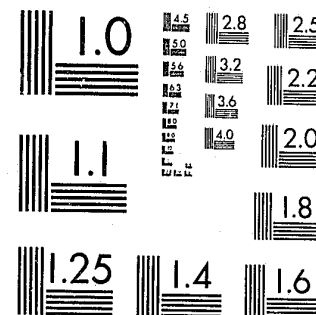


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National Institute of Justice  
United States Department of Justice  
Washington, D. C. 20531

Date Filmed

3/09/81

# MANUAL FOR LAY MAGISTRATES

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State Court Administrator

A Work Product of the State Court Administrator's Research Project

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State of South Dakota

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# PETTY OFFENSE PROCEDURE

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# PETTY OFFENSE PROCEDURE

A petty offense procedure is initiated by issuance of a petty offense summons and complaint, also known as a uniform traffic ticket. SDCL 23-1A-2. Most often these will be issued by a law enforcement officer; however, any person may sign a petty offense complaint. When a person other than a law enforcement officer signs the complaint it must be signed under oath. SDCL 23-1A-5. Anyone, even a minor, may be sued for commission of a petty offense; however, the state's attorney may at any time prior to judgment dismiss a petty offense complaint against a minor and instead try the minor as a juvenile delinquent. SDCL 23-1A-6. The summons must specify the time of hearing which must be scheduled to be held within 10 days of the issuance of the summons and complaint. Defendant may request an earlier hearing to be had before the judge or magistrate of the county in which the alleged petty offense was committed. SDCL 23-1A-8. A copy of the Petty Offense Summons and Complaint may be found in the Forms section of this manual at D 1.

## Accused's Options for a Traffic Violation

Upon issuance of a petty offense complaint for a traffic violation, the party upon whom the complaint was issued:

- (1) if he has a valid South Dakota driver's license, may give a written promise to appear at a hearing;
- (2) if he does not have a valid South Dakota driver's license, may sign an admission and give a deposit; or
- (3) if he refuses either alternative (1) or (2) above, shall be taken immediately to the nearest accessible judge or magistrate for a hearing on the complaint. SDCL 23-1A-11.

## Accused's Options for a Nontraffic Violation

A person who has been issued a petty offense complaint for other than a violation of traffic laws may:

- (1) sign a statement admitting allegations in the complaint and file a deposit in the office of the clerk by the last working day prior to the hearing;
- (2) appear in court for a hearing; or
- (3) file a deposit. SDCL 23-1A-12 and 23-1A-13.

## Making of Deposit

If one charged with a petty offense elects an alternative which requires the making of a deposit, the deposit may be made in one of two ways:



- (1) In the law enforcement officer's presence, the deposit may be mailed to the office of the clerk of court in the county in which the complaint was issued; or
- (2) In the company of the officer, the accused may go to the office of the clerk and make the deposit. SDCL 23-1A-13.

If accused makes a stipulation admitting the allegations in the complaint, the admission is filed with the deposit in the office of the clerk. SDCL 23-1A-12.

The amount of the deposit to be made is twenty-five dollars (\$25.00), which represents the potential judgment and costs. SDCL 23-1A-22. See List of Apparent Petty Offenses at A 5 et. seq.

#### Disposition of Uncontested Cases

If defendant makes a deposit either with or without a stipulation he need not appear in court. If defendant does not appear "the clerk shall record on the court appearance date, a judgment in favor of the plaintiff and enter the deposit as payment of the judgment." SDCL 23-1A-15.

If defendant appears in court, personally or by his attorney, he shall be asked whether he admits or denies the commission of the offense alleged in the complaint. If he admits the commission of the alleged offense, the court shall accept his admission and enter a judgment against him for the amount established. SDCL 23-1A-17.

If defendant does not appear at the time set by summons and the required deposit has been made, the defendant is deemed to have tendered an admission to the allegations in the complaint and judgment shall be entered accordingly. If defendant has failed to appear after filing a stipulation admitting commission of a petty offense, judgment shall be entered against defendant pursuant to such stipulation. SDCL 23-1A-18.

If defendant has not made a deposit and fails to appear, a default judgment shall be entered against him and a bench warrant for his arrest shall be issued. SDCL 23-1A-19. For Bench Warrant form, see Forms section of this manual at D 2.

#### Adjudication

If defendant appears on court appearance date and denies the allegations in the complaint, the case may be tried at that time or the case may be continued at the request of either defendant or plaintiff, but such postponement shall not exceed 30 days. If defendant requests a continuance and has not made a deposit, such deposit must be made prior to continuing the case. SDCL 23-1A-17.

A lay magistrate has the authority to hear contested petty offense cases. SDCL 16-12A-16. There is no right to a jury trial in

petty offense cases. SDCL 23-1A-17. Courtroom procedure is governed by rules of civil procedure. SDCL 23-1A-17. In the trial of a petty offense case, the state's attorney is attorney for plaintiff. SDCL 23-1A-3. If the case was initiated by the required petty offense summons and complaint, the state's attorney need not file a separate summons and complaint. SDCL 23-1A-4. If either party requests a continuance, the court may set a later date for trial which may not exceed 30 days from the date of the initial appearance. A defendant's request for continuance shall not be granted unless he deposits with the court the sum of twenty-five dollars (\$25.00). SDCL 23-1A-17.

If a defendant who has signed a stipulation requests a hearing, the court in its discretion may relieve the accused from the stipulation and have a hearing or continue the same upon request of either plaintiff or defendant, such continuance not to exceed thirty days. SDCL 23-1A-16, SDCL 23-1A-17.

#### Docketing and Forwarding Judgment to Motor Vehicles Division

The judgment is then entered in the petty offense docket section of the magistrate's docket book. Docketing such judgment results in a lien on the property of the defendant and execution may be made thereon (SDCL 23-1A-21); therefore, all uncollected judgments should be docketed in the judgment book.

Within five working days after the entry of a judgment against defendant regarding motor vehicles, certification of the entry of judgment, judgment of forfeiture or default judgment must be forwarded to the Division of Motor Vehicles. SDCL 23-1A-20. If a copy of a non-appearing out-of-state resident's signed power of attorney is mailed together with the summons and complaint to the Department of Public Safety, the Department of Public Safety will forward the information to the home state of defendant for docketing in that jurisdiction.

#### Award and Costs

The judgment shall be an award of twenty dollars (\$20.00) plus five dollars (\$5.00) as costs (SDCL 23-1A-22), except that the judge or magistrate may reduce or eliminate both the award and costs in the interests of justice. No award may be granted the defendant in a petty offense case. For manner of handling and disposing of judgments in a petty offense case, see Accounting section of this manual.



PETTY OFFENSE CONTESTED CASE - CHECKLIST

- (1) Identify court.
- (2) Call case.
- (3) Identify accused.
- (4) Ask parties if ready to proceed.
- (5) Prosecution presents case allowing defendant to cross-examine witnesses.
- (6) Defendant presents case allowing plaintiff to cross-examine.
- (7) Closing statements.
- (8) Verdict of magistrate.

LIST OF APPARENT PETTY OFFENSES

State Court Administrator's Office  
State Capitol  
Pierre, South Dakota

TO: Circuit Judges, Magistrates and Other Judicial Personnel  
RE: HB 1098 and HB 1175

After a review of the statutes of the State of South Dakota the following list of apparent petty offenses has been prepared by the staff of the State Court Administrator's Office to assist you in implementing HB 1098 and HB 1175, an Emergency Act, passed and approved by the 1978 Legislature.

| <u>Statutes</u>                       | <u>Description</u>   | <u>Amount of Judgment</u> | <u>Costs</u> | <u>Total</u> |
|---------------------------------------|--|---------------------------|--------------|--------------|
| <u>Gambling</u>                       |  |                           |              |              |
| SDCL 22-25-3                          | Persuading another to visit gambling house.                                | \$20                      | \$5          | \$25         |
| SDCL 22-25-6                          | Unlawful betting on animal races.  | \$20                      | \$5          | \$25         |
| <u>Public Nuisance</u>                |  |                           |              |              |
| SDCL 22-36-2                          | Smoking in public area.  | \$20                      | \$5          | \$25         |
| <u>Offenses By and Against Minors</u> |  |                           |              |              |
| SDCL 26-10-8                          | Child under 18 entering billard room or room where low point beer is sold. | \$20                      | \$5          | \$25         |
| <u>Camping at Rest Areas</u>          |  |                           |              |              |
| SDCL 31-7-15                          | Camping at rest areas on interstate highway system.                        | \$20                      | \$5          | \$25         |
| <u>County Highway Superintendent</u>  |  |                           |              |              |
| SDCL 31-12-25                         | Failure to establish witness corner for disturbed government corner.       | \$20                      | \$5          | \$25         |
| <u>Toll Bridges</u>                   |  |                           |              |              |
| SDCL 31-16-16                         | Failure to pay lawfully requested toll.                                    | \$20                      | \$5          | \$25         |



Highway--intersections

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 31-24-9 | Failure of highway officials to provide accessible, 24' wide approach to intersection. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|

Highways--utility lines

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 31-26-1 | Failure to apply to county commissioners for right to locate utility poles and lines in and along public highway.           | \$20 | \$5 | \$25 |
| SDCL 31-26-2 | Grant of exclusive use of highway for utility service.  | \$20 | \$5 | \$25 |
| SDCL 31-26-3 | Failure to locate utility poles and fixtures as directed by governing body.   | \$20 | \$5 | \$25 |
| SDCL 31-26-4 | Failure upon notice to change line upon charge of highway.  | \$20 | \$5 | \$25 |
| SDCL 31-26-5 | Failure to construct or maintain electric and telephone poles and wires in accordance with National Electrical Safety Code. | \$20 | \$5 | \$25 |
| SDCL 31-26-6 | Inductive interference of telephone lines by construction of electric lines.  | \$20 | \$5 | \$25 |
| SDCL 31-26-7 | Furnishing telephone services without Public Utilities Commission authorization.  | \$20 | \$5 | \$25 |

Highway--weed control

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 31-31-1 | Failure of highway officials to cut or remove grass, weeds and brush from highway right-of-way.        | \$20 | \$5 | \$25 |
| SDCL 31-31-2 | Failure of abutting landowner to cut or remove grass, weeds and brush from township road right-of-way. | \$20 | \$5 | \$25 |

Highway--obstructions and defects

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 31-32-5 | Placing barbed wire across traveled road without visible obstruction. | \$20 | \$5 | \$25 |
|--------------|---|------|-----|------|

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 31-32-6 | Failure to place danger sign and notify board or commissioners of injury or obstruction of bridge or highway. | \$20 | \$5 | \$25 |
|--------------|---|------|-----|------|

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 31-32-7 | Destruction or obstruction of highway grade or ditch. | \$20 | \$5 | \$25 |
|--------------|---|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 31-32-10 | Failure of governing body to place substantial guards over or across dangerous highway culvert or bridge. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

Motor vehicles--registration and license plates

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 32-5-26 | Failure of manufacturer or importer of motor vehicles to file list of representatives and dealers with Secretary of Public Safety. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 32-5-27 | Out-of-state used car dealers - purchase or sale of unlicensed vehicle - time for licensing | \$20 | \$5 | \$25 |
|--------------|---|------|-----|------|

