AN ACT

ENTITLED, An Act to revise the South Dakota criminal code.

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

Section 1. That § 22-18-1 be amended to read as follows:

22-18-1. Any person who:

(1) Attempts to cause bodily injury to another and has the actual ability to cause the injury;

(2) Recklessly causes bodily injury to another;

(3) Negligently causes bodily injury to another with a dangerous weapon;

(4) Attempts by physical menace or credible threat to put another in fear of imminent bodily harm, with or without the actual ability to harm the other person; or

(5) Intentionally causes bodily injury to another which does not result in serious bodily injury;

is guilty of simple assault. Simple assault is a Class 1 misdemeanor. However, if the defendant has been convicted of, or entered a plea of guilty to, two or more violations of § 22-18-1, 22-18-1.1, 22-18-26, or 22-18-29 within five years of committing the current offense, the defendant is guilty of a Class 6 felony for any third or subsequent offense.

Section 2. That § 22-18-1.1 be amended to read as follows:

22-18-1.1. Any person who:

(1) Attempts to cause serious bodily injury to another, or causes such injury, under circumstances manifesting extreme indifference to the value of human life;

(2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous weapon;

(3)

(4) Assaults another with intent to commit bodily injury which results in serious bodily

injury;

(5) Attempts by physical menace with a deadly weapon to put another in fear of imminent serious bodily harm; or

(6)

(7) Intentionally or recklessly causes serious bodily injury to an infant, less than three years old, by causing any intracranial or intraocular bleeding, or swelling of or damage to the brain, whether caused by blows, shaking, or causing the infant's head to impact with an object or surface;

is guilty of aggravated assault. Aggravated assault is a Class 3 felony. However, a violation of subdivision (7) is a Class 2 felony. A second or subsequent violation of subdivision (7) is a Class 1 felony.

Section 3. That chapter 22-18 be amended by adding thereto a NEW SECTION to read as follows:

Simple assault, as provided in § 22-18-1, if committed against a law enforcement officer, Department of Corrections employee or person under contract assigned to the Department of Corrections, or other public officer, which assault occurred while such officer or employee was engaged in the performance of the officer's or employee's duties, is a Class 6 felony.

Aggravated assault, as provided in § 22-18-1.1, if committed against a law enforcement officer, Department of Corrections employee or person under contract assigned to the Department of Corrections, or other public officer, which assault occurred while such officer or employee was engaged in the performance of the officer's or employee's duties, is a Class 2 felony.

Section 4. That § 22-18-1.2 be amended to read as follows:

22-18-1.2. Any person who assaults a pregnant woman and inflicts bodily injury on an unborn child who is subsequently born alive is guilty of simple assault. For the purposes of this section, the

term, bodily injury, does not include the inducement of the unborn child's birth if done for bona fide medical purposes.

Section 5. That § 22-18-1.3 be amended to read as follows:

22-18-1.3. Any person who assaults a pregnant woman and inflicts serious bodily injury on an unborn child who is subsequently born alive is guilty of aggravated assault.

Section 6. That § 22-18-2 be amended to read as follows:

22-18-2. To use or attempt to use or offer to use force or violence upon or toward the person of another is not unlawful if necessarily committed by a public officer in the performance of any legal duty or by any other person assisting the public officer or acting by the public officer's direction.

Section 7. That § 22-18-3 be amended to read as follows:

22-18-3. To use or attempt to use or offer to use force or violence upon or toward the person of another is not unlawful if necessarily committed by any person in arresting someone who has committed any felony or in delivering that person to a public officer competent to receive him or her in custody.

Section 8. That § 22-18-4 be amended to read as follows:

22-18-4. To use or attempt to use or offer to use force or violence upon or toward the person of another is not unlawful if committed either by any person about to be injured, or by any other person in the aid or defense of a person about to be injured, in preventing or attempting to prevent an offense against his or her own person, or in preventing any trespass or other unlawful interference with real or personal property in his or her lawful possession. However, the force or violence used cannot be more than that sufficient to prevent such offense.

Section 9. That § 22-18-5 be amended to read as follows:

22-18-5. To use or attempt to use or offer to use force upon or toward the person of another is not unlawful if committed by a parent or the authorized agent of any parent, or by any guardian,

teacher, or other school official, in the exercise of a lawful authority to restrain or correct the child, pupil, or ward and if restraint or correction has been rendered necessary by the misconduct of the child, pupil, or ward, or by the child's refusal to obey the lawful command of such parent, or authorized agent, guardian, teacher, or other school official, and the force used is reasonable in manner and moderate in degree.

Section 10. That § 22-18-6 be amended to read as follows:

22-18-6. A carrier of passengers or the authorized agent or servant of such carrier or any person assisting such person at his or her request, may use or attempt to use or offer to use force to expel any passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers if the vehicle carrying the passenger has first been stopped and the force used is not more than is sufficient to expel the offending passenger with reasonable regard for the passenger's personal safety.

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

22-18-26. Any convicted person or any incarcerated person under the jurisdiction of the Department of Corrections who intentionally throws, smears, spits, or otherwise causes blood, vomit, saliva, mucus, semen, excrement, urine, or human waste to come in contact with a Department of Corrections employee, or visitor, or other person authorized by the Department of Corrections to be on the premises, is guilty of a Class 6 felony.

Section 12. That § 22-18-26.1 be amended to read as follows:

22-18-26.1. Any person who, with the intent to assault, throws, smears, spits, or causes human blood, vomit, saliva, mucus, semen, excrement, urine, or human waste to come in contact with any other person, is guilty of a Class 1 misdemeanor.

Section 13. That § 22-18-27 be repealed.

Section 14. That § 22-18-28 be repealed.

Section 15. That § 22-18-29 be amended to read as follows:

22-18-29. Any adult confined in a county or municipal jail who intentionally throws, smears, spits, or otherwise causes blood, vomit, saliva, mucus, semen, excrement, urine, or human waste to come in contact with a county or municipal jail employee, or visitor, or other person authorized by the county or municipal jail to be on the premises, is guilty of a Class 6 felony.

Section 16. That § 22-18-29.1 be amended to read as follows:

22-18-29.1. Any juvenile confined in a juvenile detention facility or a juvenile corrections facility established and maintained in accordance with § 26-11A-1 who intentionally throws, smears, spits, or otherwise causes blood, vomit, saliva, mucus, semen, excrement, urine, or human waste to come in contact with a juvenile detention or juvenile corrections facility employee, or visitor, or other person authorized by the juvenile detention or juvenile corrections facility to be on the premises, is guilty of a Class 6 felony.

Section 17. That § 22-18-31 be amended to read as follows:

22-18-31. Any person who, knowing himself or herself to be infected with HIV, intentionally exposes another person to infection by:

(1) Engaging in sexual intercourse or other intimate physical contact with another person;

(2) Transferring, donating, or providing blood, tissue, semen, organs, or other potentially infectious body fluids or parts for transfusion, transplantation, insemination, or other administration to another in any manner that presents a significant risk of HIV transmission;

(3) Dispensing, delivering, exchanging, selling, or in any other way transferring to another person any nonsterile intravenous or intramuscular drug paraphernalia that has been contaminated by himself or herself; or

(4) Throwing, smearing, or otherwise causing blood or semen, to come in contact with

another person for the purpose of exposing that person to HIV infection; is guilty of criminal exposure to HIV.

Criminal exposure to HIV is a Class 3 felony.

Section 18. That § 22-18-33 be amended to read as follows:

22-18-33. It is an affirmative defense to prosecution pursuant to § 22-18-31, if it is proven by a preponderance of the evidence, that the person exposed to HIV knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and gave advance consent to the action with that knowledge.

Section 19. That § 22-22-15 be amended to read as follows:

22-22-15. Any person who, while married to another presently living person, marries any other person, is guilty of bigamy. The provisions of this section do not apply to:

(1) Any person, if that person's husband or wife has been absent for five successive years and is not known to be living by such person;

(2) Any person, if that person's husband or wife has absented himself or herself from such spouse by being outside the United States, continuously for at least five years;

(3) Any person, if that person's marriage has been pronounced void, annulled, or dissolved by a competent court; or

(4) Any person, presently married, who believes, in good faith, and has reason to believe, that the marriage has been pronounced void, annulled, or dissolved by a competent court.

Bigamy is a Class 6 felony.

Section 20. Any persons, eighteen years of age or older, who knowingly engage in a mutually consensual act of sexual penetration with each other:

(1) Who are not legally married; and

(2) Who are within degrees of consanguinity within which marriages are, by the laws of this

state, declared void pursuant to § 25-1-6;

are guilty of incest. Incest is a Class 5 felony.

Section 21. Any person who knowingly engages in an act of sexual penetration with a person who:

(1) Is at least sixteen but less than eighteen years of age; and

(2) Is either:

(a) The child of the perpetrator or the child of a spouse or former spouse of the perpetrator; or

(b) Related to the perpetrator within degrees of consanguinity within which marriages are, by the laws of this state, declared void pursuant to § 25-1-6;

is guilty of aggravated incest. Aggravated incest is a Class 3 felony.

Section 22. That § 22-22-19.1 be repealed.

Section 23. The code counsel shall transfer § 22-22-15 and sections 20 and 21 of this Act to a newly created chapter in Title 22 entitled "Offenses Against the Family" and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 24. That § 22-30-1 be amended to read as follows:

22-30-1. Robbery is the intentional taking of personal property, regardless of value, in the possession of another from the other's person or immediate presence, and against the other's will, accomplished by means of force or fear of force, unless the property is taken pursuant to law or process of law.

Section 25. That § 22-30-2 be amended to read as follows:

22-30-2. To constitute robbery, force or fear of force must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If employed merely as a means of escape, it does not constitute robbery. The degree of force employed to constitute robbery

is immaterial.

Section 26. That § 22-30-3 be amended to read as follows:

22-30-3. The fear of force which constitutes an element of the offense of robbery may be either:

(1) The fear of an injury, immediate or future, to the person or property of the person robbed, or of any relative or family member of the person robbed; or

(2) The fear of an immediate injury to the person or property of anyone in the company of the person robbed at the time of the robbery.

Section 27. That § 22-30-4 be amended to read as follows:

22-30-4. The taking of property from the person of another or in the immediate presence of the person is not robbery if it clearly appears that the taking was fully completed without the person's knowledge.

Section 28. That § 22-30-6 be amended to read as follows:

22-30-6. Robbery, if accomplished by the use of a dangerous weapon, is robbery in the first degree. Robbery, if accomplished in any other manner, is robbery in the second degree.

Section 29. That § 22-30-11 be repealed.

Section 30. That § 22-29-1 be amended to read as follows:

22-29-1. Any person who, having taken an oath to testify, declare, depose, or certify truly, before any competent tribunal, officer, or person, in any state or federal proceeding or action in which such an oath may by law be administered, states, intentionally and contrary to the oath, any material matter which the person knows to be false, is guilty of perjury.

Section 31. That § 22-29-2 be amended to read as follows:

22-29-2. Any unqualified statement of that which a person does not know or reasonably believe to be true is equivalent to a statement of that which a person knows to be false.

Section 32. That § 22-29-3 be amended to read as follows:

22-29-3. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that the accused actually was required to give such testimony or made such deposition or certificate.

Section 33. That § 22-29-4 be amended to read as follows:

22-29-4. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement, or that the false statement did not in fact affect the proceeding in or for which the false statement was made. It is sufficient that the false statement was material and might have been used to affect such proceeding.

Section 34. That § 22-29-5 be amended to read as follows:

22-29-5. Perjury:

(1) If committed in any trial for felony, is a Class 3 felony;

(2) If committed in any other trial, court proceeding, deposition, or administrative proceeding conducted under oath, is a Class 5 felony.

Section 35. That § 22-29-6 be amended to read as follows:

22-29-6. Any person who intentionally procures another person to commit any perjury is guilty of subornation of perjury. Subornation of perjury is punishable in the same manner as perjury, and as if the suborner were personally guilty of the perjury procured.

Section 36. That § 22-29-7 be repealed.

Section 37. That § 22-29-8 be amended to read as follows:

22-29-8. The term, oath, as used in this chapter, includes any affirmation, and every other mode of attesting the truth of that which is stated, which is authorized by law. It is no defense that the oath was administered or taken in an irregular manner.

Section 38. That § 22-29-9 be amended to read as follows:.

22-29-9. So much of an oath of office as relates to future performance of official duty is not

sufficient to constitute perjury or subornation.

Section 39. That § 22-29-9.1 be amended to read as follows:

22-29-9.1. Any person who submits any petition, application, information, or other document for the purpose of obtaining benefits or any other privilege from the State of South Dakota shall verify, under oath, that such petition, application, or information is true and correct. However, it is sufficient if the claimant, in lieu of verification under oath, signs a statement printed or written thereon in the form following: "I declare and affirm under the penalties of perjury that this claim (petition, application, information) has been examined by me, and to the best of my knowledge and belief, is in all things true and correct." Any person who signs such statement as provided for in this section, knowing the statement to be false or untrue, in whole or in part, is guilty of perjury.

Section 40. That § 22-29-10 be amended to read as follows:

22-29-10. The making of any deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person with intent that it be uttered or published as true.

Section 41. That § 22-29-11 be amended to read as follows:

22-29-11. No person may knowingly make or execute a false statement, instrument, document, or representation, or to use any other fraudulent device, and thereby obtain money, property, or other assistance to which that person is not entitled, from any program provided for by Title 26, 27A, 27B, or 28, of the South Dakota Codified Laws, or otherwise administered by the South Dakota Department of Social Services.

Section 42. That § 22-29-12 be amended to read as follows:

22-29-12. No person may knowingly fail to report any change in circumstances which would affect that person's eligibility for money, property, or other assistance, and thereby obtain money, property, or other assistance to which that person is not entitled, from any program provided for by

Title 26, 27A, 27B, or 28, of the South Dakota Codified Laws, or otherwise administered by the South Dakota Department of Social Services.

Section 43. That § 22-29-13 be amended to read as follows:

22-29-13. For the purposes of §§ 22-29-11 to 22-29-17, inclusive, any person who receives money, property, or services, on behalf of any other person, from any program covered by such sections, shall be considered to have received such money for himself or herself.

Section 44. That § 22-29-14 be amended to read as follows:

22-29-14. Any person who attempts to obtain any money, property, or other assistance, in violation of § 22-29-11 or 22-29-12, but does not thereby obtain any such money, property, or services, is guilty of a Class 1 misdemeanor.

Section 45. That § 22-29-15 be amended to read as follows:

22-29-15. Any person who violates § 22-29-11 or 22-29-12 and thereby obtains money, property, or other assistance to which such person is not entitled with a value of two hundred dollars or less is guilty of a Class 1 misdemeanor.

Section 46. That § 22-29-16 be amended to read as follows:

22-29-16. Any person who violates § 22-29-11 or 22-29-12 and thereby obtains money, property, or other assistance to which such person is not entitled with a value of more than two hundred dollars is guilty of a Class 6 felony.

Section 47. That § 22-29-17 be amended to read as follows:

22-29-17. Amounts involved in violations of § 22-29-11 or 22-29-12, or both, committed pursuant to one scheme or course of conduct, may be aggregated in determining the degree of the offense.

Section 48. That § 22-29-18 be amended to read as follows:

22-29-18. It is sufficient for a conviction of any offense under this chapter that a finding of guilt

is based upon admissible evidence. No minimum number of witnesses is required. In reviewing the sufficiency of the evidence of a conviction under this chapter, the court shall only consider whether there is evidence in the record which, if believed by the trier of fact, is sufficient to sustain a finding of guilty beyond a reasonable doubt.

Section 49. That § 22-30A-1 be amended to read as follows:

22-30A-1. Any person who takes, or exercises unauthorized control over, property of another, with intent to deprive that person of the property, is guilty of theft.

Section 50. That § 22-30A-2 be amended to read as follows:

22-30A-2. Any person who transfers property of another, or any interest in the property of another, with intent to benefit the transferor or another who is not entitled thereto, is guilty of theft.

Section 51. That § 22-30A-2.1 be repealed.

Section 52. That § 22-30A-3 be amended to read as follows:

22-30A-3. Any person who obtains property of another by deception is guilty of theft. A person deceives if, with intent to defraud, that person:

(1) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind. However, as to a person's intention to perform a promise, deception may not be inferred from the fact alone that that person did not subsequently perform the promise;

(2) Prevents another from acquiring information which would affect the other person's judgment of a transaction;

(3) Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom the deceiver stands in a fiduciary or confidential relationship; or

(4) Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment

of property which the deceiver transfers or encumbers in consideration for property the deceiver obtains, whether such impediment is or is not valid, or is or is not a matter of official record.

The term, deceive, does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive reasonable persons.

Section 53. That § 22-30A-4 be amended to read as follows:

22-30A-4. A person is guilty of theft if the person obtains property of another by threatening to:

(1) Inflict bodily injury on anyone or commit any criminal offense;

(2) Accuse anyone of a criminal offense;

(3) Expose any secret tending to subject any person to hatred, contempt, or ridicule, or to impair any person's credit or business repute;

(4) Take or withhold action as an official, or cause an official to take or withhold action;

(5) Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act;

(6) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) Inflict any other harm which would not benefit the person making the threat.

Section 54. That § 22-30A-6 be amended to read as follows:

22-30A-6. Any person who comes into control of property of another that the person knows to have been lost, estrayed, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, is guilty of theft if, with intent to deprive the owner thereof, the person fails to take reasonable measures to restore the property to a person entitled to have the property.

Section 55. That § 22-30A-7 be amended to read as follows:

22-30A-7. Any person who receives, retains, or disposes of property of another knowing that the property has been stolen, or believing that the property has probably been stolen, unless the property is received, retained, or disposed of with the intent to restore the property to the owner, is guilty of theft.

Section 56. That § 22-30A-8 be amended to read as follows:

22-30A-8. Any person is guilty of theft if that person intentionally obtains property or service which that person knows is available only for compensation, by deception, threat, or other means to avoid payment for the service or property.

Section 57. That § 22-30A-8.1 be amended to read as follows:

22-30A-8.1. Any person who, by use of a credit card issued to another person, without the consent of the person to whom issued, or by use of a credit card which has been revoked or canceled or has expired, or by use of a falsified, mutilated, altered, or counterfeit credit card obtains property or services on credit, is guilty of theft.

Section 58. That § 22-30A-9 be amended to read as follows:

22-30A-9. Any person who, having control over the disposition of services of others, to which that person is not entitled, diverts such services to his or her own benefit or to the benefit of another not entitled thereto, is guilty of theft.

Section 59. That § 22-30A-10 be amended to read as follows:

22-30A-10. Any person, who has been entrusted with the property of another and who, with intent to defraud, appropriates such property to a use or purpose not in the due and lawful execution of his or her trust, is guilty of theft. A distinct act of taking is not necessary to constitute theft pursuant to this section.

Section 60. That § 22-30A-10.1 be amended to read as follows:

22-30A-10.1. If any person, who has been accused of theft, restores or returns the property allegedly stolen before an indictment or information is laid before a magistrate, such fact may be considered in mitigation of punishment. The restoration or return of the property is not a defense nor may it be considered by the finder of fact.

Section 61. That § 22-30A-11 be amended to read as follows:

22-30A-11. Any person convicted of theft under § 22-30A-10 for unlawfully obtaining property of this state, of any of its political subdivisions, or of any agency or fund in which the state or its people are interested shall, in addition to the punishment prescribed by § 22-30A-17 and chapter 22-6, be disqualified from holding any public office, elective or appointive, under the laws of this state, so long as that person remains a defaulter to this state or any of its political subdivisions, agencies, or funds.

Section 62. That § 22-30A-12 be amended to read as follows:

22-30A-12. Any person who, without the intent to deprive the owner thereof, operates another's motor vehicle or vessel without the consent of the owner, is guilty of a Class 1 misdemeanor.

Section 63. That § 22-30A-13 be amended to read as follows:

22-30A-13. Any person who intentionally converts to his or her own use any leased or rented personal property, after receiving proper notice demanding the return of the property following expiration of the lease or rental agreement, is guilty of theft. For the purposes of this section, the term, proper notice, means a written demand for the return of the property addressed and mailed by certified or registered mail to the lessee or renter or personal service of such written demand in the manner provided for service of a summons.

