AN ACT

ENTITLED, An Act to improve public safety.

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

Section 1. Terms used in this Act mean:

(1) "Alcohol or drug accountability program," the 24/7 program or the HOPE program described in sections 9 and 10 of this Act;

(2) "Board," the Board of Pardons and Paroles;

(3) "Case plan," an individualized, documented accountability and behavior change strategy that:

(a) Matches the type and intensity of supervision to the assessed risk of reoffending;

(b) Targets and prioritizes the specific criminal risk factors of the individual, with attention to addressing barriers to learning and participation; and

(c) Establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations;

(4) "Court-ordered financial obligation," money that an offender is required to pay and can include restitution, fines, costs, and fees, but does not include child support payments;

(5) "Criminal risk factors," characteristics and behaviors that, when addressed or changed, affect a person's risk for committing crimes. The term includes: antisocial behavior; antisocial personality; criminal thinking; criminal associates; dysfunctional family; low levels of employment or education; poor use of leisure and recreation; and substance abuse;

(6) "Department," the Department of Corrections;

(7) "Evidence-based practices," supervision policies, procedures, and practices and treatment

and intervention programs and practices that scientific research demonstrates reduce recidivism among individuals under correctional supervision;

(8) "Outcome measure," a metric that captures an agency's effectiveness in impacting a condition within the population served or condition of public safety;

(9) "Oversight council," the council established by section 67 of this Act;

(10) "Parolee," an offender under parole or suspended sentence supervision by the Department of Corrections;

(11) "Performance measure," a metric that captures agency performance on critical variables that are central to accomplishing the agency mission and goals within this Act;

(12) "Recidivism," a return to prison within three years of release due to a parole or suspended sentence violation or due to a prison sentence as a result of a new felony conviction. However, for the purposes of sections 3, 18, and 70 of this Act, the term means being convicted of a felony while on probation supervision or within three years after discharge from probation;

(13) "Risk and needs assessment review," an examination of the results of a validated risk and needs assessment;

(14) "Secretary," the secretary of the Department of Corrections;

(15) "Treatment," when used in a criminal justice context, targeted interventions that focus on criminal risk factors in order to reduce the likelihood of criminal behavior and reflect evidence based practices;

(16) "Validated risk and needs assessment," an actuarial tool scientifically proven to determine a person's risk to reoffend and criminal risk factors, that when addressed, can reduce the person's likelihood of engaging in future criminal behavior.

Section 2. The Chief Justice shall establish an advisory council to address the operational,

coordination, resource, information management, and evaluation needs of the drug courts.

Section 3. For the purposes of this Act, a drug court is a court supervised alternative to incarceration and includes drug, driving under influence, and other specialty court dockets aimed at increasing offender accountability and decreasing recidivism.

Section 4. The Supreme Court may establish a drug court program in any court that has jurisdiction over criminal cases.

Section 5. The Supreme Court shall establish rules pursuant to § 16-3-1 for the eligibility criteria for participation in a drug court. No offender participating in a drug court is entitled to earned discharge on probation pursuant to section 22 of this Act.

Section 6. Nothing contained in this section may be construed to permit a judge to impose, modify, or reduce a sentence below the minimum sentence required by law. No statement made by a drug court participant in connection with the court's program or directives, nor any report made by the staff of the court or program connected to the court, regarding a participant's use of controlled substances is admissible as evidence against the participant in any legal proceeding or prosecution. However, if the participant violates the conditions or is terminated from drug court, the reasons for the violation or termination may be considered in sanctioning, sentencing, or otherwise disposing of the participant's case.

Section 7. The Unified Judicial System shall semiannually report performance measures on drug courts to the oversight council.

Section 8. That chapter 23A-27 be amended by adding thereto a NEW SECTION to read as follows:

If a defendant appears in court and pleads guilty or no contest to a crime punishable as a felony or Class 1 misdemeanor, the court shall inquire whether the defendant is currently serving in or is a veteran of, the United States Armed Forces. If the defendant is currently serving in the military or

is a military veteran, the court may:

(1) Order that a court services officer consult with the United States Department of Veterans Affairs or another agency or person with suitable knowledge or experience, for the purpose of providing the court with information regarding treatment options available to the defendant, including federal, state, and local programming; and

(2) Consider the treatment recommendations of any diagnosing or treating mental health or substance abuse professionals together with the treatment options available to the defendant in imposing sentence.

Section 9. The Supreme Court is authorized to establish two South Dakota HOPE court pilot programs.

Section 10. The Supreme Court shall establish rules pursuant to § 16-3-1 for such pilot programs consistent with the following components, modeled after the national HOPE court initiative:

(1) Involvement and commitment of criminal justice officials including judges, state's attorneys, defense attorneys, law enforcement, court services officers, and treatment providers;

(2) Eligibility criteria focused on offenders with a high risk to reoffend, without consideration of the current offense;

(3) Judicial involvement in setting and communicating to the probationer program expectations and consequences for noncompliance;

(4) Frequent, effective, and randomized drug and or alcohol testing;

(5) Swift, certain, and proportional sanctions for noncompliance with program conditions;

(6) Swift and certain warrant service for absconding; and

(7) Compilation, evaluation, and publicly reported program results.

Section 11. Each pilot program shall be evaluated for the impact on public safety outcomes. The

Unified Judicial System shall report performance measures for the pilot programs semiannually to the oversight council.