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 32-5-33 | Failure of manufacturer or importer of motor vehicle to file with the Department of Public Safety statement of models and suggested dealer list price within thirty (30) days of manufacture of new model or change or revision of prices or change in carrying capacity or weight. | \$20 | \$5 | \$25 |
|--------------|---|------|-----|------|

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 32-5-49 | Failure to obtain temporary permit for occasional trip from foreign state. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|

|                |  |      |     |      |
|----------------|--|------|-----|------|
| SDCL 32-5-89.3 | 1. Failure of licensee to super-impose personalized plates over regular plates or validate each year.<br>2. Non-collection of fee for current personalized plates and/or improper disposition of such fee. | \$20 | \$5 | \$25 |
|----------------|--|------|-----|------|

|                |  |      |     |      |
|----------------|--|------|-----|------|
| SDCL 32-5-89.4 | Failure to remove personalized plates upon transfer of vehicle or attachment to another vehicle prior to approval from the Secretary of Public Safety. | \$20 | \$5 | \$25 |
|----------------|--|------|-----|------|

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 32-5-91 | Registration receipt not in possession of operator or not submitted to peace officer for inspection upon request. | \$20 | \$5 | \$25 |
|--------------|---|------|-----|------|



Motor Carrier--compensation  
certificates

|                |   |      |     |      |
|----------------|---|------|-----|------|
| SDCL 32-9-23.5 | Failure of carrier to retain permit in his possession.  | \$20 | \$5 | \$25 |
| SDCL 32-12-39  | Failure of driver to have license in his possession or to display same on demand of official. | \$20 | \$5 | \$25 |

Traffic Regulations

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 32-14-11 | Occupance of house trailer while being towed. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

Vehicle and Accessory Specifications

|                  |  |      |     |      |
|------------------|--|------|-----|------|
| SDCL 32-15-1     | Registering motor vehicle not having safety glass.             | \$20 | \$5 | \$25 |
| SDCL 32-15-2     | Replacing glass in motor vehicle with other than safety glass. | \$20 | \$5 | \$25 |
| SDCL 32-15-7     | Vehicle without windshield wipers.                             | \$20 | \$5 | \$25 |
| SDCL 32-15-8     | Vehicle without rear-vision mirror.                            | \$20 | \$5 | \$25 |
| SDCL 32-15-10    | Vehicle without horn audible for at least 200 feet.            | \$20 | \$5 | \$25 |
| SDCL 32-15-27    | Vehicle without proper wheel weight and suspension system.     | \$20 | \$5 | \$25 |
| SDCL 32-15-28&29 | Vehicle without proper steering system.                        | \$20 | \$5 | \$25 |

Vehicle Lights and Flares

|                |  |      |     |      |
|----------------|--|------|-----|------|
| SDCL 32-17-1   | Non-exempt vehicle without 2 head-lights.  | \$20 | \$5 | \$25 |
| SDCL 32-17-8   | Vehicle without rear lamps or with rear lamps not meeting required specifications. | \$20 | \$5 | \$25 |
| SDCL 32-17-8.1 | Vehicle without stop lamps.  | \$20 | \$5 | \$25 |
| SDCL 32-17-11  | 1. Improperly placed rear lamps.   | \$20 | \$5 | \$25 |
|                | 2. Improper on-off switch control for rear lamps.                                  | \$20 | \$5 | \$25 |

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 32-17-12 | Vehicle without rear reflector or with same improperly mounted.        | \$20 | \$5 | \$25 |
| SDCL 32-17-13 | Improper mount of required reflector.                                  | \$20 | \$5 | \$25 |
| SDCL 32-17-14 | Vehicle without clearance lamps, same being improperly located.        | \$20 | \$5 | \$25 |
| SDCL 32-17-15 | Vehicle without identification lamps or same being improperly mounted. | \$20 | \$5 | \$25 |
| SDCL 32-17-18 | Vehicle with improper turn lights.                                     | \$20 | \$5 | \$25 |
| SDCL 32-17-22 | Improperly mounted warning light on mail vehicle.                      | \$20 | \$5 | \$25 |
| SDCL 32-17-23 | Misuse of special lights for vehicles operated by paraplegics.         | \$20 | \$5 | \$25 |
| SDCL 32-17-24 | Driving motorcycle without or with more than two headlamps.            | \$20 | \$5 | \$25 |
| SDCL 32-17-25 | Driving bicycle without lighted lamp or reflex mirror.                 | \$20 | \$5 | \$25 |
| SDCL 32-17-26 | Driving "other" vehicle without lighted lamps.                         | \$20 | \$5 | \$25 |

Wheels and Tires and Special Vehicles

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 32-19-1 | Vehicle with rubber tire of insufficient thickness.          | \$20 | \$5 | \$25 |
| SDCL 32-19-2 | Use of spiked, cleated, or studded tire or misuse of chains. | \$20 | \$5 | \$25 |
| SDCL 32-19-6 | Towing more than one vehicle.                                | \$20 | \$5 | \$25 |
| SDCL 32-19-7 | Improper connection between towing and towed vehicle.        | \$20 | \$5 | \$25 |
| SDCL 32-19-8 | Farm vehicle towing more than two vehicles.                  | \$20 | \$5 | \$25 |

Motorcycle Regulation

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 32-20-3 | Operating motorcycle with handlebar height exceeding 15" above seat level. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|



|                      |  |      |     |      |
|----------------------|--|------|-----|------|
| SDCL 32-20-4.1 & 4.2 | Operating motorcycle without protective eye device, windscreen, or enclosed cab.             | \$20 | \$5 | \$25 |
| SDCL 32-20-5         | Operating motorcycle without muffler or with modified muffler.                               | \$20 | \$5 | \$25 |
| SDCL 32-20-7         | Renting motorcycle to unauthorized person.   | \$20 | \$5 | \$25 |
| SDCL 32-20-8         | Permitting person other than renter to operate rented motorcycle.                            | \$20 | \$5 | \$25 |
| SDCL 32-20-9         | Operation of motorcycle in park or recreation areas other than roadways or designated areas. | \$20 | \$5 | \$25 |

#### Operating Snowmobile

|               |   |              |            |              |
|---------------|---|--------------|------------|--------------|
| SDCL 32-20A-3 | Age restriction on snowmobile drivers:<br>(1) operation under 16 prohibited on state trunk highways;<br>(2) operators under 12 prohibited on county or township highways. | \$20<br>\$20 | \$5<br>\$5 | \$25<br>\$25 |
| SDCL 32-20A-4 | Operating snowmobile on state highways in violation of Department of Transportation rules and regulations.  | \$20         | \$5        | \$25         |
| SDCL 32-20A-6 | (1) Operation of snowmobile in left hand ditch and crossing of roadways restricted.   | \$20         | \$5        | \$25         |

#### Weight, Size and Load Restrictions

|               |  |                      |                   |                      |
|---------------|--|----------------------|-------------------|----------------------|
| SDCL 32-22-11 | 1. Operating combination of vehicles by saddlemount without permit.<br>2. Exceeding length, width, height or gross limitations.<br>3. Not displaying or having in possession permit. | \$20<br>\$20<br>\$20 | \$5<br>\$5<br>\$5 | \$25<br>\$25<br>\$25 |
| SDCL 32-22-48 | Vehicle exceeding maximum load crossing bridge.  | \$20                 | \$5               | \$25                 |

#### Pedestrians Rights and Duties

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 32-27-2 | Failure of a pedestrian to yield to a vehicle lawfully proceeding on a "go" signal. | \$20 | \$5 | \$25 |
| SDCL 32-27-4 | Failure of a jaywalking pedestrian to yield right of way to a vehicle.              | \$20 | \$5 | \$25 |

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 32-27-5 | Failure to walk facing traffic where no sidewalk is available.                    | \$20 | \$5 | \$25 |
| SDCL 32-27-6 | Use of a white cane by a person not blind or handicapped.                         | \$20 | \$5 | \$25 |
| SDCL 32-27-7 | Failure to yield to a pedestrian guided by a dog or carrying a raised white cane. | \$20 | \$5 | \$25 |

#### Stopping and Parking Restrictions

|                 |  |              |            |              |
|-----------------|--|--------------|------------|--------------|
| SDCL 32-30-2.4  | Violation of no-parking zones.   | \$20         | \$5        | \$25         |
| SDCL 32-30-2.5  | Unsafe opening of doors on traffic side of stopped vehicle.  | \$20         | \$5        | \$25         |
| SDCL 32-30-5    | Improperly parked unattached vehicle.  | \$20         | \$5        | \$25         |
| SDCL 32-30-6    | Parking in prohibited area.  | \$20         | \$5        | \$25         |
| SDCL 32-30-6.1  | Stopping in prohibited area.   | \$20         | \$5        | \$25         |
| SDCL 32-30-6.2  | (1) Parking within 50 feet of railroad crossing.<br>(2) Parking in area posted as "no parking zone." | \$20<br>\$20 | \$5<br>\$5 | \$25<br>\$25 |
| SDCL 32-30-6.3  | Moving another's vehicle into a prohibited area.   | \$20         | \$5        | \$25         |
| SDCL 32-30-11   | Use of certificate of identification by one other than issuee of said certificate.                   | \$20         | \$5        | \$25         |
| SDCL 32-30-11.3 | Privilege of handicapped person used by non-handicapped person.                                      | \$20         | \$5        | \$25         |

#### School Buses

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 32-32-2. | Proper marking of school bus. Concealing mark when vehicle not used as school bus. | \$20 | \$5 | \$25 |
| SDCL 32-32-3  | Color of school bus.   | \$20 | \$5 | \$25 |
| SDCL 32-32-4  | Use of school bus color by other vehicle.  | \$20 | \$5 | \$25 |



Military

|             |   |      |     |      |
|-------------|---|------|-----|------|
| SDCL 33-8-8 | Unauthorized use of uniform or military property. | \$20 | \$5 | \$25 |
|-------------|---|------|-----|------|

Nuisances and Public Hazards

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 34-16-17 | Failure of owner or person in charge of dead animals to burn or bury or otherwise dispose of body in accordance with laws. | \$20 | \$5 | \$25 |
|---------------|--|------|-----|------|

Contagious Diseases

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 34-22-2 | Failure by county board of health to quarantine. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|

Cemeteries and Burial Records

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 34-27-5 | Organization denying interment of deceased person because of race or color. | \$20 | \$5 | \$25 |
|--------------|---|------|-----|------|

State Fire Marshall

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 34-28-6 | 1. Failure to label safety glass properly.           | \$20 | \$5 | \$25 |
|              | 2. Using safety glazing labeling on other materials. | \$20 | \$5 | \$25 |

Litter Disposal and Control

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 34A-7-2 | Failure by property owner to provide quarantine. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|

Abstracters of Title

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 36-13-9 | Unauthorized making, compiling or certifying of abstracts. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|

