

# State of South Dakota

## EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

916L0087

SENATE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to HAAKON-OBSTRUCTION OF GOVERNMENT.

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

3 Section 1. That § 22-11-1 be amended to read as follows:

4 22-11-1. Any person who resists the execution or service of any legal process is guilty of a  
5 Class 2 misdemeanor.

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

7 22-11-2. Any person who intentionally injures or destroys, takes or attempts to take, or  
8 assists any other person in taking or attempting to take, from the custody of any law enforcement  
9 officer or other person, any personal property, which such officer or person has in charge under  
10 any process of law, is guilty of a Class 1 misdemeanor.

11 Section 3. That § 22-11-3 be amended to read as follows:

12 22-11-3. Any person who intentionally obstructs or attempts to obstruct a public officer or  
13 employee, not a law enforcement officer, jailer, ~~or firefighter, or emergency management~~  
14 personnel in the performance of any official duty, or who resists a public officer in performance  
15 of ~~his~~ that duty, is guilty of a Class 2 misdemeanor.

16 Section 4. That § 22-11-3.1 be repealed.



1 ~~22-11-3.1. Any person who, after being lawfully commanded to aid any law enforcement~~  
2 ~~officer in arresting any person or in retaking any person who has escaped from legal custody,~~  
3 ~~or in executing any legal process, intentionally refuses, without lawful cause, to aid such officer,~~  
4 ~~is guilty of a Class 2 misdemeanor.~~

5 Section 5. That § 22-11-4 be amended to read as follows:

6 22-11-4. Any person who intentionally prevents or attempts to prevent a law enforcement  
7 officer ~~or jailer~~, acting under color of his authority, from effecting an arrest of the actor or  
8 another, by:

9 (1) ~~Threatening~~ Using or threatening to use physical force or violence against the law  
10 enforcement officer ~~or jailer~~ or any other person; or

11 (2) Using any other means which creates a substantial risk of causing physical injury to  
12 the law enforcement officer, ~~jailer~~ or any other person;

13 is guilty of resisting arrest. Resisting arrest is a Class 1 misdemeanor.

14 Section 6. That § 22-11-5 be amended to read as follows:

15 22-11-5. It is no defense to a prosecution under § 22-11-4 that the law enforcement officer  
16 ~~or jailer~~ was attempting to make an arrest which in fact was unlawful, if ~~he~~ the law enforcement  
17 officer was acting under color of ~~his official~~ authority and, in attempting to make the arrest ~~he~~  
18 , the law enforcement officer was not resorting to unreasonable or excessive force giving rise  
19 to the right of self-defense. A law enforcement officer ~~or~~, jailer, firefighter, or emergency  
20 management personnel acts under color of ~~his official~~ authority ~~when if~~, in the regular course  
21 of assigned duties, he or she is called upon to make, and does make, a judgment in good faith  
22 based upon surrounding facts and circumstances ~~that an arrest should be made by him.~~

23 Section 7. That § 22-11-6 be amended to read as follows:

24 22-11-6. Except as provided in §§ 22-11-4 and 22-11-5, any person who, by using or

1 threatening to use violence, force, or physical interference or obstacle, intentionally obstructs,  
2 impairs, or hinders the enforcement of the criminal laws or the preservation of the peace by a  
3 law enforcement officer or jailer acting under color of ~~his official~~ authority, or intentionally  
4 obstructs, impairs, or hinders the prevention, control, or abatement of fire by a firefighter acting  
5 under color of ~~his official~~ authority, or intentionally obstructs emergency management personnel  
6 acting under color of authority, is guilty of obstructing a law enforcement officer ~~or, jailer or,~~  
7 firefighter, or emergency management personnel. Obstructing a law enforcement officer, jailer,  
8 ~~or firefighter, or emergency management personnel~~ is a Class 1 misdemeanor.

