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TO: Law Enforcement and Interested Persons

FROM: Charles D. McGuigan, Chief Deputy Attorney General 

RE: **Legislation Passed in 2015**

The 2015 South Dakota Legislature considered 429 pieces of legislation. The House introduced 236 bills and the Senate introduced 193 bills. The Governor signed 257 bills into law. The Governor vetoed three bills and the Legislature overrode one of the Governor's vetoes.

The Attorney General requested the introduction of eight pieces of legislation during the 2015 Legislative Session. The Legislature adopted seven of the bills and the Governor signed all seven bills into law. SB 11 would have restored the chief agent of the Division of Criminal Investigation to a former position under certain circumstances. This bill was not adopted by the Legislature. SB 12 allows the spouse of an active duty military person to qualify as a resident for a temporary permit to carry a concealed pistol. SB 13 requires certain persons convicted for human trafficking to register as sex offenders. SB 14 provides for the possession and administration of opioid antagonists by first responders for the treatment of drug overdoses. SB 15 allows for discretionary appeals of illegal sentences. SB 16 revises certain provisions safeguarding law enforcement radio communications. SB 17 revises the definition of motor vehicles that are subject to the lemon law. SB 18 establishes certain administrative provisions regarding charitable raffles, lotteries, and bingo and makes a violation of those provisions subject to the deceptive trade practice and consumer protection act. During the 2015 Legislative Session, the Office of Attorney General monitored 85 bills, supported 18 bills and opposed 10 bills.

The following bills will become law on July 1, 2015, unless noted otherwise:

SB 1 – Revises certain taxes and fees to fund improvements to public roads and bridges in South Dakota, to increase the maximum speed limit on interstate highways and declares an emergency. In addition to increasing funding for highway maintenance, this bill increased the speed limit on the interstate system to 80 miles per hour. **This bill became effective on April 1st.**

SB 3 – Provides for mediation of certain drainage disputes. This bill requires the Department of Agriculture to establish and administer a statewide program to use mediation as a method to resolve disputes over surface or subsurface drainage issues.

SB 12 – Allows the spouse of an active duty military person to qualify as a resident for a temporary permit to carry a concealed pistol.

SB 13 – Requires certain persons convicted for human trafficking to register as sex offenders. This bill will require persons convicted of first degree human trafficking where the victim is a minor and second degree human trafficking involving the prostitution of a minor to register as a Tier III sex offender.

SB 14 – Provides for the possession and administration of opioid antagonists by first responders for the treatment of drug overdoses. After training, this bill will allow a law enforcement officer, an ambulance crew member or a fire fighter, to carry and administer Narcan to persons who appear to be in an overdose situation.

SB 15 – Allows for the discretionary appeal of illegal sentences. This bill will allow either the prosecution or the defense to request a discretionary appeal from an order granting or denying a motion to correct an illegal sentence or an order granting or denying a motion to correct a sentence imposed in an illegal manner.

SB 16 – Revises certain provisions safeguarding law enforcement radio communications. This bill updates the code dealing with the use and possession of police scanners by private persons. Police scanners will no longer be considered contraband. However, any person who uses a scanner while committing a felony will also be committing a class 1 misdemeanor.

SB 17 – Revises the definition of motor vehicles that are subject to the lemon law. The bill redefines a motor vehicle for the purposes of the lemon law to include personal vehicles which have a gross vehicle weight rating of 15,000 pounds. This will include three-quarter ton and one-ton pickups in the definition of a motor vehicle for the purposes of the lemon law.

SB 18 – Establishes certain provisions regarding charitable raffles and lotteries and makes a violation of these provisions subject to the deceptive practice and consumer protection act. The bill requires that a drawing for a charitable raffle must be held within 18 months after the date on which the first ticket is sold. If the charity cannot hold the drawing within the 18 month period, the charity must offer a full refund of the ticket price to those persons who purchased the ticket.

