

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

916L0050

SENATE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to DEWEY–HOMICIDE.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 22-16-1 be amended to read as follows:

4 22-16-1. Homicide is the killing of one human being, including an unborn child, by another.

5 ~~It~~ Homicide is either:

6 (1) Murder;

7 (2) Manslaughter;

8 (3) Excusable homicide;

9 (4) Justifiable homicide; or

10 (5) Vehicular homicide.

11 Section 2. That § 22-16-1.1 be amended to read as follows:

12 22-16-1.1. Homicide is fetal homicide if a the person knew, or reasonably should have
13 known, that a woman bearing an unborn child was pregnant and caused the death of the unborn
14 child without lawful justification and if the person:

15 (1) Intended to cause the death of or do serious bodily injury to the pregnant woman or
16 the unborn child; or



1 (2) Knew that the acts taken would cause death or serious bodily injury to the pregnant
2 woman or her unborn child; or

3 (3) ~~When~~ If perpetrated without any design to effect death by a person engaged in the
4 commission of any felony.

5 Fetal homicide is a Class B felony.

6 This section does not apply to acts which cause the death of an unborn child if those acts
7 were committed during any abortion, lawful or unlawful, to which the pregnant woman
8 consented.

9 Section 3. That § 22-16-2 be amended to read as follows:

10 22-16-2. No person ~~can~~ may be convicted of murder or manslaughter, or of aiding suicide,
11 unless the death of the person alleged to have been killed, and the fact of the killing by the
12 accused are each established as independent facts beyond a reasonable doubt.

13 Section 4. That § 22-16-3 be amended to read as follows:

14 22-16-3. ~~Whenever~~ If the degree of homicide is made to depend upon its having been
15 committed under circumstances evidencing a depraved mind or unusual cruelty, or in a cruel
16 manner, the jury may take into consideration any domestic or confidential relationship which
17 existed between the accused and the person killed.

18 Section 5. That § 22-16-4 be amended to read as follows:

19 22-16-4. Homicide is murder in the first degree ~~when:~~

20 (1) If perpetrated without authority of law and with a premeditated design to effect the
21 death of the person killed or of any other human being, ~~or when;~~ or

22 (2) If committed by a person engaged in the perpetration of, or attempt to perpetrate, any
23 arson, rape, robbery, first degree burglary, kidnapping, or unlawful throwing, placing,
24 or discharging of a destructive device or explosive.

1 Homicide is also murder in the first degree if committed by a person who perpetrated, or
2 who attempted to perpetrate, any arson, rape, robbery, first degree burglary, kidnapping or
3 unlawful throwing, placing or discharging of a destructive device or explosive and who
4 subsequently effects the death of any victim of such crime to prevent detection or prosecution
5 of the crime.

6 Section 6. That § 22-16-5 be amended to read as follows:

7 22-16-5. ~~A design to effect death, sufficient to constitute murder, may be formed instantly~~
8 ~~before committing the act by which it is carried into execution~~ The term, premeditated design
9 to effect the death, means an intention, purpose, or determination to kill or take the life of the
10 person killed, distinctly formed and existing in the mind of the perpetrator before committing
11 the act resulting in the death of the person killed. A premeditated design to effect death
12 sufficient to constitute murder may be formed instantly before committing the act.

13 Section 7. That § 22-16-6 be amended to read as follows:

14 22-16-6. Homicide committed with a design to effect death is not the less murder because
15 the perpetrator was in a state of anger or voluntary intoxication at the time.

16 Section 8. That § 22-16-7 be amended to read as follows:

17 22-16-7. Homicide is murder in the second degree ~~when~~ if perpetrated by any act
18 imminently dangerous to others and evincing a depraved mind, ~~regardless of~~ without regard for
19 human life, although without any premeditated design to effect the death of any particular
20 individual person.

21 Section 9. That § 22-16-8 be amended to read as follows:

22 22-16-8. Homicide perpetrated by an act imminently dangerous to others and evincing a
23 depraved mind, ~~regardless of~~ without regard for human life, is not the less murder because there
24 was no actual intent to injure others.

1 Section 10. That § 22-16-9 be repealed.

2 ~~22-16-9. Homicide is murder in the second degree when perpetrated without any design to~~
3 ~~effect death by a person engaged in the commission of any felony other than as provided in § 22-~~
4 ~~16-4.~~

5 Section 11. That § 22-16-12 be amended to read as follows:

6 22-16-12. Murder in the first degree is a Class A felony. Murder in the second degree is a
7 Class B felony.