Section 12. That chapter 1-54 be amended by adding thereto a NEW SECTION to read as follows:

In cooperation with the Department of Tribal Relations, the Department of Corrections may develop tribal parole pilot programs to supervise parolees on tribal land. The Department of Corrections shall promulgate rules pursuant to chapter 1-26 as necessary for the implementation of the pilot program. The pilot program shall utilize a tribal-state liaison officer. The officer shall use supervision strategies that focus on reducing recidivism and employ evidence-based practices and swift, certain, and proportionate sanctions.

Section 13. The Department of Corrections shall report performance measures for the tribal pilot programs semiannually to the oversight council.

Section 14. The Supreme Court shall establish rules pursuant to § 16-3-1 governing evidence-based felony probation supervision practices, including a validated risk and needs assessment, and targeting the probationer's criminal risk factors with suitable supervision and intervention, focusing resources on moderate-risk and high-risk offenders.

Section 15. The Unified Judicial System shall monitor and report semiannually to the oversight council the extent to which practices of probation supervision, as adopted in rule by the Supreme Court, as well as training requirements prescribed in sections 18 and 20 of this Act are implemented.

Section 16. The Supreme Court shall establish rules pursuant to § 16-3-1 to develop a graduated sanctions procedure and grid to guide court services officers in determining the appropriate response to a violation of conditions of probation. The graduated sanctions program shall use short jail stays as the most severe sanction within the grid, shall collect data related to the use of sanctions and their outcomes, and shall include a process for reviewing sanctions that are challenged by the probationer.

The rules shall vest statewide oversight of graduated sanctions procedure, use, and data collection with the State Court Administrator's Office.

The system of graduated sanctions shall be created with the following objectives:

(1) Responding to violations of probation quickly, consistently and proportionally, based on the nature of the violation and the risk level of the probationer;

(2) Reducing the time and resources expended by the court to respond to violations; and

(3) Reducing the commission of new crimes and revocation rates.

Section 17. The State Court Administrator's Office shall report semiannually to the oversight council the number and percentage of probationers who received a graduated sanction.

Section 18. Any person who exercises supervision over a probationer pursuant to § 23A-27-12.1 or provides intervention services to any probationer shall receive sufficient training on evidence-based practices and on how to target criminal risk factors to reduce recidivism.

Section 19. If a probationer is sentenced to a term of imprisonment in the state penitentiary, the Unified Judicial System shall transfer the case history of the probationer including the results of a risk and needs assessments conducted on the probationer to the Department of Corrections.

Section 20. That § 16-14-4 be amended to read as follows:

16-14-4. The Chief Justice of the Supreme Court of South Dakota shall annually summon all the members of the Judicial Conference to attend a conference at such time and place in the state as the Chief Justice may designate and at which the Chief Justice, or such member as the Chief Justice may designate, shall preside. Special sessions of the conference may be called by the Chief Justice at such times and places as the Chief Justice may designate. All persons so summoned shall attend such annual and special meetings.

Each magistrate and circuit judge shall complete training on evidence-based practices, including the use of validated risk and needs assessments and behavioral health assessments in decision

making. The form and length of this training requirement shall be determined by the Chief Justice. As used in this section, the term, behavioral health assessment, means an evaluation to determine the extent of an individual's substance abuse or mental health service needs.

Section 21. Sections 14 to 18, inclusive, of this Act apply prospectively regardless of the date of an offender's underlying offense.

Section 22. The Supreme Court shall establish rules pursuant to § 16-3-1 for the criteria and procedure for earning and awarding earned credits for discharge from probation.

Section 23. The State Court Administrator's Office shall oversee the award of earned discharge credits of at least fifteen days for each month a probationer is in compliance with the terms and conditions of supervision.

Section 24. Each offender placed on felony probation for a term of at least six months, except an offender placed on probation for a conviction of a sex offense as defined in § 22-24B-1, or a violation of sex offender registry requirements, or a violation of community safety zone requirements and who will serve time in the community under probation supervision, is eligible for earned discharge and completion of sentence under section 23 of this Act.

Section 25. The State Court Administrator's Office shall provide semiannually to the oversight council the number and percent of probationers who qualify for earned discharge credits and the average amount of credits earned by offenders.

Section 26. Sections 22 to 24, inclusive, of this Act, apply prospectively regardless of the date of an offender's underlying offense.

Section 27. That chapter 24-15A be amended by adding thereto a NEW SECTION to read as follows:

Parolee supervision shall use evidence-based practices and shall target the parolee's criminal risk and need factors with appropriate supervision and intervention, focusing resources on moderate-risk

and high-risk offenders.

Parole supervision shall include:

(1) Use of validated risk and needs assessments of the parolee measuring criminal risk factors, specific individual needs and driving variable supervision levels;

(2) Use of assessment results to guide supervision responses consistent with evidence-based practices as to the level of supervision and the practices used to reduce recidivism;

(3) Collateral and personal contacts, some unscheduled, with the offender and community and with a frequency consistent with the parolee's supervision level and risk of re-offense, staying informed of the parolee's conduct, compliance with conditions, and progress in community based intervention;

(4) Case planning for each parolee assessed as moderate-risk to high-risk to reoffend; and

(5) Use of practical and suitable methods that are consistent with evidence-based practices to aid and encourage the parolee to improve his or her conduct and circumstances and to reduce the risk of recidivism.

