

Be it enacted by the people of South Dakota:

An Act to provide certain provisions regarding the legalization of cannabis, to take effect immediately upon passage, the content of which was finalized on 4/5/2017.

Section 1. That the code be amended by adding a NEW SECTION to read:

As used in this Act, cannabis means all parts of the plant genus *Cannabis* spp containing one or more of the cannabinoids tetrahydrocannabinol (THC), cannabidiol (CBD), and cannabigerol (CBG), whether growing or not, whether living or not, whether in vegetative or flowering stages, cannabis accessories, cannabis growing implements, means of processing cannabis, means of transporting cannabis, means of reselling cannabis, and cannabis seeds.

Section 2. That the code be amended by adding a NEW SECTION to read:

No law enforcement agency in the state or any agent of the state may enforce any federal cannabis law.

Section 3. That the code be amended by adding a NEW SECTION to read:

A person's right to keep and bear arms may not be infringed for possessing cannabis in accordance with the provisions of this Act.

Section 4. That the code be amended by adding a NEW SECTION to read:

No charge may be brought under chapter 32-23 for consumed Cannabis metabolites. No law enforcement agency in the state or agent of the state may keep any record, whether written, electronic, digital, or otherwise based on a finding that cannabis plant matter or its metabolites are found on a person's body or breath or in the person's possession.

Section 5. That the code be amended by adding a NEW SECTION to read:

Any person under twenty-one years of age who is working in the agriculture industry with a letter from the person's employer describing the legal duties performed by the underage person may handle cannabis products having greater than three percent tetrahydrocannabinol.

Any person under age twenty-one who possesses a doctor's recommendation describing the person's medical condition that requires cannabis as medication may possess and ingest cannabis having greater than three percent tetrahydrocannabinol.

Any person under age twenty-one in possession of cannabis plant material containing greater than three percent tetrahydrocannabinol without an employer letter and without a doctor's recommendation pursuant to this section is subject to a penalty of ten hours of community service for each offense, not to exceed one hundred hours in any calendar year and shall surrender the plant material to law enforcement agents of the state. The cannabis plant material shall be tested by agents of the state in accordance with ISO/IEC 17025:2005 standards deemed applicable by the South Dakota Department of Agriculture, and catalogued without retaining or associating any personally identifying information about the person. Any cannabis plant material that is confiscated under this section shall be destroyed after testing. At least once per year the state shall issue a report disclosing test results and overall weight of confiscated cannabis.

Any person who sells or distributes Cannabis to any other person under age twenty-one who does not have a doctor's recommendation shall be subject to 100 hours of community service for each offense, not to exceed 200 hours in any calendar year, after which the offender shall pay a one thousand dollar fine per offense.

Any person under age twenty-one who is found to be in possession of cannabis containing more than three percent tetrahydrocannabinol shall display a doctor's recommendation or an employee permission letter that verifies the person's cannabis possession privileges. If a person cannot display the documentation required under this section to an official at the time of cannabis possession, the person may display the documentation to a court of competent jurisdiction within thirty days of the offense to avoid prosecution in accordance with the provisions of this Act.

Section 6. That the code be amended by adding a NEW SECTION to read:

The South Dakota Department of Agriculture shall promulgate rules pursuant to chapter 1-26 regarding the manufacture, sale, and transport of cannabis in the state in accordance with the provisions of this Act.

Section 7. That the code be amended by adding a NEW SECTION to read:

Any revenue generated from licensure fees under this Act that is in excess of the amount required to implement any provision of this Act shall be granted to South Dakota small farmers. The grants shall be used to support early-stage, high-risk local agriculture new venture, research and development. The grants shall only be awarded to proof of concept projects that are already completed, taking into account the ratio of investment-level-to-value of the expressed entrepreneurial idea as a key criterion for the award.

Section 8. That the code be amended by adding a NEW SECTION to read:

No court may determine parental suitability based on the parent's use or possession of cannabis when deciding a child custody case.

Section 9. That the code be amended by adding a NEW SECTION to read:

No locality may pass any law, ordinance, or regulation that restricts or controls the location of operation of a cannabis-related business. No locality may tax, regulate, control, or pass any law or regulation governing the use or consumption of cannabis. No locality may enact any zoning requirement that is discriminatory to a cannabis-related business. A locality may require a standard business license to conduct cannabis sales within the locality's jurisdiction. No locality may ban home cultivation or any other cultivation of cannabis.

Section 10. That the code be amended by adding a NEW SECTION to read:

Nothing in this Act may be interpreted to grant the right of an employee to use cannabis while at a workplace, nor to remove the right of employers to enact workplace policies that restrict or prohibit the use of cannabis in the workplace. Nothing in this Act may be interpreted to prohibit a landowner from restricting or prohibiting the use of cannabis on the landowner's private property.

Section 11. That the code be amended by adding a NEW SECTION to read:

The state shall recognize April 20 of each year as "Cannabis Day." State parks shall allow any resident of the state admission free of charge on April 20 of each year.