Section 64. That § 22-30A-14 be amended to read as follows:

22-30A-14. The following factors, taken as a whole, constitute an affirmative defense to a prosecution commenced under § 22-30A-13:

(1) That the lessee accurately stated his or her name and address at the time of rental;

(2) That the lessee's failure to return the item at the expiration date of the rental contract was lawful;

(3) That the lessee failed to receive the lessor's notice personally; and

(4) That the lessee returned the personal property to the owner or lessor within forty-eight hours of receiving notice of the commencement of prosecution, together with any charges for the overdue period and the value of damages to the personal property, if any.

Section 65. That § 22-30A-15 be amended to read as follows:

22-30A-15. Conduct constituting theft pursuant to this chapter constitutes a single offense including any separate offenses committed or charged before the effective date of this chapter and known as larceny, embezzlement, extortion, fraudulent conversion, false pretense, and receiving stolen property. An accusation of theft may be supported by evidence that the theft was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the indictment or information, subject only to the power of a court to ensure a fair trial by granting a continuance or other appropriate relief if the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

Section 66. That § 22-30A-16 be amended to read as follows:

22-30A-16. It is an affirmative defense to a prosecution for theft that the defendant:

(1) Was unaware that the property taken was that of another; or

(2) Acted under an honest and reasonable claim of right to the property involved or that the defendant had a right to acquire or dispose of the property as he or she did.

Section 67. That § 22-30A-17 be amended to read as follows:

22-30A-17. Theft is grand theft, if the property stolen:

(1) Exceeds one thousand dollars in value;

(2) Is a firearm;

(3) Is taken from the person of another; or

(4) The property stolen is cattle, horses, mules, buffalo, or captive nondomestic elk.

Grand theft is a Class 4 felony.

Section 68. That chapter 22-30A be amended by adding thereto a NEW SECTION to read as follows:

Theft is aggravated grand theft, if the value of the property stolen exceeds one hundred thousand dollars. Aggravated grand theft is a Class 3 felony.

Section 69. That chapter 22-30A be amended by adding thereto a NEW SECTION to read as follows:

Theft is petty theft in the first degree, if the value of the property stolen exceeds four hundred dollars but does not exceed one thousand dollars. Petty theft in the first degree is a Class 1 misdemeanor.

Section 70. That chapter 22-30A be amended by adding thereto a NEW SECTION to read as follows:

Theft is petty theft in the second degree, if the value of the property stolen is four hundred dollars or less. Petty theft in the second degree is a Class 2 misdemeanor.

Section 71. That § 22-30A-18 be amended to read as follows:

22-30A-18. Amounts involved in thefts, whether from the same person or several persons, committed pursuant to one scheme or course of conduct, may be aggregated in determining the degree of the offense.

Section 72. That § 22-30A-19.1 be amended to read as follows:

22-30A-19.1. Any adult, or any emancipated minor as defined in § 25-5-24, or any parent or guardian of any unemancipated minor, who takes possession of any goods, wares, or merchandise

displayed or offered for sale by a store or other mercantile establishment without the consent of the owner or seller, and with the intention of converting the goods to the person's own use without having paid the purchase price, is liable to the owner or seller for the retail value of the merchandise, regardless of whether or not the merchandise has been recovered in undamaged condition by the owner or seller. In addition, the owner or seller is entitled to a penalty of four times the retail value of the merchandise, or one hundred dollars, whichever is greater.

Section 73. That § 22-30A-19.2 be amended to read as follows:

22-30A-19.2. Any owner or seller of merchandise, who has reasonable grounds to believe that a person has committed retail theft pursuant to § 22-30A-19.1, may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time:

(1) To request identification;

(2) To verify such identification;

(3) To make reasonable inquiry as to whether such person has in his or her possession unpurchased merchandise and, to make reasonable investigation of the ownership of such merchandise;

(4) To inform a law enforcement officer of the detention of the person and surrender that person to the custody of a law enforcement officer; and

(5) In the case of a minor, to inform a law enforcement officer, a parent, guardian, or other private person interested in the welfare of the detained minor and to surrender custody of the minor to such person.

An owner or seller of merchandise may make a detention as permitted in this section off the premises of a retail mercantile establishment only if such detention is pursuant to the immediate pursuit of such person.

Section 74. That § 22-30A-19.3 be amended to read as follows:

22-30A-19.3. Any owner or seller of merchandise who is the victim of retail theft pursuant to § 22-30A-19.1 may make a written demand for the amount for which any person is liable pursuant to § 22-30A-19.1. Except for a sole proprietorship, a member of management, other than the initial detaining person, shall evaluate the validity of the accusation that an act of retail theft was committed and shall approve the accusation before a written demand for payment is issued. The demand for payment shall be mailed by certified mail to the person from whom payment is demanded or served personally on the person from whom payment is demanded. Personal service shall be accomplished in the same manner as the service of a summons.

Section 75. That § 22-30A-19.4 be amended to read as follows:

22-30A-19.4. If the person to whom a written demand is made pursuant to § 22-30A-19.3 complies by making full payment of the amount required by the written demand within thirty days after its receipt, that person incurs no further civil liability to the owner or seller of the merchandise. However, if the person to whom a written demand is made fails to make full payment pursuant to that written demand, then the penalty allowed in § 22-30A-19.1 may be doubled.

Section 76. That § 22-30A-20 be amended to read as follows:

22-30A-20. Any person who receives, retains, or disposes of United States Department of Agriculture commodities which have been transferred to the State of South Dakota, who is not entitled to possess those commodities, either as an eligible recipient of commodities pursuant to 7 CFR 250.3 as effective on January 1, 1981, or as a purchaser of commodities which have been released for sale due to condition or damage and have been plainly marked as available for sale to the public, is guilty of theft.

Section 77. That § 22-30A-21 be amended to read as follows:

22-30A-21. No state, county, or municipal law enforcement officer may retain or dispose of

property that has been seized or confiscated unless the law enforcement officer retains or disposes of such property pursuant to law or a court order. A violation of this section constitutes theft pursuant to § 22-30A-1.

Section 78. That § 22-30A-22 be repealed.

Section 79. That § 22-30A-23 be repealed.

Section 80. That § 22-30A-3.1 be amended to read as follows:

22-30A-3.1. If any person, without the authorization or permission of another person and with the intent to deceive or defraud:

(1) Obtains, possesses, transfers, uses, attempts to obtain, or records identifying information not lawfully issued for that person's use; or

(2) Accesses or attempts to access the financial resources of that person through the use of identifying information;

such person commits the crime of identity theft. Identity theft committed pursuant to this section is a Class 6 felony.

Section 81. That § 22-30A-3.2 be amended to read as follows:

22-30A-3.2. For the purposes of §§ 22-30A-3.1 to 22-30A-3.3, inclusive, identifying information includes:

(1) Birth certificate or passport information;

(2) Driver's license numbers;

(3) Social security or other taxpayer identification numbers;

(4) Checking account numbers;

(5) Savings account numbers;

(6) Credit card numbers;

(7) Debit card numbers;

(8) Personal identification numbers, passwords, or challenge questions;

(9) User names or identifications;

(10) Biometric data; or

(11) Any other numbers, documents, or information which can be used to access another person's financial resources.

Section 82. That § 22-30A-3.3 be amended to read as follows:

22-30A-3.3. In any criminal proceeding brought pursuant to § 22-30A-3.1, the crime may be considered to have been committed in any county in which any part of the identity theft took place, regardless of whether the defendant was ever actually in such county.

Section 83. The code counsel shall transfer §§ 22-30A-3.1 to 22-30A-3.3, inclusive, to chapter 22-40 and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 84. That § 22-30A-8.2 be amended to read as follows:

22-30A-8.2. Terms used in §§ 22-30A-8.2 to 22-30A-8.5, inclusive, mean:

(1) "Reencoder," any electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card;

(2) "Scanning device," any scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

Section 85. The code counsel shall transfer §§ 22-30A-8.2 to 22-30A-8.5, inclusive, to chapter 22-40 and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 86. That chapter 22-33 be amended by adding thereto a NEW SECTION to read as follows:

Any person who starts a fire or causes an explosion with the intent to destroy any occupied

structure of another is guilty of first degree arson. First degree arson is a Class 2 felony.

Section 87. That chapter 22-33 be amended by adding thereto a NEW SECTION to read as follows:

Any person who starts a fire or causes an explosion with the intent to:

(1) Destroy any unoccupied structure of another; or

(2) Destroy or damage any property, whether his or her own or another's, to collect insurance for such loss;

is guilty of second degree arson. Second degree arson is a Class 4 felony.

Section 88. That chapter 22-33 be amended by adding thereto a NEW SECTION to read as follows:

Any person who intentionally starts a fire or causes an explosion, whether on his or her own property or another's, and thereby recklessly:

(1) Places another person in danger of death or serious bodily injury; or

(2) Places a building or occupied structure of another in danger of damage or destruction;

is guilty of reckless burning or exploding. Reckless burning or exploding is a Class 4 felony.

Section 89. That chapter 22-33 be amended by adding thereto a NEW SECTION to read as follows:

Any person who knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, if such person can do so without substantial risk to himself or herself, or to give a prompt fire alarm, if:

(1) Such person knows that he or she is under an official, contractual, or other legal duty to prevent or combat the fire; or

(2) The fire was started, albeit lawfully, by or with the assent of himself or herself, or on property in his or her custody or control;

is guilty of failure to control or report a dangerous fire. Failure to control or report a dangerous fire is a Class 1 misdemeanor.

Section 90. That chapter 22-33 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of chapter 22-33, the term, occupied structure, means any structure, vehicle, or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present. Property is that of another, for the purposes of this section, if anyone other than the actor has a possessory or proprietary interest in the property. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another.

Section 91. That § 22-33-1 be repealed.

Section 92. That § 22-33-2 be repealed.

Section 93. That § 22-33-3 be repealed.

Section 94. That § 22-33-4 be repealed.

Section 95. That § 22-33-9 be repealed.

Section 96. That § 22-33-10 be amended to read as follows:

22-33-10. Any person who intentionally and without authorization of the person in charge of a place of confinement, sets fire to, burns, or causes to be burned any material, object, or substance within a structure knowing there is lawfully confined therein any person, is guilty of a Class 6 felony.

Section 97. That § 22-34-1 be amended to read as follows:

22-34-1. Any person who, with specific intent to do so, injures, damages, or destroys:

(1) Public property without the lawful consent of the appropriate governing body having jurisdiction thereof; or

(2) Private property in which any other person has an interest, without the consent of the

other person;

is guilty of intentional damage to property. If the damage to property is four hundred dollars or less, the person is guilty of intentional damage to property in the third degree, which is a Class 2 misdemeanor. If the damage to property is one thousand dollars or less but more than four hundred dollars, the person is guilty of intentional damage to property in the second degree, which is a Class 1 misdemeanor. If the damage to property is one hundred thousand dollars or less but more than one thousand dollars, the person is guilty of intentional damage to property in the first degree, which is a Class 4 felony. If the damage to property is more than one hundred thousand dollars, the person is guilty of aggravated intentional damage to property, which is a Class 3 felony.

The provisions of this section do not apply if the intentional damage to property was accomplished by arson or reckless burning or exploding pursuant to chapter 22-33.

Section 98. That § 22-34-1.1 be amended to read as follows:

22-34-1.1. The injuries, damages, or destruction resulting from violations of § 22-34-1 committed pursuant to one scheme or course of conduct may be aggregated to determine the degree of the offense regardless of whether such injuries, damage, or destruction affected the property of one or more persons.

Section 99. That § 22-34-2 be repealed.

Section 100. That § 22-34-27 be amended to read as follows:

22-34-27. Any person who, with intent to cause damage, deposits, throws, or propels any substance upon any highway, roadway, runway, or railroad tracks, or at any vehicle while such vehicle is either in motion or stationary, is guilty of a Class 1 misdemeanor.

Section 101. That § 22-34-28 be amended to read as follows:

22-34-28. Any person who, by any means, knowingly damages or tampers with any property and, as a direct result:

(1) Causes a substantial interruption or impairment: in television, radio, telephone, telegraph, or other mass communications service; in police, fire, or other public service communications; in radar, radio, or other electronic aids to air or marine navigation or communications; or in amateur or citizens band radio communications being used for public service or emergency communications; or

(2) Causes a substantial interruption or impairment in public transportation, water supply, gas, power, or other utility service;

is guilty of a Class 6 felony.

Section 102. That § 22-34-29 be repealed.

Section 103. That § 22-39-36 be amended to read as follows:

22-39-36. Any person who, with intent to defraud, falsely makes, completes, or alters a written instrument of any kind, or passes any forged instrument of any kind is guilty of forgery. Forgery is a Class 5 felony.

Section 104. That § 22-39-38 be amended to read as follows:

22-39-38. Any person who, with the intent to defraud, possesses any forged instrument with the knowledge that the instrument has been forged is guilty of possessing a forged instrument. Possessing a forged instrument is a Class 6 felony.

Section 105. That § 22-39-37 be amended to read as follows:

22-39-37. Any person who:

(1) Makes or possesses, with knowledge of its character, any plate, die, or other device, apparatus, equipment, or article specifically designated for use in counterfeiting, unlawfully simulating, or otherwise forging, written instruments;

(2) Makes or possesses any device, apparatus, equipment, or article capable of or adaptable to a use specified in subdivision (1) of this section, with intent to use it or to aid or permit

another to use it, for the purpose of forgery; or

(3) Possesses a genuine plate, die, or other device used in the production of written instruments, with intent to defraud;

is guilty of a Class 6 felony.

Section 106. The code counsel shall transfer § 22-39-37 to chapter 22-40 and shall renumber the section accordingly and adjust all appropriate cross references.

Section 107. That § 22-32-1 be amended to read as follows:

22-32-1. Any person who enters or remains in an occupied structure, with intent to commit any crime, unless the premises are, at the time, open to the public or the person is licensed or privileged to enter or remain, is guilty of first degree burglary if:

(1) The offender inflicts, or attempts or threatens to inflict, physical harm on another;

(2) The offender is armed with a dangerous weapon; or

(3) The offense is committed in the nighttime.

First degree burglary is a Class 2 felony.

Section 108. That § 22-32-3 be amended to read as follows:

22-32-3. Any person who enters or remains in an occupied structure with intent to commit any crime, unless the premises are, at the time, open to the public or the person is licensed or privileged to enter or remain, under circumstances not amounting to first degree burglary, is guilty of second degree burglary. Second degree burglary is a Class 3 felony.

Section 109. That § 22-32-8 be amended to read as follows:

22-32-8. Any person who enters or remains in an unoccupied structure, other than a motor vehicle, with intent to commit any crime, unless the premises are, at the time, open to the public or the person is licensed or privileged to enter or remain, is guilty of third degree burglary. Third degree burglary is a Class 4 felony.

Section 110. That § 22-32-15 be amended to read as follows:

22-32-15. The term, nighttime, as used in this chapter, means the period between thirty minutes past sunset and thirty minutes before sunrise.

Section 111. That § 22-32-17 be amended to read as follows:

22-32-17. Any person who has in his or her possession any weapon or instrument specifically designed or adapted for the commission of a burglary or any explosive useful for the commission of a burglary, with the intent to commit a burglary, is guilty of a Class 6 felony.

Section 112. That § 22-32-19 be amended to read as follows:

22-32-19. Any person who forcibly enters a motor vehicle with intent to commit any crime in that motor vehicle is guilty of aggravated criminal entry of a motor vehicle. Aggravated criminal entry of a motor vehicle is a Class 6 felony.

Section 113. That chapter 22-32 be amended by adding thereto a NEW SECTION to read as follows:

Any person who enters a motor vehicle without the use of force or who remains in a motor vehicle after forming an intent to commit any crime in that motor vehicle is guilty of criminal entry of a motor vehicle. Criminal entry of a motor vehicle is a class 1 misdemeanor.

Section 114. That § 22-1-2 be amended by adding thereto a NEW SUBDIVISION to read as follows:

"Serious bodily injury," such injury as is grave and not trivial, and gives rise to apprehension of danger to life, health, or limb.

Section 115. That § 22-19-1 be amended to read as follows:

22-19-1. Any person who, either unlawfully removes another person from the other's place of residence or employment, or who unlawfully removes another person a substantial distance from the vicinity where the other was at the commencement of the removal, or who unlawfully confines

another person for a substantial period of time, with any of the following purposes:

(1) To hold for ransom or reward, or as a shield or hostage; or

(2) To facilitate the commission of any felony or flight thereafter; or

(3) To inflict bodily injury on or to terrorize the victim or another; or

(4) To interfere with the performance of any governmental or political function; or

(5) To take or entice away a child under the age of fourteen years with intent to detain and conceal such child;

is guilty of kidnapping in the first degree. Kidnapping in the first degree is a Class C felony, unless the person has inflicted serious bodily injury on the victim, in which case it is aggravated kidnapping in the first degree and is a Class B felony.

Section 116. That § 22-19-6 be amended to read as follows:

22-19-6. Any person who receives, possesses, or disposes of any money or other property which has, at any time, been delivered asransom or reward in connection with a kidnapping and who knows that the money or property is ransom or reward in connection with a kidnapping, is guilty of a Class 3 felony.

Section 117. That § 22-19-7.1 be amended to read as follows:

22-19-7.1. No person may attempt, by any means, to take, allure, or entice away a child under the age of sixteen for any illegal purpose. A violation of this section is a Class 1 misdemeanor. Any subsequent violation is a Class 6 felony.

Section 118. That § 22-19-9 be amended to read as follows:

22-19-9. Any parent who takes, entices away, or keeps his or her unmarried minor child from the custody or visitation of the other parent, or any other person having lawful custody or right of visitation, in violation of a custody or visitation determination entitled to enforcement by the courts of this state, without prior consent is guilty of a Class 1 misdemeanor. Any subsequent violation of

this section is a Class 6 felony.

Section 119. That § 22-19-10 be amended to read as follows:

22-19-10. Any parent who violates § 22-19-9 and causes the unmarried minor child, taken, enticed, or kept from the child's lawful custodian, to be removed from the state is guilty of a Class 5 felony.

Section 120. That § 22-19-12 be amended to read as follows:

22-19-12. The state or any other unit of government incurring financial expense for the return of the child may charge that cost against the person extradited if that person is found guilty of a violation of § 22-19-10. Such expense may be charged against the person filing the charge if the person extradited is found not guilty of a violation of § 22-19-10.

Section 121. That § 22-19-13 be amended to read as follows:

22-19-13. The Department of Social Services shall enter into an agreement with the secretary of health and human services as authorized by the Parental Kidnapping Act of 1980, 94 Stat. 3572, 42 U.S.C. 663, as amended, under which the services of the parent locator service established pursuant to Title IV-D of the Social Security Act, 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, shall be made available to this state for the purpose of determining the whereabouts of any absent parent or child in order to enforce any law with respect to the unlawful taking or restraint of a child, or to make or enforce any child custody determination.

Section 122. That § 22-19-14 be amended to read as follows:

22-19-14. When a missing child report is made to a law enforcement agency in this state that has jurisdiction in the matter, the law enforcement agency shall gather readily available information about the missing child and integrate such information into the national crime information center computer within twelve hours following the making of the report. The law enforcement agency shall make reasonable efforts to acquire additional information about the missing child following the

transmittal of the initially available information and promptly integrate any additional information acquired into such computer systems.

Section 123. That § 22-19-15 be amended to read as follows:

22-19-15. Whenever a law enforcement agency integrates information about a missing child into the national crime information center computer, the law enforcement agency shall promptly notify the missing child's parents, custodial parent, guardian, or legal custodian, or any other person responsible for the missing child, of that action.

Section 124. That § 22-19-16 be amended to read as follows:

22-19-16. Each parent, custodial parent, guardian, legal custodian, or other person responsible for the missing child shall provide available information upon request, and may provide information voluntarily, to the law enforcement agency during the information gathering process. The law enforcement agency also may obtain available information about the missing child from other persons subject to constitutional and statutory limitations.

Section 125. The code counsel shall transfer §§ 22-19-13, 22-19-14, 22-19-15, and 22-19-16 to Title 26 and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 126. That chapter 22-19 be amended by adding thereto a NEW SECTION to read as follows:

Any person who knowingly and purposely restrains another person unlawfully so as to substantially interfere with such person's liberty is guilty of false imprisonment. False imprisonment is a Class 1 misdemeanor.

Section 127. That chapter 32-12 be amended by adding thereto a NEW SECTION to read as follows:

At any proceedings in which the court has jurisdiction, for any traffic or status offense, over any juvenile, the court may, at its discretion and without motion, revoke or suspend or place any

restriction or condition upon the driving privileges of the juvenile, including requiring that financial responsibility be proved and maintained, that the court may find appropriate to the juvenile's reform or rehabilitation.