9 Section 8. That § 22-11-6.1 be repealed.

10 ~~—22-11-6.1. A person who intentionally obstructs or attempts to obstruct ambulance personnel~~  
11 ~~in the performance of their duty is guilty of a Class 2 misdemeanor.~~

12 Section 9. That § 22-11-7 be amended to read as follows:

13 22-11-7. It is no defense to a prosecution under § 22-11-6 that the law enforcement officer  
14 ~~or, jailer, firefighter, or emergency management personnel~~ was acting in an illegal manner, if  
15 ~~he~~ the law enforcement officer, jailer, firefighter, or emergency management personnel was  
16 acting under the color of ~~his official~~ authority as defined in § 22-11-5.

17 Section 10. That § 22-11-8 be amended to read as follows:

18 22-11-8. Any person who intentionally impersonates any public officer or employee, civil  
19 or military, or any firefighter or any person having special authority by law to perform any act  
20 affecting the rights or interests of another, or assumes, without authority, any uniform or badge  
21 by which such officer, employee, firefighter, or person is usually distinguished, and in such  
22 assumed character does any act ~~where~~ whereby another person is injured or defrauded, is guilty  
23 of a ~~Class 2~~ Class 1 misdemeanor.

24 Section 11. The code counsel shall transfer § 22-11-8 to chapter 22-40 and shall renumber

1 the section accordingly and adjust all appropriate cross references.

2 Section 12. That § 22-11-9 be amended to read as follows:

3 22-11-9. Any person who:

4 (1) Except as provided in § 22-14A-22, knowingly causes a false fire or other emergency  
5 alarm to be transmitted to, or within, any fire department, ambulance service, or other  
6 government agency which deals with emergencies involving danger to life or  
7 property;

8 (2) Makes a report or intentionally causes the transmission of a report to law  
9 enforcement authorities of a crime or other incident within their official concern,  
10 ~~when he knows~~ knowing that it did not occur; or

11 (3) Makes a report or intentionally causes the transmission of a report to law  
12 enforcement authorities which furnishes information relating to an offense or other  
13 incident within their official concern, ~~when he knows~~ knowing that such information  
14 is false;

15 is guilty of false reporting to authorities. False reporting to authorities is a Class 1 misdemeanor.

16 Section 13. That § 22-11-9.1 be amended to read as follows:

17 22-11-9.1. Any person who intentionally gives any false alarm of fire, by any means, ~~and~~  
18 ~~bodily injury or death is sustained by any person as a result thereof is guilty of a Class 5 felony,~~  
19 if, as a result, any other person dies or sustains serious bodily injury.

20 Section 14. That § 22-11-10 be amended to read as follows:

21 22-11-10. Any person who accepts, or offers or agrees to accept, any pecuniary benefit as  
22 consideration for:

23 (1) Refraining from seeking prosecution of an offender; or

24 (2) Refraining from reporting to law enforcement authorities the commission or

1           suspected commission of any crime or any information relating to a crime;  
2 is guilty of compounding. Compounding a felony is a Class 6 felony. Compounding a  
3 misdemeanor is a Class 1 misdemeanor.

4           Section 15. That § 22-11-11 be amended to read as follows:

5           22-11-11. It is an affirmative defense to prosecution ~~under~~ pursuant to § 22-11-10 that the  
6 benefit received by the defendant did not exceed an amount which the defendant reasonably  
7 believed to be due as a restitution or indemnification for harm caused by the crime.

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

9           22-11-12. Any person who, having knowledge, which is not privileged, of the commission  
10 of a felony, conceals the ~~same~~ felony, or does not immediately disclose ~~such~~ the felony, ~~with~~  
11 including the name of the perpetrator ~~thereof~~, if known, and all of the other relevant known facts  
12 ~~in relation thereto~~, to the proper authorities, ~~shall be~~ is guilty of misprision of a felony.  
13 Misprision of a felony is a Class 1 misdemeanor. There is no misprision of misdemeanors or  
14 petty offenses.