Barbers and Barbershops

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 36-14-3 | Board acting without majority of members. | \$20 | \$5 | \$25 |
|--------------|---|------|-----|------|

|              |                                   |      |     |      |
|--------------|-----------------------------------|------|-----|------|
| SDCL 36-14-7 | Improper compensation of members. | \$20 | \$5 | \$25 |
|--------------|-----------------------------------|------|-----|------|

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 36-14-8 | Failure to submit annual report to Governor. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 36-14-9 | Failure to provide and post adopted rules and regulations. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 36-14-10 | Failure to sponsor educational program from earmarked funds. | \$20 | \$5 | \$25 |
|---------------|--|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 36-14-11 | Practicing barbering without certificate of registration. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 36-14-13 | Failure to grant certificate to one qualified or granting certificate to one not qualified. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 36-14-14 | Failure to issue journeyman barber permit on reciprocity or issuing same to one not satisfactorily showing reciprocity. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 36-14-15 | Issuing of apprentice certificate to one not meeting requirements. | \$20 | \$5 | \$25 |
|---------------|--|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 36-14-16 | Failure to credit apprentice for time in another state. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 36-14-17 | Approving school of barbering without requisite curriculum. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 36-14-19 | 1. Failure to provide requisite number of examinations annually.     | \$20 | \$5 | \$25 |
|               | 2. Failure to provide both written and practical demonstration test. | \$20 | \$5 | \$25 |

|               |                                 |      |     |      |
|---------------|---------------------------------|------|-----|------|
| SDCL 36-14-20 | Failure to display certificate. | \$20 | \$5 | \$25 |
|---------------|---------------------------------|------|-----|------|

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 36-14-21 | Apprentice independently practicing. Shop having more than one apprentice. | \$20 | \$5 | \$25 |
|---------------|--|------|-----|------|

|               |                               |      |     |      |
|---------------|-------------------------------|------|-----|------|
| SDCL 36-14-22 | Failure to renew certificate. | \$20 | \$5 | \$25 |
|---------------|-------------------------------|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 36-14-23 | Renewal of certificate without physician's certificate. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 36-14-26 | Failure to maintain records and keep them open to public inspection of any proceedings relative to certificate | \$20 | \$5 | \$25 |
|---------------|--|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 36-14-27 | Operating barbershop without a license. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 36-14-28 | Issuance of shop license without inspection. | \$20 | \$5 | \$25 |
|---------------|--|------|-----|------|



|               |  |     |      |
|---------------|--|-----|------|
| SDCL 36-14-30 | Failure to inspect shop annually.<br>\$20                              | \$5 | \$25 |
| SDCL 36-14-31 | Operating mobile barbershop where there is a licensed barbershop. \$20 | \$5 | \$25 |
| SDCL 36-14-36 | 1. Barbering without a certificate.<br>\$20                            | \$5 | \$25 |
|               | 2. Permitting employee to practice without certificate. \$20           | \$5 | \$25 |
|               | 3. Obtaining certificate by fraudulent misrepresentation. \$20         | \$5 | \$25 |
|               | 4. Failure to display certificate. \$20                                | \$5 | \$25 |
|               | 5. Using residential or business place for barbering. \$20             | \$5 | \$25 |
|               | 6. Failure to use clean towel for each customer. \$20                  | \$5 | \$25 |
|               | 7. Failing to supply adequate hot and cold water. \$20                 | \$5 | \$25 |

#### Cosmetologists and Beauty Shops

|                 |  |     |      |
|-----------------|--|-----|------|
| SDCL 36-15-4    | Acting on board without meeting qualifications. \$20                                       | \$5 | \$25 |
| SDCL 36-15-9    | Proper disposition of fees. \$20   | \$5 | \$25 |
| SDCL 36-15-11   | Board members' failure to perform duties. \$20   | \$5 | \$25 |
| SDCL 36-15-19   | Failure to make reasonable rule relating to conduct of examinations. \$20                  | \$5 | \$25 |
| SDCL 36-15-20.1 | Failure to make reasonable rule relating to lapsed license and renewals. \$20              | \$5 | \$25 |
| SDCL 36-15-21   | Licensing manager-operator's license when applicant has not met all the requirements. \$20 | \$5 | \$25 |
| SDCL 36-15-54   | Practicing outside shop. \$20  | \$5 | \$25 |
| SDCL 36-15-60   | 1. Practicing cosmetology without a license. \$20  | \$5 | \$25 |
|                 | 2. Making false oath. \$20   | \$5 | \$25 |
|                 | 3. Failure to display license. \$20  | \$5 | \$25 |
|                 | 4. Failure to comply with plumbing, electrical, and sanitary regulations. \$20             | \$5 | \$25 |

|  |     |      |
|--|-----|------|
| 5. Receiving compensation for teaching an apprentice. \$20   | \$5 | \$25 |
| 6. Operating beauty school without a license. \$20   | \$5 | \$25 |
| 7. Employing unlicensed persons where licensed person required. \$20                                 | \$5 | \$25 |
| 8. Allowing practice of cosmetology by operator without direction of licensed manager-operator. \$20 | \$5 | \$25 |
| 9. Operating beauty shop, establishment or school without a license. \$20                            | \$5 | \$25 |

#### Seed Standards and Labeling

|               |   |     |      |
|---------------|---|-----|------|
| SDCL 38-12-8  | Failure of agricultural seed dealer contracting to buy future seed crop to be adequately bonded. \$20 | \$5 | \$25 |
| SDCL 38-12-30 | Selling, possessing, distributing, or exporting mislabeled or misadvertised seed. \$20                | \$5 | \$25 |

#### Potato and Produce Standards

|               |   |     |      |
|---------------|---|-----|------|
| SDCL 38-15-5  | Nonconformance to seed laws of seed potatoes. \$20                                | \$5 | \$25 |
| SDCL 38-15-9  | Closed containers of potatoes not labeled. \$20                                   | \$5 | \$25 |
| SDCL 38-15-10 | Failure to meet labeling specifications. \$20                                     | \$5 | \$25 |
| SDCL 38-15-12 | Selling, possessing, distributing, exporting mislabeled potatoes or produce. \$20 | \$5 | \$25 |
| SDCL 38-15-18 | Lack of uniform inspection fees. Charging more than maximum. \$20                 | \$5 | \$25 |
| SDCL 38-15-21 | Improper disposition of fees collected. \$20                                      | \$5 | \$25 |

#### Weed Control

|              |   |     |      |
|--------------|---|-----|------|
| SDCL 38-22-7 | Failure to formulate weed control program. \$20               | \$5 | \$25 |
| SDCL 38-22-9 | Failure to determine and publish lists of noxious weeds. \$20 | \$5 | \$25 |



|                 |  |      |     |      |
|-----------------|--|------|-----|------|
| SDCL 38-22-10   | Failure of commission to file rules, regulations, and orders.  | \$20 | \$5 | \$25 |
| SDCL 38-22-17.1 | Noncompliance with dangerous weed order.   | \$20 | \$5 | \$25 |
| SDCL 38-22-24   | Failure of county commissioners and township supervisors to control and eradicate noxious weeds within their corporate limits. | \$20 | \$5 | \$25 |
| SDCL 38-22-26   | Placing levy on town not organized for weed control.   | \$20 | \$5 | \$25 |

#### Foods, Drugs, Oils and Compounds (Enforcement Powers)

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 39-1-15 | Removing or molesting tagged food or drug. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|

#### Food-Handling Establishments

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 39-2-10 | Expectorating in place where food is handled.                  | \$20 | \$5 | \$25 |
| SDCL 39-2-13 | Failure to wash hands after visiting toilet or beginning work. | \$20 | \$5 | \$25 |
| SDCL 39-2-14 | Sleeping in food establishment.                                | \$20 | \$5 | \$25 |

#### Refrigerated Locker Plants

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 39-3-2  | Operating locker plant without a license.   | \$20 | \$5 | \$25 |
| SDCL 39-3-5  | Failure to be equipped with accurate and reliable controls. Failure to have thermometer as specified. | \$20 | \$5 | \$25 |
| SDCL 39-3-7  | Improper storage of food.   | \$20 | \$5 | \$25 |
| SDCL 39-3-8  | Failure to have sharp freezer room.   | \$20 | \$5 | \$25 |
| SDCL 39-3-9  | Failure to sharp freeze before storing  | \$20 | \$5 | \$25 |
| SDCL 39-3-10 | Failure to mark, wash and chill meat before storage.  | \$20 | \$5 | \$25 |
| SDCL 39-3-11 | Storing food unwrapped or improperly wrapped.   | \$20 | \$5 | \$25 |

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 39-3-12 | Storing fish and game without compliance to fish and game laws. | \$20 | \$5 | \$25 |
| SDCL 39-3-13 | Storing uninspected food not for human consumption.             | \$20 | \$5 | \$25 |
| SDCL 39-3-15 | Unauthorized access to locker.                                  | \$20 | \$5 | \$25 |
| SDCL 39-3-16 | No light in locker room.  | \$20 | \$5 | \$25 |

#### Eggs and Egg Products

|               |   |              |            |              |
|---------------|---|--------------|------------|--------------|
| SDCL 39-11-2  | Dealing in, processing or candling eggs without a license.  | \$20         | \$5        | \$25         |
| SDCL 39-11-7  | Failure of secretary of agriculture to provide regulations governing grading, production and distribution standards for eggs. | \$20         | \$5        | \$25         |
| SDCL 39-11-8  | Failure to use federal standards as a guide.  | \$20         | \$5        | \$25         |
| SDCL 39-11-9  | Delivery by producers without candling.   | \$20         | \$5        | \$25         |
| SDCL 39-11-13 | 1. Excessive dockage by dealer.<br>2. Dealer overgrading or undergrading eggs.  | \$20<br>\$20 | \$5<br>\$5 | \$25<br>\$25 |
| SDCL 39-11-14 | Possession of unfit eggs.   | \$20         | \$5        | \$25         |

