

STATE OF SOUTH DAKOTA



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MEMORANDUM

To: All Interested Persons

FROM: Charles McGuigan *Charlie*
Chief Deputy Attorney General

Date: April 7, 2011

Re: **Legislation Passed in 2011**

The 2011 South Dakota Legislature considered 458 pieces of legislation. The House introduced 256 bills and the Senate introduced 202 bills. The Governor signed 224 bills into law. The Governor vetoed 4 bills and the Legislature overrode 2 of the Governor's vetoes.

The Attorney General requested the introduction of eight pieces of legislation during the 2011 legislative session. The Legislature adopted 5 of the bills and the Governor signed all 5 bills into law. Senate Bill 29 would have created the crime of making a false statement to a law enforcement officer and would have provided a penalty therefore. This bill was killed by the Senate Judiciary Committee. Senate Bill 30 would have repealed certain provisions regarding the expungement of arrest records. This bill was also killed by the Senate Judiciary Committee. Senate Bill 31 would have revised certain provisions regarding the expungement of arrest records. This bill failed on a tie vote on the floor of the House. Senate Bill 32 revises the time period to update certain sex offender registration information and requires the collection of passport and professional license information for such registration purposes. Senate Bill 33 revises certain provisions regarding the 24/7 Sobriety Program, authorizes the collection of a participation fee and authorizes

the use of ignition interlock devices. Senate Bill 34 creates the crime of possessing, selling, or distributing certain substances intended for the purposes of intoxication. Senate Bill 35 revises certain provisions regarding the crime of taking or disseminating pictures without consent and provides for a felony penalty under certain circumstances. Finally, Senate Bill 36 adds a tribal member who is a certified law enforcement officer to the Law Enforcement Officers Standards Commission.

The Legislature passed the following bills and unless noted otherwise, the following bills will become law on July 1, 2011.

HB 1006 - Authorizes the use of air guns for hunting cottontail rabbits, red squirrels, fox squirrels, gray squirrels or any species defined as a predator/varmint. The minimum requirements for air guns will be established by rules promulgated by the Game, Fish and Parks Commission.

HB 1011 - Revises certain provisions pertaining to domestic abuse programs. The bill revises the name of the current domestic abuse grants and changes it to the new name of domestic violence program funds. The bill further prohibits a county from requiring that the award of funds be contingent upon the county receiving individual client information and creates additional confidentiality provisions.

HB 1015 - Places certain substances on the controlled substances schedules and declares an emergency. This is the annual bill from the Department of Health to update South Dakota's Controlled Substance Schedules. This year's bill adds five substances, primarily synthetic THC, to the list of Schedule I controlled substances and adds one substance to Schedule II. This bill contained an emergency clause and it became illegal to possess these substances upon the Governor signature on February 25, 2011.

HB 1017 - Authorizes the release of offender photographs and physical description for purposes of victim and community notification. This bill adds to the list of information that the Department of Corrections can release to include an offender's age, physical description and a photograph. The Department of Corrections may release information concerning an inmate or parolee for the purposes of community and victim notification.

HB 1018 - Provides for a partial early final discharge from parole. This bill allows the Board of Pardons and Parole to grant a partial early final discharge if the Board is satisfied that a partial early final discharge would be in the best interest of society and the inmate. The bill also provides for a written notification to the victim regarding any early final discharge or partial early final discharge.

HB 1019 - Include employees responsible for persons on supervised release or probation and members of the Boards of Pardons and Paroles in protections afforded law enforcement and judicial officers. This bill amends the definition of a law enforcement officer under the criminal code to include persons who supervise offenders on parole or probation. This qualifies those persons for protection under the felony provisions concerning assault on a law enforcement officer. The bill also extends the protection of threatening or intimidating a judicial or ministerial officer to include members of the Board of Pardons and Parole.

HB 1020 - Repeals certain provisions regarding the disclosure of parole eligibility at sentencing.

HB 1021 - Revises certain provisions regarding the inspection of parole files. This bill will allow the inspection of parole files by subpoena in certain circumstances.

HB 1037 - This bill removes the requirement that trespass notices within the Black Hills fire protection district also include the name and address of the owner or lessee posting the lands.

HB 1038 - Revises certain provisions concerning certain fees for the electronic transmission of court records. This bill authorizes the clerk of courts to impose a fee for transmitting court records by electronic mail at the same rate that currently exists for transmitting by facsimile.

HB 1040 - Provides jurisdiction for clerk magistrates to accept certain penalties for a violation of SDCL 32-22-55, operation of overweight vehicles.

HB 1041 - Removes the statutory requirement that circuit court judge hold court in the county seat on at least two days each month. The bill now allows the presiding judge to arrange that a circuit judge is available to hold court in the county seat as

necessary to distribute the work of the courts, alleviate congestion and secure the prompt disposition of cases for each county.

HB 1043 - Clarifies the jurisdictional amount in a small claims court proceeding increasing the small claims amount to \$12,000.