Section 128. That § 26-8C-7 be amended to read as follows:

26-8C-7. If a child has been adjudicated as a delinquent child, the court shall enter a decree of disposition according to the least restrictive alternative available in keeping with the best interests of the child. The decree shall contain one or more of the following alternatives:

(1) The court may make any one or more of the dispositions in § 26-8B-6, except that a delinquent child may be incarcerated in a detention facility established pursuant to provisions of chapter 26-7A for not more than ninety days, which may be in addition to any period of temporary custody;

(2) The court may impose a fine not to exceed one thousand dollars;

(3) The court may place the child on probation under the supervision of a court services officer or another designated individual. The child may be required as a condition of probation to report for assignment to a supervised work program, provided the child is not deprived of the schooling that is appropriate for the child's age, needs, and specific rehabilitative goals. The supervised work program shall be of a constructive nature designed to promote rehabilitation, appropriate to the age level and physical ability of the child, and shall be combined with counseling by the court services officer or other guidance personnel. The supervised work program assignment shall be made for a period of time consistent with the child's best interests, but for not more than ninety days;

(4) The court may place the child at the Human Services Center for examination and treatment;

(5) The court may commit the child to the Department of Corrections;

(6) The court may place the child in a detention facility for not more than ninety days, which may be in addition to any period of temporary custody;

(7) The court may place the child in an alternative educational program;

(8) The court may order the suspension or revocation of the child's driving privilege or restrict the privilege in such manner as it sees fit, including requiring that financial responsibility be proved and maintained;

(9) The court may assess or charge costs and fees permitted by §§ 16-2-41, 23-3-52, 23A-27-26, and 23A-27-27 against the child, parent, guardian, custodian, or other party responsible for the child.

Section 129. That § 26-8B-6 be amended to read as follows:

26-8B-6. If a child has been adjudicated as a child in need of supervision, the court shall enter a decree of disposition according to the least restrictive alternative available in keeping with the best interests of the child. The decree shall contain one or more of the following alternatives:

(1) The court may place the child on probation or under protective supervision in the custody of one or both parents, guardian, custodian, relative, or another suitable person under conditions imposed by the court;

(2) The court may require as a condition of probation that the child report for assignment to a supervised work program, provided the child is not placed in a detention facility and is not deprived of the schooling that is appropriate to the child's age, needs, and specific rehabilitative goals. The supervised work program shall be of a constructive nature designed to promote rehabilitation, shall be appropriate to the age level and physical ability of the child, and shall be combined with counseling by a court services officer or other guidance personnel. The supervised work program assignment shall be made for a period of time consistent with the child's best interests, but may not exceed ninety days;

(3) If the court finds that the child has violated a valid court order, the court may place the child in a detention facility for not more than ninety days, which may be in addition to any period of temporary custody, for purposes of disposition if:

(a) The child is not deprived of the schooling that is appropriate for the child's age, needs, and specific rehabilitative goals;

(b) The child had a due process hearing before the order was issued; and

(c) A plan of disposition from a court services officer is provided to the court;

(4) The court may require the child to pay for any damage done to property or for medical expenses under conditions set by the court if payment can be enforced without serious hardship or injustice to the child;

(5) The court may commit the child to the Department of Corrections for placement in a juvenile correctional facility, foster home, group home, group care center, or residential treatment center pursuant to chapter 26-11A. Prior to placement in a juvenile correctional facility, an interagency team comprised of representatives from the Department of Human Services, Department of Social Services, Department of Education, the Department of Corrections, and the Unified Judicial System shall make a written finding that placement at a Department of Corrections facility is the least restrictive placement commensurate with the best interests of the child. Subsequent placement in any other Department of Corrections facility may be authorized without an interagency review;

(6) The court may place a child in an alternative educational program;

(7) The court may order the child to be examined and treated at the Human Services Center;

(8) The court may impose a fine not to exceed five hundred dollars;

(9) The court may order the suspension or revocation of the child's driving privilege or restrict the privilege in such manner as the court sees fit or as required by § 32-12-52.4,

including requiring that financial responsibility be proved and maintained;

(10) The court may assess or charge the same costs and fees as permitted by §§ 16-2-41, 23-3-52, 23A-27-26, and 23A-27-27 against the child, parent, guardian, custodian, or other party responsible for the child.

No adjudicated child in need of supervision may be incarcerated in a detention facility except as provided in subdivision (3) or (5) of this section.

Section 130. That § 22-13-1 be amended to read as follows:

22-13-1. Any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by:

(1) Engaging in fighting or in violent or threatening behavior;

(2) Making unreasonable noise;

(3) Disturbing any lawful assembly or meeting of persons without lawful authority; or

(4) Obstructing vehicular or pedestrian traffic;

is guilty of disorderly conduct. Disorderly conduct is a Class 2 misdemeanor.

Section 131. The code counsel shall transfer § 22-13-1 to chapter 22-18 and shall renumber the section accordingly and adjust all appropriate cross references.

Section 132. That § 22-41-1 be amended to read as follows:

22-41-1. Any person who, for himself or herself or as agent or representative of another, for a present consideration, with intent to defraud, passes a check drawn on a financial institution knowing at the time of such passing that there are not sufficient funds in the account on which the check was drawn in the financial institution for the payment of such check and all other checks upon such funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, is guilty of theft by insufficient funds check. Theft by insufficient funds check is punishable as theft pursuant to chapter 22-30A. In determining the degree of theft, the value of the

property stolen or attempted to be stolen is the same as the face amount of the insufficient funds check. Any series of insufficient funds checks within any thirty-day period may be aggregated in amount to determine the degree of theft of such course of conduct.

Section 133. That § 22-41-1.2 be amended to read as follows:

22-41-1.2. Any person who, for himself or herself or as an agent or representative of another, for present consideration, with intent to defraud, passes a check drawn on a financial institution knowing at the time of such passing that neither the check passer or the check passer's principal has an account with such financial institution, is guilty of theft by no account check. Theft by no account check is punishable as theft pursuant to chapter 22-30A. In determining the degree of theft, the value of the property stolen or attempted to be stolen is the same as the face amount of the no account check. Any series of no account checks within any thirty-day period may be aggregated in amount to determine the degree of theft of such course of conduct.

It is a defense to prosecution pursuant to this section that the check passer's or the check passer's principal's account was closed without the check passer's knowledge. Evidence that the financial institution mailed a notice by certified or registered mail to the person in whose name the account was listed at the last address contained in the financial institution's records is prima facie proof that the check passer had knowledge that such account was closed.

Section 134. That § 22-41-1.3 be amended to read as follows:

22-41-1.3. If any person, who has been accused of a violation of § 22-41-1 or 22-41-1.2, restores or returns the property allegedly obtained as consideration or makes payment of the check and the costs and expenses provided for in § 57A-3-421 to the holder within thirty days of the mailing or delivery of the notice of dishonor, no criminal prosecution may occur in regard to the check.

Section 135. That § 22-41-2 be amended to read as follows:

22-41-2. The passing of a check, described in § 22-41-1, is prima facie evidence that the person

who passed the check had knowledge of insufficient funds in the account on which the check was drawn in the financial institution.

Section 136. That § 22-41-2.1 be amended to read as follows:

22-41-2.1. Present consideration includes goods which are delivered or constructively delivered, and services which are completed, seven days, exclusive of the date of such delivery or completion and exclusive of legal holidays and Sundays, before or after payment therefor. Present consideration also includes payment made for goods and services, if the goods and services are obtained under an understanding that the goods and services would be paid for at a specific time by written agreement or under an established method of payment of accounts. In addition, payment of taxes and any other obligation due the State of South Dakota or any of its political subdivisions and payment of alimony or child support constitutes present consideration for the purposes of this chapter.

Section 137. That § 22-41-2.2 be amended to read as follows:

22-41-2.2. The making of a postdated or hold check, knowingly received as such, or a check issued under an agreement with the payee that the check would not be presented for payment for a specified time, does not constitute a violation of § 22-41-1.

Section 138. That § 22-41-2.3 be amended to read as follows:

22-41-2.3. For purposes of establishing probable cause that a criminal offense has been committed in violation of § 22-41-1 or 22-41-1.2, probable cause is established if the prosecution has presented as evidence at the preliminary hearing, or before the grand jury, a check bearing reasonable indicia that the check has been presented for payment and that the check has not been paid or honored by the financial institution because of insufficient funds in the account upon which the check was drawn or that the account did not exist. Upon the offer and acceptance of the check as evidence at the preliminary hearing, or before the grand jury, it is not necessary for an official or employee of the financial institution to testify at the preliminary hearing, or before the grand jury,

concerning the financial institution's records with respect to the account upon which the check has been drawn.

Section 139. The code counsel shall transfer §§ 22-41-1 to 22-41-3.4, inclusive, to chapter 22-30A and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 140. That § 22-41-3.1 be amended to read as follows:

22-41-3.1. The holder of an insufficient funds check or no account check shall, before presenting the check to the state's attorney for prosecution, serve a notice of dishonor upon the writer of the check, by registered or certified mail, return receipt requested, or by first class mail, supported by an affidavit of mailing sworn and retained by the sender, in the United States mail and addressed to the recipient's most recent address known to the sender. If the notice is mailed, and not returned as undeliverable by the United States Postal Service, notice is conclusively presumed to have been given on the date of mailing. The holder of the dishonored check, whether it be a no account check or insufficient funds check, shall, upon return of the receipt, hold the check for a period of at least thirty days if notice is given by first class mail, and upon the expiration of that period shall present the check with the attached bank return, return receipt or affidavit of mailing, and copy of the dishonor notice to the state's attorney for prosecution.

Section 141. That § 22-41-3.3 be amended to read as follows:

22-41-3.3. The service of a notice of dishonor in accordance with §§ 22-41-3.1 and 22-41-3.2 is not a element of the crime of theft by insufficient funds check or theft by no account check, nor is it an element of proof thereof or a defense to any prosecution therefor.

If the notice required by §§ 22-41-3.1 and 22-41-3.2 is returned undelivered, or if it appears to the state's attorney that there is reasonable cause to believe that the writer of the check intends to remove himself or herself from the jurisdiction of the court, the state's attorney may elect to prosecute without such notice. However, if the insufficient funds check or no account check is paid

by the drawer to the holder, along with the costs and expenses provided for in § 57A-3-421, within the thirty days after the notice is mailed or delivered to the drawer, the check may not be prosecuted.

Section 142. That § 22-41-3.4 be amended to read as follows:

22-41-3.4. Any criminal prosecution under § 22-41-1 or 22-41-1.2 shall be commenced within six months after the holder of a check receives notice of its dishonor. Failure to prosecute a complaint within six months constitutes a bar to any criminal action under those sections.

Section 143. That § 22-41-10 be repealed.

Section 144. That § 22-41-11 be repealed.

Section 145. That § 22-41-12 be repealed.

Section 146. That § 22-41-14 be repealed.

Section 147. The provisions of this Act are effective on July 1, 2006. However, the provisions of section 269 of this Act are effective on July 1, 2005.

Section 148. That § 22-6-1 be amended to read as follows:

22-6-1. Except as otherwise provided by law, felonies are divided into the following nine classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

(1) Class A felony: death or life imprisonment in the state penitentiary. A lesser sentence than death or life imprisonment may not be given for a Class A felony. In addition, a fine of fifty thousand dollars may be imposed;

(2) Class B felony: life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed;

(3) Class C felony: life imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;

(4) Class 1 felony: fifty years imprisonment in the state penitentiary. In addition, a fine of

fifty thousand dollars may be imposed;

(5) Class 2 felony: twenty-five years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;

(6) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed;

(7) Class 4 felony: ten years imprisonment in the state penitentiary. In addition, a fine of twenty thousand dollars may be imposed;

(8) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed; and

(9) Class 6 felony: two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.

The court, in imposing sentence on a defendant who has been found guilty of a felony, shall order in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Nothing in this section limits increased sentences for habitual criminals under §§ 22-7-7, 22-7-8, and 22-7-8.1.

Section 149. That § 23A-42-1 be amended to read as follows:

23A-42-1. There is no limitation on the time within which a prosecution for Class A, Class B, or Class C felony must be commenced.

Section 150. That § 22-16-1 be amended to read as follows:

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

(1) Murder;

(2) Manslaughter;

(3) Excusable homicide;

(4) Justifiable homicide; or

(5) Vehicular homicide.

Section 151. That § 22-16-1.1 be amended to read as follows:

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

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

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

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

Fetal homicide is a Class B felony.

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

Section 152. That § 22-16-2 be amended to read as follows:

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

Section 153. That § 22-16-3 be amended to read as follows:

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

and the person killed.

Section 154. That § 22-16-4 be amended to read as follows:

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

(1) If perpetrated without authority of law and with a premeditated design to effect the death of the person killed or of any other human being, including an unborn child; or

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

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

Section 155. That § 22-16-5 be amended to read as follows:

22-16-5. The term, premeditated design to effect the death, means an intention, purpose, or determination to kill or take the life of the person killed, distinctly formed and existing in the mind of the perpetrator before committing the act resulting in the death of the person killed. A premeditated design to effect death sufficient to constitute murder may be formed instantly before committing the act.

Section 156. That § 22-16-7 be amended to read as follows:

22-16-7. Homicide is murder in the second degree if perpetrated by any act imminently dangerous to others and evincing a depraved mind, without regard for human life, although without any premeditated design to effect the death of any particular person, including an unborn child.

Section 157. That § 22-16-8 be amended to read as follows:

22-16-8. Homicide perpetrated by an act imminently dangerous to others and evincing a depraved

mind, without regard for human life, is not the less murder because there was no actual intent to injure others.

Section 158. That § 22-16-9 be repealed.

Section 159. That § 22-16-12 be amended to read as follows:

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

Section 160. That § 22-16-15 be amended to read as follows:

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

(1) Without any design to effect death, including an unborn child, while engaged in the commission of any felony other than as provided in § 22-16-4(2);

(2) Without any design to effect death, including an unborn child, and in a heat of passion, but in a cruel and unusual manner;

(3) Without any design to effect death, including an unborn child, but by means of a dangerous weapon;

(4) Unnecessarily, either while resisting an attempt by the person killed to commit a crime or after such attempt has failed.

Manslaughter in the first degree is a Class C felony.

Section 161. That § 22-16-30 be amended to read as follows:

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

Section 162. That § 22-16-31 be amended to read as follows:

22-16-31. Homicide is excusable if committed by accident and misfortune in the heat of passion, upon sudden and sufficient provocation, or upon a sudden combat. However, to be excusable, no undue advantage may be taken nor any dangerous weapon used and the killing may not be done in

a cruel or unusual manner.

Section 163. That § 22-16-32 be amended to read as follows:

22-16-32. Homicide is justifiable if committed by a law enforcement officer or by any person acting by command of a law enforcement officer in the aid and assistance of that officer:

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

(2) If necessarily committed in retaking felons who have been rescued or who have escaped; or

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

Section 164. That § 22-16-33 be amended to read as follows:

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

Section 165. That § 22-16-34 be amended to read as follows:

22-16-34. Homicide is justifiable if committed by any person while resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person is.

Section 166. That § 22-16-35 be amended to read as follows:

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

Section 167. That § 22-16-37 be amended to read as follows:

22-16-37. Any person who intentionally in any manner advises, encourages, abets, or assists

another person in taking or in attempting to take his or her own life is guilty of a Class 6 felony.

Section 168. That § 22-16-37.1 be amended to read as follows:

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

Section 169. That § 22-16-37.2 be amended to read as follows:

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

(1) The spouse, parent, child, sibling, legally appointed guardian, or conservator of the person who would commit suicide;

(2) Entitled to inherit under the laws of intestate succession from the person who would commit suicide or the beneficiary under a life insurance policy of the person who would commit suicide;

(3) Any health care provider of the person who would commit suicide;

(4) Any public official with appropriate jurisdiction to prosecute or enforce the laws of this state.

Section 170. The code counsel shall transfer §§ 22-16-37.1 to 22-16-37.7, inclusive, to chapter 34-12D and shall renumber the sections accordingly and adjust all cross references.

Section 171. That § 22-16-40 be amended to read as follows:

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

Section 172. The code counsel shall transfer § 22-16-42 to chapter 22-18 and shall renumber the section accordingly and adjust all appropriate cross references.

Section 173. That § 22-6-2 be amended to read as follows:

22-6-2. Misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

(1) Class 1 misdemeanor: one year imprisonment in a county jail or two thousand dollars fine, or both;

(2) Class 2 misdemeanor: thirty days imprisonment in a county jail or five hundred dollars fine, or both.

The court, in imposing sentence on a defendant who has been found guilty of a misdemeanor, shall order, in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Except in Titles 1 to 20, inclusive, 22, 25 to 28, inclusive, 32 to 36, inclusive, 40 to 42, inclusive, 47 to 54, inclusive, and 58 to 62, inclusive, if the performance of an act is prohibited by a statute, and no penalty for the violation of such statute is imposed by a statute, the doing of such act is a Class 2 misdemeanor.

Section 174. That § 16-12C-11 be amended to read as follows:

16-12C-11. A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the circuit courts:

(1) To accept defaults for petty offenses;

(2) To try contested cases involving a petty offense;

(3) To take pleas of guilty, not guilty, nolo contendere for any criminal offense; or

(4) To take pleas of guilty, not guilty, nolo contendere for violation of any ordinance, bylaw, or other police regulation of a political subdivision;

if the punishment is a fine not exceeding five hundred dollars or imprisonment for a period not exceeding thirty days, or both such fine and imprisonment and to impose sentence upon a plea of guilty or nolo contendere, which sentence shall be in accordance with § 23-1A-22 or schedules adopted pursuant to subdivision 16-2-21(8). However, if the offense or violation is not covered by said schedules, the magistrate court may impose a sentence of a fine as authorized by statute, ordinance, bylaw, or police regulation or five hundred dollars, whichever is less. Acceptance of not guilty or nolo contendere pleas shall be in accordance with §§ 23A-7-2 and 23A-7-8, as applicable.

Section 175. That § 22-23-1 be amended to read as follows:

22-23-1. Any person who engages in or offers to engage in sexual activity for a fee is guilty of prostitution. Prostitution is a Class 1 misdemeanor.

Section 176. That § 22-23-1.1 be amended to read as follows:

22-23-1.1. As used in this chapter the term, sexual activity, references both sexual penetration, as defined in § 22-22-2, and sexual contact, as defined in § 22-22-7.1.

Section 177. That § 22-23-2 be amended to read as follows:

22-23-2. Any person who:

(1) Encourages, induces, procures, or otherwise purposely causes another to become or remain a prostitute;

(2) Promotes the prostitution of a minor; or

(3) Promotes the prostitution of his or her spouse, child, ward, or other dependant person;

is guilty of promoting prostitution. Promoting prostitution is a Class 5 felony.

Section 178. That § 22-23-4 be repealed.

Section 179. That § 22-23-8 be amended to read as follows:

22-23-8. Any person who:

(1) Solicits another person to patronize a prostitute;

(2) Procures a prostitute for a patron;

(3) Transports a person into or within this state to engage in prostitution, or procures or pays for transportation for that purpose;

(4) Knowingly permits a place owned, managed, supervised, or controlled by himself or herself, alone, or in association with others, to be regularly used for prostitution or the promotion of prostitution, or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(5) Solicits, receives, or agrees to receive any benefit for doing or agreeing to do anything prohibited by this section;

is guilty of a Class 6 felony.

Section 180. That § 22-23-9 be amended to read as follows:

22-23-9. Any person who hires or attempts to hire another person for a fee to engage in sexual activity is guilty of a Class 1 misdemeanor.

Section 181. That § 22-19B-1 be amended to read as follows:

22-19B-1. No person may maliciously and with the specific intent to intimidate or harass any person or specific group of persons because of that person's or group of persons' race, ethnicity, religion, ancestry, or national origin:

(1) Cause physical injury to another person; or

(2) Deface any real or personal property of another person; or

(3) Damage or destroy any real or personal property of another person; or

(4) Threaten, by word or act, to do the acts prohibited if there is reasonable cause to believe

that any of the acts prohibited in subdivision (1), (2), or (3) of this section will occur.

A violation of this section is a Class 6 felony.

Section 182. That § 22-19B-2 be amended to read as follows:

22-19B-2. For purposes of this chapter, the term, deface, includes cross-burnings or the placing of any word or symbol commonly associated with racial, religious, or ethnic terrorism on the property of another person without that person's permission.

