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TO: Law Enforcement and Interested Persons

FROM: Charles McGuigan, Chief Deputy Attorney General *McG*

RE: **Legislation Passed in 2013**

The 2013 South Dakota Legislature considered 492 pieces of legislation. The House introduced 250 bills and the Senate introduced 242 bills. The Governor signed 254 bills into law. The Governor vetoed one bill and the Legislature did not override the Governor's veto.

The Attorney General requested the introduction of five pieces of legislation during the 2013 Legislative Session. The Legislature adopted all five of the bills and the Governor signed all five bills into law. Senate Bill 35 allows the prosecution to appeal from certain judgments of acquittal. Senate Bill 36 protects the identity of the person or entity supplying the intravenous injection substances for executions and increases the penalty to a Class 1 misdemeanor. Senate Bill 37 updates certain provisions regarding the Insurance Fraud Prevention Unit. Senate Bill 38 increases the penalty for sexual acts between juvenile correction facility employees and detainees. Finally, Senate Bill 39 establishes a penalty for a juvenile convicted as an adult of a class A or B felony and allows a sentence of up to life imprisonment after a sentencing hearing. During the 2013 Legislative Session, the Office of Attorney General monitored 87 bills, supported 10 bills and opposed 6 bills.

In addition to these bills, the Governor and the Attorney General requested the introduction of eight pieces of legislation at the request of the Open Government Task Force. The Legislature adopted three of the Open Government Task Force bills and killed five of the Task Force's proposals. The Governor signed the three Open Government Task Force bills into law.

The following bills will become law on July 1, 2013, unless noted otherwise.

SB 26 - Updates terminology for individuals with intellectual disabilities and similar terms. This bill revises the terminology throughout much of the code and replaces terms such as mental retardation and mentally retarded with the term intellectual disability or developmental disability.

SB 35 - Allows the prosecution to appeal from certain judgments of acquittal. This bill was brought at the request of the Attorney General and allows the prosecution to appeal an order of the Circuit Court setting aside a guilty verdict and entering a judgment of acquittal. This bill brings us in line with the federal rules of criminal procedure and the majority of states.

SB 36 - Protects the identity of the person or entity supplying the intravenous injection substance for executions and increases the penalty for a violation from a Class 2 misdemeanor to a Class 1 misdemeanor. This bill was brought at the request of the Attorney General and with the support of the Department of Corrections to protect the identity of the company supplying the substances used for lethal injection executions and also to protect the identity of any pharmacists who may be involved with compounding or supplying the substances used for lethal injections.

SB 37 - Revises certain provisions regarding the Insurance Fraud Prevention Unit. This bill was brought at the request of the Attorney General to update the statutes dealing with the Insurance Fraud Prevention Unit and to reflect the transfer of that Unit from the Department of Labor to the Office of the Attorney General. In 2011, Governor Daugaard, by executive order, transferred the Insurance Fraud Prevention Unit to the Attorney General's Office. This bill merely updates the code to reflect that transfer.

SB 38 - Increases the penalty for sexual acts between juvenile correction facility employees and detainees. This bill was brought at the request of the Attorney General and increases the penalty to a Class 4 felony for an adult employee of a jail or juvenile correction facility who engages in a sexual act with a juvenile under their custody, supervision or disciplinary authority.

SB 39 - Establishes a penalty for a juvenile convicted as an adult of a Class A or B felony and allows a sentence of up to life imprisonment after a sentencing hearing. This bill was brought by the Attorney General to address the United States Supreme Court's opinion of *Alabama v. Miller* where the Court found that sentencing a juvenile to a mandatory life sentence without parole constituted cruel and unusual punishment. This bill allows for a sentence of up to life for a juvenile convicted as an adult of a Class A or B felony. Prior to sentencing, the Court must hold a sentencing hearing where it will consider aggravating and mitigating evidence. Finally, the bill clarifies that the victim of a Class A, B or C felony has the right to orally address the court during the sentencing hearing. This right extends to any victim and is not limited to those cases involving a juvenile convicted as an adult.