#### Beverages, Concentrates, and Flavors

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 39-13-3  | Sale of non-registered beverage.  | \$20 | \$5 | \$25 |
| SDCL 39-13-7  | Sale of non-registered contraband liquor.   | \$20 | \$5 | \$25 |
| SDCL 39-13-9  | Failure to cleanse and sterilize containers.  | \$20 | \$5 | \$25 |
| SDCL 39-13-10 | Manufacture, sale, possession of adulterated, misbranded, improperly labeled or unregistered non-alcoholic product. | \$20 | \$5 | \$25 |
| SDCL 39-13-11 | Manufacture, sale, possession of adulterated, misbranded, improperly labeled or unregistered alcoholic product      | \$20 | \$5 | \$25 |



|                         |  |      |     |      |
|-------------------------|--|------|-----|------|
| SDCL 39-13-14           | Failure to properly identify and examine sample collected.                   | \$20 | \$5 | \$25 |
| <u>Commercial Feeds</u> |  |      |     |      |
| SDCL 39-14-40           | Failure of manufacturer to file required form with secretary of agriculture. | \$20 | \$5 | \$25 |
| SDCL 39-14-41           | Distribution of non-registered commercial feeds.                             | \$20 | \$5 | \$25 |
| SDCL 39-14-42           | Refusal or cancellation of registration without opportunity to be heard.     | \$20 | \$5 | \$25 |
| SDCL 39-14-44           | Failure to make reports and pay tonnage inspection fee.                      | \$20 | \$5 | \$25 |
| SDCL 39-14-45           | Improper disposition of fees collected.                                      | \$20 | \$5 | \$25 |
| SDCL 39-14-54           | Commercial feed not adequately labeled.                                      | \$20 | \$5 | \$25 |
| SDCL 39-14-55           | Customer-formula feed improperly labeled.                                    | \$20 | \$5 | \$25 |
| SDCL 39-14-57           | 1. Manufacture or distribution of adulterated or misbranded commercial feed. | \$20 | \$5 | \$25 |
|                         | 2. Adulteration or misbranding of commercial feed.                           | \$20 | \$5 | \$25 |
|                         | 3. Distribution of adulterated agricultural commodities.                     | \$20 | \$5 | \$25 |
|                         | 4. Failure or refusal to register.   | \$20 | \$5 | \$25 |
| SDCL 39-14-61           | Failure to publish before adoption or change of rule or regulation.          | \$20 | \$5 | \$25 |
| SDCL 39-14-63           | 1. Unauthorized entry for inspection.  | \$20 | \$5 | \$25 |
|                         | 2. Exceeding scope of inspection.  | \$20 | \$5 | \$25 |
| SDCL 39-14-64           | Lack of notice of inspection and/or completion of inspection.                | \$20 | \$5 | \$25 |
| SDCL 39-14-66           | Failure to issue receipt for sample.   | \$20 | \$5 | \$25 |

|                    |   |      |     |      |
|--------------------|---|------|-----|------|
| SDCL 39-14-67      | Improper method of sampling or analysis.  | \$20 | \$5 | \$25 |
| SDCL 39-14-75      | Hindering secretary in performance of his duties.   | \$20 | \$5 | \$25 |
| SDCL 39-14-78      | 1. Failure to annually publish information on commercial feeds.                                     | \$20 | \$5 | \$25 |
|                    | 2. Disclosing operations of persons.  | \$20 | \$5 | \$25 |
| <u>Pesticides</u>  |   |      |     |      |
| SDCL 38-20A-4      | Sale or distribution of pesticides without required registration.                                   | \$20 | \$5 | \$25 |
| SDCL 38-20A-26     | Selling or transporting adulterated or misbranded pesticides.                                       | \$20 | \$5 | \$25 |
| SDCL 38-20A-27     | Selling or transporting unregistered pesticide.   | \$20 | \$5 | \$25 |
| SDCL 38-20A-28     | Selling or transporting pesticides in unauthorized container.                                       | \$20 | \$5 | \$25 |
| SDCL 38-20A-29     | Lack of warning label and antidote statement on highly toxic pesticides.                            | \$20 | \$5 | \$25 |
| SDCL 38-20A-30     | Transporting, selling, or distributing certain pesticides without required coloring or discoloring. | \$20 | \$5 | \$25 |
| SDCL 38-20A-34     | Altering or destroying label.   | \$20 | \$5 | \$25 |
| SDCL 38-20A-45     | Improper disposition of funds from sale of condemned article.                                       | \$20 | \$5 | \$25 |
| SDCL 38-20A-49     | Failure to give notice to offender of contemplated criminal proceedings.                            | \$20 | \$5 | \$25 |
| SDCL 38-20A-51     | Failure to prosecute reported violations.   | \$20 | \$5 | \$25 |
| SDCL 38-20A-52     | Failure to publish judgments.   | \$20 | \$5 | \$25 |
| <u>Hog Cholera</u> |   |      |     |      |
| SDCL 40-9-11       | Failure to dispose of swine as  |      |     |      |



|                           |      |     |      |
|---------------------------|------|-----|------|
| directed.                 | \$20 | \$5 | \$25 |
| Importing infected swine. | \$20 | \$5 | \$25 |

Vesicular Exanthema Control

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 40-10-4 | Failure to dispose of swine as directed. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|

Livestock Auction Agencies

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 40-15-2 | 1. Operating livestock auction agency without license. | \$20 | \$5 | \$25 |
|              | 2. Failure to display license.                         | \$20 | \$5 | \$25 |

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 40-15-4 | 1. Failure to fix reasonable time and place for hearing on application. | \$20 | \$5 | \$25 |
|              | 2. Failure to give notice.  | \$20 | \$5 | \$25 |

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 40-15-5 | Failure to publish notice of hearing on application. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 40-15-13 | Inadequate or unsanitary handling and testing facilities. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 40-15-14 | Failure to provide required facilities. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 40-15-15 | Failure to maintain separate pens for holding diseased animals. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 40-15-16 | 1. Discrimination in services.            | \$20 | \$5 | \$25 |
|               | 2. Unreasonable and discriminatory rates. | \$20 | \$5 | \$25 |
|               | 3. Failure to post rates.                 | \$20 | \$5 | \$25 |

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 40-15-19 | Failure to provide inspection service. | \$20 | \$5 | \$25 |
|---------------|--|------|-----|------|

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 40-15-21 | Failure to provide required testing and treatment. | \$20 | \$5 | \$25 |
|---------------|--|------|-----|------|

|               |                                      |      |     |      |
|---------------|--------------------------------------|------|-----|------|
| SDCL 40-15-23 | Improper inspection and examination. | \$20 | \$5 | \$25 |
|---------------|--------------------------------------|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 40-15-26 | Failure to inspect, examine and test livestock before shipment. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |                                   |      |     |      |
|---------------|-----------------------------------|------|-----|------|
| SDCL 40-15-27 | Failure to keep required records. | \$20 | \$5 | \$25 |
|---------------|-----------------------------------|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 40-15-28 | Failure to open records for inspection. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 40-15-31 | Improper handling of customers' funds. | \$20 | \$5 | \$25 |
|---------------|--|------|-----|------|

|               |   |      |     |      |
|---------------|---|------|-----|------|
| SDCL 40-15-37 | Improper disposition of fees collected. | \$20 | \$5 | \$25 |
|---------------|---|------|-----|------|

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 40-15-38 | Use of livestock disease emergency fund without authorization of Governor. | \$20 | \$5 | \$25 |
|---------------|--|------|-----|------|

Use of Open Range

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 40-24-4 | 1. Failure of drover to prevent trespass on settlers' cultivated land. | \$20 | \$5 | \$25 |
|              | 2. Failure to prevent injury to ditches.                               | \$20 | \$5 | \$25 |

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 40-24-5 | Failure of drover to prevent mixing with settlers' livestock. | \$20 | \$5 | \$25 |
|--------------|---|------|-----|------|

|              |  |      |     |      |
|--------------|--|------|-----|------|
| SDCL 40-24-6 | Failure of drover to separate settlers' livestock from herd upon mixing. | \$20 | \$5 | \$25 |
|--------------|--|------|-----|------|

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 40-24-8 | Driving off livestock belonging to another. | \$20 | \$5 | \$25 |
|--------------|---|------|-----|------|

Damage by Animals Trespassing

|              |   |      |     |      |
|--------------|---|------|-----|------|
| SDCL 40-28-1 | Permitting adult male animal to run at large. | \$20 | \$5 | \$25 |
|--------------|---|------|-----|------|

Predatory Animals

|               |  |      |     |      |
|---------------|--|------|-----|------|
| SDCL 40-36-28 | Importing or breeding animals for the purpose of procuring bounty. | \$20 | \$5 | \$25 |
|---------------|--|------|-----|------|

The above list has been prepared as accurately as possible; however, we accept no responsibility with respect to the accuracy of the classification of the offenses or the inclusiveness of the list. This was prepared mainly as an administrative measure to assist you in implementing emergency legislative acts, HB 1098 and HB 1175, passed and approved by the 1978 Legislature.



# CRIMINAL PROCEDURES

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# ARREST

## Warrant of Arrest - Issuance

SDCL 16-12A-13 grants to magistrates the power to issue arrest warrants for the arrest of a person charged with a public offense. Whenever a preliminary information, verified by oath or affirmation, is laid before the magistrate the magistrate must issue a warrant if it appears from the information that the offense charged was committed and that there is reasonable ground to believe that the accused committed the crime. SDCL 23-21-5. There is no precise definition of reasonable or probable cause. Probable cause exists where facts and circumstances within the affiant's knowledge or of which he has reasonable trustworthy information are sufficient to lead a reasonable man to believe an offense has been or is being committed and that the defendant has been or is the person committing the offense. If the affiant does not swear to a complaint based on his own personal knowledge, but upon information received from a third person, the magistrate should ascertain why the informant believes the information true and why the affiant believes that informant is reliable. The magistrate may, in his discretion, require of the affiant or complainant security for costs, in case it will be adjudged upon hearing or examination that the prosecution was malicious or without probable cause. SDCL 23-19-4.

A warrant is generally issued in the county where the alleged offense was committed, but may be issued by a magistrate in the county where the defendant is located. In the latter event the issuing magistrate should attach the preliminary information, and all depositions, if any, to the warrant and deliver them to the officer to whom the warrant is delivered. The warrant should also demand that the defendant be taken before the most accessible magistrate in the county in which the offense is triable. SDCL 23-22-28.

## Warrant of Arrest - Contents

A warrant must contain the following:

1. name of defendant - if name is unknown, any name may be designated and accused described;
2. the offense charged;
3. time of issuance of warrant;
4. county, city or town where issued;
5. signature of magistrate; and
6. name of office of magistrate. SDCL 23-21-2.

A warrant may be sent by telegraph or teletype. The abstract of



a warrant conveyed in this manner must contain the following information:

1. the charge;
2. court of issuance;
3. subject's name;
4. address and description of subject;
5. bail;
6. name of issuing magistrate; and
7. whether offense charged is a felony or a misdemeanor. SDCL 23-22-31.

The magistrate may also want to include on the warrant a time for arrest. Unless an order permitting an arrest at night is endorsed on the warrant, a person may not be arrested at night if the charge is a misdemeanor. SDCL 23-22-13. The warrant is usually prepared for the magistrate's signature by the state's attorney. For Warrant of Arrest Form, see D 3.

#### Arrest Without a Warrant

A peace officer may arrest without a warrant when:

1. a public offense (felony or misdemeanor) is attempted or committed in his presence (SDCL 23-22-7);
2. the person arrested has committed a felony, although not in the peace officer's presence (SDCL 23-22-7);
3. a felony has in fact been committed and the peace officer has reasonable cause for believing the person arrested to have committed it (SDCL 23-22-7);
4. there is reasonable cause to believe that the arrested party committed a felony (SDCL 23-22-7);
5. there is reasonable cause to believe that a person involved in a traffic accident is in violation of SDCL 32-23-1 (SDCL 32-23-1.1);
6. he is in the actual commission of a public offense or is pursued immediately after an escape (SDCL 23-22-9);
7. a person is arrested and charged with an offense causing or contributing to a motor vehicle accident resulting in injury or death to another (SDCL 32-33-4);

8. a person is charged with reckless driving (SDCL 32-33-4);
9. a person is charged with driving under the influence of an alcoholic beverage or any controlled drug or substance or marijuana (SDCL 32-33-4); or
10. he has good cause to believe that the person arrested has committed a felony (SDCL 32-33-4).