Section 28. That chapter 24-15A be amended by adding thereto a NEW SECTION to read as follows:

Any employee who exercises supervision over a parolee pursuant to § 24-15-14 or provides intervention services to any parolee shall receive annual training on evidence-based practices and criminal risk factors, as well as instruction on how to target these factors to reduce recidivism.

Section 29. That chapter 24-15A be amended by adding thereto a NEW SECTION to read as follows:

The department shall monitor and report semiannually to the oversight council the extent to which practices of parole supervision pursuant to section 27 of this Act and training requirements pursuant to sections 28 and 34 of this Act are implemented with fidelity.

Section 30. That § 24-15-1 be amended to read as follows:

24-15-1. If a defendant is sentenced to the state penitentiary, the Department of Corrections shall develop a file which shall contain a complete history of that person. The executive director of the Board of Pardons and Paroles shall generate an adequate case history of each inmate of the state penitentiary to enable the executive director to make recommendations to the Board of Pardons and Paroles. The case history shall include results of risk and needs assessments of the inmate conducted by the department and other agencies as available and copies of documents relevant to supervision, treatment, and violation decisions in the inmate's prior prison, probation and parole custodies. The case history shall be transferred and kept as a permanent record of the Department of Corrections, solely for the proper supervision of the inmate by the Department of Corrections and as a guide to the inmate's needs. Except for the information authorized for release pursuant to § 24-2-20, no person other than members of the Board of Pardons and Paroles, its executive director, the secretary of corrections, or any person specifically delegated for such access by the secretary of corrections, may inspect such file unless otherwise ordered by a circuit court or subpoena after notice to the secretary of corrections and an opportunity for a hearing on any objections to inspection. The secretary shall have ten days after receipt of the notice to inform the court if the secretary requests a hearing.

Section 31. That § 24-15A-17 be amended to read as follows:

24-15A-17. The executive director of the board in preparing for each parole hearing shall receive from the department:

(1) A true record of each inmate which specifies each infraction of rules and the disciplinary action taken;

(2) The warden's report of substantive noncompliance with the individual program directive or subsequent progress and conduct;

(3) A report of any conduct on the inmate's part evincing an intent to reoffend; and

(4) In the case of a discretionary parole hearing following a revocation or finding of noncompliance, a report of the nature and seriousness of the parole violation or basis for noncompliance, results of risk and needs assessments of the inmate conducted by the department and other agencies as available and copies of documents related to supervision, treatment, and violation decisions in the inmate's prior prison, probation, and parole custodies as available.

Section 32. That chapter 24-15A be amended by adding thereto a NEW SECTION to read as follows:

The department shall respond to each known violation of supervision conditions established pursuant to §§ 24-15A-37, 24-15-11, and 24-15A-24. The response to a violation shall reflect the parolee's supervision level, the severity of the violation, and consideration of previous violations. The response to a violation and the sanctioning options shall be standardized and reflect graduated responses and sanctions including informal and formal responses to violations.

Formal response to a violation shall be documented and may include the following:

(1) Written reprimand by the agent, agent supervisor, or executive director of the board;

(2) Referral to community based programming;

(3) Additional substance use testing or monitoring, or both;

(4) Community service work without pay;

(5) Placement in custody through house arrest or jailing;

(6) Required participation in an alcohol or drug accountability program; and

(7) Submission of a violation report to the board for the return of the parolee to prison and the revocation of the parolee's supervision.

Section 33. The Department of Corrections shall report semiannually to the oversight council the

number and percentage of parolees who received a graduated sanction.

Section 34. That § 24-13-2 be amended to read as follows:

24-13-2. The members of the board shall serve for terms of four years. Members are eligible for reappointment. The Governor, the attorney general, and the Supreme Court each shall appoint three members, whose terms shall expire on the third Monday in January of the fourth year after appointment. Each member shall serve until a successor takes office as provided by law. In case of a vacancy, the appointing power shall make an interim appointment to expire at the end of the next legislative session. Each member of the board shall complete annual training developed in consideration of information from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association and shall be compensated for the training at a rate to be determined by the Department of Corrections. Each first-time appointee of the board shall, within sixty days of appointment, complete training for first-time parole board members developed in consideration of information from the National Institute of Corrections, the Association of Paroling Authorities, or the American Probation and Parole Association. Training components shall include the use of a validated risk and needs assessment and the use of data guided by evidence-based practices for making parole decisions.

Section 35. Sections 27, 30, 31, and 32, of this Act, apply prospectively regardless of the date of an offender's underlying offense.

Section 36. That chapter 24-15A be amended by adding thereto a NEW SECTION to read as follows:

Each parolee shall be awarded earned discharge credits as follows:

(1) For each full calendar month of compliance with the terms of supervision, an earned discharge credit of the number of days in that month shall be deducted from the parolee's sentence discharge date established in §§ 24-15A-6 and 24-5-1. No earned discharge

credit may be awarded for partial months or for the first full calendar month of parole supervision in the community;

(2) A parolee is deemed to be compliant with the terms of supervision and shall be awarded earned discharge credits for the month if there was no violation of conditions of supervision during the month at the level warranting formal response per standardized department directive. A parolee may not receive earned discharge credits for the month if the parolee had a violation of conditions resulting in a formal response;

(3) No earned discharge credit may accrue for a calendar month in which a violation report has been submitted, the parolee has absconded from supervision, the parolee is under sanction of jailing or detainment, or for the months between the submission of the violation report and the final action on the violation report by the board. If the board does not find that the provisions of § 24-15A-27 or 24-15-20 have been violated, the board may include an award of earned discharge credits for the months the violation report was pending in the board's order to restore the parolee to the original or modified terms and conditions of parole;