Section 183. That § 22-19B-3 be amended to read as follows:

22-19B-3. In addition to the criminal penalty provided in § 22-19B-1, there is a civil cause of action for malicious harassment. The victim of malicious intimidation or harassment may recover both special and general damages, including damages for emotional distress, reasonable attorney fees and costs, and punitive damages. The civil cause of action for malicious intimidation or harassment is in addition to any other remedies, criminal or civil, otherwise available under law.

Section 184. The code counsel shall rename chapter 22-19B, Hate Crimes.

Section 185. The code counsel shall transfer § 22-19B-3 to Title 20 and shall renumber the section accordingly and adjust all appropriate cross references.

Section 186. That § 22-8-1 be repealed.

Section 187. That § 22-8-2 be repealed.

Section 188. That § 22-8-12 be amended to read as follows:

22-8-12. Any person who commits a crime of violence, as defined by subdivision 22-1-2(9), or an act dangerous to human life involving any use of chemical, biological, or radioactive material, or any explosive or destructive device, with the intent to do any of the following:

(1) Intimidate or coerce a civilian population;

(2) Influence the policy or conduct of any government or nation;

(3) Affect the conduct of any government or nation by assassination or kidnaping; or

(4) Substantially impair or interrupt public communications, public transportation, common carriers, public utilities, or other public services;

is guilty of an act of terrorism. A violation of this section is a Class C felony.

Section 189. That chapter 22-8 be amended by adding thereto a NEW SECTION to read as follows:

Any person who threatens to commit a crime of violence, as defined by subdivision 22-1-2(9), or an act dangerous to human life involving any use of chemical, biological, or radioactive material, or any explosive or destructive device, with the intent to:

(1) Intimidate or coerce a civilian population;

(2) Influence the policy or conduct of any government or nation;

(3) Affect the conduct of any government or nation; or

(4) Substantially impair or interrupt public communications, public transportation, common carriers, public utilities, or other public services;

is guilty of making a terrorist threat. A violation of this section is a Class 5 felony.

Section 190. The code counsel shall rename chapter 22-8, Terrorism.

Section 191. That § 22-11-2 be amended to read as follows:

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

Section 192. That § 22-11-3 be amended to read as follows:

22-11-3. Any person who intentionally obstructs or attempts to obstruct a public officer or employee, not a law enforcement officer, firefighter, or emergency medical technician in the performance of any official duty, or who resists a public officer in performance of that duty, is guilty

of a Class 2 misdemeanor.

Section 193. That § 22-11-3.1 be repealed.

Section 194. That § 22-11-4 be amended to read as follows:

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

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

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

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

Section 195. That § 22-11-5 be amended to read as follows:

22-11-5. It is no defense to a prosecution under § 22-11-4 that the law enforcement officer was attempting to make an arrest which in fact was unlawful, if the law enforcement officer was acting under color of authority and, in attempting to make the arrest , the law enforcement officer was not resorting to unreasonable or excessive force giving rise to the right of self-defense. A law enforcement officer, firefighter, or emergency medical technician acts under color of authority if, in the regular course of assigned duties, he or she is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances.

Section 196. That § 22-11-6 be amended to read as follows:

22-11-6. Except as provided in §§ 22-11-4 and 22-11-5, any person who, by using or threatening to use violence, force, or physical interference or obstacle, intentionally obstructs, impairs, or hinders the enforcement of the criminal laws or the preservation of the peace by a law enforcement officer or jailer acting under color of authority, or intentionally obstructs, impairs, or hinders the prevention, control, or abatement of fire by a firefighter acting under color of authority, or intentionally obstructs

emergency management personnel acting under color of authority, is guilty of obstructing a law enforcement officer, firefighter, or emergency medical technician. Obstructing a law enforcement officer, jailer, firefighter, or emergency medical technician is a Class 1 misdemeanor.

Section 197. That § 22-11-6.1 be repealed.

Section 198. That § 22-11-7 be amended to read as follows:

22-11-7. It is no defense to a prosecution under § 22-11-6 that the law enforcement officer, firefighter, or emergency medical technician was acting in an illegal manner, if the law enforcement officer, firefighter, or emergency medical technician was acting under the color of authority as defined in § 22-11-5.

Section 199. That § 22-11-8 be amended to read as follows:

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

Section 200. The code counsel shall transfer § 22-11-8 to chapter 22-40 and shall renumber the section accordingly and adjust all appropriate cross references.

Section 201. That § 22-11-9 be amended to read as follows:

22-11-9. Any person who:

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

(2) Makes a report or intentionally causes the transmission of a report to law enforcement authorities of a crime or other incident within their official concern, knowing that it did

not occur; or

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

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

Section 202. That § 22-11-9.1 be amended to read as follows:

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

Section 203. That § 22-11-10 be amended to read as follows:

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

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

(2) Refraining from reporting to law enforcement authorities the commission or suspected commission of any crime or any information relating to a crime;

is guilty of compounding. Compounding a felony is a Class 6 felony. Compounding a misdemeanor is a Class 1 misdemeanor.

Section 204. That § 22-11-11 be amended to read as follows:

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

Section 205. That § 22-11-12 be amended to read as follows:

22-11-12. Any person who, having knowledge, which is not privileged, of the commission of a felony, conceals the felony, or does not immediately disclose the felony, including the name of the perpetrator, if known, and all of the other relevant known facts, to the proper authorities, is guilty

of misprision of a felony. Misprision of a felony is a Class 1 misdemeanor. There is no misprision of misdemeanors or petty offenses.

Section 206. That § 22-11-14 be amended to read as follows:

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

Section 207. That § 22-11-15.1 be amended to read as follows:

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

Section 208. The code counsel shall transfer § 22-11-15.1 and § 22-11-15.4 within chapter 22-11 to an appropriate location where the two sections will be sequential and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 209. That § 22-11-15.2 be amended to read as follows:

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

Section 210. That § 22-11-15.4 be amended to read as follows:

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

Section 211. That § 22-11-16 be amended to read as follows:

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

(1) By means of any communication, oral or written, had with such person, except in the regular course of proceedings upon the trial of the cause;

(2) By means of any book, paper, or instrument exhibited otherwise than in the regular course of proceedings upon the trial of the cause; or

(3) By publishing any statement, argument, or observation relating to the cause;

is guilty of a Class 6 felony.

Section 212. That § 22-11-17 be repealed.

Section 213. That § 22-11-19 be amended to read as follows:

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

(1) Testify falsely;

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

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

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

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

Section 214. That § 22-11-19.1 be repealed.

Section 215. That § 22-11-20 be amended to read as follows:

22-11-20. Any person who, as a witness or prospective witness in an official proceeding, knowingly solicits, accepts, or agrees to accept any benefit upon the representation or understanding that such person will do any thing described in subdivisions 22-11-19(1) to (4), inclusive, is guilty of a Class 6 felony.

Section 216. That § 22-11-21 be amended to read as follows:

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

Section 217. The code counsel shall transfer §§ 22-11-16, 22-11-18, 22-11-20, 22-11-21, and 22-11-22 to chapter 22-12A and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 218. That § 22-11-23 be amended to read as follows:

22-11-23. Any person who knowingly makes a false entry in any public record, or falsely alters any public record is guilty of a Class 2 misdemeanor. However, if the false entry or alteration is committed by a public officer or employee having custody of the record, the offense is a Class 1

misdemeanor.

Section 219. That § 22-11-23.1 be amended to read as follows:

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

Section 220. That § 22-11-24 be amended to read as follows:

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

Section 221. That § 22-11-25 be amended to read as follows:

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

Section 222. That § 22-11-26 be amended to read as follows:

22-11-26. Any public officer found guilty of violating §§ 22-11-23 to 22-11-25, inclusive, shall forfeit the office unless the office is subject to impeachment.

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

Section 223. That § 22-11-27 be amended to read as follows:

22-11-27. Any person who, without consent of the owner, intentionally alters, obliterates, or removes a serial number or other identifying mark on personal property, or possesses any personal property knowing that the property has a serial number or identifying mark which has been intentionally obliterated, altered, or removed, which number or marking may be used to determine ownership of the property, is guilty of a Class 6 felony.

Section 224. The code counsel shall transfer § 22-11-27 to chapter 22-30A and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 225. That § 22-11-28 be amended to read as follows:

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

Section 226. The code counsel shall renumber § 22-11-23.1 as § 22-11-28.1 and adjust all appropriate cross references.

Section 227. That § 22-11-29 be amended to read as follows:

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

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

(1) Is not provided for by a specific state or federal statute;

(2) Does not depend upon the consent of the owner of the property affected for its existence; and

(3) Is not an equitable or constructive lien imposed by a court recognized under the U.S.

Constitution, federal laws, or the constitution or laws of this state.

Section 228. That § 22-11-31 be amended to read as follows:

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

Section 229. That § 22-11-32 be amended to read as follows:

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

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

Section 230. That § 22-11-34 be amended to read as follows:

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

Section 231. The code counsel shall transfer § 22-11-34 to chapter 22-40 and shall renumber the

section accordingly and adjust all appropriate cross references.

Section 232. The code counsel shall transfer §§ 22-11-30, 22-11-33, and 22-11-35 to an appropriate chapter in Title 20 and shall renumber the section accordingly and adjust all appropriate cross references.

Section 233. That § 22-12-1 be amended to read as follows:

22-12-1. Barratry is the offense of maliciously bringing or causing to be brought any groundless judicial proceeding. Barratry is a Class 2 misdemeanor. The fact that an accused was personally a party in interest or upon the record to any proceedings at law complained of is not a defense.

Section 234. That § 22-12-5 be amended to read as follows:

22-12-5. Any person who, for the purpose of obtaining anything of value, circulates or offers for sale, prints for the purpose of sale or distribution, sends or delivers, or causes to be sent or delivered, any letter, paper, document, notice of intent to bring suit, or other notice or demand which simulates any form of court or legal process or any official demand, notice or other paper of a federal, state, or municipal agency, the intention of which document is to lead the recipient or addressee to believe that it is a genuine court or legal process or official demand, notice, or other paper of a federal, state, or municipal agency, is guilty of uttering simulated process. Uttering simulated process is a Class 1 misdemeanor.

Section 235. That § 22-12-6 be amended to read as follows:

22-12-6. It is no defense to a charge of uttering simulated process, that the document bears any statement that the thing of value sought to be obtained was to apply as payment on a valid obligation.

Section 236. That § 22-12-7 be amended to read as follows:

22-12-7. In prosecutions for any violation of § 22-12-5, the prosecution may show that the simulating document was deposited in the post office for mailing or was delivered to any person with intent to be forwarded, and such showing is sufficient proof of the sending or delivery.

Section 237. That § 22-12-8 be amended to read as follows:

22-12-8. Nothing in §§ 22-12-5 to 22-12-7, inclusive, prevents the printing, publication, sale, or distribution of genuine legal forms.

Section 238. That § 22-12-10 be amended to read as follows:

22-12-10. Any public officer or person pretending to be a public officer, who under the pretense or color of any process or other legal authority, arrests any person, or detains any person against that person's will, or seizes or levies upon any property, or dispossesses any person of any lands or tenements without due and legal process, is guilty of a Class 1 misdemeanor.

Section 239. That § 22-12-11 be repealed.

Section 240. That § 22-12-13 be amended to read as follows:

22-12-13. Any person who, maliciously and without probable cause, procures a search warrant to be issued and executed is guilty of a Class 1 misdemeanor.

Section 241. That § 22-12-14 be amended to read as follows:

22-12-14. Any law enforcement officer who, in executing a search warrant, intentionally exceeds his or her authority, or exercises such authority maliciously, is guilty of a Class 1 misdemeanor.

Section 242. That § 22-12-15 be amended to read as follows:

22-12-15. Any law enforcement officer or other person, who, having arrested a person on a criminal charge, intentionally delays taking that person before a committing magistrate for further proceedings, is guilty of a Class 1 misdemeanor.

Section 243. That § 22-14-5 be amended to read as follows:

22-14-5. Any person who possesses any firearm on which the manufacturer's serial number has been changed, altered, removed, or obliterated is guilty of a Class 6 felony.

The provisions of this section do not apply to persons who have applied for a new serial number pursuant to § 23-7-43.

Section 244. That § 22-14-6 be amended to read as follows:

22-14-6. Any person who knowingly possesses a controlled weapon is guilty of a Class 6 felony. However, the provisions of this section do not apply to any person who:

(1) Is a law enforcement officer or member of the armed forces of the United States or South Dakota National Guard acting in the lawful discharge of duties;

(2) Has a valid state or federal license issued pursuant to law for such weapon or has registered such weapon with the proper state or federal authority pursuant to law;

(3) Possesses a controlled weapon briefly after having found it or taken it from an offender; or

(4) Possesses a controlled weapon, except a machine gun or short shotgun, under circumstances which negate any purpose or likelihood that the weapon would be used unlawfully.

Section 245. That § 22-14-7 be amended to read as follows:

22-14-7. Any person who:

(1) Recklessly discharges a firearm or recklessly shoots a bow and arrow;

(2) Sets a device designed to activate a weapon upon being tripped or approached, and leaves the device unmarked or unattended by a competent person; or

(3) Has in personal possession a loaded firearm while intoxicated;

is guilty of a Class 1 misdemeanor.

Section 246. That § 22-14-8 be amended to read as follows:

22-14-8. Any person who conceals on or about his or her person a controlled or dangerous weapon with intent to commit a felony is guilty of a Class 5 felony.

Section 247. That § 22-14-9 be amended to read as follows:

22-14-9. Any person, other than a law enforcement officer acting under color of authority, who:

(1) Carries a pistol or revolver, loaded or unloaded, concealed on or about his or her person without a permit as provided in chapter 23-7; or

(2) Carries a pistol or revolver, loaded or unloaded, concealed in any vehicle while operating the vehicle, without a permit as provided in chapter 23-7;

is guilty of a Class 1 misdemeanor.

Section 248. That § 22-14-9.1 be amended to read as follows:

22-14-9.1. No person may possess a concealed pistol in accordance with chapter 23-7 or this chapter unless that person also has in his or her physical possession a valid South Dakota permit to carry a concealed pistol or a permit effective pursuant to § 23-7-7.3. Any violation of this section is a petty offense. However, if within twenty-four hours of being charged with a violation of this section, the person produces a permit to carry a concealed pistol which was valid at the time of the alleged offense in the office of the officer making the demand, the charge shall be dismissed.

Section 249. That § 22-14-9.2 be amended to read as follows:

22-14-9.2. Any person who is permitted to carry a concealed pistol in a state with which the secretary of state has entered into a reciprocity agreement pursuant to §§ 23-7-7.3, 22-14-9.1, 22-14-9.2, 23-7-7, 23-7-7.1, and 23-7-8 may carry a concealed pistol in this state if the permit holder carries the pistol in compliance with the laws of this state. Any violation of this section is a Class 1 misdemeanor.

Section 250. That § 22-14-10 be amended to read as follows:

22-14-10. The provisions of § 22-14-9 do not apply to any person carrying any unloaded pistol or revolver for the purpose of, or in connection with, any lawful use, if the unloaded pistol or revolver is carried:

(1) In the trunk or other closed compartment of a vehicle; or

(2) In a closed container which is too large to be effectively concealed on the person or within

the person's clothing. The container may be carried in a vehicle or in any other manner.

No person who complies with this section may be required to obtain a permit for the lawful uses described in this section.

Section 251. That § 22-14-11 be amended to read as follows:

22-14-11. The provisions of § 22-14-9 do not apply to any person who possesses a pistol or revolver in his or her own dwelling house or place of business or on land owned or rented by himself or herself or by a member of his or her household.

Section 252. That § 22-14-12 be amended to read as follows:

22-14-12. Any person who commits or attempts to commit any felony while armed with a firearm, including a machine gun or short shotgun, is guilty of a Class 2 felony for the first conviction. A second or subsequent conviction is a Class 1 felony. The sentence imposed for a first conviction under this section shall carry a minimum sentence of imprisonment in the state penitentiary of five years. In case of a second or subsequent conviction under this section such person shall be sentenced to a minimum imprisonment of ten years in the penitentiary.

Any sentence imposed under this section shall be consecutive to any other sentences imposed for a violation of the principal felony. The court may not place on probation, suspend the execution of the sentence, or suspend the imposition of the sentence of any person convicted of a violation of this section.

Section 253. That § 22-14-13.1 be repealed.

Section 254. That § 22-14-14 be amended to read as follows:

22-14-14. A violation of § 22-14-12 shall be charged in the indictment or information as a separate count in addition to the principal felony or attempted felony alleged to have been committed. No offense may be charged under those sections if the use of a dangerous weapon is a necessary element of the principal felony alleged to have been committed or attempted.

Section 255. That § 22-14-15 be amended to read as follows:

22-14-15. No person who has been convicted in this state or elsewhere of a crime of violence or a felony pursuant to § 22-42-2, 22-42-3, 22-42-4, 22-42-7, 22-42-8, 22-42-9, 22-42-10 or 22-42-19, may possess or have control of a firearm. A violation of this section is a Class 6 felony. The provisions of this section do not apply to any person who was last discharged from prison, jail, probation, or parole more than fifteen years prior to the commission of the principal offense.

Section 256. That § 22-14-16 be amended to read as follows:

22-14-16. Any person who knows that another person is prohibited by § 22-14-15 or 22-14-15.1 from possessing a firearm, and who knowingly gives, loans, or sells a firearm to that person is guilty of a Class 6 felony.

Section 257. That § 22-14-17 be amended to read as follows:

22-14-17. The provisions of this chapter do not apply to any firearm which has been permanently altered so it is incapable of being discharged.

Section 258. That § 22-14-19 be repealed.

Section 259. That § 22-14-20 be amended to read as follows:

22-14-20. Any person who willfully, knowingly, and illegally discharges a firearm at an occupied structure or motor vehicle is guilty of a Class 3 felony.

Section 260. That § 22-14-21 be amended to read as follows:

22-14-21. Any person who willfully, knowingly, and illegally discharges a firearm from a moving motor vehicle within the incorporated limits of a municipality under circumstances not constituting a violation of § 22-14-20 is guilty of a Class 6 felony.

Section 261. That § 22-14-22 be amended to read as follows:

22-14-22. For the purposes of §§ 22-14-23 to 22-14-28, inclusive, the term, county courthouse, means the state capitol or any building occupied for the public sessions of a circuit court, with its

various offices. The term includes any building appended to or used as a supplementary structure to a county courthouse.

Section 262. That § 22-14-23 be amended to read as follows:

22-14-23. Except as provided in § 22-14-24, any person who knowingly possesses or causes to be present any firearm or other dangerous weapon, in any county courthouse, or attempts to do so, is guilty of a Class 1 misdemeanor.

Section 263. That § 22-14-25 be amended to read as follows:

22-14-25. Nothing in this chapter limits the power of a court to punish for contempt or to promulgate rules or orders regulating, restricting, or prohibiting the possession of weapons, within any building housing such court or any of its proceedings, or upon any grounds pertinent to such building.

Section 264. That § 22-14-26 be amended to read as follows:

22-14-26. Notice of the provisions of § 22-14-23 shall be posted conspicuously at each public entrance to each county courthouse.

Section 265. That § 22-14-28 be amended to read as follows:

22-14-28. By a majority of the members-elect, the county commission in any county may elect to waive the provisions of § 22-14-23.

Section 266. That § 22-14-29 be repealed.

Section 267. That § 22-14-30 be amended to read as follows:

22-14-30. No person who has been convicted of a felony under chapter 22-42 or of a felony for a crime with the same elements in another state may possess or have control of a firearm. A violation of this section is a Class 6 felony. The provisions of this section do not apply to any person who was last discharged from prison, jail, probation, or parole, for a felony under chapter 22-42 more than five years prior to the commission of the principal offense and is not subject to the restrictions in

§ 22-14-15.

Section 268. The code counsel shall renumber § 22-14-30 as § 22-14-15.1 and adjust all appropriate cross references.

Section 269. That chapter 22-14 be amended by adding thereto a NEW SECTION to read as follows:

No person who has been convicted of any misdemeanor crime involving an act of domestic violence may possess or have control of a firearm for a period of one year from the date of conviction. Any violation of this section is a Class 1 misdemeanor. At the end of the one year period, any civil rights lost as a result of this provision shall be restored. Any person who has lost their right to possess or have control of a firearm as a result of a misdemeanor conviction involving an act of domestic violence, prior to the date of the effectiveness of this Act, shall be restored to those civil rights one year after the effective date of this Act. This section shall be repealed on the date when any federal law restricting the right to possess firearms for misdemeanor domestic violence convictions is repealed.

