms and weapons. This bill makes permanent one of the bills passed in response to COVID on Veto Day at the end of the 2020 session. The bill limits the ability of any state agency, political subdivision or elected or appointed official to regulate the lawful possession of firearms and ammunition or to seize firearms and ammunition.

SB 111- Reduces the fee for permits to carry concealed pistols. This bill reduces a number of the fees associated with obtaining and renewing the various concealed carry permits.

SB 124 – Puts limitations on the government’s authority related to the exercise of religion. This bill limits governments’ ability to burden a person’s exercise of religion or to treat religious conduct differently than comparable secular conduct.

SB 126 – Establishes the crime of possession, manufacturing or distribution of an obscene doll. This bill makes it a Class 4 felony for any person to create, sell or distribute any obscene anatomical doll, obscene anatomical mannequin or obscene anatomical robot that is intentionally designed to resemble a pre-pubescent child for the purposes to either entice sexual excitement or to engage in prohibited sexual acts. A subsequent violation within a 15-year period would be a Class 3 felony. The bill makes it a Class 1 misdemeanor for any person to knowingly purchase or possess a child like sex doll. A second or subsequent conviction within a 15-year period would be a Class 6 felony.

SB 135 – Reforms training requirements for law enforcement officers. This bill requires a law enforcement officer to attend response to resistance training at least once every two years.

SB 142 – Modifies the meeting place and notice requirements for county commission meetings. The bill allows the county commission to conduct open meetings at the county courthouse or at any other suitable location in the county on at least a quarterly basis. The bill also repealed SDCL 7-8-16 dealing with joint county municipal planning sessions.

SB 148 – Establishes the crime of torture of a human trafficking victim and provides a penalty. The bill makes it a Class 1 felony for any person to inflict serious bodily injury or serious mental injury upon a human trafficking victim.

SB 150 – Clarifies the penalty for using fireworks in violation of a county resolution and declares an emergency. The bill amends SDCL 34-37-19 to make it a Class 2 misdemeanor for any person to use fireworks in violation of a county resolution prohibiting fireworks when the grassland fire danger index reaches the extreme category. This bill contained an emergency clause so became state law upon the Governor's signature on **March 25, 2021**.

SB 164 – Modifies the process for civil forfeiture. This bill limits the ability to forfeit property when only personal possession amounts of controlled substances are present.

SB 168 – Revises the population requirement for appointment of coroners. The bill reduces the population threshold for the appointment of a coroner from 75,000 to 60,000.

SB 173 – Revises certain provisions related to competency hearings. This bill amends South Dakota's current competency statutes to come in line with decisions from the United State's Supreme Court. The bill adopts a substantial probability requirement. The bill also requires that if the court finds that there is no substantial probability that the defendant will become competent to proceed in the foreseeable future, the court shall dismiss the criminal charges. The bill requires the director of the facility to determine if the defendant is a danger to self or others for the purposes of civil commitment. The bill also tolls the statute of limitations during any time period that the defendant is determined to be mentally incompetent to proceed.

SB 174 – Revises provisions related to the automatic removal of certain charges or convictions from a defendant's public record. This bill amends SDCL 23A-3-34 to shorten the current 10-year period for the removal of Class 2 misdemeanor to a five-year period. However, defendant cannot be convicted of any further offenses within that five-year period.

SB 183 – Declares certain contract provisions regarding abortion as unenforceable and provides a penalty. This bill deals with contract provisions in surrogacy contracts and declares certain provisions void and unenforceable. The bill also makes it a Class 1 misdemeanor for a person to coerce or compel a pregnant woman to undergo an abortion, to require a pregnant woman to agree to a contract provision requiring an abortion or requiring that person to assume any costs, obligation or responsibility for refusing to undergo an abortion. A subsequent offense would be a Class 6 felony.

HB 1002 – Revises certain provisions regarding fingerprint-based background checks for the Real Estate Commission and the Appraiser Certification Program.

HB 1034 – Revises certain youth hunting requirements. This bill was brought at the request of Game, Fish and Parks, and removes the requirement for 16 and 17-year olds to obtain a furbearing license or a fishing license. The bill also amends and clarifies several other sections dealing with licenses issued by the department.

HB 1043 – Provides enhanced permit criteria for current and former law enforcement officers. The bill allows a current or former law enforcement officer to renew an enhanced permit to carry a concealed pistol if, within the 12-month period preceding the date of the expiration, the officer qualified or requalified on a certified shooting course.

HB 1061 – Prohibit smoking and consuming marijuana and its derivatives in a motor vehicle and creates a penalty. This bill makes it a Class 2 misdemeanor for any person operating or in actual physical control of a motor vehicle, or a passenger, to smoke or consume marijuana while the vehicle is being operated.

HB 1064 – Makes an appropriation for and the establishment of peer support and critical incident stress management training for first responder organizations. This bill creates the Heroes Wellness Grant program which shall be administered through the Office of Attorney General. The bill provides grants to eligible applicants for the purpose of creating, establishing and developing first responder peer support programs and first responder critical incident stress management programs. This bill contained an emergency clause, it became law upon the Governor's signature on **March 25, 2021**.

