

**Major Amendments to Title 22  
From the Adoption of  
Senate Bill 43**

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In addition to the major changes discussed below, a number of minor and technical changes were suggested during the revision process. On the chapters being amended by the revision process, the Legislative Research Council performed "style and form amendments." These LRC amendments put existing sections into proper LRC format and made the language gender neutral. These minor changes are not discussed in this memorandum.

*\* Citations in italics indicate the location proposed by the Code Commission in the 2005 pocket part. These citations are subject to change and will not become official until the pocket part for 2006 is released.*

**Aggravated Assault**

Section 1 through section 3 rewrites the provisions concerning aggravated assault against a law enforcement officer. Section 1 and section 2 remove the law enforcement language from simple assault, SDCL 22-18-1, and aggravated assault, SDCL 22-18- 1.1, respectively. Section 3 creates a new offense of assaulting a law enforcement officer and categorizes assault against a law enforcement officer into simple assault, a Class 6 felony, and aggravated assault, a Class 2 felony.

*(SDCL 22-18-1.05)*

**Sliming**

Sections 11, 15 and 16 make the provisions of sliming the same for all correctional facilities, jails and juvenile detention facilities. These sections also make the offense a uniform Class 6 felony.

Section 12 amends SDCL 22-18-26.1 to create a general sliming provision that applies to any person or situation if it was done with the intent to assault. A violation of is a Class 1 misdemeanor.

Section 13 and 14 repeal the sentencing provisions that apply to penitentiary inmates convicted of sliming. Section 13 repeals SDCL 22-18-27 which imposed a mandatory consecutive sentence. Section 14 repeals SDCL 22-18-28 which required the inmate to completely serve the inmates first sentence before starting the sentence for sliming.

**Crimes Against the Family** *(SDCL ch. 22-22A)*

Section 23 moves Bigamy and new stand alone incest provisions to a new chapter entitled "Offenses Against the Family." Section 20 creates a new incest section, a Class 5 felony.

Section 21 creates an incest offense for step parents or blood relatives involving minor victims over the age of consent. A violation of Section 21 is a Class 3 felony. Section 22 repeals the existing Class 5 felony incestuous contact section, SDCL 22-22-19.1.

### **Robbery**

Sections 24 through 29 amend robbery, SDCL ch. 22-30. The major changes in robbery include Section 28 which requires the use of a dangerous weapon for first degree robbery and Section 29 which repeals air piracy, SDCL 22-30-11.

### **Perjury**

Sections 30 through 48 make mostly technical amendments to perjury. Section 34 does slightly expand the situations covered by perjury and reduces the penalty from a Class 4 felony to a Class 5 felony. Section 35 adds subornation of perjury to SDCL 22-29-6 and Section 36 repeals the existing subornation of perjury section, SDCL 22-29-7.

### **Theft**

Revisions to the theft chapter, SDCL ch. 22-30A, are covered by sections 48 through 85 of the bill. Major changes include Section 51 which repeals SDCL 22-30A-2.1 concerning removal of property following public auctions. Section 67 amends SDCL 22-30A-17 to define grand theft as stealing property in excess of \$1,000, stealing a firearm, any strong arm robbery or stealing certain livestock. Grand theft remains a Class 4 felony. Section 68 creates the new offense of aggravated grand theft which covers thefts of one hundred thousand dollars (\$100,000) or more. Aggravated grand theft will be a Class 3 felony. Section 69 and 70 divides petty theft into two categories: theft of more than \$400 but less than \$1,000 will be a Class 1 misdemeanor; and theft of less than \$400 will be a Class 2 misdemeanor. Section 78 repeals SDCL 22-30A-22 which enhances thefts by employees of the Department of Corrections or Department of Human Services from persons in those departments care. Section 79 repeals SDCL 22-30A-23, theft of an airplane.

Section 85 moves identity theft and reencoder offenses to SDCL ch. 22-40, False Personation. Section 80 raises identity theft to a Class 6 felony.  
(22-30A-17.1 and SDCL 22-30A-17.2)

### **Arson**

Sections 86 through 96 are a complete rewrite of the arson chapter, SDCL ch. 22-33. Sections 86 through 90 adopt the Model Penal Code's arson provisions. Section 86 covers first degree arson involving occupied structures and makes a violation a Class 2 felony. Section 87 establishes second degree arson, a Class 4 felony. Section 88 creates the new offense of reckless burning, a Class 4 felony. Section 89 creates the Class 1 misdemeanor crime of failure to control or report a dangerous fire. Section 90 defines an occupied structure. Sections 91 through 95 repeal the majority of the existing arson provisions. Section 96 lowers the offense level for setting jail fires from a Class 4 felony to a Class 6 felony.