Once eligible under the statute, a person convicted under this section may petition the convicting court for an order reflecting the restoration of any firearm rights lost, if the person has not been convicted within the prior year of a crime for which firearm rights have been lost. A petition filed under this section shall be verified by the petitioner and served upon the states attorney in the county where the conviction occurred. Thirty days after service upon the states attorney, the court shall enter the order, if the court finds that the petitioner is eligible for relief under this section.

Section 270. That § 22-14A-4 be amended to read as follows:

22-14A-4. Any person who knowingly sells, offers for sale, transports, or possesses any destructive device is guilty of a Class 4 felony. If such person has been previously convicted of a crime of violence in this state or elsewhere, the offense is a Class 3 felony.

Section 271. That § 22-14A-5 be amended to read as follows:

22-14A-5. Any person who, with intent to injure or to threaten to injure any person or property:

(1) Carries any explosive or destructive device on any vessel, aircraft, motor vehicle, or other vehicle that transports passengers for hire;

(2) Places or carries any explosive or destructive device, while on board any such vessel, aircraft, motor vehicle, or other vehicle, in any hand baggage, roll, or other container with intent to conceal the explosive or destructive device;

(3) Places any explosive or destructive device in any baggage which is later checked with any common carrier;

is guilty of a Class 2 felony.

Section 272. That § 22-14A-6 be amended to read as follows:

22-14A-6. Any person who has in his or her possession any explosive or destructive device under circumstances not described in § 22-14A-5, with intent to injure, intimidate, or terrify any person, or with intent to wrongfully injure or destroy any property, is guilty of a Class 3 felony.

Section 273. That § 22-14A-11 be amended to read as follows:

22-14A-11. Any person who explodes or ignites any destructive device or explosive with intent to cause serious bodily injury and which results in serious bodily injury is guilty of a Class 2 felony.

Section 274. That § 22-14A-16 be amended to read as follows:

22-14A-16. The provisions of this chapter do not apply to the armed forces of the United States, the national guard, any law enforcement agency or any officer, agent, employee, or member thereof, acting in a lawful capacity, and any person possessing a valid seller's permit or user's permit from the United States federal government for explosive and destructive devices.

Section 275. That § 22-14A-18 be amended to read as follows:

22-14A-18. Any person who intentionally destroys or attempts to destroy by the use of any

explosive or destructive device, any property real or personal, not the property of such person, although done under such circumstances as not to endanger the life or safety of any human being, is guilty of a Class 4 felony. This section does not apply to any property destroyed under the direction of any firefighter or any law enforcement officer of any municipality to prevent the spread of a fire.

Section 276. That § 22-14A-19 be amended to read as follows:

22-14A-19. Any person who intentionally, by the use of an explosive or destructive device, destroys or injures any occupied or unoccupied structure, motor vehicle, street, highway, railway, bridge, dam, dike, or other structure, by means of which the life or safety of any human being is endangered, is guilty of a Class 3 felony.

Section 277. That § 22-14A-20 be amended to read as follows:

22-14A-20. Any person who takes into, upon, under, against, or near to any occupied or unoccupied structure, motor vehicle, street, highway, railway, bridge, dam, dike, or other structure, any explosive or destructive device, with intent to destroy or injure such structure, under circumstances that if such intent were accomplished, human life or safety would be endangered thereby, is guilty of a Class 4 felony. It is no defense to a prosecution under this section that no damage is done.

Section 278. That § 22-14A-22 be amended to read as follows:

22-14A-22. Any person who makes a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, explosive, destructive device, dangerous chemical, biological agent, poison or harmful radioactive substance, is guilty of falsely reporting a threat. Falsely reporting a threat is a Class 6 felony. Any person found guilty of falsely reporting a threat shall pay restitution for any expense incurred as a result of the crime. If the person making the false report prohibited by this section is a minor, the court, in addition to such other disposition as the court may impose, shall require the minor to perform at least

fifty hours of public service unless tried as an adult.

Section 279. The code counsel shall renumber § 22-14A-22 as § 22-11-9.2 and adjust all appropriate cross references.

Section 280. That § 22-14A-23 be amended to read as follows:

22-14A-23. No person may, with the intent to cause bodily injury to another person, use or place a hazardous or injurious device on any land owned or leased by the State of South Dakota, including any highway, road, or right-of-way. A violation of this section is a Class 1 misdemeanor.

For the purposes of this section, the term, a hazardous or injurious device, means any device, which when assembled or placed, is capable of causing bodily injury, or damage to property, by the action of any person making contact with such device subsequent to the assembly or placement. The term includes guns attached to trip wires or other triggering mechanisms, ammunition attached to trip wires or other triggering mechanisms, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, lines or wires, lines or wires with hooks attached, nails, or other such devices placed so that the sharpened ends are positioned in an upright manner, or tree spiking devices including spikes, nails, or other objects hammered, driven, fastened, or otherwise placed into or on any timber, whether or not severed from the stump. However, the term does not include puncture strips placed by law enforcement officers in an immediate attempt to stop a fleeing vehicle.

Section 281. That § 22-14A-24 be amended to read as follows:

22-14A-24. Any person who intentionally communicates a threat by leaving a substance or device, thereby causing either serious public inconvenience, or the evacuation or serious disruption of a building, place of assembly, facility of public or school transport, or a school related event, is guilty of communicating a felonious threat. For the purposes of this section, a substance or device includes any actual or apparently dangerous weapon, destructive device, dangerous chemical,

biological agent, poison, or harmful radioactive substance. A violation of this section is a Class 4 felony.

Section 282. That § 22-14A-25 be amended to read as follows:

22-14A-25. Any person who intentionally possesses, transports, uses, or places any hoax substance or hoax destructive device with the intent of causing anxiety, unrest, fear, or personal discomfort is guilty of a Class 6 felony. A hoax substance is any substance that would cause a person to reasonably believe that it is a dangerous chemical or biological agent, a poison, a harmful radioactive substance, or a similar substance. A hoax destructive device is any device that would cause a person to reasonably believe that it is a dangerous explosive or incendiary device or a similar destructive device.

Section 283. That § 22-14A-26 be amended to read as follows:

22-14A-26. The court may, after conviction or adjudication of any violation of § 22-11-9.2, 22-14A-24, or 22-14A-25, conduct a hearing to ascertain the extent of costs incurred, damages, and financial loss suffered by local, county, or state public safety agencies, and the amount of property damage caused as a result of the crime. A person found guilty of violating § 22-11-9.2, 22-14A-24, or 22-14A-25, may upon conviction, be ordered to make restitution to the local, county, or state public service agency for any cost incurred, damages, and financial loss or property damage sustained as a result of the commission of the crime.

Section 284. That § 22-14A-27 be amended to read as follows:

22-14A-27. The provisions of § 22-11-9.2, 22-14A-24, or 22-14A-25 may not be construed to create any cause of action against any person based upon or arising out of any act or omission relating to any good faith response to a felonious threat or an attempted felonious threat.

Section 285. That § 22-25-3 be repealed.

Section 286. That § 22-27-1 be amended to read as follows:

22-27-1. Any person who, by threats or violence, intentionally prevents another person from performing any lawful act enjoined upon or recommended by the religion which such person professes is guilty of a Class 1 misdemeanor.

Section 287. That § 22-27-2 be amended to read as follows:

22-27-2. Any person who intentionally attempts, by threats or violence, to compel another person to adopt, practice, or profess any particular form of religious belief is guilty of a Class 1 misdemeanor.

Section 288. The code counsel shall transfer §§ 22-27-1 and 22-27-2 to chapter 22-19B and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 289. That § 22-35-5 be amended to read as follows:

22-35-5. Any person who, knowing that he or she is not privileged to do so, enters or remains in any building or structure surreptitiously, is guilty of criminal trespass. Criminal trespass is a Class 1 misdemeanor.

Section 290. That § 22-35-6 be amended to read as follows:

22-35-6. Any person who, knowing that he or she is not privileged to do so, enters or remains in any place where notice against trespass is given by:

(1) Actual communication to the person who subsequently commits the trespass;

(2) Posting in a manner reasonably likely to come to the attention of trespassers; or

(3) Fencing or other enclosure which a reasonable person would recognize as being designed to exclude trespassers;

is guilty of a Class 2 misdemeanor. However, if such trespasser defies an order to leave, personally communicated to him or her by the owner of the premises or by any other authorized person, the trespasser is guilty of criminal trespass, which is a Class 1 misdemeanor.

Section 291. That § 22-35-7 be amended to read as follows:

22-35-7. It is an affirmative defense to prosecution under §§ 22-35-5 or 22-35-6 that:

(1) The premises were at the time open to members of the public and the person complied with all lawful conditions imposed concerning access to or the privilege of remaining on the premises; or

(2) The person reasonably believed that the owner of the premises, or other person permitted to license access to the premises, would have permitted him or her to enter or remain.

Section 292. The code counsel shall rename chapter 22-35 as Criminal Trespass.

Section 293. That § 22-40-1 be amended to read as follows:

22-40-1. No person may impersonate any other person, with intent to deceive a law enforcement officer. Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor.

Section 294. The code counsel shall rename chapter 22-40 as Identity Crimes.

Section 295. The code counsel shall transfer §§ 22-47-1, 22-47-2, and 22-47-3 to Title 37 and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 296. That § 22-43-1 be amended to read as follows:

22-43-1. Any person who confers, or agrees to confer, directly or indirectly, any benefit upon any employee, agent, or fiduciary without the consent of the latter's employer or principal, with intent to influence the employee's, agent's, or fiduciary's conduct in relation to that person's employer's or principal's affairs, is guilty of commercial bribery. Commercial bribery is a Class 1 misdemeanor.

Section 297. That § 22-43-2 be amended to read as follows:

22-43-2. Any employee, agent, or fiduciary who, without consent of that person's employer or principal, solicits, accepts, or agrees to accept any benefit, directly or indirectly, from another person upon an agreement or understanding that such benefit will influence his or her conduct in relation to that person's employer's or principal's affairs, is guilty of receiving a commercial bribe. Receiving a commercial bribe is a Class 1 misdemeanor.

Section 298. That § 22-24-1.1 be amended to read as follows:

22-24-1.1. A person commits the crime of public indecency if the person, under circumstances in which that person knows that his or her conduct is likely to annoy, offend, or alarm some other person, exposes his or her anus or genitals in a public place where another may be present who will be annoyed, offended, or alarmed by the person's act. A violation of this section is a Class 2 misdemeanor.

Section 299. That § 22-24-1.2 be amended to read as follows:

22-24-1.2. A person commits the crime of indecent exposure if, with the intent to arouse or gratify the sexual desire of any person, the person exposes his or her genitals in a public place under circumstances in which that person knows that person's conduct is likely to annoy, offend, or alarm another person. A violation of this section is a Class 1 misdemeanor. However, if such person has been previously convicted of a felony violation of § 22-22-1, 22-22-7, 22-22-19.1, or 22-22-24.2, that person is guilty of a Class 6 felony. Any person convicted of a third or subsequent violation of this section is guilty of a Class 6 felony.

Section 300. That § 22-24-1.3 be amended to read as follows:

22-24-1.3. If any person, eighteen years of age or older, with the intent to arouse or gratify the sexual desire of any person, exposes his or her genitals under circumstances in which that person knows that his or her conduct is likely to annoy, offend, or alarm some child, thirteen years of age or younger, that person is guilty of the crime of indecent exposure involving a child. Indecent exposure involving a child is a Class 6 felony. A second or subsequent conviction for indecent exposure involving a child is a Class 5 felony.

Section 301. That § 22-24-8 be repealed.

Section 302. That § 22-24-25.1 be amended to read as follows:

22-24-25.1. Any county or municipality may provide, by ordinance, for a contemporary

community standards test to regulate the sale, distribution, and use of obscene material and to regulate obscene live conduct in any commercial establishment or public place within its jurisdiction.

Section 303. That § 22-24-27 be amended to read as follows:

22-24-27. Terms used in §§ 22-24-25 to 22-24-37, inclusive, mean:

(1) "Contemporary community standard," the contemporary community standard of the state in which the question of obscenity is to be tested, by the average person, of the state;

(2) "Distributed," to transfer possession of, whether with or without consideration;

(3) "Exhibit," to show or display;

(4) "Harmful to minors," includes in its meaning the quality of any material or of any performance or of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, if it:

(a) Predominantly appeals to the prurient, shameful, or morbid interest of minors; and

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(c) Is without serious literary, artistic, political, or scientific value;

(5) "Magistrate," any circuit court or magistrate judge;

(6) "Material," anything tangible which is harmful to minors, whether derived through the medium of reading, observation, or sound;

(7) "Matter" or "material," any book, magazine, newspaper, or other printed or written material; or any picture, drawing, photograph, motion picture, or other pictorial representation; or any statue or other figure; or recording, transcription or mechanical, chemical, or electrical reproduction; or any other articles, equipment, machines, or materials;

(8) "Minor," any person less than eighteen years of age;

(9) "Nudity," within the meaning of subdivision (4) of this section, the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

(10) "Obscene live conduct," any physical human body activity, whether performed or engaged in alone or with other persons, including singing, speaking, dancing, acting, simulation, or pantomiming, where:

(a) The dominant theme of such conduct, taken as a whole, appeals to a prurient interest;

(b) The conduct is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and

(c) The conduct is without serious literary, artistic, political, or scientific value.

In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the conduct;

(11) "Obscene material," material:

(a) The dominant theme of which, taken as a whole, appeals to the prurient interest;

(b) Which is patently offensive because it affronts contemporary community standards relating to the description or representation of sado-masochistic abuse or sexual conduct; and

(c) Lacks serious literary, artistic, political, or scientific value.

In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of production,

presentation, sale, dissemination, or publicity indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter;

(12) "Prurient interest," a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience or clearly defined deviant sexual group, the appeal of the subject matter shall be judged with reference to such audience or group;

(13) "Sado-masochistic abuse," flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed;

(14) "Sexual conduct," within the meaning of subdivision (4) of this section, any act of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person be a female, the breast;

(15) "Sexual excitement," the condition of human male or female genitals when in a state of sexual stimulation or arousal.

Section 304. That § 22-24-29 be amended to read as follows:

22-24-29. A person is guilty of disseminating material harmful to minors if that person knowingly gives or makes available to a minor or promotes or possesses with intent to promote to minors, or if that person knowingly sells or loans to a minor for monetary consideration any material described in subdivision § 22-24-27(4).

Section 305. That § 22-24-29.1 be amended to read as follows:

22-24-29.1. No person may knowingly distribute, display, sell, or exhibit for sale in any public place any magazine, book, or newsprint displaying or containing obscene material on its cover or material unless the magazine, book, or newsprint is wrapped and sealed so that no more than its title, name, price, or date is exposed to the public and the magazine, book, or newsprint cannot be viewed or examined without breaking the seal, wrapping, or covering. Any person who violates this section is guilty of a Class 1 misdemeanor.

Section 306. That § 22-24-30 be amended to read as follows:

22-24-30. A person is guilty of disseminating material harmful to minors if, with reference to a motion picture, show, or other presentation which depicts nudity, sexual conduct, or sado-masochistic abuse, and which is harmful to minors, that person knowingly:

(1) Exhibits such motion picture, show, or other presentation to a minor;

(2) Sells or gives to a minor an admission ticket or pass to premises whereon there is exhibited such motion picture, show, or other presentation; or

(3) Admits a minor for a monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture, show, or other presentation.

Section 307. That § 22-24-31 be amended to read as follows:

22-24-31. In any prosecution for disseminating material harmful to minors, it is an affirmative defense that:

(1) The defendant had reasonable cause to believe that the minor involved was eighteen years old or more. A draft card, driver's license, birth certificate, or other official or apparently official document is evidence establishing that the minor was eighteen years of age or older;

(2) The minor involved was accompanied by a parent or guardian, or by an adult and the adult represented that he or she was the minor's parent or guardian or an adult and the adult

signed a written statement to that effect;

(3) The defendant was the parent or guardian of the minor involved; or

(4) The defendant was a bona fide school, college, university, museum, or public library, or was acting in the capacity of an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.

Section 308. That § 22-24-32 be amended to read as follows:

22-24-32. A person is guilty of a Class 1 misdemeanor if that person knowingly misrepresents that he or she is a parent or guardian of a minor for the purpose of obtaining admission of any minor to any motion picture, show, or other presentation which is harmful to minors.

Section 309. That § 22-24-33 be amended to read as follows:

22-24-33. A minor is guilty of a Class 2 misdemeanor if that minor misrepresents his or her age for the purpose of obtaining admission to any motion picture, show, or other presentation which is harmful to minors.

Section 310. That § 22-24-34 be amended to read as follows:

22-24-34. If more than one article or item of material prohibited under §§ 22-24-27 to 22-24-37, inclusive, is sold, given, advertised for sale, distributed commercially, or promoted, by the same person, after a hearing and determination that probable cause exists to believe such article or material is harmful to minors, each such sale, gift, advertisement, distribution, or promotion constitutes a separate offense.

Section 311. That § 22-24-37 be amended to read as follows:

22-24-37. The provisions of §§ 22-24-27 to 22-24-37, inclusive, do not apply to any persons who may possess or distribute obscene matter or participate in conduct, otherwise proscribed by those sections, if such possession, distribution, or conduct occurs:

(1) In the course of law enforcement and judicial activities;

(2) In the course of bona fide school, college, university, museum, or public library activities or in the course of employment of such an organization or retail outlet affiliated with and serving the educational purposes of such an organization; or

(3) In the course of employment as a moving picture machine operator, or assistant operator, in a motion picture theater in connection with a motion picture film or show exhibited in such theater if such operator or assistant operator has no financial interest in the motion picture theater wherein that operator or assistant operator is so employed other than wages received or owed;

or like circumstances of justification if the possession, distribution, or conduct is not limited to the subject matter's appeal to prurient interests.

Section 312. That § 22-24-55 be amended to read as follows:

22-24-55. Any public school that provides a public access computer shall do one or both of the following:

(1) Equip the computer with software that will limit minors' ability to gain access to obscene materials or purchase internet connectivity from an internet service provider that provides filter services to limit access to obscene materials; or

(2) Develop and implement, by January 1, 2001, a local policy that establishes measures to restrict minors from computer access to obscene materials.

Section 313. That § 22-24-57 be amended to read as follows:

22-24-57. No public school that complies with § 22-24-55 or any public library that complies with § 22-24-56 may be held liable for any damages that may arise from a minor gaining access to obscene materials through the use of a public access computer that is owned or controlled by the public school or public library.

Section 314. That § 22-24-58 be amended to read as follows:

22-24-58. For the purposes of §§ 22-24-55 to 22-24-59, inclusive, obscene material is defined pursuant to subdivision 22-24-27(11).

Section 315. That § 22-24-64 be amended to read as follows:

22-24-64. Any of the following persons may bring an action for damages caused by another person's conduct as proscribed by §§ 22-24-60 to 22-24-68, inclusive:

(1) The victimized minor;

(2) Any parent, legal guardian, or sibling of a victimized minor; or

(3) Any person injured as a result of the willful, reckless, or negligent actions of a person who knowingly participated in conduct proscribed by §§ 22-24-60 to 22-24-68, inclusive.

If the parent or guardian is named as a defendant in the action, the court shall appoint a special guardian to bring the action on behalf of the minor.

Section 316. That § 22-24-66 be amended to read as follows:

22-24-66. Any person entitled to bring an action under § 22-24-64 may recover the following damages:

(1) Economic damages, including the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the proscribed conduct;

(2) Noneconomic damages, including physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses proximately caused by the proscribed conduct;

(3) Exemplary damages;

(4) Attorneys' fees; and

(5) Disbursements.

Section 317. That § 22-11A-1 be amended to read as follows:

22-11A-1. The term, prisoner, as used in this chapter, includes every person who is in custody by being under arrest or by being under process of law issued from a court of competent jurisdiction, whether civil or criminal. A prisoner at the time of escape need not be in a place designated for the keeping of prisoners.

The term, escape, as used in this chapter, means the departure without lawful authority or the failure to return to custody following an assignment or temporary leave granted for a specific purpose or limited period.

Section 318. That § 22-11A-2 be amended to read as follows:

22-11A-2. Any escape by a prisoner constitutes first degree escape if the prisoner effects the escape:

(1) By means of the use or threat of violence; or

(2) From physical confinement in a correctional facility; or

(3) From the immediate custody of a law enforcement officer or Department of Corrections employee.

First degree escape is a Class 4 felony.