SB 43 - Revises certain provisions regarding the crossing of a railroad and revises the penalty for certain railroad crossing violations by the driver of a commercial motor vehicle. This bill brings South Dakota laws dealing with railroad crossings and commercial driver's licenses in line with federal requirements. If a commercial motor vehicle is not required to stop at a railroad crossing, this bill will now require that commercial motor vehicle to slow down when approaching the crossing, to stop at the crossing under certain circumstances and to ensure there is sufficient undercarriage clearance before negotiating a crossing. If a person violates this act, they may be subject to disqualification from driving a commercial motor vehicle.

SB 44 - Allows for the disqualification of commercial driver licenses for violations of federal, state or local texting bans while driving a commercial vehicle. This bill brings South Dakota state laws involving commercial drivers and texting into line with federal regulations and requirements. This bill allows for the disqualification of a person to hold a commercial driver's license if they violate a federal, state or local law or rule prohibiting texting while driving.

SB 68 - Revises the controlled substance schedule and declares an emergency. This bill is the annual bill by the Department of Health to update South Dakota's list of controlled substances to match the federal controlled substance schedule. In addition, SB 68 adds a synthetic analog prohibition to state law. This analog prohibition to synthetic drugs is similar to the federal analog provisions. This is an attempt to address the growing problem with synthetic or designer drugs and the continual tweaking and modification of the chemical compounds within synthetic drugs to avoid the controlled substance provisions. The intent is to capture and prohibit all of the known existing synthetic or designer drugs currently available including their analogs. This bill contained an emergency clause and became law with the Governor's signature on **March 6, 2013**.

SB 70 - South Dakota Public Safety Improvement Act. This bill, brought at the request of the Governor and Chief Justice, is a comprehensive revision of the South Dakota Criminal Justice System and is the result of an extensive year-long study by the Governor's Criminal Justice Work Group.

Sections 1-7 establish a statutory frame work for drug courts within South Dakota. These sections allow the Supreme Court to establish a Drug Court in any jurisdiction, to establish rules for drug courts and requires semi-annual reporting of performance measures.

Section 8 deals with how the criminal justice system deals with veterans and active duty military personnel who plea to a felony or a Class 1 misdemeanor. The Court may order that a court service officer consult with the VA for treatment options and recommendations.

Sections 9 to 11 authorize the Supreme Court to establish two South Dakota HOPE Court pilot programs. These pilot programs will establish and evaluate the HOPE program established in Hawaii as an intensive sentencing alternative for persons convicted of a controlled substance violation.

Sections 12 and 13 develop tribal pilot programs to supervise state parolees within Indian country.

Sections 14 and 15 require the Supreme Court to establish rules governing evidence based practices for felony probation supervision.

Sections 16 and 17 require the Supreme Court to establish rules to develop graduated sanctions and to establish a grid to guide court services officers in determining appropriate responses to violations of conditions or probation.

Section 18 requires Court Service Officers to receive training on evidence based practices and training on how to target risk factors in order to reduce recidivism.

Section 19 requires UJS to send the case history and the results of risk and needs assessment to the Department of Corrections for a probationer sentenced to prison.

Sections 20 and 21 requires magistrate and circuit court judges to complete training on evidence based practices.

Sections 22 to 26 requires the Supreme Court to establish rules for criteria and a procedure for earning and awarding earned credits for early discharge from probation. All probationers, except persons on probation for sex crimes, shall be eligible for early discharge credits from probation and for the possibility of an early completion of sentence.

Sections 27 to 31 deal with parole supervision and require the use of evidence based practices. The level of supervision shall target the parolee's criminal risk and need factors with the goal of focusing resources on moderate risk and high risk offenders. These sections require a risk and needs assessments to be done in order to guide supervision and responses to violations. Responses to parole violations reflect a parolee supervision level, the severity of violation and prior violations. Parole violation responses will be standardized and will include formal and informal responses.

Sections 32 to 33 will be establish a list of formal responses ranging from a written reprimand, to community service, to treatment, if available, to incarceration for those who violate parole conditions.

Sections 34 and 35 require training for parole board members including the use of a validated risk and needs assessment and evidence based practices for making parole decisions.

Sections 36 to 45 establish the awarding of early discharge credits for parolees. Earned discharged credit will be deducted from the parolee's discharge date. Early discharge credits for parolees will not be available for sex offenders. The sections

also establish a system for a parolee to appeal to the parole board if they disagree with a failure to award a discharge credit. These sections also address how to handle a parolee who has remaining court ordered financial obligations.