SB 22 – Revises the penalty for altering a registration device issued by a dealer. The bill amends existing prohibitions to treat all individuals who alter or forge a motor vehicle registration card the same.

SB 57 – Authorizes and regulates the playing of craps, roulette and keno within the city limits of Deadwood.

SB 58 – Revises certain authority, monetary penalties and hearing procedures of the South Dakota Commission on Gaming.

SB 61 – Places certain substances on the controlled substance schedule and declares an emergency. This is the Department of Health's annual bill to update South Dakota's controlled substance schedules. The bill added Alprazolam and Tramadol to the Schedule IV and moved Hydrocodone to Schedule II. The bill also updates the list of known synthetic drugs. Specifically, Section 1 prohibits a new method of chemical modification popular among the producers of synthetic drugs and also adding new chemical structures to each class that chemists are beginning to use. This section also adds a new class of synthetic drugs (substituted carboxylic acid indole) that has become quite popular among producers and users and have been confirmed to be in South Dakota. Section 2 clarifies when opium derivatives would be in a lower schedule – which is when it is mixed with a non-narcotic or in smaller quantities. Section 3 adds seven substances as a result of DEA's action in moving hydrocodone combination products from schedule III to schedule II (See Section 4). As a result of that change, certain clarifications are necessary to specifically list certain substances that were previously listed by reference only. Section 4 repeals the scheduling of hydrocodone products that are combination products in Schedule III. Single ingredient hydrocodone products are currently scheduled as a Schedule II controlled substance in §34-20B-16 while hydrocodone products that are combination products are Schedule III controlled substance pursuant to §34-20B-23 as Schedule III. This change would classify all hydrocodone products (whether single ingredient or combination) as Schedule II pursuant to §34-20B-16. Section 5 of the bill amends 34-20B-25 to include three drugs which were scheduled as Schedule IV controlled substances by the DEA. Alfaxalone is an injectable intravenous anesthetic for animals (cats and dogs typically), tramadol which is used to treat pain, and Suvorexant which is used to treat insomnia. This section also adds new subsections 11A – 11C for clarification purposes as they are not currently

listed specifically, but by reference only. Section 6 amends 34-20B-26 (Schedule IV) to mirror a DEA change to accommodate a higher concentration of difenoxin (used in the treatment of diarrhea). Because the bill contained an emergency clause, this bill became effective with the Governor's signature on **February 18th**.

SB 70 – Requires that the mandatory reporter who witnessed the disclosure or evidence of child abuse or neglect be available to answer questions when the initial report is made. This bill was introduced at the request of the Jolene's Law Task Force.

SB 73 – Juvenile Justice Public Safety Improvement Act. This bill is a result of the Governor's Task Force which studied the juvenile justice system. The bill makes extensive revisions and additions to the juvenile code. The bill encourages the use of diversions, encourages the use of community service programs, establishes community response teams, specifies criteria to commit a delinquent, specifies findings for placing a child in detention, establishes graduated responses for violations, revises the handling of CHINS and establishes a method for issuing citations for certain juvenile offenses. Attached at the end of this memo is a section by section summary prepared by the Governor's General Counsel Jim Seward. Portions of the bill do not become effective until **January 1, 2016**.

SB 75 – Revises the effective period of the travel permit for certain livestock used for rodeo purposes and declares an emergency. This bill changes the effective date for the travel permit for rodeo stock from the calendar year to a 12 month period. Because of the emergency clause, this bill became effective with the Governor's signature on **March 11th**.

SB 76 – Extends the length of time a local livestock ownership inspection certificate is valid for transportation. The bill changes current time period from the day of issuance to 24 hours after the time of inspection.

SB 78 – Authorizes counties or medical providers to recover inmate health care costs from insurers.

SB 81 – Requires persons convicted of driving a vehicle while under the influence of alcohol, drugs or intoxicants to pay certain costs to the county. The bill requires a person convicted of DUI to remit costs in the amount of \$50 which shall be deposited in the county general fund.