### **Vandalism**

Section 97 adds specific intent language to SDCL 22-34-1. This section also ties the offense level into the same dollar levels as theft (0 to 400 a Class 2 misdemeanor, 401 to 999 a Class 2 misdemeanor, 1,000 to 99,999 a Class 4 felony and 100,000 and above a Class 3 felony). Section 99 repeals SDCL 22-34-2 which provides for treble damages. Section 102 repeals SDCL 22-34-29 which provides for the loss of driving privileges for juveniles if a motor vehicle was used in the vandalism.

### **Forgery**

Sections 103, 104 and 105 generally update forgery sections with no major substantive changes. Section 106 transfers SDCL 22-39-37, possession or manufacture of forging equipment, to SDCL ch. 22-40, False Personation.

### **Burglary**

Sections 107 through 113 substantively rewrite burglary. Sections 107, 108 and 109 adds a requirement that the offender entered or remained in the structure without permission, license or privilege to first, second and third degree burglary respectively. Section 110 redefines "nighttime" to exclude the time period 30 minutes prior to sunrise and the 30 minutes following sunset. Section 111 rewrites the prohibition on possessing burglar tools and lowers the offense level to a Class 6 felony. Section 112 abolishes fourth degree burglary and replaces it with aggravated criminal entry of a motor vehicle by using force, a Class 6 felony. Section 113 creates criminal entry of a motor vehicle with no force, a Class 1 misdemeanor.

*(SDCL 22-32-19 and SDCL 22-32-20)*

### **Serious Bodily Injury**

Section 114 defines "serious bodily injury" and adds it as a new subdivision to the definitions located in SDCL 22-1-2.

### **Kidnapping**

Sections 115 through 126 rewrite SDCL ch. 22-19, kidnapping. Section 115 creates the offense of first degree kidnapping. First degree kidnapping requires that the offender remove the victim from a residence or place of employment, remove the victim a "substantial" distance or confine the person for a "substantial" period of time for one of the five traditional evil purposes. The offense level is reduced for aggravated kidnapping involving serious bodily injury to a Class B felony. Section 447 establishes second degree kidnapping as a Class 3 felony unless serious bodily injury occurs in which case it is a Class 1 felony. Second degree kidnapping does not require a "substantial distance" or "substantial period of time." Section 117 amends SDCL 22-19-7.1 by raising the age of the victim for enticement purposes from the current 14 to age 16. Section 126 creates the crime of false imprisonment, a Class 1 misdemeanor.

### **Juvenile Driving Privileges**

Sections 127 through 129 amended the appropriate criminal and juvenile codes to clarify that a judge can suspend or revoke a juvenile's driving privileges any time that the court deems it appropriate.

### **Disorderly Conduct**

Section 131 transfers disorderly conduct, SDCL 22-13-1, to SDCL ch. 22-18, assaults.

### **Bad Checks**

Sections 132 through 142 and Sections 442 through 446 modify and add to the bad check provisions in SDCL ch. 22-41. Section 132 ties the offense level for an insufficient fund check to the offense levels for theft in SDCL ch. 22-30A. Section 133 ties no account checks to the theft levels. Section 134 requires a person attempting to make good on a bad check in order to avoid prosecution to also pay the costs and expenses provided in SDCL 57A-3-421. Section 139 moves the bad check statutes to the theft chapter, SDCL ch. 22-30A. Section 140 amends SDCL 22-41-3.1 to include no account checks and also enlarge the notice period from five days to thirty days. Sections 141 and 142 add no account checks to SDCL 22-41-3.3 and 22-41-3.4. Section 143 through Section 146 repeals SDCL 22-41-10 through 22-41-14 because these practices are covered by deceptive trade practices. Section 442 adds a new section to SDCL ch. 22-30A clarifying that an offender has 30 days after notice to make good on the check and any applicable fees and costs. After 30 days the states attorney may prosecute the offender and also be liable for an additional civil penalty in the amount of twice the dishonored checks value. Section 444 amends the notice form located at SDCL 22-41-3.2 and makes the holding period 30 days to be consistent with the other changes previously discussed. Section 445 describes when a person is not criminally or civilly liable for a bad check. Section 446 authorizes and venues a recovery action.

### **Delayed Implementation**

Section 147 delays implementation of SB 43 until July1, 2006.