8 Section 12. That § 22-16-15 be amended to read as follows:

9 22-16-15. Homicide is manslaughter in the first degree ~~when~~ if perpetrated:

10 (1) Without a any design to effect death ~~by a person~~ while engaged in the commission
11 of ~~a misdemeanor involving moral turpitude~~ any felony other than as provided in
12 § 22-16-4;

13 (2) Without a any design to effect death, and in a heat of passion, but in a cruel and
14 unusual manner;

15 (3) Without a any design to effect death, but by means of a dangerous weapon;

16 (4) Unnecessarily, either while resisting an attempt by the person killed to commit a
17 crime or after such attempt ~~shall have~~ has failed;

18 ~~(5) Unnecessarily, either while resisting an attempt by a pregnant woman to either~~
19 ~~commit a crime or after such attempt shall have failed.~~

20 Manslaughter in the first degree is a ~~Class~~ Class C felony.

21 Section 13. That § 22-16-20 be amended to read as follows:

22 22-16-20. Any reckless killing of one human being, including an unborn child, by the act
23 or procurement of another which, under the provisions of this chapter, is neither murder nor
24 manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the

1 second degree. Manslaughter in the second degree is a Class 4 felony.

2 Section 14. That § 22-16-30 be amended to read as follows:

3 22-16-30. Homicide is excusable ~~when~~ if committed by accident and misfortune in doing
4 any lawful act, with usual and ordinary caution.

5 Section 15. That § 22-16-31 be amended to read as follows:

6 22-16-31. Homicide is excusable ~~when~~ if committed by accident and misfortune in the heat
7 of passion, upon sudden and sufficient provocation, or upon a sudden combat; ~~provided that,~~
8 However, to be excusable, no undue advantage ~~is~~ may be taken nor any dangerous weapon used
9 and ~~that~~ the killing ~~is~~ may not be done in a cruel or unusual manner.

10 Section 16. That § 22-16-32 be amended to read as follows:

11 22-16-32. Homicide is justifiable ~~when~~ if committed by a law enforcement ~~officers and~~
12 ~~those acting by their~~ officer or by any person acting by command of a law enforcement officer
13 in their ~~the~~ aid and assistance of that officer:

14 (1) ~~When~~ If necessarily committed in overcoming actual resistance to the execution of
15 some legal process, or to the discharge of any other legal duty; or

16 (2) ~~When~~ If necessarily committed in retaking felons who have been rescued; or who
17 have escaped; ~~or when;~~ or

18 (3) If necessarily committed in arresting felons fleeing from justice.

19 Section 17. That § 22-16-33 be amended to read as follows:

20 22-16-33. Homicide is justifiable ~~when~~ if necessarily committed in attempting by lawful
21 ways and means to apprehend any person for any felony committed, or in lawfully suppressing
22 any riot, or in lawfully keeping and preserving the peace.

23 Section 18. That § 22-16-34 be amended to read as follows:

24 22-16-34. Homicide is justifiable ~~when~~ if committed by any person ~~when~~ while resisting any

1 attempt to murder such person, or to commit any felony upon him or her, or upon or in any
2 dwelling house in which such person is.

3 Section 19. That § 22-16-35 be amended to read as follows:

4 22-16-35. Homicide is justifiable ~~when~~ if committed by any person in the lawful defense of
5 such person, or of his or her husband, wife, parent, child, master, mistress, or servant ~~when~~ if
6 there is reasonable ground to apprehend a design to commit a felony, or to do some great
7 personal injury, and imminent danger of such design being accomplished.

8 Section 20. That § 22-16-36 be amended to read as follows:

9 22-16-36. Suicide is the intentional taking of one's own life.

10 Section 21. That § 22-16-37 be amended to read as follows:

11 22-16-37. Any person who intentionally in any manner advises, encourages, abets, or assists
12 another ~~in taking his~~ person in taking or in attempting to take his or her own life is guilty of a
13 Class 6 felony.

14 Section 22. That § 22-16-37.1 be amended to read as follows:

15 22-16-37.1. Any licensed health care professional who administers, prescribes, or dispenses
16 medications or procedures to relieve another person's pain or discomfort, even if the medication
17 or procedure may hasten, or increase the risk of, death, does not violate § 22-16-37, unless the
18 medications or procedures are knowingly administered, prescribed, or dispensed with a purpose
19 to cause death. Any licensed health care professional who withholds or withdraws a life-
20 sustaining procedure, in compliance with chapter 34-12D or in accordance with reasonable
21 medical practice, does not violate § 22-16-37.