Section 319. That chapter 22-11A be amended by adding thereto a NEW SECTION to read as follows:

Any escape by a prisoner constitutes second degree escape if the prisoner effects the escape by means of failure to return to custody following an assignment or temporary leave granted for a specific purpose or limited period. Second degree escape is a Class 5 felony.

Section 320. That § 22-11A-3 be repealed.

Section 321. That § 22-11A-4 be amended to read as follows:

22-11A-4. If a prisoner escapes, the person from whose custody that prisoner escaped may immediately pursue and retake that prisoner at any time and in any place in the state. To retake a prisoner, the person pursuing may, after notice of intention and refusal of admittance, break open an outer or inner door or window of a dwelling house or other structure.

Section 322. That § 22-11A-5 be amended to read as follows:

22-11A-5. Any person who conceals any prisoner knowing that the prisoner has escaped is guilty of a Class 5 felony.

Section 323. The code counsel shall transfer §§ 22-11A-6 and 22-11A-7 to an appropriate chapter in Title 24 and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 324. That § 22-11A-7 be amended to read as follows:

22-11A-7. In order to obtain reimbursement pursuant to § 22-11A-6, the chair of the board of county commissioners of the county shall present a claim on a voucher to be approved by the secretary of corrections for all of the actual expenses paid by the county. When the voucher is presented to the state auditor, the state auditor shall examine it and, if the claim is just and valid, the state auditor shall issue a warrant for payment to be made from funds appropriated for that purpose, and the state treasurer shall then pay the sum to the treasurer of the county.

Section 325. That § 22-11A-8 be repealed.

Section 326. That § 22-11A-9 be repealed.

Section 327. That § 22-11A-10 be repealed.

Section 328. The code counsel shall rename chapter 22-11A, Escape.

Section 329. That § 22-12A-1 be amended to read as follows:

22-12A-1. Any person who gives, or agrees or offers to give, any gratuity or reward in consideration that that person or any other person be appointed to any public office, or be permitted

to exercise, perform, or discharge the prerogatives or duties of any public office, is guilty of a Class 1 misdemeanor.

Section 330. That § 22-12A-2 be amended to read as follows:

22-12A-2. Any person who, directly or indirectly, asks or receives any consideration for appointing another person or procuring the employment of another person in any public office, or for permitting or agreeing to permit any other person to exercise any of the prerogatives or duties of a public office, is guilty of a Class 1 misdemeanor.

Section 331. That § 22-12A-3 be amended to read as follows:

22-12A-3. Any appointment or employment to a public office made contrary to § 22-12A-1 or 22-12A-2 is void. However, no official act performed prior to conviction of any offense prohibited by such sections is invalid.

Section 332. That § 22-12A-4 be amended to read as follows:

22-12A-4. Any person who gives, or offers to give, a bribe to any member of the Legislature, or attempts, directly or indirectly, by menace, deceit, suppression of truth, or any other corrupt means, to influence a member to give or to withhold the member's vote, or to not attend the legislative session, or any committee thereof, is guilty of a Class 4 felony.

Section 333. That § 22-12A-5 be amended to read as follows:

22-12A-5. Any member of the Legislature who asks, receives, or agrees to receive any bribe upon any understanding that the member's official vote, opinion, judgment, or action be influenced thereby, or who is given any bribe in any manner upon any particular side of any question or matter upon which the member may be required to act in an official capacity, is guilty of a Class 4 felony.

Section 334. That § 22-12A-6 be amended to read as follows:

22-12A-6. Any person who gives or offers a bribe to a public officer or employee with intent to influence the officer or employee in respect to any act, decision, vote, opinion, or other proceeding

for which the officer or employee is responsible, is guilty of a Class 4 felony.

Section 335. That § 22-12A-7 be amended to read as follows:

22-12A-7. Any public officer or employee, who asks, receives, or agrees to receive a bribe upon an agreement or understanding that his or her vote, opinion, or action upon any matter then pending, or which may by law be brought before him or her in a public capacity, be influenced thereby, is guilty of a Class 4 felony.

Section 336. That § 22-12A-8 be amended to read as follows:

22-12A-8. Any public officer or employee who asks or receives any fee or consideration for any official service which has not been rendered, except charges for prospective costs or fees demandable in advance, if allowed by law, or who asks or receives any emolument, gratuity, reward, or other consideration excepting as authorized by law, for doing any official act, is guilty of a Class 1 misdemeanor.

Section 337. That § 22-12A-10 be amended to read as follows:

22-12A-10. The public office of any public officer or employee who is convicted of violating any provision contained in this chapter is forfeit. Moreover, such public officer or employee is forever disqualified from holding any public office in this state.

Section 338. That § 22-12A-11 be amended to read as follows:

22-12A-11. Any person who:

(1) Gives or offers to give a bribe to any judicial officer or juror or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence that person's vote, opinion, or decision upon any matter or question which is or may be brought before that person for decision; or

(2) While acting as a judicial officer or juror, asks, receives or agrees to receive a bribe upon any agreement or understanding that that person's vote, opinion, or decision upon any

matter or question which is or may be brought before that person for decision shall be influenced thereby,

is guilty of a Class 4 felony.

In addition, the office of any judicial officer convicted under subdivision (2) of this section is forfeit. Moreover, such judicial officer is forever disqualified from holding any public office under this state.

Section 339. That § 22-46-1 be amended to read as follows:

22-46-1. Terms used in this chapter mean:

(1) "Abuse," physical harm, bodily injury, or attempt to cause physical harm or injury, or the infliction of fear of imminent physical harm or bodily injury on a disabled adult;

(2) "Disabled adult," a person eighteen years of age or older who suffers from a condition of mental retardation, infirmities of aging as manifested by organic brain damage, advanced age, or other physical dysfunctioning to the extent that the person is unable to protect himself or herself or provide for his or her own care;

(3) "Exploitation," the wrongful taking or exercising of control over property of a disabled adult with intent to defraud that disabled adult; and

(4) "Neglect," harm to a disabled adult's health or welfare, without reasonable medical justification, caused by the conduct of a person responsible for the adult's health or welfare, within the means available for the disabled adult, including the failure to provide adequate food, clothing, shelter, or medical care.

Section 340. That chapter 34-12 be amended by adding thereto a NEW SECTION to read as follows:

If a disabled adult is under treatment solely by spiritual means, the court may, upon good cause shown, order that medical treatment be provided for that disabled adult.

Section 341. That § 22-46-2 be amended to read as follows:

22-46-2. Any person who abuses or neglects a disabled adult in a manner which does not constitute aggravated assault is guilty of a Class 6 felony.

Section 342. That § 22-46-3 be amended to read as follows:

22-46-3. Any person who, having assumed the duty by written contract, by receipt of payment for care, or by order of a court to provide for the support of a disabled adult, and having been entrusted with the property of that disabled adult, with intent to defraud, appropriates such property to a use or purpose not in the due and lawful execution of that person's trust, is guilty of theft by exploitation. Theft by exploitation is punishable as theft pursuant to chapter 22-30A.

Section 343. That § 22-46-6 be amended to read as follows:

22-46-6. Any institution regulated pursuant to chapter 34-12 and any employee, agent, or member of a medical or dental staff thereof who, in good faith, makes a report of abuse, exploitation, or neglect of a disabled adult, is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, and has the same immunity with respect to participation in any judicial proceeding resulting from such report. This immunity also extends in a like manner to any public official involved in the investigation of abuse, exploitation, or neglect of any disabled adult, or to any person or institution provided herein who in good faith cooperates with such public officials in an investigation. The provisions of this section do not extend to any person alleged to have committed any act of abuse or neglect of a disabled adult.

Section 344. The code counsel shall transfer § 22-46-6 to chapter 34-12 and shall renumber the section accordingly and adjust all appropriate cross references.

Section 345. That § 22-10-1 be amended to read as follows:

22-10-1. Any use of force or violence or any threat to use force or violence, if accompanied by immediate power of execution, by three or more persons, acting together and without authority of

law, is riot. Riot is a Class 4 felony.

Section 346. That chapter 22-10 be amended by adding thereto a NEW SECTION to read as follows:

There is no offense of attempted riot or attempted aggravated riot.

Section 347. That § 22-10-6 be amended to read as follows:

22-10-6. Any person who participates in any riot and who directs, advises, encourages, or solicits other persons participating in the riot to acts of force or violence is guilty of a Class 2 felony.

Section 348. That § 22-10-6.1 be amended to read as follows:

22-10-6.1. Any person who does not personally participate in any riot but who directs, advises, encourages, or solicits other persons participating in the riot to acts of force or violence is guilty of a Class 5 felony.

Section 349. That § 22-10-9 be amended to read as follows:

22-10-9. Any person who assembles with two or more persons for the purpose of engaging in conduct constituting riot or aggravated riot or who, being present at an assembly that either has or develops such a purpose, remains there, with intent to advance that purpose, is guilty of unlawful assembly. Unlawful assembly is a Class 1 misdemeanor.

Section 350. That § 22-10-11 be amended to read as follows:

22-10-11. Any person who, during a riot or unlawful assembly, intentionally disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot, is guilty of a Class 1 misdemeanor. A public safety order is any order, the purpose of which is to prevent or control disorder or promote the safety of persons or property, issued by a law enforcement officer or a member of the fire or military forces concerned with the riot or unlawful assembly.

Section 351. The code counsel shall transfer § 22-10-13 to chapter 1-7 and shall renumber the

section accordingly and adjust all appropriate cross references.

Section 352. That § 22-10-14 be amended to read as follows:

22-10-14. Terms used in §§ 22-10-14 to 22-10-16, inclusive, mean:

(1) "Street gang," any formal or informal ongoing organization, association, or group of three or more persons who have a common name or common identifying signs, colors, or symbols and have members or associates who, individually or collectively, engage in or have engaged in a pattern of street gang activity;

(2) "Street gang member," any person who engages in a pattern of street gang activity and who meets two or more of the following criteria:

(a) Admits to gang membership;

(b) Is identified as a gang member by a documented reliable informant;

(c) Resides in or frequents a particular gang's area and adopts its style of dress, its use of hand signs or its tattoos and associates with known gang members;

(d) Is identified as a gang member by an informant of previously untested reliability if such identification is corroborated by independent information;

(e) Has been arrested more than once in the company of identified gang members for offenses which are consistent with usual gang activity;

(f) Is identified as a gang member by physical evidence, such as photographs or other documentation; or

(g) Has been stopped in the company of known gang members four or more times; and

(3) "Pattern of street gang activity," the commission, attempted commission, or solicitation by any member or members of a street gang of two or more felony or violent misdemeanor offenses on separate occasions within a three-year period for the purpose of furthering gang activity.

Section 353. That § 22-10-15 be amended to read as follows:

22-10-15. The penalty for conviction of any offense shall be reclassified to the next highest classification in the penalty schedule if the commission of such offense is part of a pattern of street gang activity.

Section 354. That § 22-10-16 be amended to read as follows:

22-10-16. An allegation that a defendant is a street gang member shall be filed as a separate information at the time of, or before, arraignment. The separate information shall state those criteria, as set forth in subdivision 22-10-14(2), which allegedly identify the defendant as a street gang member, and shall be signed by the prosecutor.

Section 355. The code counsel shall transfer §§ 22-10-14, 22-10-15, and 22-10-16, to a new chapter entitled, Street Gang Activity, and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 356. That § 22-1-1 be amended to read as follows:

22-1-1. The rule of the common law that penal statutes are to be strictly construed has no application to this title. All its criminal and penal provisions and all penal statutes shall be construed according to the fair import of their terms, with a view to effect their objects and promote justice.

Section 357. That § 22-1-2 be amended to read as follows:

22-1-2. Terms used in this title mean:

(1) If applied to the intent with which an act is done or omitted:

(a) The words, "malice, maliciously," and all derivatives thereof import a wish to intentionally vex, annoy, or injure another person, established either by proof or presumption of law;

(b) The words, "intent, intentionally," and all derivatives thereof, import a specific design to cause a certain result or, if the material part of a charge is the violation

of a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, a specific design to engage in conduct of that nature;

(c) The words, "knowledge, knowingly," and all derivatives thereof, import only a knowledge that the facts exist which bring the act or omission within the provisions of any statute. A person has knowledge if that person is aware that the facts exist which bring the act or omission within the provisions of any statute. Knowledge of the unlawfulness of such act or omission is not required;

(d) The words, "reckless, recklessly," and all derivatives thereof, import a conscious and unjustifiable disregard of a substantial risk that the offender's conduct may cause a certain result or may be of a certain nature. A person is reckless with respect to circumstances if that person consciously and unjustifiably disregards a substantial risk that such circumstances may exist;

(e) The words, "neglect, negligently," and all words derived thereof, import a want of attention to the nature or probable consequences of an act or omission which a prudent person ordinarily bestows in acting in his or her own concerns;

(f) If the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge, intent, or malice also constitutes sufficient culpability for such element. If recklessness suffices to establish an element of the offense, then knowledge, intent or malice also constitutes sufficient culpability for such element. If knowledge suffices to establish an element of an offense, then intent or malice also constitutes sufficient culpability for such element. If intent suffices to establish an element of an offense, then malice also constitutes sufficient culpability for such element;

(2) "Actor," the person who takes the active part in a transaction;

(3) "Affirmative defense," an issue involving an alleged defense to which, unless the state's evidence raises the issue, the defendant, to raise the issue, must present some credible evidence. If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense;

(4) "Antique firearm," any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured before 1899, and any replica of any firearm described in this section if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or if it uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(5) "Check," any check, draft, order or other commercial device which orders a financial institution to pay a sum certain of money on its presentment;

(6) "Concealed," any firearm that is totally hidden from view. If any part of the firearm is capable of being seen, it is not concealed;

(7) "Consideration," any type of property or thing of legal value, whether delivered in the past, present or to be delivered in the future. The term includes an unfulfilled promise to deliver. The term may include an advantage or benefit to the promisor or a loss or detriment to the promisee. Any amount, advantage or inconvenience, no matter how trifling, is sufficient to constitute consideration;

(8) "Controlled weapon" includes any firearm silencer, machine gun, or short shotgun, as those terms are defined in subdivisions (17), (23), and (46) of this section;

(9) "Crime of violence," any of the following crimes or an attempt to commit, or a conspiracy to commit, any of the following crimes: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact as defined in §§ 22-22-7 and 22-22-19.1, felony child abuse as defined in § 26-10-1, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device;

(10) "Dangerous weapon" or "deadly weapon," any firearm, stun gun, knife, or device, instrument, material, or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm;

(11) "Dealer in stolen property," any person who:

(a) Is found in possession or control of property stolen from two or more persons on separate occasions; or

(b) Has received stolen property in another transaction within the year preceding the commencement of the prosecution; or

(c) Trades in property similar to the type of stolen property received and acquires such property for a consideration which that person knows is substantially below its reasonable value;

(12) "Deprive," to take or to withhold property of another or to dispose of property of another so as to make it unlikely that the owner will receive it;

(13) "Destructive device,"

(a) Any bomb, grenade, explosive missile, or similar device or any launching device therefor; or

(b) Any breakable container which contains a flammable liquid with a flashpoint of

one hundred and fifty degrees Fahrenheit or less and has a wick or similar device capable of being ignited;

(c) The term does not include "permissible fireworks," defined by § 34-37-5; any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device; surplus ordnance sold, loaned or given by the secretary of the army pursuant to the provisions of 10 U.S.C. §§ 4684(2), 4685, or 4686; or any other device which is an antique or is a rifle which the owner intends to use solely for sporting purposes;

(14) "Explosive," any substance, or combination of substances, that is used for the purpose of detonation and which, upon exposure to any external or internal force or condition, is capable of a relatively instantaneous release of gas and heat. The term does not include "permissible fireworks," as defined by § 34-37-5;

(15) "Financial institution," a bank, insurance company, credit union, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment;

(16) "Firearm," any weapon from which a projectile or projectiles may be discharged by gunpowder. As used in this subdivision, the term,gunpowder, includes any propellant that upon oxidization emits heat and light and is commonly used in firearms cartridges;

(17) "Firearm silencer," any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any such weapon;

(18) "Government," the United States, any state, county, municipality, school district, or other political unit, or any department, agency, or subdivision of any of the foregoing, or any

corporation or other association carrying out the functions of any of the foregoing;

(19) "Immediate family," any spouse, child, parent, or guardian of the victim;

(20) "Insanity," the condition of a person temporarily or partially deprived of reason, upon proof that at the time of committing the act, the person was incapable of knowing its wrongfulness, but not including an abnormality manifested only by repeated unlawful or antisocial behavior;

(21) "Intoxication," a disturbance of mental or physical capacities resulting from the introduction of substances into the body. Intoxication is not, in itself, a mental disease or defect;

(22) "Law enforcement officer," any officer, prosecutor, or employee of the state or any of its political subdivisions or of the United States, or, while on duty, an agent or employee of a railroad or express company or security personnel of an airline or airport, who is responsible for the prevention, detection, or prosecution of crimes, for the enforcement of the criminal or highway traffic laws of the state, or for the supervision of confined persons;

(23) "Machine gun," any firearm, whatever its size and usual designation, that automatically discharges two or more cartridges by a single function of the firing device;

(24) "Mental illness," any substantial psychiatric disorder of thought, mood or behavior which affects a person at the time of the commission of the offense and which impairs a person's judgment, but not to the extent that the person is incapable of knowing the wrongfulness of such act. Mental illness does not include abnormalities manifested only by repeated criminal or otherwise antisocial conduct;

(25) "Moral turpitude," an act done contrary to justice, honesty, principle, or good morals, as well as an act of baseness, vileness, or depravity in the private and social duties which a

person owes to his fellow man or to society in general;

(26) "Motor vehicle," any automobile, motor truck, motorcycle, house trailer, trailer coach, cabin trailer, or any vehicle propelled by power other than muscular power;

(27) "Obtain,"

(a) In relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the actor or another; or

(b) In relation to labor or service, to secure performance thereof;

(28) "Occupied structure," any structure:

(a) Which is the permanent or temporary habitation of any person, whether or not any person is actually present;

(b) Which at the time is specially adapted for the overnight accommodation of any person, whether or not any person is actually present; or

(c) In which at the time any person is present;

(29) "Offense" or "public offense," any crime, petty offense, violation of a city or county ordinance, or act prohibited by state or federal law;

(30) "Pass," to utter, publish or sell or to put or send forth into circulation. The term includes any delivery of a check to another for value with intent that it shall be put into circulation as money;

(31) "Person," any natural person, unborn child, association, limited liability company, corporation, firm, organization, partnership, or society. If the term is used to designate a party whose property may be the subject of a crime or petty offense, it also includes the United States, any other country, this state, and any other state or territory of the United States, and any of their political subdivisions, agencies, or corporations;

(32) "Pistol," any firearm with a barrel less than sixteen inches in length, designed to expel a

projectile or projectiles by the action of an explosive;

(33) "Private place," a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access;

(34) "Process," any writ, warrant, summons, or order issued in the course of judicial proceedings;

(35) "Property," anything of value, including, but not limited to, motor vehicles, real estate, tangible and intangible personal property, contract rights, choses-in-action, and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power, services, and signatures which purport to create, maintain, or extinguish any legal obligation;

(36) "Property of another," property in which any person other than the actor has an interest upon which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of an actor may not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement;

(37) "Public employee," any person employed by the state or any of its political subdivisions, who is not a public officer;

(38) "Public office," the position held by a public officer or employee;

(39) "Public officer," any person who holds a position in the state government or in any of its political subdivisions, by election or appointment, for a definite period, whose duties are fixed by law, and who is invested with some portion of the sovereign functions of

government;

(40) "Public record," any official book, paper, or record created, received, or used by or in any office or agency of the state or of any of its political subdivisions;

(41) "Publish," to disseminate, circulate or place before the public in any way, other than by speech which is not mechanically or electronically amplified;

(42) "Receive," to acquire possession, control or title, or to lend or borrow on the security of the property;

(43) "Service," labor that does not include a tangible commodity. The term includes, but is not limited to: labor; professional advice; telephone, cable television and other utility service; accommodations in hotels, restaurants or elsewhere; admissions to exhibits and entertainments; the use of machines designed to be operated by coin or other thing of value; and the use of rental property;

(44) "Seller," any person or employee engaged in the business of selling pistols at retail;

(45) "Short rifle," any rifle having a barrel less than sixteen inches long, or an overall length of less than twenty-six inches;

(46) "Short shotgun," any shotgun having a barrel less than eighteen inches long or an overall length of less than twenty-six inches;

(47) "Signature," any name, mark or sign written with intent to authenticate any instrument or writing;

(48)

(49) "Structure," any house, building, outbuilding, motor vehicle, watercraft, aircraft, railroad car, trailer, tent, or other edifice, vehicle or shelter, or any portion thereof;

(50) "Stun gun," any battery-powered, pulsed electrical device of high voltage and low or no amperage that can disrupt the central nervous system and cause temporary loss of

voluntary muscle control of a person;

(50A) "Unborn child," an individual organism of the species homo sapiens from fertilization until live birth.