Sections 46 to 51 requires the Supreme Court to promulgate rules for the collection of outstanding debts, including a graduated sanctioning grid policy and a policy for termination or an adjustment of financial obligations. Any debt over 25 years old which is deemed to be non-collectible will be terminated. The failure to comply with debt provisions constitutes a probation violation and the original sentencing court shall have a review hearing.

Section 52 eliminates preliminary hearings for Class 1 misdemeanors.

Section 53 creates presumptive probation for Class 5 and Class 6 felonies. A judge may sentence someone to incarceration if the court finds aggravating circumstances and makes a written record.

Section 54 creates the stand-alone offense of possession of a controlled substance in an altered state. If the ingested substance is a Schedule I or Schedule II controlled substance, the penalty will be a Class 5 felony. If the substance is listed in Schedule III or Schedule IV, the penalty will be a Class 6 felony.

Section 55 establishes a Class 3 felony for distribution of drugs. In order to establish distribution, the prosecution must prove three of five factors are present. The factors include: the possession of \$300 or more in cash; a firearm; bulk materials used for the packaging of controlled substances; materials used to manufacture a controlled substance including recipes, precursor chemicals, laboratory equipment; lighting, ventilation or power generating equipment; and drug transaction records or customer lists.

Section 56 and 57 add the term "controlled drug" to the existing controlled substance statutes.

Section 58 amends the possession statute and reduces the violation for possessing a Schedule I or II controlled substance from a Class 4 felony to a Class 5 felony and makes it a Class 6 felony to possess a substance listed in Schedule III and Schedule IV. This section also clarifies that ingested

substances new provision in section 54 or altered state substances must be used.

Section 59 creates an exception for the crime of misprision of a felony for altered state UA or hot UA felony cases.

Section 60 establishes a tiered system for grand theft. Grand theft will be a Class 6 felony if the value is \$1,000 to \$2,500, a Class 5 felony if the value is \$2,500 to \$5,000 dollars, a Class 4 felony if the value is \$5,000 to \$100,000 and a Class 3 felony if the property is valued at more than \$100,000 but less than \$500,000.

Section 61 amends the crime of aggravated grand theft which is theft greater than \$500,000. The penalty is a Class 2 felony.

Section 62 reduces third degree burglary from a Class 4 felony to a Class 5 felony.

Section 63 addresses high level repeat DUI offenders. A sixth DUI offense within a 25 year period is an aggravated DUI and is a Class 4 felony. The Court must revoke the offender's driver's license for at least three years. If an offender has ten or more previous convictions, he must be subject to a term of supervision of not less than 10 years. Any person convicted under this section having at least five and not more than nine previous DUIs is subject to a term of supervision not less than 5 years.

Section 64 allows for DUIs older than 10 years to be used if that DUI would fall under the provisions of sections 63.

Section 65 clarifies sentencing pursuant to DUI 4th includes the provisions governing suspension of execution of sentence included in section 66 of the act.

Section 66 modifies the provisions dealing with suspended execution of sentence. This section allows for persons convicted of DUI 4th to be sentenced to jail for up to a year as a condition of a suspended execution of sentence. This section also encourages the court to not incarcerate an individual for a period that exceeds 60 consecutive days to insure the court retains authority to impose additional days of imprisonment if necessary during the term of supervision. The Court retains jurisdiction to raise or lower the required period of incarceration within the section otherwise allowed by law.

Sections 67 to 69 establish an oversight committee to meet semi-annually to review the implementation and progress under this act.

Section 70 creates a definition for treatment and intervention programs.

Section 71 to 75 requires a fiscal impact statement to any legislative bill or ballot initiative which may impact jail or prison populations.

Section 76 requires the Attorney General to establish a statewide automated victim information and notification (SAVIN) system.

Section 77 requires the Department of Corrections to promulgate rules, to administer a reinvestment program for purposes of improving public safety and reducing recidivism. The section requires UJS to provide data to DOC about the number of probationers at the end of each year. A calculation will be done to determine how many felony probationers were sentenced in the last five years. A trend line based on growth will project growth based on past performance. If the use of felony probation and the county has increased beyond the trend line, then the county will be compensated for additional felony probationers under supervision at fiscal year-end. The county sheriff shall receive one thousand dollar for each additional probationer beyond the trend line. In counties without a county jail, the sheriff shall receive \$200 per probationer above the trend line as compensation for additional transportation costs.