SB 82 – Updates outdated language related to domestic abuse. In 2014, the Legislature in SB 7 revised the terminology and definitions applying to persons eligible for protection from domestic abuse. This bill updates additional statutes dealing with domestic abuse to reflect what the Legislature did last year.

SB 85 – Repeals certain requirements regarding the handle bar height on motorcycles. This bill repeals SDCL 32-20-3.

SB 97 – Revised the allowable penalties for a person admitted to Drug Court. The bill clarifies that jail time is a possible sanction for a person who is a participant in Drug Court.

SB 98 – Revises provisions related to the financial accountability system for persons who are subject to court ordered financial obligations.

SB 108 – Revises certain provisions relating to aggravated DUIs. The bill amends SDCL 32-23-4.9 to require at least two of the prior convictions to have occurred within 10 years.

SB 161 – Allows certain fireworks to be used all year. The bill allows the use of snakes, smoke effects and single shot parachute pieces without a flare to be used year round.

SB 168 – Establishes a task force to study elder abuse in South Dakota.

SB 178 – Authorizes certain projects in the Unified Judicial System. This bill continues funding for the rural attorney assistance program and also allows the UJS to award grants to counties for projects related to improvement of courthouse security.

SB 179 – Repeals the sunset provision relating to record search fees. This bill repeals SDCL 16-2-29.7

SB 186 – Revises the procedure for the execution of a warrant. This bill amends SDCL 23-24-16 to clarify that law enforcement can honor a warrant from another state for an offense where the possible punishment is one year or greater.

HB 1001 – Establishes a wine direct shipment license and wine carrier license to enable the direct shipments of certain wine into South Dakota.

HB 1004 – Authorize the direct sale of distilled spirits from artisan distillers to retailers and wholesalers.

HB 1006 – Allow bullheads to be used as bait.

HB 1027 – Revises certain provisions regarding the regulation of certain money lending activities. This bill was brought at the request of the Division of Banking and updates and amends certain definitions dealing with money

lending, changes the expiration date of licenses, expands the Division's authority to revoke a license and prohibits certain collection practices.

HB 1030 – Provides certain restrictions regarding the passing of a bicycle. The bill establishes a minimum of a three foot separation between the right side of the driver's vehicle, including any mirror, and the left side of the bicycle on roads where the speed limit is 35 miles per hour or less. The bill establishes a minimum of six feet separation if the posted speed limit is greater than 35 miles per hour. A violation is a Class 2 misdemeanor. The bill also prohibits a bicyclist from passing a vehicle on the right if the vehicle is signaling to make a right turn.

HB 1058 – Revises certain provisions regarding contagious disease control quarantine measures. This bill was brought at the request of the Department of Health and updates SDCL Ch. 34-22 regarding the control of contagious diseases and the ability to implement certain quarantine procedures.

HB 1062 – Revises certain provisions relating to jury selection. This bill was brought at the request of the Chief Justice and amends and repeals various jury selection statutes to update them to match current practices for selecting a jury.

HB 1073 – Requires a sex offender to report a change in vehicle status to law enforcement. This bill requires a sex offender to report within three business days any change in the registration status of a vehicle the offender owns. A violation will be a Class 1 misdemeanor.

HB 1082 – Allows a law enforcement officer to issue a citation without a notary. This bill amends SDCL 23-1A-5 to allow an officer to issue a citation without a notary if the officer signs a declaration which will state "I declare and affirm under the penalties of perjury that this complaint or summons has been examined by me, and to the best of my knowledge and belief, is in all things true and correct." A person who signs this statement knowing the statement to be false, in whole or in part, will be guilty of perjury.

HB 1089 – Prohibits the practice of female genital mutilation. A violation is a Class 4 felony. The bill contains an emergency clause and became effective with the Governor's signature on **March 11th**.