22 Section 23. That § 22-16-37.2 be amended to read as follows:

23 22-16-37.2. A cause of action for injunctive relief may be maintained against any person
24 who is reasonably believed to be about to violate or who is in the course of violating § 22-16-37

1 by any person who is:

- 2 (1) The spouse, parent, child, sibling, legally appointed guardian, or conservator of the
3 person who would commit suicide;
- 4 (2) Entitled to inherit under the laws of intestate succession from the person who would
5 commit suicide or the beneficiary under a life insurance policy of the person who
6 would commit suicide;
- 7 (3) ~~A~~ Any health care provider of the person who would commit suicide;
- 8 (4) Any public official with appropriate jurisdiction to prosecute or enforce the laws of
9 this state.

10 Section 24. That § 22-16-37.3 be amended to read as follows:

11 22-16-37.3. Any person given standing by subdivision 22-16-37.2(1) or (2) or the person
12 who would have committed suicide, in the case of an attempt, may maintain a cause of action
13 against any person who violates or attempts to violate § 22-16-37 for compensatory damages
14 and punitive damages. An action under this section may be brought whether or not the plaintiff
15 had prior knowledge of the violation or attempt.

16 Section 25. That § 22-16-37.4 be amended to read as follows:

17 22-16-37.4. Reasonable attorney's fees shall be awarded to the prevailing plaintiff in any
18 civil action brought pursuant to § 22-16-37.2 or 22-16-37.3.

19 Section 26. That § 22-16-37.5 be amended to read as follows:

20 22-16-37.5. Any court shall notify the appropriate licensing board in any case in which a
21 licensed health care professional:

- 22 (1) Is convicted of a violation of § 22-16-37;
- 23 (2) Has been cited for contempt of court for violating an injunction issued under § 22-16-
24 37.2; or

1 (3) Has been subject to an assessment of damages under § 22-16-37.3.

2 Section 27. That § 22-16-37.6 be amended to read as follows:

3 22-16-37.6. Any professional licensing board authorized pursuant to Title 36 may, subject
4 to the procedures set out in Title 36, suspend or revoke the license of any licensed health care
5 professional who:

6 (1) Is convicted of a violation of § 22-16-37;

7 (2) Has been cited for contempt of court for violating an injunction issued under § 22-16-
8 37.2; or

9 (3) Has been subject to an assessment of damages under § 22-16-37.3.

10 Section 28. That § 22-16-37.7 be amended to read as follows:

11 22-16-37.7. For the purposes of §§ 22-16-37.1 to 22-16-37.6, inclusive, the term, licensed
12 health care professional, means any physician, surgeon, podiatrist, osteopath, physician
13 assistant, nurse, dentist, or pharmacist licensed pursuant to Title 36.

14 Section 29. The code counsel shall transfer §§ 22-16-37.1 to 22-16-37.7, inclusive, to
15 chapter 34-12D and shall renumber the sections accordingly and adjust all cross references.

16 Section 30. That § 22-16-39 be amended to read as follows:

17 22-16-39. It is no defense to a prosecution for aiding suicide that the person who committed
18 or attempted to commit suicide was not a person deemed capable of committing crime.

19 Section 31. That § 22-16-40 be amended to read as follows:

20 22-16-40. ~~It shall be the duty of any~~ Any law enforcement officer who has knowledge that
21 any party has attempted to take his or her own life ~~to~~ shall immediately notify the state's
22 attorney.

23 Section 32. That § 22-16-41 be amended to read as follows:

24 22-16-41. Any person who, while under the influence of an alcoholic beverage, any

1 controlled drug or substance, marijuana, or a combination thereof, without design to effect
2 death, operates or drives a motor vehicle of any kind in a negligent manner and thereby causes
3 the death of another person, including an unborn child, is guilty of vehicular homicide.
4 Vehicular homicide is a Class 3 felony. In addition to any other penalty prescribed by law, the
5 court may also order that the driver's license of any person convicted of vehicular homicide be
6 revoked for such period of time as may be determined by the court.

7 Section 33. That § 22-16-42 be amended to read as follows:

8 22-16-42. Any person who, while under the influence of an alcoholic beverage, any
9 controlled drug or substance, marijuana, or a combination thereof, without design to effect
10 serious bodily injury, operates or drives a motor vehicle of any kind in a negligent manner and
11 thereby causes the serious bodily injury of another person, including an unborn child, is guilty
12 of vehicular battery. Vehicular battery is a Class 4 felony. In addition to any other penalty
13 prescribed by law, the court may also order that the driver's license of any person convicted of
14 vehicular battery be revoked for a period of two years subsequent to release from incarceration.

15 Section 34. The code counsel shall transfer § 22-16-42 to chapter 22-18 and shall renumber
16 the section accordingly and adjust all appropriate cross references.