Sections 78 to 83 establish effective dates for the various sections of this bill ranging from July 1, 2013 through June 30, 2014.

SB 84 - Creates the South Dakota Athletic Commission for the supervision of boxing, kickboxing, mixed martial arts competitions and sparring exhibitions in the state. The bill requires that any boxing, kick boxing or mixed martial arts competition held in any city, shall be held in conformity to the ordinances of that city and that no boxing, kick boxing or mixed martial arts may be held in a city where such contests are prohibited by city ordinance.

SB 86 - Increases the minimum salary payable to county officials including state's attorneys and sheriffs.

SB 106 - Prohibits certain minors from using wireless communication devices while operating motor vehicles upon the public highways. This bill creates a secondary offense which prohibits the holder of an instruction permit or the holder of a restricted minor permit to use any type of wireless communication device while operating a motor vehicle.

SB 120 - Revises provisions relating to consent to sexual activity. This bill removes the spousal exception for felony sexual contact involving a spouse who is incapable of consenting because of physical or mental incapacity.

SB 154 - Revises the maximum weight allowed on certain wide based super single tires. This bill establishes an overweight limit for an axle equipped with tires having a minimum width of 445 millimeters or 17 and $\frac{1}{2}$ inches as 600 pounds on any inch of the tire width if operated on one of eight designated highway segments.

SB 166 - Revises the number of years that permits to carry concealed weapons are valid. This bill increases the period from four years to five years from the date of issuance.

SB 200 - Revises certain provisions concerning campaign finance. This bill addresses some of the issues concerning independent expenditures in elections. The bill requires certain reporting if \$100 or more is spent or donated. A violation is a Class 1 misdemeanor.

SB 206 - Revises certain provisions relating to liability and worker's compensation for law enforcement officers performing duties in other jurisdictions. This bill will allow public agencies to assist other jurisdictions and clarifies the powers, duties and responsibilities of both the requesting agency and the responding agency.

SB 227 - Revises provisions relating to the possession of firearms on snowmobiles. This bill will allow a person to carry a pistol on a snowmobile if they possess a valid concealed carry permit.

HB 1018 - Revises certain provisions concerning elections and petitions. This bill establishes a one year period to gather signatures to organize a new political party. It prohibits

candidates from notarizing their own election forms. It also prohibits a person gathering signatures from paying, lending, offering a gift or offering employment as an inducement to someone signing a petition or other election form. A violation will be a Class 2 misdemeanor.

HB 1019 - Authorize the involuntary treatment of jailed prisoners with psychotropic medication. This bill resulted from the Lt. Governor's Mental Health Workgroup and authorizes the involuntary treatment of jailed prisoners. The bill establishes a procedure that needs to be followed prior to involuntary treatment and requires a hearing before a three-person local panel. The panel consists of two local medical representatives and a representative appointed by the sheriff.

HB 1020 - Revises certain provisions relating to the evaluation and treatment of persons with mental illness. This bill also resulted from the Lt. Governor's Mental Health Workgroup. The bill broadens the individuals who can become certified as a Qualified Mental Health Professional. The bill authorizes the expansion and use of mobile mental health crisis teams. Finally, the bill makes a number of changes to the mental health code involving the treatment of minors.

HB 1031 - Revises certain provisions regarding parole date calculation when a suspended sentence is revoked.

HB 1070 - Revises certain provisions relating to the failure to fulfill the responsibilities of jury duty. The bill authorizes the court to hold in contempt any juror who willfully fails to complete and return the jury questionnaire or who fails to appear without good cause. The bill increases the contempt fine to not less than fifty dollars and not more than five hundred dollars.

HB 1072 - Repeals certain provisions providing a criminal penalty for a political party to endorse or nominate a judicial candidate. This bill repeals the statute which makes it a Class 2 misdemeanor for any political party to endorse or nominate a candidate for judicial office.

HB 1073 - Establishes a procedure for the determination of the competency of a juvenile to proceed in a juvenile court matter. This bill was brought at the request of the Chief Justice and is designed to establish a uniform statutory process to be used by the courts in order to establish the competency of a juvenile to proceed in a juvenile court matter.