(4) A parolee serving a sentence for a conviction of a sex offense as defined in § 22-24B-1 or a violation of sex offender registry requirements or a violation of community safety zone requirements is not eligible for earned discharge credits on any sex offense, sex offender registry violation, or community safety zone violation sentence;

(5) Earned discharge credits shall be applied to the sentence discharge date within thirty days of the end of the month in which the credits were earned. At least every six months, a parolee who is serving a sentence eligible for earned discharge credits shall be notified of the current sentence discharge date; and

(6) A parolee serving an eligible South Dakota prison sentence in any community in another

state under the Interstate Compact for Adult Offender Supervision is eligible for earned discharge credits pursuant to this Act.

Section 37. That chapter 24-15A be amended by adding thereto a NEW SECTION to read as follows:

Within fifteen days following the end of the month, a supervising parole agent shall report to the department the name of any supervised parolee eligible for the award of discharge credits earned in the previous month.

Section 38. That chapter 24-15A be amended by adding thereto a NEW SECTION to read as follows:

A parolee who objects to a parole agent's determination that the parolee is ineligible for the award of earned discharge credits may seek a review with the board. The board may determine if the parolee is eligible for the award of earned discharge credits and order that the credits be applied to the parolee's sentence discharge date. The board may also determine if the parolee is ineligible for the award of earned discharge credits. This review may be of the parolee's record. A personal appearance of the parolee is not required. The decision of the board is final.

Section 39. That chapter 24-15A be amended by adding thereto a NEW SECTION to read as follows:

The department shall provide semiannually to the oversight council the number and percentage of parolees who qualify for earned discharge credits and the average amount of credits a parolee earned within the year.

Section 40. That chapter 24-15A be amended by adding thereto a NEW SECTION to read as follows:

Each inmate discharging pursuant to § 24-15A-7 or 24-5-2 who owes court-ordered financial obligations on the sentence or sentences discharging shall be transferred by the department to the

administrative financial accountability system pursuant to section 44 of this Act.

Section 41. That § 24-15A-1 be amended to read as follows:

24-15A-1. The provisions of this chapter do not apply to persons sentenced to prison for crimes committed prior to July 1, 1996, except the provisions in §§ 24-15A-18 and 24-15A-19 involving multiple sentences occurring both prior and subsequent to the enactment of this chapter and the provisions of §§ 24-15A-8.1, 24-15A-9, 24-15A-10, 24-15A-11, 24-15A-11.1, 24-15A-31, 24-15A-37, 24-15A-40, 24-15A-41.1, and sections 27, 32, 36, 37, 38, and 40 of this Act.

Section 42. Sections 36, 37, 38, 40, and 41 of this Act, apply prospectively regardless of the date of an offender's underlying offense.

Section 43. The Department of Corrections or the Unified Judicial System may place any adult offender with an outstanding court-ordered financial obligation into the administrative financial accountability system.

Section 44. A parolee, inmate, or probationer, who is discharged from supervision or has otherwise satisfied all of the conditions of the sentence but has outstanding, court-ordered financial obligations, shall be managed by the administrative financial accountability system, as administered pursuant to section 45 of this Act, in order to satisfy all court-ordered financial obligations.

Section 45. The administrative financial accountability system shall be administered by the Unified Judicial System pursuant to § 23A-28-3 and shall monitor and track payments and sanctions.

Section 46. The Supreme Court shall promulgate rules for the collection of outstanding court-ordered financial obligations through the administrative financial accountability system. The rules shall include a graduated sanctioning grid policy and a policy for the termination or adjustment of the financial obligations.

Section 47. Pursuant to rules established by the Supreme Court, any financial obligation from an order more than twenty-five years old, deemed uncollectible, or following the death of an offender

may be terminated.

Section 48. Failure of any individual in this system to comply with the plan of restitution or plan for financial obligations as approved or modified by the court constitutes a violation of the conditions of probation within this system. Without limitation, the court may modify the plan of restitution or financial obligation, extend the period of time for restitution or financial obligation, or continue the individual in the administrative financial accountability system. If the individual fails to make payment as ordered by the court, the individual may be held in contempt of the court's order.

Section 49. The original sentencing court shall be the court of competent jurisdiction pursuant to section 48 of this Act for contempt or review hearings, if necessary, as part of the sanctioning grid.

Section 50. The Unified Judicial System shall semiannually report the implementation and outcomes of the administrative financial accountability system to the oversight council.

Section 51. Sections 43 to 49, inclusive, of this Act, apply retroactively and prospectively regardless of the date of an offender's underlying offense.

Section 52. That § 23A-4-3 be amended to read as follows:

23A-4-3. If a charge against a defendant requires a preliminary hearing, the defendant may not be called on to plead. The committing magistrate shall inform the defendant of the complaint against the defendant and of any affidavit filed therewith, of the defendant's right to retain counsel and to request assignment of counsel if the defendant is unable to obtain counsel, and of the general circumstances under which the defendant may secure pretrial release. The committing magistrate shall inform the defendant that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant. The committing magistrate shall also inform the defendant of the defendant's right to a preliminary hearing. The committing magistrate shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail in the amount set pursuant to § 23A-2-4 or chapter 23A-43, or as

otherwise provided by law. If the offense charged is a Class 1 misdemeanor, and the circuit in which the offense is charged has a magistrate court presided over by a magistrate judge, the defendant shall be held to answer before the magistrate judge or the circuit court.