### **Felony Classifications**

Section 148 amends SDCL 22-6-1 and adds a new ninth felony classification. The felony classifications are:

(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.

### **Homicide**

Section 150 through section 172 address homicide, SDCL ch. 22-16. Section 155 defines “premeditated design to effect death” by codifying the pattern jury instruction. Section 158 repeals SDCL 22-16-9, the catch all felony murder rule. Section 160 amends SDCL 22-16-15, first degree manslaughter, to include the “other felonies” felony murder rule repealed in Section 158. Section 160 also repeals SDCL 22-16-15(5) dealing with the death of a pregnant woman committing a crime. Section 170 moves certain sections dealing with health care professionals and attempted suicides to SDCL ch. 34-12D. Section 172 moves SDCL 22-16-42, vehicular battery, to the assault chapter, SDCL ch. 22-18.

*(SDCL 22-16-5)*

### **Lesser Included**

Sections 436 and 437 allow for a lesser included offense instruction to be given in a homicide case.

*(SDCL 22-16-20.1 and SDCL 22-16-20.2)*

### **Misdemeanor Offenses**

Section 173 increases the monetary penalties in SDCL 22-6-2 to \$2,000 for a Class 1 misdemeanor and \$500 for a Class 2 misdemeanor.

### **Prostitution**

Section 175 through Section 180 update and modernize the language in the prostitution sections, SDCL ch. 22-23 and closes the loophole that excludes sexual contact from the definition of prostitution.

*(SDCL 22-23-1.1)*

### **Hate Crimes**

Section 181 makes all violations of SDCL 22-19B-1 a Class 6 felony. Section 184 renames SDCL ch. 22-19B, from “Harassment,” to “Hate Crimes.”

### **Treason**

Section 186 repeals SDCL 22-8-1, treason.

### **Terrorism**

Section 188 amends SDCL 22-8-12, terrorism, to lower the offense level to a Class C felony. Section 189 creates the crime of making a terrorist threat, a Class 5 felony. Section 190 renames SDCL ch. 22-8 "Terrorism."

### **Obstruction of Government**

Sections 191 through 232 update the sections in SDCL ch. 22-11, obstruction of government. Section 192 adds emergency medical technicians to the list of public officers. Section 193 repeals SDCL 22-11-3.1 which makes it a Class 2 misdemeanor to not aide a law enforcement officer. Section 197 repeals SDCL 22-11-6.1 dealing with ambulance personnel. This is because of the addition of emergency medical technicians throughout the chapter. Section 199 amends SDCL 22-11-8 to raise the offense level of impersonating a public official to a Class 1 misdemeanor. Section 200 transfers SDCL 22-11-8 to SDCL ch. 22-40, False Personation. Section 212 repeals SDCL 22-11-17, communication with a juror. Sections 213 and 214 combine tampering with a witness, SDCL 22-11-19 and SDCL 22-11-19.1, into one section. Section 224 transfers SDCL 22-11-27, altering serial numbers, to SDCL ch. 22-30A, theft. Section 231 transfers SDCL 22-11-34, common law courts, to SDCL ch. 22-40, False Personation. Section 232 transfers SDCL 22-11-30, 22-11-33 and 22-11-35 dealing with impersonating a judicial official to SDCL Title 20.

### **Abuse of Judicial Process**

Section 233 through Section 242 amend SDCL ch. 22-12. Section 239 repeals SDCL 22-12-11 making it a Class 2 misdemeanor to attach a dead body for debt purposes.

### **Firearms**

Sections 243 through 269 amend SDCL ch. 22-14, unlawful use of weapons. Section 253 repeals SDCL 22-14-13.1, a Class 3 felony for using a stun gun during the commission of a felony. Section 357 adds a stun gun to the definition of a "dangerous weapon" in SDCL 22-1-2(10). Section 255 amends SDCL 22-14-15 to apply the 15 year gun ban to drug distribution crimes. Section 256 amends SDCL 22-14-16 to prohibit the transfer of a firearm to someone subject to the restrictions of SDCL 22-14-15.1 (five year gun ban). Section 259 amends SDCL 22-14-20 to raise the felony level for discharging a gun at a house or motor vehicle to a Class 3 felony. Section 260 amends SDCL 22-14-21 to repeal the Class 5 felony dealing with the discharge of a firearm from a motor vehicle resulting in a bodily injury. Section 266 repeals SDCL 22-14-29 dealing with juvenile possession of butterfly and balisong knives. Section 267 amends the five year gun ban in SDCL 22-14-30 to cover persons convicted of non-distribution drug offenses under SDCL ch. 22-42. Section 268 moves SDCL 22-14-30 and renumbers it to SDCL 22-14-15.1. Section 269 creates a new section that prohibits the possession of a firearm for one year by anyone convicted of a misdemeanor domestic violence offense. A violation of Section 269 is a Class 1 misdemeanor. Section 269 takes effect on July 1, 2005.  
(SDCL 22-14-15.2)