15           Section 17. That § 22-11-14 be repealed.

16           ~~22-11-14. As used in this chapter, the term, judicial officer, includes any referee, arbitrator,~~  
17 ~~judge, hearing officer, or any other person authorized by law to hear or determine a controversy.~~

18           Section 18. That § 22-11-15 be amended to read as follows:

19           22-11-15. Any person who, directly or indirectly, utters or addresses any threat or  
20 intimidation to any judicial or ministerial officer, juror, or other person authorized by law to  
21 hear or determine any controversy, or any court services officer, with intent to induce such  
22 person either to do any act not authorized by law, or to omit or delay the performance of any  
23 duty imposed upon such person by law, or for having performed any duty imposed upon such  
24 person by law, is guilty of a Class 5 felony.

1 Section 19. That § 22-11-15.1 be amended to read as follows:

2 22-11-15.1. Any person who, knowingly and intentionally, deposits for conveyance in the  
3 mail or for a delivery from any post office or by any messenger, any letter, paper, writing, print,  
4 or document containing any threat to take the life of or to inflict serious bodily harm upon a law  
5 enforcement officer of the state or a member of the officer's immediate family is guilty of a  
6 Class 5 felony. However, if any such threat is made which otherwise would constitute a  
7 violation of § 22-11-4 or 22-18-1.1, the provisions of such sections ~~are controlling~~ supersede  
8 the provisions of this section, and the penalties provided in § 22-11-4 or 22-18-1.1 apply.

9 Section 20. The code counsel shall transfer § 22-11-15.1 and § 22-11-15.4 within chapter  
10 22-11 to an appropriate location where the two sections will be sequential and shall renumber  
11 the sections accordingly and adjust all appropriate cross references.

12 Section 21. That § 22-11-15.2 be amended to read as follows:

13 22-11-15.2. Any person who, knowingly and intentionally, deposits for conveyance in the  
14 mail or for a delivery from any post office or by any messenger any letter, paper, writing, print,  
15 or document containing any threat to take the life of or to inflict bodily harm upon a  
16 constitutional officer or former constitutional officer of the state, or a member of ~~his~~ the  
17 constitutional officer's immediate family, or who, knowingly and intentionally, otherwise makes  
18 any threat to take the life of or to inflict bodily harm upon a constitutional officer or former  
19 constitutional officer or a member of ~~his~~ the constitutional officer's immediate family is guilty  
20 of a Class 5 felony.

21 Section 22. That § 22-11-15.3 be amended to read as follows:

22 22-11-15.3. Any person who, directly or indirectly, threatens or intimidates any person who  
23 has served as a juror, or any member of such person's immediate family, because of such  
24 person's jury service, is guilty of a Class 5 felony.

1 Section 23. That § 22-11-15.4 be amended to read as follows:

2 22-11-15.4. Any person who, knowingly and intentionally, communicates any threat not  
3 subject to § 22-11-15.1 to take the life of or to inflict serious bodily harm upon a law  
4 enforcement officer of the state or a member of the officer's immediate family, is guilty of a  
5 Class 1 misdemeanor. However, if any such threat is made which otherwise would constitute  
6 a violation of § 22-11-4 or 22-18-1.1, the provisions of such sections ~~are controlling~~ supersede  
7 the provisions of this section, and the penalties provided in § 22-11-4 or 22-18-1.1 apply.

8 Section 24. That § 22-11-16 be amended to read as follows:

9 22-11-16. Any person who attempts to influence a juror, or any person summoned or drawn  
10 as a juror, or chosen an arbitrator or appointed a referee, in respect to ~~his~~ any verdict or decision  
11 in any cause or matter pending, or about to be brought before ~~him~~ such person:

- 12 (1) By means of any communication, oral or written, had with ~~him~~ such person, except  
13 in the regular course of proceedings upon the trial of the cause;
- 14 (2) By means of any book, paper, or instrument exhibited otherwise than in the regular  
15 course of proceedings upon the trial of the cause; or
- 16 (3) By publishing any statement, argument, or observation relating to the cause;  
17 is guilty of a Class 6 felony.