A private citizen may arrest when:

1. a public offense is committed or attempted in his presence;
2. when the person arrested has committed a felony, although not in his presence; or
3. a felony has in fact been committed and there is reasonable cause to believe the person arrested committed it (SDCL 23-22-14); or
4. upon a written or verbal order of a magistrate when a public offense is committed in the presence of the magistrate (SDCL 23-22-10).

#### Bench Warrant

If the accused does not appear in court on the required time and date the magistrate may issue a bench warrant for the arrest of the accused. SDCL 23-35-3. The bench warrant is proceeded upon in the same manner as any other arrest warrant and may be served in any county in the state. SDCL 23-35-7. The amount of bail must be endorsed upon the bench warrant and signed by the clerk. SDCL 23-35-6. For a facsimile of a bench warrant see the Form at D 2.

#### Citation to Appear

In traffic (SDCL 32-33-2) or game and fish (SDCL 41-15-11) misdemeanors the arresting officer may issue a summons ordering the alleged violator to appear at a certain time and place. The time must be at least five (5) days after the arrest unless the accused requests an earlier hearing. If the accused refuses to sign the citation giving his promise to appear, he must be arrested and taken before the nearest magistrate. SDCL 32-33-2, 41-15-13. The accused may demand a hearing within twenty-four hours at a convenient time. SDCL 32-33-3, 41-15-12. This may require a weekend hearing, but need not be had during the middle of the night.



## INITIAL APPEARANCE

### Accused is Brought Before a Magistrate

An accused's first appearance before a magistrate is generally a result of an arrest or a promise to appear. South Dakota law demands that the accused upon being arrested be taken before a magistrate without unnecessary delay. SDCL 23-22-16 and 23-22-20. The primary purpose of this initial appearance is to allow accused to post bail and advise him of certain constitutional and statutory rights.

A person arrested for a felony must be taken before the magistrate who issued the warrant. If the issuing magistrate is absent or unable to act, the accused must be brought to the nearest accessible magistrate in the county in which the warrant was issued. SDCL 23-22-22. The same is true for misdemeanors unless the accused is arrested in a county other than where the warrant was issued. In that case, the accused must be taken before the nearest accessible magistrate, if he so demands. SDCL 23-22-23.

If the arrest is made pursuant to a warrant, the warrant is returned by the arresting officer to the magistrate before whom the accused is brought, SDCL 23-22-26, and must have endorsed on it the arresting officer's return. SDCL 23-22-26 and 23-22-29. After the initial appearance, the warrant together with the preliminary information or complaint, any depositions and bail, are filed with the court to which the accused is bound over.

### Advising Accused of His Rights

At the initial appearance of an accused charged with a Class 1 misdemeanor or a felony, the magistrate must inform defendant "of the charge against him and of his right to the aid of counsel in every stage of the proceedings and also of his right to waive an examination before any further proceedings are had." SDCL 23-27-1.

The magistrate must address the accused personally and inform him in an intelligible manner of the charge against him. The defendant should be furnished with a copy of the complaint. After the magistrate is satisfied that the defendant understands the nature of the charge against him, the magistrate may proceed to advise defendant of his constitutional and statutory rights. These rights are specifically listed in the sample dialogue which follows. Since often there is no formal record it is advised that the defendant sign the dialogue form indicating that he has been informed of his rights. If defendant refuses to sign, notation of this may be made on the form, e.g., "Defendant advised of above rights, refused to sign," and followed by your signature. See form at D 13 and D 14.

If the accused wishes to waive his right to a preliminary examination the magistrate must make sure that the waiver is intelligently and knowingly made. The accused must know and

appreciate exactly what he is giving up and what the result will be. He must realize that he will be tried for the crime if there is no preliminary hearing. If the accused does waive the preliminary examination, the magistrate should endorse the waiver upon the warrant or preliminary information. This should then be conveyed to the court to which the accused is bound over. SDCL 23-27-1.

If the defendant does not waive preliminary examination he should be advised that it will be held on a date certain and that witnesses against the defendant will then be examined as well as any witness whom the defendant may produce. He should be informed that if, from the evidence at the preliminary examination, there is probable cause to believe that an offense has been committed and that he has committed it, he will be bound over for trial; otherwise, he will be discharged.

Regardless of whether defendant waives or does not waive his right to a preliminary hearing he has a right to be admitted to bail pending any proceedings.

The accused should not be called upon to plead at this stage, unless the charge in the complaint or preliminary information alleges the violation of an offense where the penalty is not greater than 30 days in the county jail or \$100 fine or both. If the charge is for an offense where the penalty is not greater than 30 days in the county jail or \$100 fine or both and the accused indicates a desire to waive trial and has had the opportunity to obtain or confer with counsel, the magistrate may proceed with the arraignment as is found elsewhere in this manual. If defendant requests counsel and has not had or taken the opportunity to obtain counsel he should be given the time to do so. If he requests court-appointed counsel the magistrate should have the accused complete an application for court-appointed counsel and submit the same to the presiding judge for approval. If the magistrate has a question with respect to whether or not he should release the accused on his personal recognizance this question might also be submitted to the presiding judge at the same time as the application for court-appointed counsel. Forms for this procedure are found at D 15 through D 19 of this manual.

### Accused Charged with Driving Under the Influence

It is recommended that an accused charged with driving under the influence be advised of the statutory revocation of his license upon conviction and of progressive statutory penalties upon subsequent convictions. There is no statutory mandate for giving such advice, but it is in keeping with the spirit of the requirement that the defendant be advised of the nature of the charge against him. Included in the sample dialogue is a statement with respect to giving this advice to one charged with driving under the influence.



INITIAL APPEARANCE - SAMPLE DIALOGUE

The Magistrate Court for \_\_\_\_\_ Judicial Circuit,  
State of South Dakota, is now in session. This is the case of the  
State of South Dakota against \_\_\_\_\_.

1. What is your true name?
2. Have you received a copy of the Complaint/Citation which was just read?
3. Do you understand the charge against you?\*
4. Do you understand that you have a right to be represented by counsel and, if you cannot afford one, one will be appointed for you? Do you wish to have additional time to consult with an attorney?
5. You are entitled to a preliminary hearing at which time the state would have to show that there was sufficient evidence to establish that you probably committed the crime with which you are charged. If at the conclusion of the preliminary hearing the judge should find that sufficient evidence has been shown to establish that you probably committed the crime with which you are charged then you will be bound over to circuit court for further proceedings. If, however, sufficient evidence has not been shown then the charge against you will be dismissed and you will be released. Do you understand what a preliminary hearing is? Do you wish to have a preliminary hearing on this charge? (Having waived your right to a preliminary hearing, you will be bound over to circuit court for further proceedings and must make an appearance on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ m.) (Having requested a preliminary hearing, you are hereby advised that the preliminary hearing is hereby scheduled to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ m. in the courtroom of the \_\_\_\_\_ County Courthouse in the City of \_\_\_\_\_). You are further advised that

\* You have been charged with driving under the influence. I wish to further advise you that upon your first conviction or plea of guilty to this charge your driver's license will be revoked for a minimum of thirty days (SDCL 32-23-2). Further, if within four years of this violation you are convicted or plead guilty a second time to this charge, that your license will be revoked for a minimum of sixty days (SDCL 32-23-3); and that for a third or subsequent conviction or guilty plea within a four-year period the violation becomes a felony and subject to a penitentiary sentence and revocation of your driver's license for a period of not less than one year following the date of final discharge (SDCL 32-23-4).

at this time the state will produce witnesses to show that there is probable cause to believe that an offense has been committed and that you have committed it. Any witnesses you wish to produce will also be examined. If, from the preliminary examination, there is probable cause to believe that an offense has been committed and that you have committed it, you will be bound over for trial; otherwise, you will be discharged.)

6. Constitutional and statutory rights other than the right to an attorney and the right to a preliminary hearing afforded to you are as follows:
  - a. You have a constitutional right to remain silent which means that you do not have to give any statement to the police or any other law enforcement officer. You are reminded that anything you do say may be used against you at any later hearing or proceeding.
  - b. You have a constitutional right to a speedy public trial by an impartial jury selected from this community and at this trial the state has the burden of proving your guilt beyond reasonable doubt. You do not have to prove yourself innocent.
  - c. You have a constitutional right to confront, that is, to see, hear, question and cross-examine, all the witnesses who will testify against you at the time of trial, but you do not have to testify and you cannot be forced to testify against yourself. Further, any statement you make may be used against you.
  - d. You have a constitutional right to summon and compel witnesses to be present to testify in your behalf.
  - e. You will be presumed to be innocent until the state proves your guilt beyond reasonable doubt.
  - f. In addition to these rights, you have a right to have a reasonable bail set and, once it is posted, to be at liberty on bail while your case is pending.

DO YOU UNDERSTAND THESE RIGHTS? DO YOU HAVE ANY QUESTIONS CONCERNING THESE RIGHTS--WHAT THEY ARE OR HOW THEY APPLY TO YOU?

The above statement of my rights has been explained to me and I fully understand what my rights are.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Defendant



## INITIAL APPEARANCE - CHECKLIST

1. Identify court and case.
2. Ascertain name of defendant.
3. Furnish defendant with copy of complaint.
4. Advise defendant of charge. (If DWI charge, consequences thereof.)
5. Advise of right to counsel and court-appointed counsel, if indigent.
6. Advise of right to preliminary hearing and nature and purpose of hearing.
7. Ask if waiver of preliminary hearing is desired.
8. Advise of other constitutional and statutory rights:
  - a. Remain silent
  - b. Speedy trial
  - c. Jury trial
  - d. Confront witnesses against him
  - e. Compulsory process
  - f. Presumption of innocence
  - g. Bail

## BAIL

### Jurisdiction

A magistrate court has concurrent jurisdiction with the circuit court to fix bond or take personal recognizance of persons charged with an offense in accordance with a schedule adopted by the presiding judge of the circuit court. The magistrate must follow the schedule in setting bail for all cases. SDCL 16-12A-15. This schedule can be found at E 1. This schedule is followed by a Classification of Crimes and Punishment Schedule, which may be useful in setting bonds in felonies and Class 1 misdemeanors.

A defendant having committed an offense in one county may be brought before a magistrate of another county for purpose of giving bail. SDCL 23-35-9. When this occurs the magistrate must proceed in the same manner as if the defendant had been brought before him upon a warrant of arrest. SDCL 23-35-9.

### Purpose of Bail

Bail is the security given for the future appearance in court of a person charged with an offense in order to obtain his release from custody. Bail may be required before trial upon change of venue (SDCL 23-28-13) or at any time accused requests an adjournment or continuance. A committing magistrate can require the accused to post bail to insure his presence at a preliminary hearing or, if he is bound over, his presence at the trial. SDCL 23-27-18. If the accused is arrested upon a warrant issued in another state and is awaiting extradition, the magistrate may release him on bail unless the crime with which accused is charged is punishable by death or life imprisonment in the state where the crime took place. SDCL 23-24-18.