HB 1106 – Establishes the rights of municipal, county, or township officers in certain decision making processes. This bill was brought in response to the Supreme Court's recent decision of Hanson v. Minnehaha County. The bill attempts to clarify how an official may receive and consider relevant information without disqualifying that official from the decision making process.

HB 1111 – Increases the cost and expense considered reasonable for the collection of certain dishonored checks. This bill increases the amount from the current \$30 to \$40.

HB 1121 – Authorizes township boards to establish speed zones on township roads.

HB 1122 – Authorizes township boards to designate certain roads as no maintenance roads. The bill allows a township board to designate a road that is unsafe for vehicle travel as a no maintenance road. The township board shall post signs on a no maintenance road to notify the motoring public that it is a no maintenance road and that no vehicle travel is advised.

HB 1124 – Authorize motor vehicles to exceed the posted speed limit under certain conditions. This bill will allow a vehicle passing on a two-lane highway where the speed limit equals or exceeds 65 miles per hour to exceed the speed limit by 10 miles per hour over the posted speed limit.

HB 1125 – Revise certain provisions regarding the notice for meeting of public bodies. This bill clarifies that the proposed agenda must be posted in a location that is visible, readable and accessible for at least a continuous 24 hours immediately preceding the public body's meeting.

HB 1134 – Revises certain provisions concerning the expungement of arrest records. This bill amends SDCL 23A-3-27 to remove the requirement that the consent of the prosecutor be received for an expungement involving a dismissal. However, it also requires that a person wait at least one year after the dismissal before requesting an expungement. The bill also amends SDCL 23A-3-30 to clarify that the burden of proof rests with the defendant or arrested person and that they must demonstrate by clear and convincing evidence that the ends of justice and the best interest of the public will be served by the entry of the expungement.

HB 1135 – Expands certain bonding provisions regarding local government officials and employees. The bill allows for a governing board to purchase a blanket bond, blanket crime coverage and insurance policy or an individual bond in order to meet the requirements of a performance bond.

HB 1140 – Increase the crimes and look back period to enhance the penalty for violating a stalking protection order. This bill extends the look period to ten years in order to determine if a violation of a stalking protection order is a felony.

HB 1142 – Revises certain provisions pertaining to the age requirement for sex offender registration. This bill clarifies that any juvenile offender has to be 14 years or older at the time of the offense.

HB 1143 – Increases the criminal violations that are subject to domestic violence protection orders. This bill amends SDCL 25-10-13 to include aggravated assault under SDCL 22-18-1.1 as an offense that would elevate violating a domestic abuse protection order to a Class 6 felony. The bill also adds violating a stalking protection order violation to the look back period.

HB 1146 – Limits who may request to see a person's hunting or fishing license. This bill removes the requirement that a holder of a hunting license display their license at any time at the request of any person. The license holder must still display their license at the request of law enforcement. This bill also establishes a new section that requires a person who is hunting, fishing or trapping or engaged in any recreational activity upon private land, to display their license to the landowner. A violation will be a Class 2 misdemeanor.

HB 1151 – Establishes confidential stress management services for emergency service providers. This bill will allow the use of critical incidence stress management teams during critical incidents, crises, disasters or emergencies and provides that certain services will remain confidential.

HB 1215 – Provides for an optional enhanced permit to carry a concealed pistol. In addition to the currently existing concealed carry permit, this bill will establish an optional enhanced permit which may allow a person purchasing a firearm to bypass a NICS check. In order to receive an enhanced permit, the applicant must undergo a fingerprint based background check and successfully complete a qualifying handgun course.

HB 1229 – Revise provisions related to the release of medical waste. This bill amends SDCL 34A-6-102.1 to include that a person is guilty of unlawful release of medical waste if the person with negligence engages in conduct which causes the release of medical waste. This bill also removes the knowledge requirement.