18 Section 25. That § 22-11-17 be repealed.

19 ~~22-11-17. Any juror, or person drawn or summoned as a juror, or judicial officer, who~~  
20 ~~knowingly permits any communication to be made to him or receives any book, paper,~~  
21 ~~instrument, or information relative to any cause pending before him, except according to the~~  
22 ~~regular course of proceeding upon the trial of such cause, is guilty of a Class 1 misdemeanor.~~

23 Section 26. That § 22-11-18 be amended to read as follows:

24 22-11-18. Any juror, or person drawn or summoned as a juror, or judicial officer, who

1 makes any promise or agreement to give a verdict for or against any party is guilty of a Class  
2 6 felony.

3 Section 27. That § 22-11-19 be amended to read as follows:

4 22-11-19. ~~A~~ Any person who injures, or threatens to injure, any person or property, or, with  
5 intent to influence a witness, offers, confers, or agrees to confer any benefit on a witness or  
6 prospective witness in an official proceeding to induce the witness to:

7 (1) Testify falsely;

8 (2) Withhold any testimony, information, document, or thing;

9 (3) Elude legal process summoning the witness to testify or supply evidence; or

10 (4) Absent himself or herself from an official proceeding to which the witness has been  
11 legally summoned;

12 is guilty of tampering with a witness. Any person who injures, or threatens to injure, any person  
13 or property in retaliation for that person testifying in an official proceeding, or for cooperating  
14 with law enforcement, government officials, investigators, or prosecutors, is guilty of tampering  
15 with a witness. Tampering with a witness is a Class 4 felony.

16 Section 28. That § 22-11-19.1 be repealed.

17 ~~—22-11-19.1. A person who injures or threatens to injure any person or property in retaliation~~  
18 ~~for that person testifying in an official proceeding, or for cooperating with law enforcement,~~  
19 ~~government officials, investigators or prosecutors, is guilty of tampering with a witness.~~  
20 ~~Tampering with a witness is a Class 4 felony.~~

21 Section 29. That § 22-11-20 be amended to read as follows:

22 22-11-20. ~~A~~ Any person who, as a witness or prospective witness in an official proceeding  
23 who, knowingly solicits, accepts, or agrees to accept any benefit upon the representation or  
24 understanding that he such person will do any thing specified described in subdivisions § 22-11-

1 19(1) to (4), inclusive, is guilty of a Class 6 felony.

2 Section 30. That § 22-11-21 be amended to read as follows:

3 22-11-21. Any person who, in any trial, proceeding, inquiry, or investigation authorized by  
4 law, offers in evidence as genuine, any book, paper, document, record, or other instrument in  
5 writing, knowing ~~the same to have~~ that it has been forged or fraudulently altered, is guilty of a  
6 Class 5 felony.

7 Section 31. That § 22-11-22 be amended to read as follows:

8 22-11-22. Any person who prepares any false book, paper, record, instrument in writing, or  
9 other matter or thing with intent to produce it or allow it to be produced as genuine in any trial,  
10 proceeding, inquiry, or investigation authorized by law, is guilty of a Class 6 felony.

11 Section 32. The code counsel shall transfer §§ 22-11-16, 22-11-18, 22-11-20, 22-11-21, and  
12 22-11-22 to chapter 22-12A and shall renumber the sections accordingly and adjust all  
13 appropriate cross references.

14 Section 33. That § 22-11-23 be amended to read as follows:

15 22-11-23. Any person who knowingly makes a false entry in any public record, or falsely  
16 alters any public record is guilty of a Class 2 misdemeanor, ~~except that when done.~~ However,  
17 if the false entry or alteration is committed by a public officer or employee having custody of  
18 the record, it the offense is a Class 1 misdemeanor.