No defendant is entitled to a preliminary hearing unless charged with an offense punishable as a felony. If the defendant waives the preliminary hearing, the committing magistrate shall forthwith hold the defendant to answer in circuit court if the offense charged is a felony. If the defendant does not waive the preliminary hearing, the committing magistrate shall schedule a preliminary hearing. The hearing shall be held within a reasonable time, but in any event not later than fifteen days following the initial appearance if the defendant is in custody, and not later than forty-five days if the defendant is not in custody. However, the preliminary hearing may not be held if the defendant is indicted before the date set for the preliminary hearing. With the consent of the defendant and with a showing of good cause, taking into account the public interest and the proper disposition of criminal cases, time limits specified in this section may be extended one or more times by the committing magistrate. In the absence of consent by the defendant, time limits may be extended by the committing magistrate only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

Section 53. That chapter 22-6 be amended by adding thereto a NEW SECTION to read as follows:

The sentencing court shall sentence an offender convicted of a Class 5 or Class 6 felony, except those convicted under §§ 22-11A-2.1, 22-18-1, 22-18-1.05, 22-18-26, 22-19A-1, 22-19A-2, 22-19A-3, 22-19A-7, 22-19A-16, 22-22A-2, 22-22A-4, 22-24A-3, 22-22-24.3, 22-24-1.2, 22-24B-2, 22-24B-12, 22-24B-12.1, 22-24B-23, 22-42-7, subdivision 24-2-14(1), 32-34-5, and any person ineligible for probation under § 23A-27-12, to a term of probation. The sentencing court may impose a sentence other than probation if the court finds aggravating circumstances exist that pose a

significant risk to the public and require a departure from presumptive probation under this section. If a departure is made, the judge shall state on the record at the time of sentencing the aggravating circumstances and the same shall be stated in the dispositional order. Neither this section nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest.

Section 54. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as follows:

No person may knowingly ingest a controlled drug or substance or have a controlled drug or substance in an altered state in the body unless the substance was obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of the practitioner's professional practice or except as otherwise authorized by chapter 34-20B. A violation of this section for a substance in Schedules I or II is a Class 5 felony. A violation of this section for a substance in Schedules III or IV is a Class 6 felony.

Section 55. That § 22-42-2 be amended to read as follows:

22-42-2. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with intent to manufacture, distribute, or dispense a substance listed in Schedules I or II; create or distribute a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a counterfeit substance listed in Schedules I or II. A violation of this section is a Class 4 felony. However, a violation of this section is a Class 3 felony if the person is in possession of three or more of the following:

(1) Three hundred dollars or more in cash;

(2) A firearm or other weapon pursuant to §§ 22-14-6, 22-14-15, 22-14-15.1, 22-14-15.3, and subdivision 22-1-2(8);

(3) Bulk materials used for the packaging of controlled substances;

(4) Materials used to manufacture a controlled substance including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment; or

(5) Drug transaction records or customer lists.

The distribution of a substance listed in Schedules I or II to a minor is a Class 2 felony. A first conviction under this section shall be punished by a mandatory sentence in the state penitentiary of at least one year, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction under this section shall be punished by a mandatory sentence in the state penitentiary of at least ten years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. However, a first conviction for distribution to a minor under this section shall be punished by a mandatory sentence in the state penitentiary of at least five years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction for distribution to a minor under this section shall be punished by a mandatory sentence in the state penitentiary of at least fifteen years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence, may not form the basis for reducing the mandatory time of incarceration required by this section.

A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars. A conviction for the purposes of the mandatory sentence provisions of this chapter is the acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding of guilt by a jury or court.

Section 56. That § 22-42-3 be amended to read as follows:

22-42-3. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a controlled drug or substance listed in Schedule III; possess with intent to manufacture, distribute, or dispense a substance listed in Schedule III; create or distribute a counterfeit substance listed in Schedule III; or possess with intent to distribute a counterfeit substance listed in Schedule III. A violation of this section is a Class 5 felony. However, the distribution of a substance listed in Schedule III to a minor is a Class 3 felony. A first conviction under this section shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction under this section shall be punished by a mandatory penitentiary or county jail sentence of at least one year, which sentence may not be suspended. However, a first conviction for distribution to a minor under this section shall be punished by a mandatory sentence in the state penitentiary or county jail of at least ninety days, which sentence may not be suspended. A second or subsequent conviction for distribution to a minor under this section shall be punished by a mandatory sentence in the state penitentiary of at least two years, which sentence may not be suspended. A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars.

Section 57. That § 22-42-4 be amended to read as follows:

22-42-4. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a controlled drug or substance listed in Schedule IV; possess with intent to manufacture, distribute, or dispense a substance listed in Schedule IV; create or distribute a counterfeit substance listed in Schedule IV; or possess with intent to distribute a counterfeit substance listed in Schedule IV. A violation of this section is a Class 6 felony. However, the distribution of a substance listed in Schedule IV to a minor is a Class 4 felony. A first conviction

under this section shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction under this section shall be punished by a mandatory penitentiary or county jail sentence of at least one year, which sentence may not be suspended. A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars. Notwithstanding any other provision of this section, a violation of this section with respect to distribution of Flunitrazepam to a minor is a Class 4 felony, but in all other cases under this section is a Class 5 felony.