(51) "Unoccupied structure," any structure which is not an occupied structure;

(52) "Vessel," if used with reference to shipping, any ship of any kind and every structure adapted to be navigated from place to place;

(53) "Victim," any natural person against whom the defendant in a criminal prosecution has committed or attempted to commit a crime;

(54) "Voluntary intoxication," intoxication caused by substances that an actor knowingly introduces into his or her body, the tendency of which is to cause intoxication;

(55) "Written instrument," any paper, document, or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying, or recording information, and any money, credit card, token, stamp, seal, badge, trade mark, service mark or any evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

Section 358. That § 22-1-3 be repealed.

Section 359. That § 22-1-4 be amended to read as follows:

22-1-4. Any crime is either a felony or a misdemeanor. A felony is a crime which is or may be punishable by imprisonment in the state penitentiary. Every other crime is a misdemeanor.

Section 360. That § 22-1-6 be amended to read as follows:

22-1-6. No person may be convicted for the failure to perform an act if the act has been performed by another person, acting on the other person's behalf, who is competent by law to perform it.

Section 361. That § 22-1-7 be amended to read as follows:

22-1-7. In the various cases in which the sending of a letter is made criminal by the statutes of this state, the offense is deemed complete from the time when such letter is deposited in any post office or any other place or delivered to any person with intent that it be forwarded.

Section 362. That § 22-1-8 be amended to read as follows:

22-1-8. No act or omission may be deemed criminal or punishable except as prescribed or authorized by this title or by some other statute of this state.

Section 363. That § 22-1-9 be amended to read as follows:

22-1-9. If the possession of an object is made an offense, no law enforcement officer may be convicted of that offense if that law enforcement officer came into and retained possession of that object in the course of performing official duties.

Section 364. That § 22-1-11 be amended to read as follows:

22-1-11. The victim or witness assistant shall:

(1) Advise the victim about the legal proceedings in which the victim will be involved;

(2) Advise the victim concerning any required appearance at any proceeding and if the proceeding is continued or postponed;

(3) Assist the state's attorney, court services officer, and the victim to determine the amount of monetary damages suffered by the victim and advise the victim about restitution;

(4) Advise, if the victim is less than sixteen years of age and the victim of certain crimes, the victim and one of the victim's immediate family that the preliminary hearing or deposition testimony of the victim may be videotaped pursuant to § 23A-12-9;

(5) Advise the victim or one of the victim's immediate family if the defendant is released from custody and the defendant's bail conditions.

The victim or witness assistant may accompany the victim in any criminal proceeding.

Section 365. That § 22-1-12 be amended to read as follows:

22-1-12. No person, other than in the performance of official duties, may disclose the identity and biographical information concerning a victim of a crime of violence or of a violation of § 22-22-7 until reasonable efforts have been made to notify one of the immediate family.

Section 366. The code counsel shall transfer §§ 22-1-10, 22-1-11, and 22-1-12 to chapter 23A-28C and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 367. That § 22-2-1 be amended to read as follows:

22-2-1. The omission to specify or affirm in this title any liability to any damages, penalty, forfeiture, or other remedy imposed by law and allowed to be recovered or enforced in any civil action or proceeding for any act or omission declared punishable in this title does not affect any right to recover or enforce the same.

Section 368. That § 22-2-3 be amended to read as follows:

22-2-3. No act or omission declared punishable by any statute of this state is less so because it is also punishable under the laws of another state, government, or country, unless the contrary is expressly declared by statute.

Section 369. That § 22-2-6 be amended to read as follows:

22-2-6. No criminal act is less punishable as a crime because it is also declared to be punishable as contempt.

Section 370. That § 22-3-1 be amended to read as follows:

22-3-1. Any person is capable of committing a crime, except those included in the following classes:

(1) Any child under the age of ten years;

(2) Any child of the age of ten years, but under the age of fourteen years, in the absence of proof that at the time of the committing the act or neglect charged, the child knew its

wrongfulness;

(3) Any person who committed the act or made the omission charged under ignorance or mistake of fact which disproves any criminal intent. However, ignorance of the law does not excuse a person from punishment for its violation;

(4) Any person who committed the act charged without being conscious thereof; or

(5) Any person who committed the act or made the omission charged while under involuntary subjection to the power of superiors.

Section 371. That § 22-3-1.1 be amended to read as follows:

22-3-1.1. No person who is under the influence of voluntarily consumed or injected alcohol or controlled substances at the time of committing the act charged is for that reason insane.

Section 372. That § 22-3-3 be amended to read as follows:

22-3-3. Any person who, with the intent to promote or facilitate the commission of a crime, aids, abets, or advises another person in planning or committing the crime, is legally accountable, as a principal to the crime.

Section 373. That § 22-3-3.1 be amended to read as follows:

22-3-3.1. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated. Any person connected with the commission of a felony, whether that person directly commits the act constituting the offense or aids and abets in its commission, though not present, shall be prosecuted, tried, and punished as a principal.

Section 374. That § 22-3-5 be amended to read as follows:

22-3-5. A person is an accessory to a crime, if, with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a felony, that person renders assistance to the other person. There are no accessories

to misdemeanors.

The term, render assistance, means to:

(1) Harbor or conceal the other person;

(2) Warn the other person of impending discovery or apprehension, other than a warning given in an effort to bring the other person into compliance with the law;

(3) Provide the other person with money, transportation, a weapon, a disguise, or any other thing to be used in avoiding discovery or apprehension;

(4) Obstruct anyone by force, intimidation, or deception in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person; or

(5) Conceal, destroy, or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person.

A violation of this section is a Class 5 felony.

Section 375. That § 22-3-5.1 be amended to read as follows:

22-3-5.1. An accessory to the commission of a felony may be prosecuted, tried, and punished, even if the principal is not prosecuted or tried, or even if the principal was acquitted.

Section 376. That § 22-3-8 be amended to read as follows:

22-3-8. If two or more persons conspire, either to commit any offense against the State of South Dakota, or to defraud the State of South Dakota, or any county, township, school district, or municipal corporation in any manner or for any purpose, and one or more of the parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy is guilty of conspiracy and may be punished up to the maximum penalty which may be imposed for a crime which is one level below the penalty prescribed for the crime underlying the conspiracy. However, it is not a crime to conspire to commit a Class 2 misdemeanor or a petty offense.

Section 377. That § 22-4-1 be amended to read as follows:

22-4-1. Unless specific provision is made by law, any person who attempts to commit a crime and, in the attempt, does any act toward the commission of the crime, but fails or is prevented or intercepted in the perpetration of that crime, is punishable for such attempt at maximum sentence of one-half of the penalty prescribed for the underlying crime. However, any person who attempts to commit a Class A, Class B, or Class C felony is guilty of a Class 2 felony.

Section 378. That § 22-4-2 be amended to read as follows:

22-4-2. The provisions of § 22-4-1 do not protect a person who, in attempting unsuccessfully to commit a crime, commits another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

Section 379. That § 22-5-1 be amended to read as follows:

22-5-1. No person may be convicted of a crime based upon conduct in which that person engaged because of the use or threatened use of unlawful force upon himself, herself, or another person, which force or threatened use of force a reasonable person in that situation would have been lawfully unable to resist.

Section 380. That § 22-5-5 be amended to read as follows:

22-5-5. No act committed by a person while in a state of voluntary intoxication may be deemed less criminal by reason of such condition. But if the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time in determining the purpose, motive, or intent with which the accused committed the act.

Section 381. That § 22-5-7 be amended to read as follows:

22-5-7. A morbid propensity to commit prohibited acts existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts forms no defense to a

prosecution therefor.

Section 382. That § 22-5-9 be amended to read as follows:

22-5-9. Any person may lawfully resist the commission of any public offense as follows:

(1) Any person, about to be injured, may make sufficient resistance to prevent an offense against his or her person or any family member thereof, or to prevent an illegal attempt by force to take or injure property in his or her lawful possession; and

(2) Any person may make sufficient resistance in aid or defense of a person, about to be injured, to prevent such offense.

Section 383. That § 22-7-7 be amended to read as follows:

22-7-7. If a defendant has been convicted of one or two prior felonies under the laws of this state or any other state or the United States, in addition to the principal felony, the sentence for the principal felony shall be enhanced by changing the class of the principal felony to the next class which is more severe, but in no circumstance may the enhancement exceed the sentence for a Class C felony. The determination of whether a prior offense is a felony for purposes of this chapter shall be determined by whether the prior offense was a felony under the laws of this state or under the laws of the United States at the time of conviction of such prior offense. For the purpose of this section, if the principal felony is not classified it shall be enhanced to the class which has an equal maximum imprisonment. For the purposes of this section, if the maximum imprisonment for the principal felony falls between two classifications, the principal felony shall be enhanced to the class which has the less severe maximum authorized imprisonment.

Section 384. That § 22-7-8 be amended to read as follows:

22-7-8. If a defendant has been convicted of three or more felonies in addition to the principal felony and one or more of the prior felony convictions was for a crime of violence as defined in subdivision 22-1-2(9), the sentence for the principal felony shall be enhanced to the sentence for a

Class C felony.

Section 385. That § 22-7-8.1 be amended to read as follows:

22-7-8.1. If a defendant has been convicted of three or more felonies in addition to the principal felony and none of the prior felony convictions was for a crime of violence as defined in subdivision § 22-1-2(9), the sentence for the principal felony shall be enhanced by two levels but in no circumstance may the enhancement exceed the sentence for a Class C felony. A defendant sentenced pursuant to this section is eligible for consideration for parole pursuant to § 24-15-5.

Section 386. That § 22-7-9 be amended to read as follows:

22-7-9. No prior conviction may be considered under either § 22-7-7 or 22-7-8 unless the defendant was, on such prior conviction, discharged from prison, jail, probation, or parole within fifteen years of the date of the commission of the principal offense. Moreover, only one prior conviction arising from the same transaction may be considered.

Section 387. That § 22-7-10 be amended to read as follows:

22-7-10. Whenever any jailer, warden, or prison, probation, parole, or law enforcement officer has knowledge that any person charged with a felony has been previously convicted within the meaning of this chapter, that person shall provide that information to the state's attorney.

Section 388. That § 22-7-11 be amended to read as follows:

22-7-11. Any allegation that a defendant is an habitual criminal shall be filed as a separate information at the time of, or before, arraignment. However, the court may, upon motion, permit the separate information to be filed after the arraignment, but no less than thirty days before the commencement of trial or entry of a plea of guilty or nolo contendre. The information shall state the times, places, and specific crimes alleged to be prior convictions and shall be signed by the prosecutor. An official court record under seal or a criminal history together with fingerprints certified by the public official having custody thereof is sufficient to be admitted in evidence,

without further foundation, to prove the allegation that the defendant is an habitual criminal.

Section 389. That § 22-7-12 be amended to read as follows:

22-7-12. The defendant shall be apprised of the contents of the habitual offender information and shall receive a copy of it. The habitual offender information may not be divulged to the jury in any manner unless and until the defendant has been convicted of the principal offense.

The defendant shall also be informed of the right to a trial by jury on the issue of whether the defendant is the same person as alleged in the habitual criminal information.

Section 390. That § 22-22-1 be amended to read as follows:

22-22-1. Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:

(1) If the victim is less than thirteen years of age; or

(2) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or

(3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or

(4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or

(5) If the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.

A violation of subdivision (1) of this section is rape in the first degree, which is a Class C felony. A violation of subdivision (2) of this section is rape in the second degree which is a Class 1 felony. A violation of subdivision (3) or (4) of this section is rape in the third degree, which is a Class 2 felony. A violation of subdivision (5) of this section is rape in the fourth degree, which is a Class 3

felony. Notwithstanding § 23A-42-2 a charge brought pursuant to this section may be commenced at any time prior to the time the victim becomes age twenty-five or within seven years of the commission of the crime, whichever is longer.

Section 391. That § 22-22-30.1 be repealed.

Section 392. That § 22-22-1.2 be amended to read as follows:

22-22-1.2. If any adult is convicted of any of the following violations, the court shall impose the following minimum sentences:

(1) For a violation of subdivision 22-22-1(1), ten years for a first offense and twenty years for a subsequent offense; and

(2) For a violation of § 22-22-7 if the victim is less than thirteen years of age, five years for a first offense and ten years for a subsequent offense.

Section 393. That § 22-22-1.3 be amended to read as follows:

22-22-1.3. Any person convicted of a violation as provided in § 22-22-1.2 shall have included in the offender's presentence investigation report an assessment including the following information: the offender's sexual history; intellectual, adaptive and academic functioning; social and emotional functioning; previous legal history; previous treatment history; victim selection; risk to the community; and treatment options recommended.

Section 394. That § 22-22-1.4 be amended to read as follows:

22-22-1.4. The sentencing court may impose a sentence other than that which is required by § 22-22-1.2 if the court finds that mitigating circumstances exist which require a departure from the mandatory sentence imposed by § 22-22-1.2. The court's finding of mitigating circumstances and the factual basis relied upon by the court shall be in writing.

Section 395. That § 22-22-5 be repealed.

Section 396. That § 22-22-7.2 be amended to read as follows:

22-22-7.2. Any person, fifteen years of age or older, who knowingly engages in sexual contact with another person, other than his or her spouse if the other person is sixteen years of age or older and the other person is incapable, because of physical or mental incapacity, of consenting to sexual contact, is guilty of a Class 4 felony.

Section 397. That § 22-22-7.3 be amended to read as follows:

22-22-7.3. Any person, younger than sixteen years of age, who knowingly engages in sexual contact with another person, other than his or her spouse, if such other person is younger than sixteen years of age, is guilty of a Class 1 misdemeanor.

Section 398. That § 22-22-7.4 be amended to read as follows:

22-22-7.4. No person fifteen years of age or older may knowingly engage in sexual contact with another person other than his or her spouse who, although capable of consenting, has not consented to such contact. A violation of this section is a Class 1 misdemeanor.

Section 399. That § 22-22-7.5 be amended to read as follows:

22-22-7.5. The court, upon the conviction of any person of a violation of the provisions of chapter 22-22 in which the victim was a child or upon an adjudication of a juvenile as a delinquent child for a violation of the provisions of chapter 22-22 in which the victim was a child, may, as a part of the sentence or adjudication, order that the defendant or delinquent child not:

(1) Reside within one mile of the victim's residence unless the person is residing in a juvenile detention facility, jail, or state corrections facility;

(2) Knowingly or willfully come within one thousand feet of the victim;

(3) Attend the same school as the victim; or

(4) Have any contact with the victim, whether direct or indirect or through a third party.

No condition imposed pursuant to this section applies once the victim attains the age of majority. A violation of any condition imposed pursuant to this section is a Class 6 felony.

Section 400. That § 22-22-11 be repealed.

Section 401. That § 22-22-24.3 be amended to read as follows:

22-22-24.3. A person is guilty of sexual exploitation of a minor if the person causes or knowingly permits a minor to engage in an activity or the simulation of an activity that:

(1) Is harmful to minors;

(2) Involves nudity; or

(3) Is obscene.

Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation a Class 5 felony.

The court shall order a mental examination of any person convicted of violating this section. The examiner shall report to the court whether treatment of the person is indicated.

Section 402. That § 22-22-26 be amended to read as follows:

22-22-26. If a physician, hospital, or clinic examines the victim of an alleged rape or sexual offense to gather information or evidence about the alleged crime, the examination shall be provided without cost to the victim if the alleged offense is reported to the state. The physician, hospital, or clinic shall be paid for the cost of the examination by the county where the alleged rape or sexual offense occurred, which shall be reimbursed by any defendant if convicted.

Section 403. That § 22-22-27 be amended to read as follows:

22-22-27. Terms used in §§ 22-22-28 and 22-22-29 mean:

(1) "Emotional dependency," a condition of the patient brought about by the nature of the patient's own emotional condition or the nature of the treatment provided by the psychotherapist which is characterized by significant impairment of the patient's ability

to withhold consent to sexual acts or contact with the psychotherapist and which the psychotherapist knows or has reason to know exists;

(2) "Patient," any person who seeks or obtains psychotherapeutic services from a psychotherapist on a regular and ongoing basis;

(3) "Psychotherapist," any physician, psychologist, nurse, chemical dependency counselor, social worker, member of the clergy, marriage and family therapist, mental health service provider, or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy; and

(4) "Psychotherapy," the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

Section 404. That § 22-22-28 be amended to read as follows:

22-22-28. Any psychotherapist who knowingly engages in sexual contact, as defined in § 22-22-7.1, with a person who is not his or her spouse and who is a patient who is emotionally dependent on the psychotherapist at the time of contact, commits a Class 5 felony. Consent by the patient is not a defense.

Section 405. That § 22-22-29 be amended to read as follows:

22-22-29. Any psychotherapist who knowingly engages in an act of sexual penetration, as defined in § 22-22-2, with a person who is not his or her spouse and who is a patient who is emotionally dependent on the psychotherapist at the time that the act of sexual penetration is committed, commits a Class 4 felony. Consent by the patient is not a defense.

Section 406. That § 22-22-42 be amended to read as follows:

22-22-42. No person, for the purpose of that person's sexual gratification, may:

(1) Engage in a sexual act with an animal; or

(2) Coerce any other person to engage in a sexual act with an animal; or

(3) Use any part of the person's body or an object to sexually stimulate an animal; or

(4) Videotape a person engaging in a sexual act with an animal; or

(5) Kill or physically abuse an animal.

Any person who violates any provision of this section is guilty of the crime of bestiality. Bestiality is a Class 6 felony. However, if the person has been previously convicted of a sex crime pursuant to § 22-22-30, any subsequent violation of this section is a Class 5 felony.

Section 407. The code counsel shall transfer §§ 22-22-24, to 22-22-24.2, inclusive, and §§ 22-22-24.4 to 22-22-25, inclusive, to a new chapter entitled, Child Pornography, and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 408. That § 22-22-24.1 be amended to read as follows:

22-22-24.1. Terms used in §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, mean:

(1) "Adult," any person eighteen years of age or older;

(2) "Child pornography," any image or visual depiction of a minor engaged in prohibited sexual acts;

(3) "Child" or "minor," any person under the age of eighteen years;

(4) "Computer," any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, including wireless communication devices such as cellular phones. The term also includes any on-line service, internet service, or internet bulletin board;

(5)

(6) "Digital media," any electronic storage device, including a floppy disk or other magnetic

storage device or any compact disc that has memory and the capacity to store audio, video, or written materials;

(7) "Harmful to minors," any reproduction, imitation, characterization, description, visual depiction, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement if it:

(a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

This term does not include a mother's breast-feeding of her baby;

(8) "Masochism," sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death;

(9) "Nudity," the showing or the simulated showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state for the purpose of creating sexual excitement. This term does not include a mother's breast-feeding of her baby irrespective of whether or not the nipple is covered during or incidental to feeding;

(10) "Obscene," the status of material which:

(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

(b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

This term does not include a mother's breast-feeding of her baby;

(11) "Person," includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations;

(12) "Sadism," sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death;

(13) "Sadomasochistic abuse," flagellation or torture by or upon a minor, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself;

(14) "Sexual battery," oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. This term does not include an act done for a bona fide medical purpose;

(15) "Sexual bestiality," any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other;

(16) "Prohibited sexual act," actual or simulated sexual intercourse, sadism, masochism, sexual bestiality, incest, masturbation, or sadomasochistic abuse; actual or simulated exhibition of the genitals or the pubic or rectal area in a lewd or lascivious manner; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; defecation or urination for the purpose of creating sexual excitement in the viewer; or any act or conduct which constitutes sexual battery or simulates that sexual battery is

being or will be committed. The term includes encouraging, aiding, abetting or enticing any person to commit any such acts as provided in this subdivision. The term does not include a mother's breast-feeding of her baby;

(17) "Sexual excitement," the condition of the human male or female genitals if in a state of sexual stimulation or arousal;

(18) "Sexually oriented material," any book, article, magazine, publication, visual depiction or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this section that creates the appearance of such conduct and that exhibits any uncovered portion of the breasts, genitals, or anus;

(20) "Visual depiction," any developed and undeveloped film, photograph, slide and videotape, and any photocopy, drawing, printed or written material, and any data stored on computer disk, digital media, or by electronic means that are capable of conversion into a visual image.