Section 12. That §13-32-9 be amended to read:

Any person adjudicated, convicted, the subject of an informal adjustment or court-approved diversion program, or the subject of a suspended imposition of sentence or suspended adjudication of delinquency for possession, use, or distribution of controlled drugs or substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education for one calendar year from the date of adjudication, conviction, diversion, or suspended imposition of sentence. The one-year suspension may be reduced to thirty calendar days if the person participates in an assessment with a certified or licensed addiction counselor. If the assessment indicates the need for a higher level of care, the student is required to complete the prescribed program before becoming eligible to participate in extracurricular activities. Upon a second adjudication, conviction, diversion, or suspended imposition of a sentence for possession, use, or distribution of controlled ~~drugs,~~ drugs or substances, ~~or marijuana~~ as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substance as prohibited by § 22-42-15, by a court of competent jurisdiction, that person is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education for one year from the date of adjudication, conviction, diversion, or suspended imposition of sentence. The one year suspension may be reduced to sixty calendar days if the person completes an accredited intensive prevention or treatment program. Upon a third or subsequent adjudication, conviction, diversion, or suspended imposition of sentence for possession, use, or distribution of controlled drugs or substances ~~or marijuana~~ as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, by a court of competent jurisdiction, that person is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education. Upon such a determination in any juvenile court proceeding the Unified Judicial System shall give notice of that determination to the South Dakota High School Activities Association and the chief administrator of the school in which the person is participating in any extracurricular activity. The Unified Judicial System shall give notice to the chief administrators of secondary schools accredited by the Department of Education for any such determination in a court proceeding for any person eighteen to twenty-one years of age without regard to current status in school or involvement in extracurricular activities. The notice shall include name, date of birth, city of residence, and offense. The chief administrator shall give notice to the South Dakota High School Activities Association if any such person is participating in extracurricular activities.

Upon placement of the person in an informal adjustment or court-approved diversion program, the state's attorney who placed the person in that program shall give notice of that placement to the South Dakota High School Activities Association and chief administrator of the school in which the person is participating in any extracurricular activity.

As used in this section, the term, extracurricular activity, means any activity sanctioned by the South Dakota High School Activities Association. Students are ineligible to participate in activity events, competitions, and performances, but a local school district may allow a student to participate in practices.

Section 13. That §13-32-9.2 be amended to read:

If a suspension is reduced pursuant to § 13-32-9, a suspension for a first offense shall make the student ineligible for a minimum of two South Dakota High School Activities Association sanctioned events. If two sanctioned events for which the student is ineligible do not take place within the reduced suspension period, the student's suspension remains in effect until two sanctioned events for which the student is ineligible have taken place. If a suspension is reduced pursuant to § 13-32-9, a suspension for a second offense shall make

the student ineligible for a minimum of six South Dakota High School Activities Association sanctioned events. If six sanctioned events for which the student is ineligible do not take place within the reduced suspension period, the student's suspension remains in effect until six sanctioned events for which the student is ineligible have taken place. To count toward the minimum number of events, the student must participate in the entire activity season and may not drop out or quit the activity to avoid suspension and the failure of a student to complete the entire activity season shall result in the student being ineligible for one year from the date of adjudication, conviction, the subject of an internal adjustment or court approved diversion program, or the subject of a suspended imposition of sentence or suspended adjudication of delinquency. A suspension that is not completed by the student during one activity season shall carry over to the next activity season in which the student participates. In addition, a suspension that is reduced pursuant to § 13-32-9 is only in effect during the South Dakota High School Activities Association's activity year, which begins on the first day of its first sanctioned event and concludes on the last day of its last sanctioned event. A reduced suspension that is not completed by the end of one activity year shall carry over to the next activity year.

A suspension begins on:

(1) The day following the notification to a school administrator by the Unified Judicial System that a student has been adjudicated, convicted, the subject of an informal adjustment or court approved diversion program, or the subject of a suspended imposition of a sentence or a suspended adjudication of delinquency for possession, use, or distribution of controlled ~~drugs, drugs or substances, or marijuana~~ as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substance prohibited by § 22-42-15 and the school administrator gives notice to the South Dakota High School Activities Association and the students; or

(2) The day following the student's admission to a school administrator that the student committed an offense enumerated in subdivision (1), which shall be made with the student's parent or guardian present if the student is an unemancipated minor, and the school administrator gives notice to the South Dakota High School Activities Association.

Section 14. That §13-53-42 be amended to read:

Any person who has been determined by a court of competent jurisdiction to have possessed, used, or distributed controlled substances ~~or marijuana~~ as defined in chapter 22-42 under circumstances which would constitute a felony under South Dakota law while enrolled at a South Dakota state supported institution of higher education is ineligible to participate in any form of intercollegiate extracurricular competition at any South Dakota state supported institution of higher education. Upon receiving a request from the chief administrator of the postsecondary educational institution, the Unified Judicial System shall send notice of whether the person who is the subject of the request was adjudicated in a juvenile proceeding of possessing, using, or distributing controlled substances ~~or marijuana~~ as defined in chapter 22-42 under circumstances which would constitute a felony under South Dakota law if that person were an adult.