Bail may also be required to secure the appearance of state witnesses. This may take the form a written undertaking without surety (SDCL 23-27-22) or may require security (SDCL 23-27-23) or even commitment if the witness fails to furnish the security (SDCL 23-27-25).

### Right to Bail

All persons charged with a criminal offense have a constitutional and statutory right to be released on bail. S.D. Const. Art. VI, Sec. 8; SDCL 23-26-1. Whenever it is necessary that the accused be present to answer a criminal charge, the magistrate may require bail. If the accused is unable to furnish bail, he may be committed to jail. SDCL 23-27-19. However, denial of release from custody for inability to furnish bail cannot be taken lightly. Accused also has a constitutional right that excessive bail shall not be required. S.D. Const. Art. VI, Sec. 23. Denial of release before trial may deny a person the opportunity to investigate the charge against him, to prepare a proper defense, and to avoid serious consequences regarding



his employment and the support of his family. In any case where jurisdiction to try the offense in magistrate court exists, the offense charged is properly bailable. An accused has a right to bail even if he is arrested upon a warrant issued for his failure to appear after bail was posted. SDCL 23-35-5; 23-35-1

#### Methods of Furnishing Bail

Providing release from custody may be accomplished in any one of three ways. First, depending upon the seriousness of the offense and the trustworthiness of the accused, the accused may be released upon his own recognizance (the word of the accused serving as his bond). Secondly, the court may fix the amount of bail according to the schedule, and if the accused fails to post such bail, he will be committed to jail to insure his appearance. Finally, bail may be posted and accused released from custody. In such case bail serves as security that accused will appear in court when his appearance is required. The security posted may take several forms: Cash bond, government securities, recognizance, surety bond by a bonding company or surety bond of a private citizen.

The cash bond is authorized by SDCL 23-26-5 and contemplates a deposit of cash, money order, cashier's check or certified check by the accused.

SDCL 58-22-41 authorizes use of unregistered bonds of the United States, State of South Dakota, or any county, city or town in South Dakota as security for bail if the market value of the bond is equal to the amount required for bail. In addition to the bonds, a personal undertaking of the accused must be obtained, as well as the personal undertaking of any third party depositing the securities. SDCL 58-22-41. This method is little used but entirely acceptable.

Recognizance is simply the accused's promise to appear or forfeit a certain amount, without a deposit being required. This method is used only when the magistrate is certain accused will appear and thus normally used only when the accused is known to the magistrate and/or the offense charged is minor. If the accused is indigent and the magistrate is uncertain as to whether or not he should release accused on his recognizance, he may consult with his presiding judge. If court-appointed counsel is requested these two matters may be handled in the same step. (See B 5 of this manual.)

Bonding companies are regulated by the state. Each bondsman receives a certificate of registration which must be shown to the magistrate when he is determining the sufficiency of the bond. SDCL 58-22-25.

An accused may also post bail by having two (2) people who are not precluded from acting as surety undertake to stand as surety for him. The undertaking must be in writing and must state their residences and occupations (SDCL 23-26-6, SDCL 15-22-17).

The qualifications of the sureties are as follows (SDCL 15-22-18):

- (1) Each must be a resident and freeholder in the state. This means the surety must live in and own property in the state.
- (2) Each must be worth the amount of bail specified in the order of arrest, exclusive of any property exempt from execution. If the bond required is One Thousand Dollars (\$1,000.00), each surety must be worth One Thousand Dollars (\$1,000.00).
- (3) But a clerk or magistrate may allow more than two people to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that required. For example, if bail required is One Thousand Dollars (\$1,000.00), two must justify One Thousand Dollars (\$1,000.00) apiece, or three or more can justify a total of Two Thousand Dollars (\$2,000.00).

Persons disqualified to act as a surety for hire, but who may act gratuitously, include the magistrate and police officer. SDCL 58-22-3, 58-22-4. No attorney is allowed to act as surety. SDCL 16-18-10.

#### Amount And Justification

A magistrate is only authorized to fix bond in accordance with the schedule adopted by the presiding judge of the circuit. SDCL 16-12A-15. If the offense is not listed or within a category listed, you should contact your presiding judge for guidance. Below is a suggested list of questions to be asked of accused which may assist the judge in fixing an unscheduled bond or in establishing whether or not the accused ought to be released on his personal recognizance. Once accused is admitted to bail and proof is made that accused is about to abscond, or that bail is insufficient, or that accused has left the state, the magistrate may then require an increase in the amount of bail, security or bond according to the schedule adopted by the court. If the accused does not comply, the magistrate may commit him to prison and order his arrest by issuing a new warrant or endorsing such on the former order of commitment (SDCL 23-26-8).

Since the amount of the bail is set in a schedule, the magistrate has only the duty of the justification or examination of the surety to ascertain if he is sufficient. The justification is not the undertaking itself. If the magistrate finds the bailor sufficient, he must allow the bail.

#### Examination by Court Prior to Setting Bail

To assist the magistrate in determining the amount of bail, some of the following information may be solicited either of the defendant in open court or through a third party via telephone.

1. Age and address?



2. Employment - where, what, how long?
3. Marital status, dependents?
4. Length of time at present address?
5. Friend or relatives in area? Who? Where?
6. Education?
7. Military service?
8. Previous criminal charges? Convictions? When? Where? For what?
9. Previous failure to abide by court order to appear?

#### Disposition and Discharge

"Upon the allowance of bail and the execution of the requisite recognizance, bond, or undertaking to the state, the magistrate ... must, if the defendant is in custody, make and sign an order for his discharge ...." SDCL 23-26-7.

If the accused is to appear before a magistrate of another county, the magistrate who admits the accused to bail must immediately certify on the warrant that bail was taken and deliver the undertaking of bail and the warrant to the arresting officer. SDCL 23-22-25.

If accused has been bound over to circuit court, the magistrate must endorse the warrant or information as follows:

"and that he is admitted to bail in the sum of \_\_\_\_\_ dollars, and is committed to the sheriff of the county of \_\_\_\_\_ until said bail is given." SDCL 23-27-18 and 23-27-19.

The warrant, together with the bond or undertaking allowed must then be transmitted to the clerk of court. SDCL 23-27-21.

A bond is discharged when the condition or conditions of the bond have been satisfied. Bail is also exonerated or discharged when the charges are dismissed (SDCL 23-34-5), when the information is set aside on motion (SDCL 23-36-5 and 23-36-6), when a mentally ill defendant is committed to an appropriate state facility (SDCL 23-38-7) or when the defendant is placed in custody by his bailor or surety (SDCL 23-26-9). When the bail is discharged, the magistrate must endorse the same on the bail, undertaking or bond, or a certified copy thereof, and docket the same. If any cash or government bonds have been paid to the magistrate they must be returned upon discharge.

Upon setting bond a defendant may present an automobile club card in lieu of cash. In this instance the clerk should take said card and notify defendant that the card will be temporarily retained by the court and will be ultimately returned to the defendant by his automobile club. The clerk notifies the automobile club of the offense, retention of the card by the court, the nonappearance of defendant and the amount of the fine. (See form letter on page D 4.) Upon receipt of the money from the automobile club the defendant's membership card is returned to the club.

#### Forfeiture

If without sufficient cause the defendant neglects to appear according to the terms or conditions of the recognizance, bond or undertaking then the court must enter that fact upon its minutes, declaring forfeiture of said recognizance, bond, undertaking or money deposited. SDCL 23-26-11. Upon declaring a forfeiture, all moneys or bonds should be transmitted to the county treasurer. SDCL 23-26-13. For procedure in handling this matter, see Accounting portion of this manual. Any recognizance, bond or undertaking must be proceeded against by the state's attorney. SDCL 23-26-13. The magistrate need not accept the forfeiture of the bond as the accused's only punishment. Should the accused or bailor appear before the final adjournment of the court and give a satisfactory excuse for his failure to appear, the magistrate may discharge the forfeiture. SDCL 23-26-12.



## PRELIMINARY HEARINGS

### Jurisdiction And Purpose

SDCL 16-12A-14 authorizes the magistrate court to conduct preliminary hearings as a committing magistrate. However, defendant has the right to have the hearing conducted before a law-trained magistrate or a circuit judge if demand is made prior to the hearing. SDCL 16-12A-14. If such demand is made it is the duty of the presiding judge to assign a "judge" to preside over the matter. Either party may transfer from the magistrate court to the circuit court at any time prior to the entry of an order in a preliminary hearing. SDCL 23-27-11. If upon demand or motion the case is transferred, the magistrate must send a certified copy of all the proceedings to the court to which the hearing is transferred. SDCL 23-27-11.

The purpose of the preliminary hearing is not to determine the guilt or innocence of the accused. It serves as a screening process to avoid a trial if there is not sufficient evidence. The defendant does not enter a plea at the preliminary hearing. State v. Reggio, 84 SD 687, 176 NW2d 62 (1970). The sole purpose of a preliminary hearing is to determine whether a public offense has been committed and whether there is probable cause to believe the defendant committed it. SDCL 23-27-16; State v. Heisinger, 252 N.W.2d 899 (S.D. 1977). The definition of probable cause required at the preliminary examination is similar to that required to issue a warrant and to hold at the initial appearance a defendant arrested without a warrant.

### Procedure at Examination

At the time set for the preliminary hearing, the court must proceed to examine the case when counsel appears. If no attorney appears, and if the defendant requires the aid of counsel, the magistrate must postpone the examination, allowing defendant a reasonable time to obtain counsel. SDCL 23-27-4.

The examination must be completed in one session unless it is adjourned by the magistrate for good cause. The adjournment cannot be for more than two days at a time or more than six days in all, unless the defendant consents to or moves for the extra time. SDCL 23-27-5. If an adjournment is had, the magistrate must either commit the defendant for examination or discharge him from custody upon sufficient bail. SDCL 23-27-6. The commitment order is endorsed on the arrest warrant. SDCL 23-27-7. A form for a Commitment Order may be found at D 21.

At the examination the magistrate acts as the presiding judge. He must first read to the defendant the preliminary information on file before him. SDCL 23-27-8. The defendant has the right to be present during the preliminary examination. SDCL 23-27-9. The

procedure for a preliminary examination is similar to a trial. Each witness before testifying should be sworn. Each side may cross-examine the witness on the other side and the magistrate himself may ask questions. The prosecutor will present its evidence first, followed by any witness the defendant may produce. SDCL 23-27-9. In no instance may the accused be compelled to testify. He should be advised of his right to remain silent. If he elects to testify he should be advised that anything he says may be used against him at his trial.

The committing magistrate may receive evidence that would be inadmissible at the trial. If, for example, defendant objects to evidence alleged to have been illegally obtained, the magistrate may overrule the objection. The defendant will still have the opportunity for a pretrial determination of the admissibility of such evidence through motion to suppress made in trial court.

Either party may have the magistrate issue subpoenas. SDCL 23-27-8. The magistrate should upon request, or if he sees cause, direct the witnesses for or against the defendant to be kept separate so that they may not converse with each other or hear each other's testimony before they are examined under oath.