HB 1068 – Revises the requirement for written findings of fact and conclusions in certain judicial proceedings involving a child. This bill was brought at the request of the Chief Justice to amend state law to only require written findings of fact and conclusions of law in delinquency or CHINS proceedings if there is a contested evidentiary hearing or if the disposition is a commitment to the Department of Corrections.

HB 1080 – Increases the enhanced penalty for the crime of simple assault. This bill makes a fourth simple assault offense a Class 5 felony and makes a fifth or subsequent offense a Class 4 felony. The bill also clarifies that convictions from other states may be used as part of the enhancement.

HB 1081 – Increases the penalty for protection order violations. This bill makes a fourth protection order violation a Class 5 felony and makes a fifth or subsequent protection order violation a Class 4 felony.

HB 1096 – Provides a penalty for sexual contact with a minor by a person holding a position of authority. This bill addresses the hole in state law concerning sexual contact by an adult in a position of authority with persons who are 16 or 17. The bill makes it a Class 6 felony for an adult in a position of authority to knowingly engage in sexual contact with a person less than 18 years of age. A person in a position of authority includes a coach, child care provider, disability services provider, guardian ad litem, health care provider, law enforcement officer, mental health counselor, probation officer, religious leader, school administrator, social worker, teacher, therapist or youth leader.

HB 1098 – Authorizes the shipment of cigars to persons in this state under certain conditions. Persons who do not comply with the requirements to ship cigars into South Dakota are guilty of a Class 1 misdemeanor. This bill does not take effect until **January 1, 2022**.

HB 1102 – Revises certain definitions for sex offender registry. This bill excludes from the definition of a school any facility where the education of students might occur incidentally to the primary purpose of the facility. The bill removes juvenile detention facilities from the definition of a school for community safety zone purposes.

HB 1111 – Revises certain provisions regarding inspections and seizures by and forfeitures involving the Department of Game, Fish and Parks. This bill was brought at the request of the Governor. The bill repeals some authority of the department regarding inspections. The bill also eliminates the department statutory right to seize guns, vehicles or other instrumentalities unlawfully used in hunting and fishing.

HB 1125 – Defines adjournment for counting ballots.

HB 1127 – Revises certain provisions regarding official meetings conducted by teleconference. The bill mandates roll call votes to only those circumstances where a voice vote indicates a member voted in the negative.

HB 1132 – Adds dental hygienists to the list of mandatory reporters of child abuse or neglect.

HB 1140 – Restrict the entry of conservation officers onto certain private land without permission. This bill was brought at the request of the Governor and prohibits conservation officers from entering private land unless the conservation officer has a warrant or permission to enter the private land. Conservation officers may enter private land without permission if the officer has reasonable suspicion or probable cause to believe that a violation has occurred, to dispatch crippled or distressed wildlife and to respond to emergency situations, accidents, or other threats to public safety.

HB 1191 – Allows for an expedited process for local government legal disputes. This bill establishes an expedited civil action in order to facilitate the quick and efficient resolution of disputes between two or more local governmental bodies. The bill also authorizes the use of alternative dispute resolution except for binding arbitration.

HB 1192 – Provides for the use of motorized foot scooters.

HB 1197 – Requires the Attorney General to be licensed to practice law in South Dakota.

HB 1199 – Establishes the Office of Liaison for Missing and Murdered Indigenous Persons.

HB 1203 – Authorizes banks to engage in business with industrial hemp or marijuana licensees and associated persons.

HB 1204 – Revises criminal provisions regarding certain visual recordings or photographic devices. This bill amends SDCL 22-21-4 to prohibit the use, disclosure or dissemination of any recording or photograph in order to harass, embarrass or invade the privacy of another person. A violation is a Class 1 misdemeanor, however, if the victim is 17 years of age or younger and the perpetrator is at least 21 years of age or older, the violation becomes a Class 6 felony.

HB 1212 – Clarifies the use of force. This bill repeals SDCL 20-9-8 regarding the right to use force in defense of persons or property, SDCL 22-5-9 regarding resistance to public offenses, and SDCL 22-16-34 and 22-16-35 regarding justifiable homicide. In place of these four statutory sections the bill adds 11 new sections to SDCL ch. 22-18 regarding the use of force in defense of person or property.

HB 1228 – Revises provisions regarding industrial hemp and declares an emergency. This bill changes provisions dealing with licensing, inspection, testing and the transportation of industrial hemp. The bill reduces the outdoor acreage required to grow industrial hemp from 5 or more acres to at least one-

half acre. The bill also authorizes growing of industrial hemp in an indoor green house that may not be less than 2,880 square feet. This bill contained an emergency clause, so it became law upon the Governor's signature on **March 25, 2021.**

HB 1262 – Regulates kratom for those under the age of twenty-one. This bill makes it a Class 2 misdemeanor for any person to knowingly sell or distribute kratom to a person under the age of 21 unless the purchaser is a parent or guardian. The bill makes it a Class 2 misdemeanor for a person under the age of 21 to purchase, possess or consume kratom.

Please feel free to contact me if you need additional information. You can access all the bills introduced by the 2021 Legislature at the South Dakota Legislative Research Council website. The web address for the 2021 Session is at this location:

<https://sdlegislature.gov/Session/Bills/44>