19 Section 34. That § 22-11-23.1 be amended to read as follows:

20 22-11-23.1. ~~A~~ Any person who knowingly offers a any false or forged instrument, knowing  
21 that the instrument is false or forged, for filing, registering, or recording in a public office,  
22 which instrument, if genuine, could be filed, registered, or recorded under any law of this state  
23 or of the United States, is guilty of a Class 6 felony.

24 Section 35. That § 22-11-23.2 be amended to read as follows:

1        22-11-23.2. No person may file a financing statement with the secretary of state knowing  
2 that the debtor did not authorize the filing of that financing statement. A violation of this section  
3 is a Class 1 misdemeanor.

4        Section 36. That § 22-11-24 be amended to read as follows:

5        22-11-24. Any person who, ~~knowing he lacks~~ without the authority to do so, knowingly and  
6 intentionally destroys, mutilates, conceals, removes, or impairs the availability of any public  
7 record is guilty of a Class 6 felony, ~~except that when done.~~ However, if the provisions of this  
8 section are violated by a public officer or employee having custody of the record, it the offense  
9 is a Class 5 felony.

10       Section 37. That § 22-11-25 be amended to read as follows:

11       22-11-25. Any person who, ~~knowing he lacks~~ lacking the authority to retain a public record  
12 in his or her possession, knowingly refuses to deliver it up upon proper request of any person  
13 lawfully entitled to receive such record, is guilty of a Class 2 misdemeanor, ~~except that when~~  
14 ~~done.~~ However, if the knowing refusal to deliver is committed by a public officer or employee  
15 having custody of the record, it the offense is a Class 1 misdemeanor.

16       Section 38. That § 22-11-26 be amended to read as follows:

17       22-11-26. Any public officer ~~not liable to impeachment~~ found guilty of violating §§ 22-11-  
18 23 to 22-11-25, inclusive, shall forfeit ~~his~~ the office unless the office is subject to impeachment.

19       Any public employee found guilty of violating any provision of §§ 22-11-23 to 22-11-25,  
20 inclusive, shall be discharged. Any public officer having authority to discharge a public  
21 employee, who refuses to comply with this section, is guilty of a Class 2 misdemeanor.

22       Section 39. That § 22-11-27 be amended to read as follows:

23       22-11-27. Any person who, without consent of the owner, intentionally alters, obliterates,  
24 or removes a serial number or other identifying mark on personal property, or knowingly

1 possesses any personal property ~~having~~ knowing that the property has a serial number or  
2 identifying mark which has been intentionally obliterated, altered, or removed, which number  
3 or marking may be used to determine ownership ~~thereof~~ of the property, is guilty of a Class 6  
4 felony.

5 Section 40. The code counsel shall transfer § 22-11-27 to chapter 22-30A and shall  
6 renumber the sections accordingly and adjust all appropriate cross references.

7 Section 41. That § 22-11-28 be amended to read as follows:

8 22-11-28. Any person who offers a counterfeit lien for filing, registering, or recording in a  
9 public office knowing or having reason to know that the lien is counterfeit is guilty of a Class  
10 1 misdemeanor. A second or subsequent conviction for a violation of this section is a Class 6  
11 felony. ~~The person's lack~~ Lack of belief in the jurisdiction or authority of the state or of the  
12 United States is no defense to a prosecution under this section.

13 Section 42. The code counsel shall renumber § 22-11-23.1 as § 22-11-28.1 and adjust all  
14 appropriate cross references.

15 Section 43. That § 22-11-29 be amended to read as follows:

16 22-11-29. For purposes of § 22-11-28, the term, offers, includes the mailing of the  
17 instrument to a public office with the knowledge or belief that it the instrument will be filed  
18 with, registered, or recorded in, or otherwise become a part of, the records of the public office.

19 For purposes of § 22-11-28, the term, counterfeit lien, means a lien that:

- 20 (1) Is not provided for by a specific state or federal statute;
- 21 (2) Does not depend upon the consent of the owner of the property affected for its  
22 existence; and
- 23 (3) Is not an equitable or constructive lien imposed by a court recognized under the U.S.  
24 Constitution, federal laws, or the constitution or laws of this state.