HB 1231 – Authorizes the forfeiture of any financial benefit or valuables gained from pimping. This bill expands the criminal forfeiture provisions to include persons convicted of promoting prostitution, pimping or hiring for sexual activity.

Please feel free to contact me if you need additional information. You can access all of the bills introduced by the 2015 Legislature at the South Dakota Legislative Research Council website. The web address for the 2015 Session is at this location:

http://legis.sd.gov/Legislative_Session/Default.aspx?Session=Ninetieth

Juvenile Justice Public Safety Improvement Act

Summary

Section 1 – Definitions

Definition of terms used in the Act.

Section 2 – Diversion Duration and Restitution

Amended language changes the duration of diversion to four months and authorizes the imposition of restitution as a condition of diversion. The language was also amended to clarify intent that diversion be available to all youth at the state's attorneys' discretion.

Section 3 – Diversion Criteria

New section establishes criteria for those youth that are non-violent misdemeanants or CHINS with no prior adjudications as well as no diversions within twelve months, to be referred to diversion by the state's attorney.

Section 4 – Preliminary Investigation Procedure

Amended language so the state's attorney may prosecute juvenile cited violations.

Section 5 – Diversion Fiscal Incentive

New section requires the DOC to develop a program to incentivize county use of diversion, establish parameters for the program, and report to the oversight council.

Section 6 – Community Based Intervention/Service Model

New section authorizes the DSS, in coordination with the DOC and the UJS, to identify community-based treatment to be provided. It sets up a process that incorporates risk and needs assessment to guide referrals to community-based treatment.

Section 7 – Data/Reporting for Community Based Interventions

New section specifies data the DSS is required to collect and submit semiannually to the oversight council and provide to the DOC and UJS.

Section 8 – Native American Outcomes Study

New section requires the Department of Tribal Relations, in coordination with other state agencies and stakeholders, to evaluate and make recommendations to the oversight council to improve outcomes for justice system involved Native American children.

Section 9 – Native American Study Reporting

New section requires the Department of Tribal Relations to report to the oversight council six months and twelve months after the Act's effective date progress on its evaluation and submit final recommendations to improve outcomes for Native American children.

Section 10 – DOC Role in Treatment Team Meetings

New section requires the DOC to train its staff to participate in monthly treatment team meetings for youth placed in state-run or private residential facilities.

Section 11 – Oversight Council Establishment

New section establishes an oversight council to monitor the provisions set forth in the Act.

Section 12 – Oversight Council Composition

New section describes the composition of the oversight council.

Section 13 – Oversight Council Powers and Duties

New section describes the meeting frequency, powers, and duties of the oversight council.

Section 14 – Community Response Teams (CRTs)

New section allows the presiding judge to appoint CRTs to assist judges by recommending community-based interventions for CHINS and delinquent youth.

Section 15 – Establishment of CRT Rules

New section authorizes the Supreme Court to establish rules regarding the formation of the CRTs.

Section 16 – CRT Recommendation for Delinquents

Amended language allows the court to seek a recommendation from the CRT prior to disposition to the DOC for a delinquent child.

Section 17 – CRT Recommendation for CHINS

Amended language allows the court to seek a recommendation from the CRT prior to disposition to the DOC for a CHINS.

Section 18 – CRT Performance Measures

New section establishes that UJS will semiannually report CRT performance measures to the oversight council.

Section 19 – Purpose of Delinquent Children Chapter

Amended language clarifies intent to focus on community-based rehabilitation for delinquent child.

Section 20 – Delinquency Disposition Options

Amended language specifies criteria to commit a delinquent child to the DOC.

Section 21 – Community Service Programs

New section details parameters of community service engagement, receipt, and oversight.

Section 22 – Criteria for Extended Use of County Detention

New section specifies required findings prior to placing a child in county detention for more than 14 days in a 30 day period.

Section 23 – Probation Duration for Delinquents

Amended language specifies the duration of juvenile probation for delinquent children and authorizes extensions under specified circumstances.