Section 15. That § 13-55-29 be amended to read:

Any person adjudicated, convicted, or the subject of a suspended imposition of sentence for possession, use, or distribution of controlled substances ~~or marijuana~~ as defined in chapter 22-42 under circumstances which would constitute a felony under South Dakota law is ineligible for any scholarship for attendance at a postsecondary institution to the extent such scholarship is funded by the State of South Dakota. Upon receiving a

request from the chief administrator of the postsecondary educational institution, the Unified Judicial System shall send notice of whether the person who is the subject of the request was adjudicated in a juvenile proceeding of possessing, using, or distributing controlled substances ~~or marijuana~~ as defined in chapter 22-42 under circumstances which would constitute a felony under South Dakota law if that person were an adult.

Section 16. That § 22-42-1 be amended to read:

(1) "Controlled drug or substance," a drug or substance, or an immediate precursor of a drug or substance, listed in Schedules I through IV. The term includes an altered state of a drug or substance listed in Schedules I through IV absorbed into the human body;

(2) "Counterfeit substance," a controlled drug or substance which, or the container of labeling of which, without authorization, bears the trade-mark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(3) "Deliver" or "delivery," the actual or constructive transfer of a controlled ~~drug,~~ drug or substance, ~~or marijuana~~ whether or not there exists an agency relationship;

(4) "Dispense," to deliver a controlled drug or substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery, and a dispenser is one who dispenses;

(5) "Distribute," to deliver a controlled ~~drug,~~ drug or substance, ~~or marijuana~~. Distribution means the delivery of a controlled ~~drug,~~ substance, ~~or marijuana~~;

(6) "Manufacture," the production, preparation, propagation, compounding, or processing of a controlled drug or substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. A manufacturer includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate user;

~~(7) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not, in its natural and unaltered state, except for drying or curing and crushing or crumbling. The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant;~~

~~(8)~~ "Practitioner," a doctor of medicine, osteopathy, podiatry, dentistry, optometry, or veterinary medicine licensed to practice his or her profession, or pharmacists licensed to practice their profession; physician's assistants certified to practice their profession; government employees acting within the scope of their employment; and persons permitted by certificates issued by the Department of Health to distribute, dispense, conduct research with respect to, or administer a substance controlled by chapter 34-20B;

~~(9)~~(8) "Precursor" or "immediate precursor," a substance which the Department of Health has found to be and by rule designates as being a principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used, in the manufacture of a controlled drug or substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

~~(10)~~(9) "Schedule I," "Schedule II," "Schedule III," and "Schedule IV," those schedules of drugs, substances, and immediate precursors listed in chapter 34-20B;

~~(11)~~(10) "Ultimate user," a person who lawfully possesses a controlled drug or substance for that person's own use or for the use of a member of that person's household or for administration to an animal owned by that person or by a member of that person's household.

Section 17. That § 22-42A-3 be amended to read:

No person, knowing the drug related nature of the object, may use or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body any controlled substance ~~or marijuana~~ in violation of this chapter. Any person who violates any provision of this section is guilty of a Class 2 misdemeanor.

Section 18. That § 22-42A-4 be amended to read:

No person, knowing the drug related nature of the object, may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance ~~or marijuana~~ in violation of this chapter. Any person who violates any provision of this section is guilty of a Class 6 felony.

Section 19. That § 22-42-6 be repealed:

~~No person may knowingly possess marijuana. It is a Class 1 misdemeanor to possess two ounces of marijuana or less. It is a Class 6 felony to possess more than two ounces of marijuana but less than one half pound of marijuana. It is a Class 5 felony to possess one half pound but less than one pound of marijuana. It is a Class 4 felony to possess one to ten pounds of marijuana. It is a Class 3 felony to possess more than ten pounds of marijuana. 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 20. That § 22-42-7 be repealed:

~~The distribution, or possession with intent to distribute, of less than one half ounce of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana is a Class 6 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one half pound of marijuana is a Class 5 felony. The distribution, or possession with intent to distribute, of one half pound but less than one pound of marijuana is a Class 4 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana is a Class 3 felony. The distribution, or possession with intent to distribute, of less than one half ounce of marijuana to a minor without consideration is a Class 6 felony; otherwise, the~~

~~distribution, or possession with intent to distribute, of one ounce or less of marijuana to a minor is a Class 5 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one half pound of marijuana to a minor is a Class 4 felony. The distribution, or possession with intent to distribute, of one half pound but less than one pound of marijuana to a minor is a Class 3 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana to a minor is a Class 2 felony. A first conviction of a felony 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 of a felony under this section shall be punished by a mandatory sentence of at least one year. Conviction of a Class 4 misdemeanor under this section shall be punished by a mandatory sentence in county jail of not less than fifteen days, which sentence may not be suspended. A civil penalty, not to exceed ten thousand dollars, may be imposed, in addition to any criminal penalty, upon a conviction of a felony violation of this section.~~

Section 21. That § 22-42A-1 be amended to read:

The term, drug paraphernalia, means any equipment, products, and materials of any kind which are primarily used, intended for use, or designed for use by the person in possession of them, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled substance ~~or marijuana~~ in violation of the provisions of this chapter. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or marijuana or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

~~(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of marijuana or any species of plant which is a controlled substance;~~

~~(4) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;~~

~~(5)~~(4) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

~~(6) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;~~

~~(7)~~ (5) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances or marijuana;

~~(8)~~(6) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or marijuana;

~~(9)~~(7) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human

body; and

~~(10) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:~~

~~(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;~~

~~(b) Water pipes;~~

~~(c) Carburetion tubes and devices;~~

~~(d) Smoking and carburetion masks;~~

~~(e) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;~~

~~(f) Miniature cocaine spoons and cocaine vials;~~

~~(g) Chamber pipes;~~

~~(h) Carburetor pipes;~~

~~(i) Electric pipes;~~

~~(j) Air-driven pipes;~~

~~(k) Chillums;~~

~~(l) Bongs; and~~

~~(m) Ice pipes or chillers.~~

Section 22. That § 22-42A-2 be amended to read:

In determining whether an object is drug paraphernalia as defined in Â§ 22-42A-1, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) The proximity of the object, in time and space, to a direct violation of this article;

(3) The proximity of the object to controlled substances ~~or marijuana~~;

(4) The existence of any residue of controlled substances ~~or marijuana~~ on the object;

(5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to any person whom the person knows, or should reasonably know, intends to use the object to facilitate a violation of this article;



- (6) Instructions, oral or written, provided with the object concerning its use;
- (7) Descriptive materials accompanying the object which explain or depict its use;
- (8) National and local advertising concerning its use;
- (9) The manner in which the object is displayed for sale;
- (10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community;
- (11) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- (12) The existence and scope of legitimate uses for the object in the community; and
- (13) Expert testimony concerning its use.

Section 23. That § 23A-35A-2 be amended to read:

Orders authorizing or approving the interception of wire or oral communications may be granted, subject to the provisions of this chapter when the interception may provide or has provided evidence of the commission of, or of any conspiracy to commit, the following offenses as otherwise defined by the laws of this state: murder; kidnapping; gambling; robbery; bribery; theft; unlawful use of a computer; unauthorized manufacturing, distribution or counterfeiting of controlled substances ~~or marijuana~~; and, rape.

Section 24. That § 24-2-14 be amended to read:

No alcoholic beverage, ~~marijuana~~, or weapon, as defined in subdivision 22-1-2(10), may be possessed by any inmate of the state penitentiary. No prescription or nonprescription drugs, controlled substance as defined by chapter 34-20B, or any article of indulgence may be possessed by any inmate of the state penitentiary except by order of a physician, physician assistant, or nurse practitioner, as defined in chapters 36-4, 36-4A, and 36-9A, respectively, which order shall be in writing and for a definite period. Any violation of this section constitutes a felony pursuant to the following schedule:

- (1) Possession of any alcoholic beverage ~~or marijuana~~ is a Class 6 felony;
- (2) Possession of any prescription or nonprescription drug or controlled substance is a Class 4 felony;
- (3) Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

Section 25. That § 24-11-47 be amended to read:

No alcoholic beverages, controlled substances as defined by chapter 34-20B, ~~marijuana~~, or weapons as defined in subdivision 22-1-2(10), may be possessed by any inmate of a jail. No prescription drugs may be possessed by any inmate of a jail except by order of a physician, physician assistant, or nurse practitioner, as defined in chapters 36-4, 36-4A, and 36-9A, respectively and such an order shall be in writing and for a definite period. For purposes of this section, prescription drugs include nonprescription medication items that have not been authorized by the sheriff and which are not available to inmates except

through authorized jail personnel or the inmate commissary system. A violation of this section constitutes a felony pursuant to the following schedule:

- (1) Possession of alcoholic beverages ~~or marijuana~~ is a Class 6 felony;
- (2) Possession of prescription or nonprescription drugs or controlled substances is a Class 4 felony;
- (3) Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

Section 26. That § 26-8A-34 be amended to read:

If the court finds the apparent, alleged, or adjudicated abuse or neglect of a child was related to the use of alcohol, ~~marijuana~~, or any controlled drug or substance, the placement or return of the child may be subject to the condition, if the court so orders, that a parent, guardian, custodian, or any other adult residing in the home submit to tests for alcohol, ~~marijuana~~, or any controlled drug or substance prior to or during the placement or return of the child. If a parent, guardian, custodian, or any other adult, who resides in the home and has been ordered by the court to submit to testing for alcohol, ~~marijuana~~, or any controlled drug or substance, tests positive for alcohol, ~~marijuana~~, or any controlled drug or substance, or fails to submit to the test as required, the Department of Social Services may immediately remove the child from the physical custody of the parent, guardian, or custodian, without prior court order, subject to a review hearing, which may be telephonic, within forty-eight hours excluding Saturdays, Sundays, and court holidays. As used in this section, any controlled drug or substance means a controlled drug or substance which was not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B.