### **Explosives and Destructive Devices**

Sections 270 through 284 amend SDCL ch. 22-14A dealing with explosives and destructive devices. Section 278 repeals the portion of SDCL 22-14A-22 creating civil liability for the costs associated with false reporting. Section 279 moves SDCL 22-14A-22 and renumbers the section as SDCL 22-11-9.2. Section 282 amends SDCL 22-14A-25 to reduce the offense level for hoax device to a Class 6 felony.

### **Gambling**

Section 285 repeals SDCL 22-25-3 which makes it a petty offense to persuade someone to visit a gambling house.

### **Interference with Religion**

Section 288 moves SDCL 22-27-1 and SDCL 22-27-2, interference with religious practices, to SDCL ch. 22-19B, Hate Crimes.

### **Criminal Trespass**

Section 292 renames Unlawful Occupancy, SDCL ch. 22-35, as Criminal Trespass.

### **Identity Crimes**

Section 294 renames False Personation, SDCL ch. 22-40, as Identity Crimes.

### **Debt Adjusting**

Section 295 transfers SDCL ch. 22-47 to SDCL Title 37.

### **Obscenity**

Sections 298 through 316 amend SDCL ch. 22-24, obscenity. Section 298 amends SDCL 22-24-1.1, public indecency, to replace “immoral purpose” with “under circumstances in which that person knows his or her conduct is likely to annoy, offend, or alarm some other person.” Section 300 amends SDCL 22-24-1.3, aggravated indecent exposure, by modifying several elements, raises the offense level to a Class 6 felony and renames the offense “indecent exposure involving a child.” Section 301 repeals SDCL 22-24-8 prohibiting prophylactic vending machines in a place accessible by minors.

### **Escape**

Section 318 amends SDCL 22-11A-2 to create the crime of 1<sup>st</sup> degree escape, a Class 4 felony. 1<sup>st</sup> degree escape involves escapes involving force or directly from a facility or officer. Section 319 creates a new crime of 2<sup>nd</sup> degree escape, a Class 5 felony. 2<sup>nd</sup> degree escape involves walk away and failure to return situations. Section 320 repeals SDCL 22-11A-4 which made it a Class 1 misdemeanor to negligently allow a prisoner to escape. Section 323 transfers SDCL 22-11A-6 and SDCL 22-11A-7 to Title 24. Section 325 repeals SDCL 22-11A-8 requiring a mandatory minimum sentence of 7 years for escape. Section 326 repeals SDCL 22-11A-9 which requires the escape sentence to be consecutive to the original sentence. Section 327 repeals SDCL 22-11A-10 which requires a prisoner to serve the full term of the first sentence without goodtime or parole. Section 328 renames SDCL ch. 22-11A, Escape.

*(SDCL 22-11A-2.1)*

### **Abuse, Neglect or Exploitation of Disabled Adults**

Section 339 amends SDCL 22-46-1(4) to remove language excepting spiritual healing from the definition of "Neglect." Section 340 adds a new section addressing spiritual healing and the court's ability to order treatment. Section 341 removes several assault exceptions from SDCL 22-46-2. Section 342 amends SDCL 22-46-3 to tie thefts from a disabled adult to the theft amounts in SDCL ch. 22-30A. Section 344 moves SDCL 22-46-6 to chapter 34-12.

### **Riot**

Sections 345 through 351 amend the sections dealing with riot in SDCL ch. 22-10. Section 251 transfers SDCL 22-10-13 dealing with the use of armed forces to suppress a riot to SDCL ch. 1-7.

### **Street Gang Activity**

Section 353 amends SDCL 22-10-15 so that the offense level for a crime involving street gang activity is increased one classification level. Section 355 moves SDCL 22-10-14, 22-10-15 and 22-10-16 to a new chapter entitled "Street Gang Activity."

### **Definitions**

Section 357 amends SDCL 22-1-2, definitions as follows: (9) removes criminal pedophilia and second degree burglary from the definition of a crime of violence; (10) adds a stun gun to the definition of a dangerous weapon; (22) adds a prosecutor to the definition of a law enforcement officer and also clarifies that jailers or juvenile correction employees are a law enforcement officer; and (48) repeals the definition of "steal."