HB 1047 - Revises certain prairie dog shooting season provisions. The bill repeals the administrative rules establishing a prairie dog season and declares the prairie dog shooting season open statewide year round with no limitation on shooting hours and no prairie dog daily or possession limits.

HB 1056 - Establishes an additional time period during which fireworks may be sold and discharged and revises certain provisions regarding county regulation of fireworks. The bill will allow the use of fireworks from December 28th through January 1st of each year.

HB 1062 - Adopts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

HB 1067 - Revises the look back period for the enhancement of penalties for multiple assaults and violations of protection orders. This bill extends the current five year look back period to ten years for the purposes of determining if a felony offense for a third or subsequent simple assault or violation of a protection order has occurred.

HB 1069 - Defines electronic communication devices for certain crimes involving threatening or harassing calls. This bill expands threatening or harassing telephone communications to include other electronic communication devices. The bill defines an electronic communication device as any electronic device capable of transmitting signs, signals, writing, images, sounds, messages, data, or other information by wire, radio, light waves, electro-magnetic means, or other similar means, including telephones, cellular phones and computers.

HB 1079 - Repeals certain provisions related to purchase of firearms by out of state residents. This bill repeals the current requirement that gun sales can only occur with residents who reside in states contiguous to South Dakota.

HB 1085 - Prohibits certain political advertising in highway rights of way. This bill clarifies that current restrictions

concerning signage within right-of-ways applies to political campaign advertising. The bill further authorizes the South Dakota Department of Transportation or a local authority to immediately remove offending signs and allows for the removal to be done without notice to the owners.

HB 1149 - Allows legal residents of the United States to obtain a concealed pistol permit. This bill removes a restriction that a concealed pistol permit can only be given to a United States citizen and now allows for a legal resident to obtain a concealed pistol permit after going through a criminal history check including a check through INTERPOL if determined necessary by the sheriff.

HB 1154 - Requires persons convicted of crimes involving domestic violence to support domestic violence programs. This bill authorizes the court to order any person convicted of a crime involving domestic violence or domestic abuse to remit costs in the amount of \$25 which will then be deposited in the county domestic violence program fund. The bill also allows for the use of contempt proceedings if an offender fails to remit the \$25 to the clerk of courts.

HB 1217 - Establishes certain legislative findings pertaining to the decision of a pregnant mother considering termination of her relationship with her child by an abortion, to establish certain procedures to better insure that such decisions are voluntary, uncoerced and informed, and to revise certain causes of action for professional negligence relating to the performance of an abortion. This bill establishes a 72 hour waiting period and certain counseling requirements before a lawful abortion can be performed.

HB 1221 - Establishes a task force on teen driving safety. The bill requires a task force that may not exceed 20 members appointed by the Executive Board of the Legislative Research Council, the Chief Justice of the Supreme Court and the Secretary of Public Safety to evaluate data, laws and current practices regarding teen driving and to provide recommendations for improving teen driving safety to the 2013 Legislature.

SB 4 - Update certain standards governing pedestrian control signals. This bill updates requirement for special pedestrian control signals from the 2003 manual on Uniform Traffic Devices to the 2009 edition.

SB 5 - Revises the maximum distances from a bridge for posting maximum vehicle weight and warning signage. This bill increases the distance that signs shall be posted from the current 100 feet and increases the minimum distance to within 600 feet of both entrances to any bridge.

SB 13 - Revises certain evidentiary rules pertaining to the statement of children. This bill modifies SDCL 19-16-39 to allow for the out of court statements in civil proceedings alleging child abuse or neglect or any proceeding for termination of parental rights if the statement was made by a child under the age of 13.

SB 14 - Requires a mandatory reporting of abuse or neglect of elderly or disabled adults. The bill requires that health professionals, long-term care ombudsman, mental health professionals and law enforcement personnel who know or who have reasonable cause to suspect elder or disabled adult abuse or neglect to report their knowledge or suspicion to the state's attorney, Department of Social Services or to law enforcement within 24 hours. It is a class 1 misdemeanor to not make the required report. Section 2 of the bill applies to any staff member of a nursing facility, assisted living facility, adult day care center, community support provider, residential caregiver, individuals providing homemaker services, victim advocates or hospital personnel and requires those individuals to report abuse or neglect of an elderly or disabled adult to the person in charge of the institution where the elderly or disabled adult resides, to the state's attorney, Department of Social Services or to law enforcement. Those persons must also report within 24 hours. Failure to report is a class 1 misdemeanor.

SB 20 - Removes the requirement of a prior felony conviction for a fourth and subsequent DUI offense. Currently in order to prosecute a fourth offense DUI as a felony, the person also needed to previously have been convicted of a felony DUI. SB 20 removes the requirement that one of the previous DUIs needs to be a felony.

SB 28 - Revises certain provisions regarding the authority of the Secretary of Transportation to create limited speed zones through highway work zones and to declare an emergency. The bill removes certain restrictions that have been previously placed upon the Secretary of Transportation's ability to create

limited speed zones. Because the bill had an emergency clause, it became law on March 8th, 2011, when signed by the Governor.