Section 27. That § 26-8A-22 be amended to read:

On completion of the dispositional phase of the proceeding, the court shall enter a final decree of disposition. If the final decree of disposition does not terminate parental rights, the decree shall include one or more of the following provisions which the court finds appropriate as the least restrictive alternative available:

- (1) The court may place the child in the custody of one or both of the child's parents, a guardian, a relative of the child or another suitable person, or a party or agency, with or without protective supervision, or the Department of Social Services, subject to the conditions and the length of time that the court deems necessary or appropriate. If the court returns custody to the child's parent, guardian, or custodian, such return of custody may be with supervision during which the court may require the parent, guardian, custodian, and any other adult residing in the home, to cooperate with home visits by the department and may require the parent, guardian, custodian, and any other adult residing in the home, to submit, at the request of the department, to tests for alcohol, ~~marijuana~~, or any controlled drug or substance. If the adjudication of abuse or neglect was related to the use of alcohol, ~~marijuana~~, or any controlled drug or substance, the parent, guardian, or custodian, and any other adult residing in the home, may be required, in those areas where such testing is available, to submit to regular tests for alcohol, ~~marijuana~~, or any controlled drug or substance. If a positive test for alcohol, ~~marijuana~~, or any controlled drug or substance is obtained, or the person fails to submit to the test as required, the department may immediately remove the child from the physical custody of the parent, guardian, custodian, or any other adult residing in the home whose test was positive or who failed to submit to the test, without prior court order subject to a review hearing, which may be telephonic, within forty-eight hours excluding Saturdays, Sundays, and court

holidays. As used in this section, any controlled drug or substance means a controlled drug or substance which was not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B;

(2) The court after determining that a compelling reason exists to place the child who is sixteen years of age or older in another planned permanent living arrangement rather than with a relative or with a legal guardian other than the department may place the child in the custody of the department or a child placement agency, with or without guardianship of the child, until the child attains the age of majority or until an earlier date or event as determined by the court;

(3) The court may order that the child be examined or treated by a physician or by a qualified mental health professional or that the child receive other special care and may place the child in a suitable facility for such purposes under conditions that the court deems necessary or appropriate. On completion of the examination, treatment, or hospitalization and on a full report to the court, the court shall conduct a supplemental dispositional hearing or hearings and shall make disposition of the child as otherwise provided in this section or, if the evidence shows need, the court may consider termination of parental rights as an appropriate possible alternative in keeping with the best interests and welfare of the child.

If disposition of the child under this section involves the removal from or nonreturn of the child to the home of the child's parents, guardian, or custodian and placement of the child in the custody of the department for placement in foster care, the court shall include in the decree a written judicial determination that continuation of the child's placement in the home of the child's parents, guardian, or custodian would be contrary to the welfare of the child and that reasonable efforts were made by the department to prevent or eliminate the need for removal of the child from the home. In no case may a child remain in foster care for a period in excess of twelve months from the time the child entered foster care without the court holding a permanency hearing and making a dispositional decree. The court shall review the child's permanency status and make a dispositional decree every twelve months thereafter as long as the child continues in the custody of the department. The court shall determine whether the state has made reasonable efforts to finalize the permanency plan that is in effect. That determination shall be included in the dispositional decree.

Section 28. That § 26-8A-2 be amended to read:

In this chapter and chapter 26-7A, the term, abused or neglected child, means a child:

(1) Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;

(2) Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian;

(3) Whose environment is injurious to the child's welfare;

(4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being;

(5) Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian;

(6) Who is threatened with substantial harm;

(7) Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;

(8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care;

(9) Who was subject to prenatal exposure to abusive use of alcohol, ~~marijuana~~, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or

(10) Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.

Section 29. That § 26-8A-26 be amended to read:

If an adjudicated, abused, or neglected child whose parental rights have not been terminated has been in the custody of the Department of Social Services and it appears at a dispositional or review hearing that all reasonable efforts have been made to rehabilitate the family, that the conditions which led to the removal of the child still exist, and there is little likelihood that those conditions will be remedied so the child can be returned to the custody of the child's parents, the court shall affirmatively find that good cause exists for termination of the parental rights of the child's parents and the court shall enter an order terminating parental rights. If the court does not find at the hearing, which shall be conducted in the same manner as a dispositional hearing, that good cause exists for termination of parental rights, the court may make further disposition of the child as follows:

(1) Return custody of the child to the child's parents, guardian, or custodian, with or without supervision during which the court may require the parent, guardian, custodian, and any other adult residing in the home, to cooperate with home visits by the department and may require the parent, guardian, custodian, and any other adult residing in the home, to submit, at the request of the department, to tests for alcohol; ~~marijuana~~, or any controlled drug or substance. If the adjudication of abuse or neglect was related to the use of alcohol, ~~marijuana~~, or any controlled drug or substance, the parent, guardian, or custodian, and any other adult residing in the home, may be required, in those areas where such testing is available, to submit to regular tests for alcohol, ~~marijuana~~, or any controlled drug or substance. If a positive test for alcohol; ~~marijuana~~, or any controlled drug or substance is obtained, or if the person fails to submit to the test as required, the department may immediately remove the child from the physical custody of the parent, guardian, custodian, or any other adult residing in the home whose test was positive or who failed to submit to the test, without prior court order subject to a review hearing, which may be telephonic, within forty-eight hours excluding Saturdays, Sundays, and court holidays. As used ~~herein~~ in this section, any controlled drug or substance means a controlled drug or substance which was not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B;