Section 358 repeals SDCL 22-1-3 defining a crime. Section 366 transfers SDCL 22-1-10, 22-1-11 and 22-1-12 to SDCL ch. 23A-28C.

### **Conspiracy**

Section 376 amends SDCL 22-3-8 to provide that conspiracy is punished at one level lower than the crime underlying the conspiracy.

### **Attempt**

Section 377 amends SDCL 22-4-1 and provides that the maximum penalty for an attempt is one half the maximum sentence of the underlying crime. An attempt to commit a Class A, B or C felony is punishable as Class 2 felony.

### **Habitual Offender**

Sections 383, 384 and 385 amend the habitual offender provisions in SDCL 22-7-7, 22-7-8 and 22-7-8.1 to provide for a maximum enhancement to a Class C felony. These amendments were designed to address the situation where an offender with a non-violent history could receive a harsher sentence than an offender with a violent history. See State v. Denoyer, 541 N.W.2d 725 (1995).

### **Sex Offenses**

Section 390 amends SDCL 22-22-1 to increase the victim age for 1<sup>st</sup> degree rape to from less than 10 to less than 13. The section raises the age for statutory rape from 10 to 13. It repeals (6) incest and repeals (7) step parents. New crimes for both of the activities are included in the new chapter, Crimes Against the Family. This section maintains first degree rape as a Class C felony and raises second degree rape to a Class 1 felony.

Section 391 repeals SDCL 22-22-30.1, criminal pedophilia. Section 395 repeals SDCL 22-22-5 requiring an initial screening. Section 400 repeals SDCL 22-22-11 making it a Class 4 felony to compel another to marry.

### **Child Pornography**

Section 407 transfers SDCL 22-22-24 through 22-22-25 to a new chapter entitled Child Pornography. Section 408 repeals SDCL 22-22-24.1(5), deviant sexual intercourse from the child pornography definitions. Section 412 transfers the authority to seize and forfeit equipment used in the manufacture, distribution or use of child pornography from the Department of Social Services to the Attorney General.

### **Sex Offender Registry**

Section 415 transfers the sex offender registry sections, SDCL 22-22-30 through SDCL 22-22-41, to a new chapter entitled Sex Offender Registry. Section 416 adds additional offenses involving a minor victim. Section 417 rewrites SDCL 22-22-31. Section 418 repeals SDCL 22-22-31.2 allowing for a juvenile to petition to get off the registry. Section 420 through section 423 establishes a new procedure where an offender who was a juvenile at the time the offense was committed or an offender convicted of statutory rape if the offender was 21 or younger, can petition the court for removal after 10 years. Section 424 defines "work." Section 425 defines "attends school" and "attends class." Section 426 adds a new subsection to the Crime Victims Rights Act, SDCL ch. 23A-28C, requiring that the victim be notified when an offender petitions for removal from the registry.

*(SDCL ch. 22-24B)*

### **Punishments**

Section 429 amends SDCL 22-6-5.1 to allow either a double of an inmate's sentence for a crime committed while incarcerated or a habitual offender enhancement, not both.

Section 430 adds a new section to SDCL ch. 22-6 limiting the use of second or subsequent offenses to only those offenses where a conviction has occurred. This is in response to the decision of *State v. Vatne*, 2003 SD 31, 659 N.W.2d 380. Section 431 repeals SDCL 22-6-6 dealing with unclassified felonies. Section 435 limits application of the changes in punishment level only to offenses committed after the effective date of the Act.

*(SDCL 22-6-5.2)*

### **Lesser Included Homicides**

Section 436 adds a new section to SDCL ch. 22-16 providing that 2<sup>nd</sup> degree murder is a lesser included offense of 1<sup>st</sup> degree murder, 1<sup>st</sup> degree manslaughter is a lesser included

offense of second degree murder and 2<sup>nd</sup> degree manslaughter is a lesser included offense of 1<sup>st</sup> degree manslaughter. Section 437 allows for any party to request a lesser included offense instruction in any homicide trial.  
(SDCL 22-16-20.1 and SDCL 22-16-20.2)

**Criminal Solicitation**

Section 438 creates criminal solicitation and sets forth penalties for the commission of the offense based upon the offense level of the underlying offense. In most cases it is one offense level lower. Sections 439 through section 442 provide certain defenses to a solicitation offense. This section was adopted in response to the Court's recent decision in State v. DiSanto, 2004 SD 112, 688 N.W.2d 201.  
(SDCL ch. 22-4A)