Section 58. That § 22-42-5 be amended to read as follows:

22-42-5. No person may knowingly possess a controlled drug or substance unless the substance was obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of the practitioner's professional practice or except as otherwise authorized by chapter 34-20B. A charge for unauthorized possession of controlled substance when absorbed into the human body as set forth in subdivision 22-42-1(1) shall only be charged under the provisions of section 54 of this Act. A violation of this section for a substance in Schedules I or II is a Class 5 felony. A violation of this section for a substance in Schedule III and IV is a Class 6 felony.

Section 59. 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, petty offenses, or any violation of section 54 of this Act.

Section 60. That § 22-30A-17 be amended to read as follows:

22-30A-17. Grand theft is a Class 6 felony, if the property stolen:

(1) Exceeds one thousand dollars in value but is less than or equal to two thousand five hundred dollars;

(2) Is a firearm with a value of less than or equal to two thousand five hundred dollars;

(3) Is taken from the person of another with a value of less than or equal to two thousand five hundred dollars; or

(4) The property stolen is cattle, horses, mules, buffalo, or captive nondomestic elk with a value of less than or equal to two thousand five hundred dollars.

Grand theft is a Class 5 felony if the value of the property is more than two thousand five hundred dollars but less than or equal to five thousand dollars.

Grand theft is a Class 4 felony if the value of the property is more than five thousand dollars but less than or equal to one hundred thousand dollars.

Grand theft is a Class 3 felony if the value of the property is more than one hundred thousand dollars but less than or equal to five hundred thousand dollars.

Section 61. That § 22-30A-17.1 be amended to read as follows:

22-30A-17.1. Theft is aggravated grand theft, if the value of the property stolen exceeds five hundred thousand dollars. Aggravated grand theft is a Class 2 felony.

Section 62. 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 5 felony.

Section 63. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as follows:

If a conviction for a violation of § 32-23-1 is for a sixth offense, or subsequent offense, and the

person had at least five convictions of § 32-23-1 occurring within twenty-five years of the violation being charged, the violation is an aggravated offense and the person is guilty of a Class 4 felony.

The court, in pronouncing sentencing, shall order that the driver license of any person so convicted be revoked for a period of not less than three years from the date the sentence is imposed or three years from the date of initial release from imprisonment, whichever is later. If the person is returned to imprisonment prior to the completion of the period of driver license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the person shall be sentenced to the county jail for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation.

Upon the person's successful completion of a court-approved chemical dependency counseling program and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, 24/7 sobriety testing, attendance at school, or attendance at counseling programs.

In addition to the penalties authorized by law, any person convicted under this section and having ten or more previous convictions under § 32-23-1 is subject to a term of supervision not less than ten years. Any person convicted under this section and having at least five and not more than nine previous convictions under § 32-23-1 is subject to a term of supervision not less than five years. The supervision of an offender shall include at least one of the following: enrollment in an alcohol or drug accountability program, ignition interlock, breath alcohol interlock, an alcohol monitoring bracelet, or another enhanced monitoring tool. Supervision of the offender shall be overseen by the Unified Judicial System if the sentence does not include a term of imprisonment in the penitentiary or by the Department of Corrections if the sentence includes a term of imprisonment in the

penitentiary. Any offender supervised pursuant to this section is not excluded from earned discharge credit as otherwise authorized by statute.

If, during the period of supervision imposed under this section, the person being supervised violates conditions, the offender shall be penalized according to the graduated sanctions policy to be established by the Supreme Court or the Department of Corrections, respectively.

Section 64. That § 32-23-4.1 be amended to read as follows:

32-23-4.1. Except as authorized under section 63 of this Act, no previous conviction for, or plea of guilty to, a violation of § 32-23-1, 22-18-36, or 22-16-41 occurring more than ten years prior to the date of the violation being charged may be used to determine that the violation being charged is a second, third, or subsequent offense. Any period of time during which the defendant was incarcerated for a previous violation may not be included when calculating if the time period provided in this section has elapsed.

Section 65. That § 32-23-4.6 be amended to read as follows:

32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense, the person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall order that the driver's license of any person so convicted be revoked for a period of not less than two years from the date sentence is imposed or two years from the date of initial release from imprisonment, whichever is later. If the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the person shall be sentenced to the county jail for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may

permit the person to operate a vehicle for the purposes of employment, 24/7 sobriety testing, attendance at school, or attendance at counseling programs. Further, sentencing pursuant to this section includes the provisions of § 23A-27-18.

Section 66. That § 23A-27-18.1 be amended to read as follows:

23A-27-18.1. The conditions of probation imposed pursuant to § 23A-27-12 or 23A-27-13 or the conditions of suspension of execution imposed pursuant to § 23A-27-18, may include the requirement that the defendant be imprisoned in the county jail for no more than one hundred eighty days, except as otherwise specified in this section, or in the state penitentiary for no more than one hundred eighty days or the sentence which was imposed or which may be imposed by law, whichever is less. However, for persons sentenced pursuant to § 32-23-4.6, the conditions of probation imposed pursuant to § 23A-27-12 or 23A-27-13 or the conditions of suspension of execution imposed pursuant to § 23A-27-18, may include the requirement that the defendant be imprisoned in the county jail for a specific period not exceeding three hundred sixty-five days. The imprisonment may be further restricted to certain days specified by the court as part of such conditions. The required period of imprisonment for a county jail or state penitentiary term should not exceed sixty consecutive days to ensure the court retains authority to impose additional days of imprisonment, if necessary, during the term of supervision pursuant to section 16 of this Act. The court retains jurisdiction to raise or lower the required period of imprisonment within the sentence otherwise allowed by law. Any such imprisonment, either in the county jail or state penitentiary, shall be credited toward any incarceration imposed upon any subsequent revocation of a suspended imposition or execution of sentence. During any such imprisonment the defendant shall be subject to all policies, rules, and regulations of the county jail or state penitentiary.