(2) Continue foster care placement of the child for a specified period of time, and, if the child is sixteen years of age or older, direct the department to determine

the services needed to assist the child to make the transition from foster care to independent living and, if appropriate, provide a plan for independent living for the child;

(3) Place the child who is sixteen years of age or older in the custody of the department or a child placement agency, with or without guardianship of the child, in another planned permanent living arrangement following a determination that a compelling reason exists that the placement is more appropriate than adoption or with a relative or with a legal guardian other than the department and under a court-approved plan that determines visitation rights of the child's parents, guardian, or custodian. Under this subdivision, the court may retain jurisdiction of the action and proceedings for future consideration of termination of parental rights if termination of parental rights is the least restrictive alternative available in keeping with the best interests of the child.

In no case may a child remain in foster care for a period in excess of twelve months from the time the child entered foster care without the court holding a permanency hearing and making a dispositional decree setting forth one of the above options. The court shall review the child's permanency status and make a dispositional decree every twelve months thereafter as long as the child continues in the custody of the department. The court shall determine whether the state has made reasonable efforts to finalize the permanency plan that is in effect. That determination shall be included in the dispositional decree.

Section 30. That § 32-23-1 be amended to read:

No person may drive or be in actual physical control of any vehicle while:

(1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other bodily substance;

(2) Under the influence of an alcoholic beverage, ~~marijuana~~, or any controlled drug or substance not obtained pursuant to a valid prescription, or any combination of an alcoholic beverage, ~~marijuana~~, or such controlled drug or substance;

(3) Under the influence of any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving;

(4) Under the combined influence of an alcoholic beverage and or any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving; or

(5) Under the influence of any substance ingested, inhaled, or otherwise taken into the body as prohibited by ~~Â§ 22-42-15~~.

Section 31. That § 32-23-10 be amended to read:

Any person who operates any vehicle in this state is considered to have given consent to the ~~withdrawal of blood or other bodily substance and chemical analysis of the person's blood, breath, or other bodily substance~~ external capture of urine and any chemical analysis of the person's breath, hair, fecal matter, or urine to determine the amount of alcohol in the person's blood and to determine the presence of ~~marijuana~~ or any controlled drug or substance or any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15 or any other substance that may render a person incapable of safely driving. The arresting law enforcement officer may, subsequent to the arrest of any operator for a

violation of § 32-23-1, require the operator to submit to the ~~withdrawal of blood or other bodily substances~~ collection of breath, hair, fecal matter, or urine as evidence.

Section 32. That § 32-23-21 be amended to read:

It is a Class 2 misdemeanor for any person under the age of twenty-one years to drive, operate, or be in actual physical control of any vehicle:

(1) If there is physical evidence of 0.02 percent or more by weight of alcohol in the person's blood as shown by chemical analysis of the person's breath, blood, or other bodily substance; or

(2) After having consumed ~~marijuana~~ or any controlled drug or substance for as long as physical evidence of the consumption remains present in the person's body.

If a person is found guilty of or adjudicated for a violation of this section, the Unified Judicial System shall notify the Department of Public Safety. Upon conviction or adjudication, the court shall suspend that person's driver's license or operating privilege for a period of thirty days for a first offense, one hundred eighty days for a second offense, or one year for any third or subsequent offense. However, the court may, upon proof of financial responsibility pursuant to Â§ 32-35.43.1, issue an order permitting the person to operate a vehicle for purposes of the person's employment, attendance at school, or attendance at counseling programs.

Section 33. That § 32-33-4 be amended to read:

Sections 32-33-2 and 32-33-3 do not apply to any person arrested and charged with an offense causing or contributing to an accident resulting in injury or death to any person, nor to any person charged with reckless driving, nor to any person charged with driving while under the influence of an alcoholic beverage or any controlled drug or substance ~~or marijuana~~, nor to any person charged with a violation of subdivision 32-12-65(1) or Â§ 32-33-13, nor to any person who the arresting officer has good cause to believe has committed any felony. A law enforcement officer shall take such person without unnecessary delay before the nearest or most accessible magistrate.

Section 34. That § 33-10-282 be amended to read:

The substances referred to in § 33-10-281 are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, ~~and marijuana~~ and any compound or derivative of any such substance;

(2) Any substance not specified in subdivision (1) of this section that is listed on a schedule of controlled substances prescribed by the President for the purposes of the Uniform Code of Military Justice of the armed forces of the United States 10 U.S.C. § 801 et seq. as of January 1, 2012; and

(3) Any other substance not specified in subdivision (1) of this section or contained on a list prescribed by the President pursuant to subdivision (2) of this section that is listed in schedules I through V of article 202 of the Controlled Substances Act 21 U.S.C. § 812 as of January 1, 2012.