Section 24 – Probation Data/Reporting

New section describes data the UJS will collect and submit semiannually to the oversight council on charging decisions, dispositions, juvenile probationers, and recidivism.

Section 25 – Graduated Responses for Probationers

New section allows the Supreme Court to establish rules for the development and use of a graduated sanctions and incentives procedure and grid for juvenile probationers.

Section 26 – Graduated Response Reporting

New section specifies the graduated response data that the UJS must collect and submit semiannually to the oversight council.

Section 27 – Delinquent Probation Violations

Amended language specifies findings that must be made to commit a delinquent probation violator to the DOC.

Section 28 – Purpose of CHINS Chapter

Amended language clarifies intent to focus on community-based rehabilitation for CHINS.

Section 29 – CHINS Disposition Options

Amended language specifies criteria to commit a CHINS to the DOC.

Section 30 – Probation Duration for CHINS

Amended language specifies the duration of juvenile probation for CHINS and authorizes extensions under specified circumstances.

Section 31 – CHINS Probation Violations

Amended language specifies findings that must be made to commit a CHINS probation violator to the DOC.

Section 32 – Performance Based Contracting for Group Care/Expectations for STAR Academy

New section describes a performance based reimbursement rate structure for group care providers contracted by the DOC. This section also requires that state-run juvenile corrections facilities design and operate programs to achieve release to aftercare within three months.

Section 33 – Performance Based Contracting for Residential Treatment Centers

New section describes a performance based reimbursement rate structure for residential treatment and intensive residential treatment center providers contracted by the DOC.

Section 34 – DOC Performance Measures

New section requires the DOC to semiannually report performance measures on committed youth and duration of placement to the oversight council.

Section 35 – DOC Aftercare Violations

Amended language enumerates criteria the DOC hearing officers must evaluate to proceed toward an aftercare revocation hearing.

Section 36 – DOC Aftercare Violation Data/Reporting

New section specifies the aftercare violation data that the DOC is required to collect and report semiannually to the oversight council.

Section 37 – Cited Violations

New section specifies the delinquency and CHINS violations to be treated as cited violations.

Section 38 – State’s Attorney Procedures for Cited Violations

New section details preliminary procedures for state’s attorneys prosecuting juvenile cited violations.

Section 39 – Court Procedure for Cited Violations

New section describes the circuit court procedure for cited violations.

Section 40 – Disposition Alternatives for Cited Violations

New section describes the disposition options for cited violations and requires judgment on cited violations to be confidential.

Section 41 – Uniform Traffic Ticket Rules

New section permits the attorney general to revise the uniform traffic ticket to be used by law enforcement for juvenile cited violations.

Section 42 – Detention Cost-Sharing Development

New section requires the DOC to develop the juvenile justice detention cost-sharing fund to assist counties with increased juvenile detention expenses.

Section 43 – Detention Cost-Sharing Data Requirements

New section describes deadlines for data counties must provide to participate in the juvenile justice detention cost-sharing fund, and manner that non-participating counties may become participating counties in subsequent years.

Section 44 – Detention Cost-Sharing Application

New section describes data counties must submit to the DOC to receive funds from the juvenile justice detention cost-sharing fund.

Section 45 – Detention Cost-Sharing Funding Process

New section describes the process by which the DOC will determine funding amounts for counties participating in the juvenile justice detention cost-sharing fund.

Section 46 – Detention Cost-Sharing Duration

New section repeals sections 42 to 45, inclusive, on January 30, 2019 and authorizes transfer of any remaining moneys in the detention cost-sharing fund to the general fund.

Section 47 – Effective Dates

New section makes sections 14 to 18, inclusive, sections 23 to 27, inclusive, sections 29 to 33, inclusive, sections 37 to 41, inclusive, and sections 7, 20 and 35 of this Act effective on January 1, 2016.