Section 67. There is hereby established an oversight council responsible for monitoring and reporting performance and outcome measures related to the provisions set forth in this Act. The

Unified Judicial System shall provide staff support for the council.

Section 68. The oversight council shall be composed of thirteen members. The Governor shall appoint four members, including one member from the Board of Pardons and Paroles, one member from the Department of Corrections, one member from the Department of Social Services, and one additional member who shall serve as chair. The Chief Justice shall appoint four members, one of whom shall be a defense attorney. The majority leader of the Senate shall appoint two legislative members of the Senate, one from each political party. The majority leader of the House of Representatives shall appoint two legislative members of the House of Representatives, one from each political party. The Attorney General shall appoint one member.

Section 69. The oversight council shall meet within ninety days after appointment and shall meet at least semiannually thereafter. The oversight council terminates five years after its first meeting, unless the Legislature, by joint resolution, continues the oversight council for a specified period of time.

The oversight council has the following powers and duties:

(1) Review the recommendations of the criminal justice initiative work group in the final report dated November 2012, and track implementation and evaluate compliance with this Act;

(2) Review performance and outcome measures proposed by the Department of Corrections, Unified Judicial System, and Department of Social Services;

(3) Review performance and outcome measure reports submitted semiannually by the Department Corrections and Unified Judicial System pursuant to sections 7, 11, 13, 15, 17, 25, 29, 33, 39, 50, and 70 of this Act and evaluate the impact of section 52 of this Act;

(4) Review of behavioral health intervention outcomes delivered to probationers and parolees administered by Department of Social Services pursuant to section 70 of this Act;

(5) Review the payments of the reinvestment fund to counties, pursuant to section 77 of this Act, the number of probationers above the trend line, and the rate of felony convictions to prison and probation by each county;

(6) Review the number and length of stay of offenders admitted to the Department of Corrections, particularly in the categories included in this Act;

(7) Review the activities of sections 63 to 66, inclusive, of this Act, including:

(a) The number of offenders supervised and the number of violations of the conditions pursuant to section 63 of this Act; and

(b) The number and percent of offenders in section 66 of this Act imprisoned in the county jail for more than one hundred eighty days; and

(8) Prepare and submit an annual summary report of the performance and outcome measures that are part of this Act to the Legislature, Governor, and Chief Justice. The report should include recommendations for improvements and a summary of savings generated from this Act.

Section 70. Treatment and intervention programs, as used in this section, mean substance abuse, mental health, or cognitive based treatment received by probationers or parolees.

All treatment and intervention programs for parolees and probationers shall be intended to reduce recidivism as demonstrated by research or documented evidence.

Payment for substance abuse or mental health treatment services may be made only if such services are recommended through an assessment conducted by a provider accredited by the Department of Social Services. Payment for cognitive based treatment services may be made only if such services are recommended through a risk and needs assessment tool used by the Department of Corrections or the Unified Judicial System.

The Department of Social Services shall collect data related to the participation, completion and

treatment outcomes of all probationers and parolees receiving treatment services paid for by the Department of Social Services. The Department of Social Services shall report this information semiannually to the oversight council.

The Department of Corrections shall collect data on the recidivism outcomes of parolees receiving treatment and interventions. The Department of Corrections shall report this information semiannually to the oversight council.

The Unified Judicial System shall collect data on the recidivism outcomes of probationers receiving treatment and interventions. The Unified Judicial System shall report this information semiannually to the oversight council.

Section 71. That chapter 2-1 be amended by adding thereto a NEW SECTION to read as follows:

A fiscal impact statement shall be attached to any bill or amendment or measures proposed by ballot initiative that may impact state prison or county jail populations. The requirement for a fiscal impact statement includes those bills or amendments that increase the periods of imprisonment authorized for existing crimes, that add new crimes for which imprisonment is authorized, that impose minimum or mandatory minimum terms of imprisonment, or that modify any law governing release of prisoners from imprisonment or supervision.

The sponsor of such legislation or such ballot initiative shall request and allow sufficient time to prepare a fiscal impact statement from the Bureau of Finance and Management or the Legislative Research Council. The fiscal impact statement shall be completed no later than the day the bill is submitted to the committee with subject matter cognizance. Any ballot initiative shall have a fiscal impact statement attached to the Attorney General's statement required pursuant to § 2-13-9 or 12-13-25.1.

Section 72. A fiscal impact statement pursuant to section 71 of this Act shall include the following:

(1) An analysis of the specific components of the bill or the ballot initiative that will impact the prison and jail population;

(2) The projected cost of the impact of the bill on the state prison system and the aggregate cost to county jails on an annual basis and cost of the bill over a ten year period; and

(3) Operational costs and capital costs including all manner of construction.