Section 35. That § 34-20B-1 be amended to read:

Terms as used in this chapter mean:

(1) "Administer," to deliver a controlled drug or substance to the ultimate user or human research subject by injection, inhalation, or ingestion, or by any other means;

(2) "Agent," an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser and includes a common or contract carrier, public warehouseman, or employee thereof;

(3) "Control," to add, remove, or change the placement of a drug, substance, or immediate precursor under §§ 34-20B-27 and 34-20B-28;

(4) "Counterfeit substance," a controlled drug or substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who manufactured, distributed, or dispensed such the substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(5) "Deliver" or "delivery," the actual, constructive, or attempted transfer of a controlled ~~drug,~~ drug or substance, ~~or marijuana~~ whether or not there exists an agency relationship;

(6) "Department," the Department of Health created by chapter 1-43;

(7) "Dispense," to deliver a controlled drug or substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery, and a dispenser is one who dispenses;

(8) "Distribute," to deliver a controlled ~~drug,~~ drug or substance, or marijuana. A distributor is a person who delivers a controlled ~~drug,~~ drug or substance, ~~or marijuana;~~

(9) ~~"Hashish," the resin extracted from any part of any plant of the genus cannabis, commonly known as the marijuana plant;~~

~~(10)~~ "Imprisonment," imprisonment in the state penitentiary unless the penalty specifically provides for imprisonment in the county jail;

~~(11)~~(10) "Manufacture," the production, preparation, propagation, compounding, or processing of a controlled drug or substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. A manufacturer includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer;

~~(12) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds; but does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant, or the resin when extracted from any part of such plant;~~

~~(13)~~(11) "Narcotic drug," any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium, coca leaves, and opiates;

(b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(c) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subsections (a) and (b) of this subdivision; except that the term, narcotic drug, as used in this chapter does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine;

~~(14)~~(12) "Opiate," any controlled drug or substance having an addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability;

~~(15)~~(13) "Opium poppy," the plant of the species *papaver somniferum* L., except the seeds thereof;

~~(16)~~(14) "Person," any corporation, association, limited liability company, partnership or one or more individuals;

~~(17)~~(15) "Poppy straw," all parts, except the seeds, of the opium poppy, after mowing;

~~(18)~~(16) "Practitioner," a doctor of medicine, osteopathy, podiatry, optometry, dentistry, or veterinary medicine licensed to practice their profession, or pharmacists licensed to practice their profession; physician assistants certified to practice their profession; nurse practitioners and nurse midwives licensed to practice their profession; government employees acting within the scope of their employment; and persons permitted by certificates issued by the department to distribute, dispense, conduct research with respect to, or administer a substance controlled by this chapter;

~~(18A)~~(17) "Prescribe," an order of a practitioner for a controlled drug or substance.

~~(19)~~(18) "Production," the manufacture, planting, cultivation, growing, or harvesting of a controlled drug or substance;

~~(20)~~(19) "State," the State of South Dakota;

~~(24)~~(20) "Ultimate user," a person who lawfully possesses a controlled drug or substance for personal use or for the use of a member of the person's household or for administration to an animal owned by the person or by a member of the person's household;

~~(22)~~(21) "Controlled substance analogue," any of the following:

(a) A substance that differs in its chemical structure to a controlled substance listed in or added to the schedule designated in schedule I or II only



by substituting one or more hydrogens with halogens or by substituting one halogen with a different halogen; or

(b) A substance that is an alkyl homolog of a controlled substance listed in or added to schedule I or II; or

(c) A substance intended for human consumption; and

(i) The chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

(ii) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(iii) With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II;

However, the term, controlled substance analogue, does not include a controlled substance or any substance for which there is an approved new drug application.

Section 36. That § 34-20B-70 be amended to read:

The following are subject to forfeiture pursuant to chapter 23A-49 and no property right exists in them:

(1) All controlled drugs and substances ~~and marijuana~~ which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this chapter or chapter 22-42;

(2) All raw materials, products, and equipment of any kind which are used or intended for use, in manufacturing, compounding, processing, importing, or exporting any controlled drug or substance ~~or marijuana~~ in violation of the provisions of this chapter or chapter 22-42;

(3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);

~~(4) All conveyances including aircraft, vehicles, or vessels, which transport, possess, or conceal, or which are used, or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession, or concealment of marijuana in excess of one half pound or any quantity of any other property described in subdivision (1) or (2), except as provided in §§ 34-20B-71 to 34-20B-73, inclusive. This subdivision includes those instances in which a conveyance transports, possesses or conceals marijuana or a controlled substance as described herein without the necessity of showing that the conveyance is specifically being used to transport, possess, or conceal or facilitate the transportation, possession, or concealment of marijuana or a controlled substance in aid of any other offense;~~

~~(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;~~

~~(6)~~(5) Any funds or other things of value used for the purposes of unlawfully purchasing, attempting to purchase, distributing, or attempting to distribute any controlled drug or substance or marijuana;

~~(7)~~(6) Any assets, interest, profits, income, and proceeds acquired or derived from the unlawful purchase, attempted purchase, distribution, or attempted distribution of any controlled drug or substance ~~or marijuana~~.