1 Section 44. That § 22-11-30 be amended to read as follows:

2 22-11-30. Any person who violates § 22-11-28 is liable in a civil action to any person for  
3 any injury, death, or loss to person or property incurred as a result of the commission of the  
4 offense and for reasonable attorney's fees, court costs, and other reasonable expenses incurred  
5 as a result of prosecuting a civil action commenced under this section. A civil action under this  
6 section is not the exclusive remedy of a person who incurs injury, death, or loss to person or  
7 property as a result of a violation of § 22-11-28.

8 Section 45. That § 22-11-31 be amended to read as follows:

9 22-11-31. Any person who harasses ~~an individual~~ any other person by sending or delivering,  
10 or causing to be sent or delivered, any letter, paper, document, notice of intent to bring suit, or  
11 other notice or demand that simulates a any form of court or legal process and that threatens the  
12 ~~individual~~ other person, directly or indirectly, with incarceration, monetary fines, or penalties,  
13 or with the imposition of a counterfeit lien on the real or personal property of the ~~individual~~  
14 other person is guilty of a Class 1 misdemeanor. A second or subsequent conviction for a  
15 violation of this section is a Class 6 felony. ~~The person's lack~~ Lack of belief in the jurisdiction  
16 or authority of the state or of the United States is no defense to a prosecution under this section.

17 Section 46. That § 22-11-32 be amended to read as follows:

18 22-11-32. For purposes of § 22-11-31, the term, harasses, means a knowing and willful  
19 course of conduct directed at ~~the individual~~ any person which seriously alarms or annoys the  
20 ~~individual~~ person and which serves no legitimate legal purpose.

21 For purposes of § 22-11-31, the term, course of conduct, means a pattern of conduct  
22 composed of a series of acts over a period of time, however short, evidencing a continuity of  
23 purpose.

24 Section 47. That § 22-11-33 be amended to read as follows:

1       22-11-33. Any person who violates § 22-11-31 is liable in a civil action to any person for  
2 any injury, death, or loss to person or property incurred as a result of the commission of the  
3 offense and for reasonable attorney's fees, court costs, and other reasonable expenses incurred  
4 as a result of prosecuting a civil action commenced under this section. A civil action under this  
5 section is not the exclusive remedy of a person who incurs injury, death, or loss to person or  
6 property as a result of a violation of § 22-11-31.

7       Section 48. That § 22-11-34 be amended to read as follows:

8       22-11-34. Any person who, without authority under the U.S. Constitution, federal law, or  
9 the constitution or laws of this state, acts as a supreme court justice, a circuit court judge, a  
10 magistrate judge, a lay magistrate, a clerk of court or deputy, a juror, or other official holding  
11 authority to determine a controversy or adjudicate the rights or interests of ~~others~~ any other  
12 person, or signs a document in such capacity, is guilty of a Class 1 misdemeanor. It is no  
13 defense to a prosecution under this section that the judicial office that the person ~~pretended~~  
14 affected to hold ~~does~~ did not exist.

15       Section 49. The code counsel shall transfer § 22-11-34 to chapter 22-40 and shall renumber  
16 the section accordingly and adjust all appropriate cross references.

17       Section 50. That § 22-11-35 be amended to read as follows:

18       22-11-35. Any person who violates § 22-11-34 is liable in a civil action to any person for  
19 any injury, death, or loss to person or property incurred as a result of the commission of the  
20 offense and for reasonable attorney's fees, court costs, and other reasonable expenses incurred  
21 as a result of prosecuting a civil action commenced under this section. A civil action under this  
22 section is not the exclusive remedy of a person who incurs injury, death, or loss to persons or  
23 property as a result of a violation of § 22-11-34.

24       Section 51. The code counsel shall transfer §§ 22-11-30, 22-11-33, and 22-11-35 to an

- 1 appropriate chapter in title 20 and shall renumber the section accordingly and adjust all
- 2 appropriate cross references.