Section 73. That § 4-7-16 be amended to read as follows:

4-7-16. The Bureau of Finance and Management, at the direction and under the control of the Governor, and subject to the provisions of this chapter, § 12-13-9, 12-13-25.1, and pursuant to section 72 of this Act, shall analyze financial and administrative aspects of proposed legislation.

Section 74. That § 12-13-9 be amended to read as follows:

12-13-9. Before the third Tuesday in May, the attorney general shall deliver to the secretary of state an attorney general's statement for each amendment to the Constitution proposed by the Legislature, and any referred measure from an odd year. The attorney general's statement for each referred measure from an even year shall be delivered to the secretary of state before the second Tuesday in July. The attorney general's statement shall be written by the attorney general and shall consist of a title, an explanation, and a clear and simple recitation of the effect of a "Yes" or "No" vote. The title shall be a concise statement of the subject of the proposed amendment or referred measure authored by the attorney general. The explanation shall be an objective, clear, and simple summary to educate the voters of the purpose and effect of the proposed amendment to the Constitution or the referred law. The attorney general shall include a description of the legal consequences of the proposed amendment or the referred law, including the likely exposure of the state to liability if the proposed amendment or the referred law is adopted. The explanation may not exceed two hundred words in length. On the printed ballots, the title shall be followed by the explanation and the explanation shall be followed, if applicable, by the fiscal impact statement

prepared pursuant to section 72 of this Act and then followed by the recitation.

Section 75. That § 12-13-25.1 be amended to read as follows:

12-13-25.1. Following receipt of the written comments of the director of the Legislative Research Council, the sponsors shall submit a copy of the initiative or initiated amendment to the Constitution in final form, to the attorney general. The attorney general shall prepare an attorney general's statement which consists of a title and explanation. The title shall be a concise statement of the subject of the proposed initiative or initiated amendment to the Constitution. The explanation shall be an objective, clear, and simple summary to educate the voters of the purpose and effect of the proposed initiated measure or initiated amendment to the Constitution. The attorney general shall include a description of the legal consequences of the proposed amendment or initiated measure, including the likely exposure of the state to liability if the proposed amendment or initiated measure is adopted. The explanation may not exceed two hundred words in length. The attorney general shall file the title and explanation with the secretary of state and shall provide a copy to the sponsors within sixty days of receipt of the initiative or initiated amendment to the Constitution.

If the petition is filed as set forth in § 2-1-2, the attorney general shall deliver to the secretary of state before the third Tuesday in May a simple recitation of a "Yes" or "No" vote. On the printed ballots, the title shall be followed by the explanation and the explanation shall be followed, if applicable, by the fiscal impact statement prepared pursuant to section 72 of this Act and then followed by the recitation.

Section 76. That chapter 23A-28C be amended by adding thereto a NEW SECTION to read as follows:

The Office of the Attorney General shall oversee the establishment of a statewide automated victim information and notification (SAVIN) system within the criminal justice system and shall serve as the coordinating agency for the development, implementation and maintenance of any such

system. All agencies within the state shall cooperate with the Office of the Attorney General in order to establish the SAVIN system, undergo any required training, and report into the system as required. The Office of the Attorney General shall establish guidelines by rules promulgated pursuant to chapter 1-26 and in accordance with the provisions of § 23A-28C-2, to ensure any victim is properly notified of the SAVIN system and advised as to how the victim may gain access.

Section 77. The Department of Corrections shall promulgate rules pursuant to chapter 1-26 to administer a reinvestment program for the purposes of improving public safety and reducing recidivism. The reinvestment program is part of the local and endowment fund. The rules shall include the following:

(1) A calculation of the number of felony probation population as of fiscal year end. The Unified Judicial System will provide the necessary data on felony probationers to the Department of Corrections;

(2) A calculation of the five years, FY09 to FY13, inclusive, to determine how many felony probationers are under supervision in each county at fiscal year end. A trend line based on the prior growth in each county shall project growth based upon past performance;

(3) If the use of felony probation in a county has increased beyond the trend line calculated in subdivision (2) of this section, then the county will be compensated for additional felony probationers who are under supervision at fiscal year end. The first calculation of probationers beyond the trend line shall be on June 30, 2014, and the first payment shall be made on or about October 1, 2014;

(4) That a county's sheriff office shall receive one thousand dollars for each additional probationer beyond the trend line calculated in subdivisions (2) and (3) of this section;

(5) That in counties without a county jail, the sheriff shall receive an additional two hundred dollars per probationer above the trend line due to transportation costs;

(6) That the reinvestment fund shall be in existence until the fund is depleted; and

(7) That any probationer admitted to probation under a program described in section 9 of this Act is not included in the calculation performed in subdivision (2) of this section.

Section 78. Sections 67 to 69, inclusive, of this Act, are effective on July 1, 2013.

Section 79. Sections 14 to 21, inclusive, of this Act, are effective on October 1, 2013.

Section 80. Sections 9 to 11, inclusive, and 43 to 51, inclusive, of this Act, are effective on January 1, 2014.

Section 81. Section 77 of this Act is effective on June 30, 2014.

Section 82. Section 76 of this Act is effective on July 1, 2014.

Section 83. The remaining sections of this Act are effective on July 1, 2013.

An Act to improve public safety.

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I certify that the attached Act originated in the

SENATE as Bill No. 70

_____
Secretary of the Senate

_____
President of the Senate

Attest:

_____
Secretary of the Senate

_____
Speaker of the House

Attest:

_____
Chief Clerk

Senate Bill No. 70
File No. ____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

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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