Property described in subdivision (1) shall be deemed contraband and shall be summarily forfeited to the state, property described in subdivisions (2), (3), (5), (6), and (7) is subject to forfeiture under the terms of § 23A-49-14, and property described in subdivision (4) is subject to forfeiture under the terms of § 23A-49-15.

Section 37. That § 34-20C-1 be amended to read:

Terms used in this chapter mean:

(1) "Controlled drug or substance," a drug or substance, or an immediate precursor of a drug or substance, listed in Schedules I to IV, inclusive;

(2) "Illegal drug," a controlled drug or substance ~~or marijuana~~ whose distribution is a violation of state law;

(3) "Illegal drug market," the support system of illegal drug related operations, from manufacture to retail sales, through which an illegal drug reaches the user;

(4) "Illegal drug market target community," the area described under ~~Â~~§ 34-20C-11;

(5) "Level 1 participation," possession of sixteen ounces or more or distribution of four ounces or more of a controlled drug or substance ~~or possession of ten pounds or more or distribution of one pound or more of marijuana~~;

(6) "Level 2 participation," possession of eight ounces or more, but less than sixteen ounces, or distribution of two ounces or more, but less than four ounces, of a controlled drug or substance ~~or possession of one to ten pounds, or distribution of one-half pound but less than one pound, of marijuana~~;

(7) "Level 3 participation," possession of four ounces or more, but less than eight ounces, or distribution of one ounce or more, but less than two ounces, of a controlled drug or substance, ~~or possession of one-half pound but less than one pound, or distribution of more than one ounce but less than one-half pound of marijuana~~;

(8) "Level 4 participation," possession of one-fourth ounce or more, but less than four ounces, or distribution of less than one ounce of a controlled drug or substance, ~~or possession of less than one-half pound, or distribution of one ounce or less of marijuana~~;

(9) "Participate in the illegal drug market," to distribute, possess with an intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute, possess with an intent to distribute, or commit an act intended to facilitate the marketing and distribution of an illegal drug. The term does not include the purchase or receipt of an illegal drug for personal use only;

(10) "Period of illegal drug use," in relation to the individual drug user, the time of the user's first use of an illegal drug to the accrual of the cause of action. The period of illegal drug use is presumed to commence two years before the cause of action accrues unless the defendant proves otherwise by clear and convincing evidence;

(11) "Place of illegal drug activity," in relation to the individual drug user, each county in which the user possesses or uses an illegal drug or in which the user resides, attends school, or is employed during the period of the user's illegal drug use, unless the defendant proves otherwise by clear and convincing evidence;

(12) "Place of participation," in relation to a defendant in an action brought under this chapter, each county in which the person participates in the illegal drug market or in which the person resides, attends school, or is employed during the period of the person's participation in the illegal drug market;

(13) "User," the person whose illegal drug use is the basis of an action brought under this chapter.

Section 38. That § 34-20B-81 be amended to read:

All property described in subdivision 34-20B-70(1) shall be deemed contraband and shall be summarily forfeited to the state. Controlled substances ~~or marijuana~~ that are seized or come into possession of the state, the owners of which are unknown, shall be deemed contraband and shall be summarily forfeited to the state.

Section 39. That § 39-15-8 be amended to read:

For the purposes of this chapter a drug shall be deemed to be misbranded if the contents of the package as originally packed shall have been removed in whole or in part and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, ~~cannabis indica~~, chloral hydrate, or acetanilide or any derivative or preparation of any such substance contained therein. Nothing in this section shall be construed to apply to the dispensing of prescriptions written by regularly licensed practicing physicians, veterinary surgeons, or dentists, and kept on file by the dispensing pharmacist, nor to such drugs as are recognized in the United States Pharmacopoeia and the National Formulary, and which are sold under the name by which they are so recognized.

Section 40. That § 42-8-45 be amended to read:

No person may operate a boat as defined in subdivisions 42-8-2(2B), (3), (5A), or (6) while underway on the public waters of the state while:

(1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other bodily substance;

(2) Under the influence of an alcoholic beverage, ~~marijuana~~, or any controlled drug or substance not obtained pursuant to a valid prescription, or any combination of an alcoholic beverage, marijuana, or such controlled drug or substance;

(3) Under the influence of any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving or operating such boat;

(4) Under the combined influence of an alcoholic beverage and any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving or operating such boat; or

(5) Under the influence of any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15.

Any violation of this section is a Class 1 misdemeanor.

Section 41. That § 42-8-45.6 be amended to read:

Any person who operates a boat while underway on the public waters of the state in this state is considered to have given consent to the withdrawal of blood or other bodily substance and chemical analysis of the person's blood, breath, or other bodily substance to determine the amount of alcohol in the person's blood ~~and to determine the presence of marijuana~~ or any controlled drug or substance or any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15 or any other substance that may render a person incapable of safely operating a boat. The arresting law enforcement officer may, subsequent to the arrest of any operator for a violation of § 42-8-45, require the operator to submit to the withdrawal of blood or other bodily substances as evidence.