HB 1083 - Revises the crime of rustling to include sheep and goats. Currently it is automatically grand theft if a person steals cattle, horses, mules, buffalo or captive non-domestic elk regardless of the value of the animal. This bill will add sheep and goats to that list and the theft of such an animal will automatically qualify as felony grand theft.

HB 1087 - Provides for the creation of the school sentinel program and for the training of school sentinels. The bill authorizes any school board to arm school employees, hired security personnel or volunteers after receiving the approval of local law enforcement and after the person successfully completes a school sentinel training course approved by the Law Enforcement Officers Standards Commission.

HB 1091 - Establishes certain provisions regarding the labeling of motor fuel at a retail fuel pump and declares an emergency. This bill was in response to the improper signage and selling of low octane fuel in parts of the state. The bill establishes new signing and record keeping requirements for the retailer, refiner, importer and distributor of petroleum products. The bill authorizes the selling of low octane motor fuel only in the counties of Butte, Custer, Fall River, Harding, Lawrence, Meade, Pennington, Perkins and Shannon. This bill contained an emergency clause and became effective with the Governor's signature on **March 6th, 2013**.

HB 1110 - Provide for openness in certain electronic records databases and to open certain information regarding electronic record systems. This bill was introduced by the Governor and the Attorney General at the request of the Open Government Task Force. This bill requires government agencies to consider and document whether new electronic data bases would reasonably provide for public disclosure. The bill requires a public entity to provide a narrative description of the system purpose and functionality and any such information as may be reasonably necessary for a member of the public to request public information that may be stored within the electronic record system.

HB 1112 - Clarifies the application of certain open meeting provisions to certain three-member public boards. This bill authorizes a quorum of township supervisors, road district trustees or trustees for a municipality of the third class to carry out ministerial functions relating to public safety without having to comply with the requirements of the open

meeting statute. This bill was also brought at the request of the Open Government Task Force.

HB 1115 - Clarifies the deliberative process exception to certain open records provisions. This was the third and final bill adopted by the Legislature at the request of the Open Government Task Force. This bill clarifies that a government agency cannot use the deliberative process or create an exception for any document that is otherwise already public and such document is not made confidential by reason of having been used in deliberations.

HB 1157 - Increases certain penalties regarding the sale of petroleum products. This bill was also in response to the mislabeling and selling of low octane fuel products in parts of the state. This bill increases the penalty from a Class 2 misdemeanor to a Class 1 misdemeanor.

HB 1158 - Revises certain provisions relating to the posting of public notices for meetings of public bodies. This bill explicitly states that the posting of a proposed agenda must include the date, time and location of the public meeting.

HB 1169 - Amend the provisions regarding the reimbursement of a physical exam of a victim after a rape. This bill deletes language in the existing statute saying that the county has to pay for a rape examination if the examination is "to gather information or evidence about the alleged crime." The bill clarifies that a county must pay for all rape exams including "Jane Doe" rape exams.

HB 1174 - Revises certain provisions pertaining to snowmobile operation. This bill establishes a restriction on snowmobiles and defines a snowmobile in such a way that a snowmobile cannot exceed 48 inches width. The bill also recognizes that modification of a motorcycle can occur in such a fashion as to qualify as a snowmobile.

HB 1208 - Prohibit the release of medical waste and to provide a penalty therefore. This bill creates a new Class 2 misdemeanor which makes it a crime to negligently place medical waste into recycling. This bill creates a defense for a waste hauler or transporter which requires that the hauler or transporter have actual knowledge that medical waste was placed within their trash or recycling waste stream.

HB 1209 - Prohibits certain persons who fail to pay certain campaign finance related penalties from running for office. This bill prohibits a person from being certified as a candidate unless their campaign has paid all administrative penalties and filed all statements, documents and information required under the election laws.

HB 1234 - Provides a limited exception to the provisions that exempt sport shooting ranges from the public nuisance laws and declares an emergency. This bill will allow shooting ranges to be declared a public nuisance if it can be shown that there is a significant threat to human life or habitation and that the range is not in compliance with local regulations or ordinances pertaining to the normal operation and use of sport shooting ranges. This bill contains an emergency clause and became the law upon the Governor's signature on **March 21, 2013**.

Please feel free to contact me if you need additional information. You can access all of the bills introduced by the 2013 Legislature at the South Dakota Legislative Research Council website. The web address is:

<http://legis.state.sd.us/sessions/2013/index.aspx>