The magistrate must keep a complete record of all testimony taken, including any statements made by the accused. This record must not be shown to anyone except the state's attorney or his assistants, the accused, the accused's counsel, or the judge of the court in which the offense is being tried. It is a misdemeanor to fail to keep the record or to show it to any unauthorized persons. SDCL 23-27-12.

The accused has the right to demand that all testimony be reduced to writing in the form of depositions or a shorthand reporter's transcript. SDCL 23-27-9. This means a word-for-word account of what the witnesses testify. For this purpose, the magistrate is authorized to obtain a stenographer and charge the costs to the county. A.G. Report 1935-36, p. 226.

### Defendant Discharged Or Held to Answer

If after hearing the evidence, it appears that no public offense was committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate must order the defendant discharged by an endorsement on or attached to the preliminary information. SDCL 23-27-13. The Forms section of this manual at D 22 sets forth the form for the Order Discharging the Defendant. The magistrate must then immediately forward to the court where the accused might have been held to answer the preliminary information, a certified statement of the proceedings, all officers' and witnesses' fees incurred by both the state and the accused, stenographer's fees, and all other papers concerning the case. SDCL 23-27-15.



If it appears that a public offense has been committed, however, and that there is sufficient cause to believe the defendant guilty of it, the magistrate must hold the accused to answer by an endorsement on or attached to the preliminary information. SDCL 23-27-16. The magistrate must further make out a commitment and deliver it, with the defendant, to the officer to whom defendant is committed. SDCL 23-27-20. For forms for Order Holding to Answer and Commitment, see D 22.

If the accused is held to answer, the magistrate must transmit to the court in which the accused is held to answer the preliminary information, with any endorsement thereon or attached to it, the depositions or transcripts of any testimony taken, the warrant, the bail or undertaking, if any, and a certified copy of the docket. SDCL 23-27-21. If bound over on a felony charge, a defendant will be answerable in the circuit court, but misdemeanors not within the jurisdiction of a non law trained magistrate may be tried before a law-trained magistrate.

#### PRELIMINARY HEARING - CHECKLIST

1. Identification of court and case.
2. Identification of defendant.
3. Advise of right to counsel and court-appointed counsel if indigent.
4. Postpone hearing if defendant desires time to seek counsel.
5. If postponement:
  - a. commit, with endorsement on warrant of arrest; or
  - b. discharge on bail.
6. Waive reading of preliminary information?
7. Determine need for sequestration of witnesses.
8. Issue necessary subpoenas.
9. Prosecution presents its case.
10. Place each witness under oath.
11. Allow defendant to cross-examine witnesses.
12. Allow defendant to present his witnesses, placing them under oath and allowing for cross-examination by state.
13. Advise defendant of right to remain silent and that anything he might say may be used against him at his trial.
14. Determination of probable cause.
15. If probable cause - commit:
  - a. endorse on preliminary information the order holding to answer;
  - b. deliver accused and commitment order to officer.
16. If no probable cause - discharge.



## ARRAIGNMENT

### Nature of Arraignment

An arraignment is a hearing before the court at which the accused is informed of the nature of the charge against him and of his constitutional rights; bail is set or continued; and the accused is required to plead. SDCL 23-35-12. The arraignment precedes a trial, although a trial may immediately follow arraignment. At this stage of the proceedings, the court does not examine any matters pertaining to the defendant's guilt or innocence but only inquires into plea of accused. As in all other appearances of the accused in court, the judge should make a proper identification of the defendant. If the accused gives another name, the complaint (information) should be amended and all minutes of any proceedings conducted subsequently must mention both names. SDCL 23-32-13, 23-35-13. A judge should not hesitate to interrupt the proceedings at any time if there are any indications that the defendant is confused. In his remarks a judge should use words that the defendant can understand. If there is hesitancy on the part of the defendant, the judge should ask questions and make responses to resolve the defendant's confusion.

The accused has a right to counsel if he so desires (SDCL 23-35-11) and counsel must be appointed if the defendant is indigent and charged with aailable offense. SDCL 23-2-1. Defendant must defend or waive counsel upon appearance for arraignment. The court must insure that any waiver of the right to counsel is intelligently and voluntarily made. Therefore, before any such waiver is accepted, the court should have informed defendant of all his constitutional and statutory rights. State ex rel. Warner v. Jameson, 77 S.D. 340, 91 N.W. 2d 743 (1958). If the accused requests additional time in which to enter his plea, he must be allowed until the next day, or such further time as is needed and which the court deems reasonable. SDCL 23-35-14. If the accused desires additional time to secure counsel, the magistrate should continue the arraignment for this purpose. When charged with a misdemeanor, the accused need not be present personally at the arraignment but may appear through his attorney. Whenever the magistrate acts as a committing magistrate for felonies the accused must be present in court for all proceedings. SDCL 23-35-2. A special problem exists with respect to persons who are mentally incompetent and thus legally incapable of standing trial for criminal offenses otherwise subject to magistrate court jurisdiction. The procedures for determining mental competency are presently relatively unsettled. Should the magistrate question mental competence of the accused all further proceedings should be suspended and the matter referred to the presiding judge.

### Pleas

A defendant may plead not guilty or guilty. If a defendant refuses to plead, the court shall enter a plea of not guilty for the defendant SDCL 23-35-28. A plea of not guilty is a denial of every

material allegation in a complaint, although at trial the defendant shall be found not guilty if only one essential element of the offense is not proven beyond a reasonable doubt. SDCL 23-44-5. A plea of guilty is an admission of every material allegation in the complaint.

The court shall not accept a plea of guilty without first informing the defendant in open court and determining that he understands the following:

1. The nature of the charge to which the plea is offered;
2. The maximum possible punishment, as well as any minimum punishment, provided by the statute or ordinance defining the offense to which the plea is offered;
3. That the defendant has the right to plead not guilty, or to persist in that plea if it was already made, or to plead guilty; and
4. That if he pleads guilty there will not be a further trial of any kind, so that by pleading guilty he waives the right to a trial by jury or otherwise and the right to be confronted with the witnesses against him.

From a practical standpoint, the court should not request or accept any plea from the defendant until he has been informed of the foregoing.

Before the defendant enters a plea, he should be advised that a not guilty plea entitles him to a trial and the following rights at trial:

1. To compel the attendance in court of witnesses and evidence by legal process SDCL 23-2-10; S.D. Const. Act VI, Sec. 7;
2. To confront the prosecution's witnesses and cross-examine them. SDCL 23-2-9;
3. To testify as a witness in his behalf or to remain silent SDCL 23-2-14; and
4. To be admitted to bail before trial. S.D. Const. Art. VI, Sec. 8; SDCL 23-26-1.

The court shall not accept a plea of guilty without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement, Fed. R. Crim. P. 11(d), as adopted in State v. Doherty, 261 N.W.2d 677, 681-682 (S.D. 1978). At this stage, when a guilty plea has been entered but the court has not accepted it yet, it is proper for a judge to question the defendant concerning the voluntariness of the plea. If there were any inducement for the entry of the plea, other than a free and willing



admission by the defendant, the court should withdraw the guilty plea and enter a not guilty plea.

Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without being satisfied that there is a factual basis for the plea. This may be done by questioning the arresting officer or other complainant, examining a police report, and by questioning or receiving comments from the defendant. If there is not a factual basis for the guilty plea, the court should not accept it, but should enter a not guilty plea. Even at this stage of the proceedings, it is possible that a wrong charge was made. The original charge may be dismissed and a new complaint filed.

#### Plea Bargaining

The prosecuting attorney and the attorney for the defendant may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecuting attorney will move for dismissal of other charges, or will recommend or not oppose the imposition of a particular sentence, or will do both. The court should not participate in any such discussions. This process is often referred to as plea bargaining.

If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty in the expectation that a specific sentence will be imposed or that other charges before the court will be dismissed, the court shall require the disclosure of the agreement in open court at the time the plea is offered. Thereupon the court may accept or reject the agreement.

If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition contemplated in the plea agreement or another disposition more favorable to the defendant than that contemplated in the plea agreement.

If the court rejects the plea agreement, the court shall inform the parties of this fact, advise the defendant personally in open court that the court is not bound by the plea agreement, and afford the defendant the opportunity to then withdraw his plea. Fed. R. Crim. P. 11 as adopted in State V. Doherty, 261 N.W.2d 677 (S.D. 1978).

#### Post Plea Procedure

If a plea of not guilty is entered at the arraignment, the court should set the trial and advise the defendant of the place and date of trial. Upon a plea of not guilty, defendant should be asked if he desires a jury trial. (A defendant has the right to a jury trial in all misdemeanor cases. S.D. Const. Art. VI, Sec. 7. The right to a jury trial in violation of city ordinance cases exists only when there is a possible penalty of more than ten days in jail or a fine of more

than twenty dollars. City of Brookings V. Roberts, 226 N.W.2d 380, 383 (S.D. 1975).

#### Judgment And Sentencing

When the accused pleads guilty, the magistrate must enter judgment. Entering judgment occurs when the magistrate announces that the accused has pled guilty and the court finds the accused guilty of the offense. Upon entry of a judgment, the magistrate must impose sentence in accordance with the schedules provided by the presiding judge. SDCL 16-12A-16. However, if the offense or violation is not covered by said schedules, the magistrate may impose a sentence of a fine as authorized by statute, ordinance, bylaw, or police regulation or one hundred dollars, whichever is less. SDCL 16-12A-16.

Before imposing sentence, the court shall allow comment on same by the defendant, his counsel, and the prosecution. The court shall address the defendant personally to determine whether he wishes to make a statement in his behalf or wishes to present any information in mitigation of punishment or which would require the court to withhold pronouncement of judgment and sentence.

The defendant should also be informed of his right to appeal the judgment to circuit court. SDCL 16-12A-27. Penalty having been scheduled by the presiding judge of the circuit, his appeal may be either that the schedule was not properly applied or that there was not sufficient evidence to sustain the conviction or that any of the grounds for a new trial (SDCL 23-50-2) exist. The record to be forwarded to the clerk of court for purpose of appeal should be a certified copy of the docket and either the original files or certified copies of all pleadings and documents in the file and the transcript, if available.

Immediately following is a sample dialogue and checklist which may be used to implement the above outlined procedure.

The fine and bond schedule for use in sentencing is found at E 1 et seq.



SAMPLE DIALOGUE - ARRAIGNMENT, PLEA, SENTENCING

1. "The magistrate Court for \_\_\_\_\_ Judicial Circuit, State of South Dakota, is now in session. This is the case of the State of South Dakota against \_\_\_\_\_. The defendant will stand. Is \_\_\_\_\_ your true and correct name?"
2. "If not, what is?" \_\_\_\_\_. (The complaint information should be amended and all minutes of any proceedings conducted subsequently must mention both names. SDCL 23-32-13, 23-35-13.)
3. "There has been a complaint (an information) filed with this court charging \_\_\_\_\_. Here is a copy of the complaint which alleges you have committed \_\_\_\_\_. (Hand the copy to the defendant. Done? \_\_\_\_\_)"
4. "You have the right to be represented by counsel [SDCL 23-2-7, 23-35-11, and S.D. Const. Art VI, Sec. 7] and may have a reasonable postponement to obtain and consult with your attorney if you desire. If you desire to have an attorney and cannot afford one, one will be appointed for you at the expense of the county. Do you understand this right?" \_\_\_\_\_.
5. (If defendant has an attorney.) "Have you had all the time that you need to confer with your counsel? Has your counsel explained to you everything that you want explained concerning the charge against you, your possible defenses, and your rights?" \_\_\_\_\_.
6. (If defendant present without an attorney.) "In any event you are entitled to an attorney before any proceedings are had and you must have an attorney or knowingly waive your right to an attorney. Do you understand this explanation?" \_\_\_\_\_.
7. "I again ask you. Do you want an attorney or do you waive your right to an attorney?" \_\_\_\_\_.  
  