SB 32 - Revises the time period to update certain sex offender registration information and to require the collection of passport and professional license information for such registration purposes. This bill was brought by the Attorney General in order to maintain South Dakota's certification of compliance with the Adam Walsh Act. To maintain consistency, the bill changes two sections that required a five-day registration period and amends that to three business days. This makes them consistent with the other time periods in the sex offender laws. The bill also requires the collection of passport and professional license information.

SB 33 - Revises certain provisions regarding the 24/7 Sobriety Program, authorizes the collection of a participation fee and authorizes the use of ignition interlock devices. This bill was brought at the request of the Attorney General in order to proceed with a pilot program to test whether ignition interlock devices can or should be part of the 24/7 Program. During the legislative process, the Legislature determined that the 24/7 Sobriety Program should become a self-funded program and no longer receive general fund tax dollars. As a result, the Legislature authorized the collection of a participation fee from all participants in the 24/7 Sobriety Program.

SB 34 - Creates the crime of possessing, selling, or distributing certain substances intended for the purpose of intoxication. The Attorney General brought his bill to address the reoccurring problem with designer drugs and substances being sold as "legal highs." Every year law enforcement is confronted with a number of new substances being sold and marketed that are not listed as a controlled substance. If a person ingests these substances with the intent to become intoxicated, it is a violation of SDCL 22-42-15. This bill makes it a class 1 misdemeanor for any person to possess, possess with intent to distribute, sell or distribute a substance knowing that it is to be used in violation of SDCL 22-42-15.

SB 35 - Revises certain provisions regarding the crime of taking or disseminating pictures without consent and provides for a felony penalty under certain circumstances. This bill was brought by both the Attorney General and the State's Attorneys Association to address concerns with new technology. Currently it is a crime to take a compromising picture of a person with a

hidden camera in a situation where they have an expectation of privacy. Cell phone cameras and other technology no longer requires that the camera be hidden. Further, these types of embarrassing photos are being taken not for the purposes of sexual exploitation or gratification but rather being taken for purposes of embarrassment and harassment. This bill addresses that new technology and also addresses photos taken for the purposes of harassment and embarrassment. The bill still requires that the photo be taken without consent or disseminated without consent and was taken in circumstances where that a person had a reasonable expectation of privacy. A violation remains a class 1 misdemeanor. However, a violation will be a Class 6 felony if the victim is 17 years of age or younger and the perpetrator is at least 21 years of age.

SB 36 - Adds a tribal member who is a certified law enforcement officer to Law Enforcement Officer Standards Commission. The Attorney General brought this bill to address the increase in the number of tribal officers being trained at the state law enforcement academy. Since moving into the Mickelson Criminal Justice Center, 62 tribal officers from 6 different tribes have received state certification.

SB 48 - Revises certain provisions regarding the consumption of distilled spirits in public and provides certain penalties for consumption of alcoholic beverages. The bill removes local government's authority to permit the consumption of alcoholic beverages on public property and creates new authority for a board of county commissioners or a governing body of a municipality to permit the consumption, but not the sale, of alcoholic beverages on public property or property owned by a non-profit corporation.

SB 55 - Allows the shooting of coyotes from snowmobiles.

SB 101 - Provides a penalty for denying access to public records. The bill creates a 30 day period for a public entity to comply with an order from the Office of Hearing Examiners or to file an appeal. The bill also establishes a \$50 civil penalty if a court determines that the public entity acted unreasonably or in bad faith in failing to produce public records.

SB 173 - Allows specific details of alleged sex crimes against minors to be suppressed under certain conditions. The bill allows, upon the request of any minor victim, or the minor

victim's parent or guardian, the court to order that the name and specific details of the alleged act be suppressed if the trial court finds a compelling interest upon the consideration of certain factors. The bill also allows the court to limit access to any affidavit in support of a search warrant or arrest warrant that is filed with the court in cases of alleged rape, incest or sexual contact if the victim is a minor.

SB 176 - Provides for the crime of human trafficking, establishes the elements and degrees of the crime and provides penalties for the violation thereof. The bill creates the new felony offense of human trafficking which is defined as the recruiting, harboring, transporting, providing or obtaining another person by force, fraud or coercion to engage in prostitution, forced labor, or involuntary servitude. First degree human trafficking will be a class 2 felony and applies to situations involving kidnapping, victims under the age of 16, prostitution or offenses resulting in the death of the victim. Second degree human trafficking will be a class 4 felony and applies to human trafficking or to situations where someone benefits financially or receives anything of value from an act of human trafficking.

SB 193 - Authorizes counties to issue additional on-sale licenses for certain facilities located on hunting preserves.

Please feel free to contact me if you need additional information. You can access all of the bills introduced by the 2011 Legislature at the South Dakota Legislative Research Council website. The web address is:
<http://legis.state.sd.us/sessions/2011/index.aspx>