Section 409. That § 22-22-24.2 be amended to read as follows:

22-22-24.2. A person is guilty of possessing, manufacturing, or distributing child pornography if the person:

(1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act;

(2) Causes or knowingly permits the creation of any visual depiction of a minor engaged in

a prohibited sexual act, or in the simulation of such an act; or

(3) Knowingly possesses, distributes, or otherwise disseminates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act.

Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 4 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 3 felony.

The court shall order a mental examination of any person convicted of violating this section. The examiner shall report to the court whether treatment of the person is indicated.

Section 410. That § 22-22-24.5 be amended to read as follows:

22-22-24.5. A person is guilty of solicitation of a minor if the person eighteen years of age or older:

(1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in a prohibited sexual act; or

(2) Knowingly compiles or transmits by means of a computer; or prints, publishes or reproduces by other computerized means; or buys, sells, receives, exchanges or disseminates, any notice, statement or advertisement of any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information for the purpose of soliciting a minor or someone the person reasonably believes is a minor to engage in a prohibited sexual act.

The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section does not constitute a defense to a prosecution under this section.

Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or

custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 5 felony.

The court shall order a mental examination of any person convicted of violating this section. The examiner shall report to the court whether treatment of the person is indicated.

Section 411. That § 22-22-24.8 be amended to read as follows:

22-22-24.8. Any of the following persons may bring an action for damages caused by another person's conduct as proscribed by §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive:

(1) The child;

(2) Any parent, legal guardian, or sibling of a victimized child;

(3) Any medical facility, insurer, governmental entity, employer, or other entity that funds a treatment program or employee assistance program for the child or that otherwise expended money or provided services on behalf of the child;

(4) Any person injured as a result of the willful, reckless, or negligent actions of a person who knowingly participated in conduct proscribed by §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive.

If the parent or guardian is named as a defendant in the action, the court shall appoint a special guardian to bring the action on behalf of the child.

Section 412. That § 22-22-24.15 be amended to read as follows:

22-22-24.15. Any person who is convicted of an offense under §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, shall forfeit to the state the person's interest in the following and no property right exists in them:

(1) Any photograph, film, videotape, book, digital media or visual depiction that has been

manufactured, distributed, purchased, possessed, acquired, or received in violation of §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;

(2) Any material, product, and equipment of any kind that is used or intended for use in manufacturing, processing, publishing, selling, possessing, or distributing any visual depiction proscribed by §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;

(3) Any property that is used, or intended for use, as a container for property described in subdivisions (1) and (2) of this section, including any computers and digital media;

(4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or conceal, or that is used, or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession or concealment of any visual depiction proscribed under §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;

(5) Any book, record, and research, including microfilm, tape, and data that is used, or intended for use, in violation of §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;

(6) Any funds or other things of value used for the purposes of unlawfully purchasing, attempting to purchase, distributing, or attempting to acquire or distribute any visual depiction proscribed by §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;

(7) Any asset, interest, profit, income, and proceed acquired or derived from the unlawful sale or purchase, attempted sale or purchase, distribution, or attempted distribution of any visual depiction proscribed by §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-

25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive.

Any property described in subdivision (1) of this section shall be deemed contraband and shall be summarily forfeited to the state. Any other property seized and forfeited shall be used to reimburse the actual costs of the criminal investigation and prosecution. Any amount over and above the amount necessary to reimburse for the investigation and prosecution shall be used to satisfy any civil judgments. The attorney general shall promulgate rules, pursuant to chapter 1-26, to implement the distribution of seized and forfeited assets.

Section 413. That § 22-22-24.19 be amended to read as follows:

22-22-24.19. The provisions of §§ 22-19A-1, 22-22-24 to 22-22-24.19, inclusive, 22-22-25, 22-22-30, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, do not apply to the performance of official duties by any law enforcement officer, court employee, attorney, licensed physician, psychologist, social worker, or any person acting at the direction of a licensed physician, psychologist, or social worker in the course of a bona fide treatment or professional education program.

Section 414. That § 22-22-25 be amended to read as follows:

22-22-25. The provisions of § 22-22-24 and §§ 22-22-24.2, 22-22-24.3, and 22-22-24.5 do not apply to the selling, lending, distributing, exhibiting, giving away, showing, possessing, or making of films, photographs, or other materials involving only nudity, if the materials are made for and have a serious literary, artistic, educational, or scientific value.

Section 415. The code counsel shall transfer §§ 22-22-30, 22-22-31, 22-22-31.1, 22-22-31.2, 22-22-31.3, 22-22-31.4, 22-22-32, 22-22-32.1, 22-22-33, 22-22-34, 22-22-36, 22-22-38, 22-22-39, 22-22-40, and 22-22-41, and sections 420 to 425, inclusive, of this Act, to a new chapter entitled, Sex Offender Registry, and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 416. That § 22-22-30 be amended to read as follows:

22-22-30. For the purposes of §§ 22-22-31 to 22-22-39, inclusive, a sex crime is any of the following crimes regardless of the date of the commission of the offense or the date of conviction:

(1) Rape as set forth in § 22-22-1;

(2) Sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by an adult and the adult is convicted of a felony;

(3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2 if committed by an adult;

(4) Incest as set forth in § 22-22-19.1 if committed by an adult;

(5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-22-24.2;

(6) Sale of child pornography as set forth in § 22-22-24;

(7) Sexual exploitation of a minor as set forth in § 22-22-24.3;

(8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;

(9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);

(10) Criminal pedophilia as previously set forth in § 22-22-30.1;

(11) Felony indecent exposure as previously set forth in former § 22-24-1 or indecent exposure as set forth in § 22-24-1.2;

(12) Solicitation of a minor as set forth in § 22-22-24.5;

(13) Felony aggravated indecent exposure as set forth in § 22-24-1.3;

(14) Bestiality as set forth in § 22-22-42;

(15) An attempt to commit any of the crimes listed in this section;

(16) Any crime committed in a place other than this state which would constitute a sex crime under this section if committed in this state;

(17) Any federal crime or court martial offense that would constitute a sex crime under federal

law;

(18) Any crime committed in another state if that state also requires that anyone convicted of that crime register as a sex offender in that state; or

(19) If the victim is a minor:

(a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-7.6;

(b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or

(c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29.

Section 417. That § 22-22-31 be amended to read as follows:

22-22-31. Any person who has been convicted for commission of a sex crime, as defined in § 22-22-30, shall register as a sex offender. The term, convicted, includes a verdict or plea of guilty, a plea of nolo contendere, and a suspended imposition of sentence which has not been discharged pursuant to 23A-27-14 prior to July 1, 1995. Any juvenile fifteen years or older shall register as a sex offender if that juvenile has been adjudicated of a sex crime as defined in § 22-22-30(1), 22-22-20(9), or 22-22-7.2, or of an out-of-state or federal offense that is comparable to the elements of these three sex crimes. The sex offender shall register within ten days of coming into any county to reside, temporarily domicile, attend school, attend postsecondary education classes, or work. Registration shall be with the chief of police of the municipality in which the sex offender resides, domiciles, attends school, attends classes, or works, or, if no chief of police exists, then with the sheriff of the county. A violation of this section is a Class 1 misdemeanor. However, any subsequent violation is a Class 6 felony. Any person whose sentence is discharged under § 23A-27-14 after July 1, 1995, shall forward a certified copy of such formal discharge by certified mail to the Division of Criminal Investigation and to local law enforcement where the person is then registered under this section. Upon receipt of such notice, the person shall be removed from the sex offender registry open to public inspection and shall be relieved of further registration requirements under this section.

Section 418. That § 22-22-31.2 be repealed.

Section 419. That § 22-22-40 be amended to read as follows:

22-22-40. Any registration record collected by local law enforcement agencies pursuant to this chapter, registration lists provided to local law enforcement by the Division of Criminal Investigation, and records collected by institutions pursuant to § 22-22-38 for those persons required to register under the provisions of §§ 22-22-30 to 22-22-39, inclusive, is a public record as provided in chapter 1-27.

Nothing in this section permits the release of the name or any identifying information regarding the victim of the crime to any person other than law enforcement agencies, and such victim identifying information is confidential.

Section 420. Any person required to register under this chapter who is eligible to seek removal from the registry as provided for in section 422 of this Act may petition the circuit court in the county where the person resides for an order terminating the person's obligation to register. If the person seeking removal from the registry is not a resident of this state, but is required to register under other requirements of § 22-22-31, then the person may petition the circuit court of any county of this state where the person is currently registered. The offender shall serve the petition and all supporting documentation on the state's attorney in the county where the offender is currently registered, the office of the prosecutor in the jurisdiction where the offense occurred, and the Attorney General. The Attorney General's office shall respond to each petition to request removal from the sex offender registry.

No person petitioning the court under this section for an order terminating the person's obligation to register is entitled to court appointed counsel, experts, or publicly funded witnesses.

Section 421. The petition and documentation to support the request for removal from the sex offender registry shall include:

(1) The information required for registration of convicted sex offenders in § 22-22-32;

(2) A detailed description of the sex crime that was the basis for the offender to register;

(3) A certified copy of judgment of conviction or other sentencing document; and

(4) The offender's criminal record and a detailed description of those offenses.

Section 422. To be eligible for removal from the registry, the petitioner shall show, by clear and convincing evidence, that all of the following criteria have been met:

(1) At least ten years have elapsed since the date the petitioner first registered pursuant to this chapter. For purposes of this subdivision, any period of time during which the petitioner was incarcerated or during which the petitioner was confined in a mental health facility does not count toward the ten-year calculation, regardless of whether such incarceration or confinement was for the sex offense requiring registration or for some other offense;

(2) The crime requiring registration was for:

(a) Statutory rape under subdivision 22-22-1(5), or an attempt to commit statutory rape under subdivision 22-22-1(5), but only if the petitioner was twenty-one years of age or younger at the time the offense was committed;

(b) A juvenile adjudication for a sex crime as defined in §§ 22-22-30(1), 22-22-30(9), or 22-22-7.2 ; or

(c) An out-of-state, federal or court martial offense that is comparable to the elements of the crimes listed in (a) or (b);

(3) The circumstances surrounding the crime requiring registration did not involve a child under the age of thirteen;

(4) The petitioner is not a recidivist sex offender. A recidivist sex offender is a person who has been convicted or adjudicated for more than one sex crime listed in § 22-22-30(1) to (17), inclusive, regardless of when those convictions or adjudications occurred. For

purposes of this subdivision, a conviction or adjudication includes a verdict or plea of guilty; a verdict or plea of guilty but mentally ill; a plea of nolo contendere; a suspended imposition of sentence granted under § 23A-27-13, regardless of whether it has been discharged; a deferred prosecution agreement entered by a prosecutor; and a determination made in another state, federal jurisdiction, or courts martial that is comparable to any of these events; and

(5) The petitioner has completely and truthfully complied with the registration and re-registration requirements imposed under chapter 22-22.

Section 423. If the court finds that all of the criteria described in section 422 of this Act have been met and that the petitioner is not likely to offend again, then the court may, in its discretion, enter an order terminating the petitioner's obligation to register in this state and require the removal of petitioner's name from the registry. However, if the court finds that the offender has provided false, misleading, or incomplete information in support of the petition, or failed to serve the petition and supporting documentation upon the respondent, then the petition may be denied. If the petition is denied, the petitioner may not file a subsequent petition for at least two years from the date the previous petition was denied.

Section 424. As used in § 22-22-31, the term, work, includes employment that is full-time or part-time for a period of time exceeding fourteen days or for an aggregate period of time exceeding thirty days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

Section 425. As used in § 22-22-31, the term, attends school, and the term, attends classes, refer to any person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.

Section 426. That § 23A-28C-1 be amended by adding thereto a NEW SUBDIVISION to read as follows:

To be notified of a petition by the sex offender for removal from the sex offender registry and to provide written input with respect to the removal request.

Section 427. The code counsel shall transfer §§ 2-7-16 and 2-7-21 to chapter 22-12A and shall renumber the sections accordingly and adjust all appropriate cross references.

Section 428. That § 2-7-21 be amended to read as follows:

2-7-21. Any person who fraudulently alters a bill which has been passed by the Legislature of this state, with intent to have it approved by the Governor, certified by the secretary of state, or printed or published by the printer of the statutes, in language different from that in which it was passed by the Legislature, is guilty of a Class 6 felony.

Section 429. That § 22-6-5.1 be amended to read as follows:

22-6-5.1. A court may sentence any person convicted of a crime committed while he was a prisoner as defined by § 22-11A-1, to a term of not more than twice the maximum term allowed by the statute for the commission of the same crime by a person not so confined. However, the provisions of this section do not apply if, for the same offense, the prisoner is subject to an enhanced penalty as an habitual offender.

Section 430. That chapter 22-6 be amended by adding thereto a NEW SECTION to read as follows:

No enhanced penalty may be imposed for any second, third, or subsequent violation unless the defendant was convicted of or plead guilty or nolo contendere to the prior offense previous in time to committing the relevant second, third, or subsequent offense.

Section 431. That § 22-6-6 be repealed.

Section 432. That § 22-6-6.1 be amended to read as follows:

22-6-6.1. If a defendant is convicted of two or more offenses, regardless of when the offenses were committed or when the judgment or sentence is entered, the judgment or sentence may be that the imprisonment on any of the offenses or convictions may run concurrently or consecutively at the discretion of the court.

Section 433. That § 22-6-7 be amended to read as follows:

22-6-7. Actions for violations of petty offenses are civil proceedings in which the state is the plaintiff. Such actions are governed by chapter 23-1A.

Section 434. That § 22-6-8 be amended to read as follows:

22-6-8. Notwithstanding § 22-6-1 or 22-6-2, if there is an insurer, self insurance, reciprocal insurance, or an insurance pool available to compensate the victim by means of a civil liability determination, the court in imposing sentence on a defendant who has been found guilty of a misdemeanor or felony may order that the defendant make restitution to a victim in accordance with the provisions of chapter 23A-28.

Section 435. Nothing in this Act may be construed to permit the imposition of any lesser or greater penalty that may be provided for in this Act as punishment for any offense which was committed prior in time to the effective date of this Act regardless of when the sentence for such offense may be imposed.

Section 436. That chapter 22-16 be amended by adding thereto a NEW SECTION to read as follows:

Murder in the second degree is a lesser included offense of murder in the first degree. Manslaughter in the first degree is a lesser included offense of murder in the first degree and murder in the second degree. Manslaughter in the second degree is a lesser included offense of murder in the first degree, murder in the second degree, and manslaughter in the first degree.

Section 437. That chapter 22-16 be amended by adding thereto a NEW SECTION to read as

follows:

A lesser included offense instruction shall be given at any homicide trial whenever any facts are submitted to the trier of fact which would support such an offense pursuant to this chapter. The state and the defendant each have the separate right to request a lesser included offense instruction. The failure to request a lesser included offense instruction constitutes a waiver of the right to such an instruction.

Section 438. Any person who, with the intent to promote or facilitate the commission of a crime, commands, hires, requests, or solicits another person to engage in specific conduct which would constitute the commission of such offense or an attempt to commit such offense, is guilty of criminal solicitation.

Criminal solicitation is a:

(1) Class 1 felony if the offense solicited is a Class A, B or C felony;

(2) Class 2 felony if the offense solicited is a Class 1 felony;

(3) Class 3 felony if the offense solicited is a Class 2 felony;

(4) Class 4 felony if the offense solicited is a Class 3 felony;

(5) Class 5 felony if the offense solicited is a Class 4 felony;

(6) Class 6 felony if the offense solicited is a Class 5 felony; or

(7) Class 1 misdemeanor if the offense solicited is a Class 6 felony.

Section 439. It is not a defense to prosecution for criminal solicitation that the person solicited neither committed or attempted to commit the offense solicited nor was capable of committing or attempting to commit the offense solicited.

Section 440. No person may be convicted of criminal solicitation upon the uncorroborated testimony of the person allegedly solicited, and there must be proof of circumstances corroborating both the solicitation and the defendant's intent.

Section 441. No person may be convicted of criminal solicitation if, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, the defendant:

(1) Notified the person solicited of his or her renunciation; and

(2) Gave timely and adequate warning to the law enforcement authorities or otherwise made a substantial effort to prevent the commission of the criminal conduct solicited.

The burden of injecting this issue is on the defendant, but this does not shift the burden of proof.

Section 442. That chapter 22-30A be amended by adding thereto a NEW SECTION to read as follows:

If the drawer of a check does not pay the fees and costs provided for in § 57A-3-421 and the amount of the check to the holder of the check within thirty days of the mailing of the notice of dishonor, the drawer shall owe to the holder of the check an additional civil penalty equal to twice the amount of the check. The state's attorney may then prosecute the dishonor.

Section 443. The code counsel shall, pursuant to section 139 of this Act, place section 442 of this Act, between § 22-41-3.1 and § 22-41-3.2 in chapter 22-30A.

Section 444. That § 22-41-3.2 be amended to read as follows:

22-41-3.2. The notice of dishonor required by § 22-41-3.1 shall be in substantially the following form:

Date _____

Name of issuer _____

Bank on which drawn _____

Date of check _____

Amount of check _____

Holder of the check _____

You are hereby notified that your check described above has been dishonored and is now being

held by the above holder for a period of thirty days from the date of the mailing of this notice. Civil liability incurred by a check issuer pursuant to SDCL 57A-3-420 is not a defense to a violation of this chapter. If you do not pay the amount of the check and the costs and expenses provided for by SDCL 57A-3-421 within thirty days of the mailing of this notice of dishonor to you, your check will be delivered to the state's attorney for criminal prosecution for theft, and you will be liable to the holder of the check for an additional civil penalty of an amount equal to twice the amount of the check in addition to the amount of the check and the costs and expenses provided for by SDCL 57A-3-421.

Section 445. That chapter 22-30A be amended by adding thereto a NEW SECTION to read as follows:

The maker, drawer, or issuer is not criminally liable or civilly liable for damages and costs specified in this chapter if:

(1) The account contained sufficient funds or credit to cover the check, draft, or order at the time the check, draft, or order was issued, plus all other checks, drafts, and orders on the account then outstanding and unpaid; or

(2) The check, draft, or order was not paid because a paycheck, deposited in the account in an amount sufficient to cover the check, draft, or order, was not paid upon presentation; or

(3) Funds sufficient to cover the check, draft, or order were garnished, attached, or setoff, and the maker, drawer, or issuer had no notice of such garnishment, attachment, or setoff at the time the check, draft, or order was issued; or

(4) The maker of the check, draft, or order was not competent or of full age to enter into a legal contractual obligation at the time the check, draft, or order was issued; or

(5) The making of the check, draft, or order was induced by fraud or duress; or

(6) The transaction which gave rise to the obligation for which the check, draft, or order was given lacked consideration or was illegal.

Section 446. That chapter 22-30A be amended by adding thereto a NEW SECTION to read as follows:

If the same person is the maker, drawer, or issuer of two or more checks, drafts, or orders, such instruments may be combined. An action for their recovery pursuant to this chapter may be brought in any county in which one of the dishonored checks, drafts, or orders were issued or in the county in which the check writer resides. A cause of action under this chapter may be brought in small claims court, if the amount of the demand does not exceed the jurisdiction of that court, or in any other appropriate court.

Section 447. That chapter 22-19 be amended by adding thereto a NEW SECTION to read as follows:

Any person who unlawfully holds or retains another person with any of the following purposes:

(1) To hold for ransom or reward, or as a shield or hostage; or

(2) To facilitate the commission of any felony or flight thereafter; or

(3) To inflict bodily injury on or to terrorize the victim or another; or

(4) To interfere with the performance of any governmental or political function; or

(5) To take or entice away a child under the age of fourteen years with intent to detain and conceal such child;

is guilty of kidnapping in the second degree. Kidnapping in the second degree is a Class 3 felony, unless the person has inflicted serious bodily injury on the victim in which case it is aggravated kidnapping in the second degree and is a Class 1 felony.

An Act to revise the South Dakota criminal code.

I certify that the attached Act originated in the

SENATE as Bill No. 43

_____
Secretary of the Senate

_____
President of the Senate

Attest:

_____
Secretary of the Senate

_____
Speaker of the House

Attest:

_____
Chief Clerk

Senate Bill No. 43
File No. ____
Chapter No. _____

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State