(If the defendant wants an attorney and has not yet obtained one, set bond \_\_\_\_\_, then recess the hearing until such time as the defendant has consulted with an attorney.)  
  
(If defendant desires to proceed without an attorney, the magistrate proceeds by advising defendant of the following rights.)
8. "I will now explain your rights. In all criminal proceedings or prosecutions the accused shall have the right to defend in person as well as by counsel. Do you understand you have this right?" \_\_\_\_\_.
9. "A complaint has been filed against you charging you with the

crime of \_\_\_\_\_. You have previously received a copy of the complaint. Do you wish the complaint read to you or do you waive the reading? Do you understand the offense with which you are charged?" \_\_\_\_\_.

10. "The maximum penalty for this offense is \_\_\_\_\_. This does not mean it is the penalty the court will impose, but is the maximum the court can impose. Do you understand what the maximum penalty is for this offense?" \_\_\_\_\_.
11. "You have the right to meet the witnesses against you face to face in open court, to see them, to hear them testify and to cross examine them. Do you understand you have this right?" \_\_\_\_\_.
12. "You have a right to compulsory process of the law served for obtaining witnesses in your own behalf by means of what we call a subpoena. You give the names of the witnesses you desire to have testify to the clerk of the court and the clerk issues a subpoena in the name of the court to the sheriff who serves this subpoena upon the people named therein and it compels them to come into court and give testimony. Do you understand this right?" \_\_\_\_\_.
13. "You have a right to a speedy public trial by an impartial jury selected from this community and at this trial the state has the burden of proving your guilt beyond a reasonable doubt. Do you understand this right?" \_\_\_\_\_.
14. "You have a constitutional right to remain silent. This means you do not have to make any statement here or to any law enforcement officer. You are reminded that anything you do say may be used against you at any later proceeding. If you plead not guilty and have a trial you do not have to testify and you cannot be forced to testify against yourself. Do you understand this right as I have explained it to you?" \_\_\_\_\_.
15. "You have the right to have bail fixed so upon posting bail you could be at liberty until the time of your trial. Do you understand this right?" \_\_\_\_\_.
16. "You have the right to enter a plea of either not guilty or guilty. If you enter a plea of not guilty, you are presumed innocent until the prosecution has proven you guilty beyond a reasonable doubt. SDCL 23-44-5. If you enter a plea of guilty, you waive certain of these rights such as the right to a trial, the right to face the witnesses against you, and the right to remain silent. Further a plea of guilty constitutes an admission of all the elements of the offense charged. Upon acceptance by the court it constitutes a conviction the same as a jury verdict of guilty. If you enter a guilty plea to the charge against you or are found guilty by this court, the penalty that this court can impose is a fine not to exceed \$\_\_\_\_\_ or imprisonment not



to exceed \_\_\_\_\_ days, or both such fine and imprisonment. This is the maximum sentence that can be imposed, and it does not mean that it is the sentence that will be imposed. Do you understand each of these rights as they have been explained to you?" \_\_\_\_\_.

17. "The Court finds this defendant has been regularly held to answer the charge contained in the information; (that he is represented by competent counsel;) that the defendant understands the nature and cause of the accusation against him and the maximum possible sentence which might be imposed upon a conviction or a plea of guilty; that the defendant is acting of his own free will and accord and without duress and is competent to enter a plea in this court, the defendant understanding the nature and consequences of a plea. And the court is at this time ready to receive the defendant's plea. However, you are not required to enter a plea in this court, the defendant understanding the nature and consequences of a plea. And the court is at this time ready to receive the defendant's plea. However, you are not required to enter a plea now. If you want more time to answer this charge, the court will grant you additional time. Are you prepared to enter a plea?" \_\_\_\_\_.
18. "If you enter a plea here today, will that be of your own free will and accord?" \_\_\_\_\_.
19. "Then to the charge of \_\_\_\_\_ as set forth in the complaint, what is your plea?" \_\_\_\_\_.
20. (If plea is "not guilty.") "Your plea of not guilty will be received in the record of the case and your trial set for [time and date] in the courtroom of the \_\_\_\_\_ County Courthouse, \_\_\_\_\_, South Dakota. If represented by counsel, you should advise your attorney of this trial time and date. Bail having been previously set, it shall be continued [or set bail] and you are released pending your appearance in this court for trial."
21. (If plea is "guilty.") "M\_\_\_\_\_, is your guilty plea voluntary and not the result of any force, threats or promises?" \_\_\_\_\_ "At the time of your arrest or since that time, have you in any way been abused or mistreated?" \_\_\_\_\_.
22. "Does your willingness to plead guilty result from any prior discussion with the prosecuting attorney?" (If answer is yes, terms of the plea bargain should be inquired into and questions similar to the following asked: "Has there been any promise as to sentence?" If the state has volunteered that it would make a recommendation, the court should satisfy itself that the defendant understands that any recommendation as to sentence made by the state's attorney is only a recommendation and not binding on the court's ultimate decision.) (If a plea of guilty has been entered the court must be satisfied that there is a factual basis

for the plea. This may be done either by questioning the officer, examining a police report, or questioning and receiving comments from the defendant.) "Since there is a factual basis for your plea and the plea is voluntarily made, the court accepts your plea of guilty and it shall be entered in the record of the case. Do you have any statement you wish to make in your behalf before sentence is imposed upon you? Do you know of any legal reason why sentence should not now be imposed?" \_\_\_\_\_.

23. "No cause appearing why sentence should not be pronounced, I now sentence you to pay \_\_\_\_\_. You are further notified that you have a right to appeal this judgment to circuit court. If you decide to appeal you must notify this court within a reasonable time."
24. (Satisfy yourself that the defendant has fully understood all of these rights, that he is competent, mentally alert and was fully capable of intelligently doing what he did in your court.)



## ARRAIGNMENT - CHECKLIST

### Arraignment

1. Inquiry as to correct name
2. Nature of charge
3. Right to counsel
4. Explanation of rights
  - a. Right to defend self in person or by counsel
  - b. Right to know nature of charge and explanation of elements if necessary
  - c. Right to face state's witnesses
  - d. Right to compulsory process
  - e. Right to speedy public trial where guilt must be proven beyond a reasonable doubt.
  - f. Right to remain silent
  - g. Right to bail

### Entry of Plea

1. Explanation of types of pleas and consequences of either
  - A. If not guilty
    - a. Right to trial
    - b. Must be proven guilty beyond a reasonable doubt
  - B. If guilty
    - a. Waiver of certain rights
    - b. Constitutes an admission and constitutes conviction
2. Maximum penalty of crime
3. Inquire if additional time required before entering plea
4. Inquire what plea is
  - A. If not guilty

- a. Set trial date
  - b. Inquire if jury trial desired
- B. If guilty
  - a. Findings of court
  - b. Inquire into voluntariness of plea
  - c. Inquire as to plea agreement
  - d. Determine whether there is a factual basis

### Sentencing

1. Request accused to stand
2. Entry of judgment (acceptance of plea)
3. Statement of defendant
4. Pronouncement of sentence (from schedule provided)
5. Notification of right of appeal.
6. Signature of magistrate.
7. Signature of defendant.



## SEARCH WARRANTS

### Definition And Purpose

A search warrant is an order in writing, in the name of the state, signed by a magistrate, directed to a peace officer, commanding him to search for personal property and bring it before the magistrate. SDCL 23-15-1.

The law governing the issuance of search warrants was developed for the purpose of protecting individuals from unreasonable searches and seizures. Unreasonable searches and seizures are prohibited by constitutional and statutory provisions. The Fourth Amendment to the Constitution of the United States provides:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The provision of the South Dakota Constitution with respect to search warrants reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by affidavit, particularly describing the place to be searched and the person or thing to be seized." S.D. Const. Art. VI, §11.

SDCL 23-15-2 reiterates this position:

"A search warrant cannot be issued except upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched."

Upon issuing a search warrant to a peace officer a magistrate should remind himself of these constitutional guarantees and not be unduly influenced by the officer obtaining the warrant. This view has been reinforced by our Supreme Court which declared that issuing a search warrant is a judicial function and the magistrate's role should be one of neutrality and detachment. State v. Gerber, 241 N.W.2d 720, 722 (S.D. 1976); State v. Cochrane, 84 S.D. 527, 531, 173 N.W.2d 495, 497 (1970).

### Grounds for Issuance

A search warrant is generally issued on behalf of the state for the purpose of obtaining evidence to support a criminal action already

instituted or to furnish information determining the propriety of bringing a criminal action. What constitutes grounds for issuance of a search warrant is more specifically defined by statute and unless one of the following statutory grounds exists, no search warrant is authorized.

1. A warrant may be issued when the property was stolen or embezzled. SDCL 23-15-3.
2. A search warrant may be issued when the property was used as a means of committing a felony. SDCL 23-15-4.
3. A warrant may be issued when the property is in possession of any person who has intent to use it as a means of committing a public offense or in the possession of another to whom he may have delivered it for the purposes of preventing its discovery. SDCL 23-15-5.
4. A warrant may be issued by a magistrate for the purpose of obtaining evidence which would aid in apprehending and convicting a person. SDCL 23-15-5.1.
5. A warrant may be issued when the property is alcoholic beverages in the possession of any person in violation of the laws of the state. SDCL 23-15-6.

### Jurisdiction And Other Requirements for Issuance

The first requirement is that the magistrate have jurisdiction to issue the warrant. In order that the lay magistrate have jurisdiction the property to be searched must be located in the county in which the magistrate presides. SDCL 23-15-9; A.G. Report 1929-30, PP. 109, 110.

A search warrant can be issued only if there is one or more sworn affidavits which tend to establish grounds of the application or probable cause for believing they exist. SDCL 23-15-2, 23-15-8. "[P]robable cause" has been defined as "the existence of such facts and circumstances as would excite an honest belief in a reasonable mind, acting on all the facts and circumstances within the knowledge of the magistrate, that the charge made by applicant for the warrant is true." State v. Lane, 76 S.D. 544, 548, 82 N.W.2d 286, 289 (1957). An important element to consider when making the determination of whether or not probable cause exists is the source of the information. There is less problem in determining reliability if the information is given on affiant's own knowledge, but even in that event there should be a disclosure of facts and underlying circumstances on which this knowledge is based. If the affiant's information is solely on information or belief, i.e., hearsay, there is a two-prong test which should be applied to making the determination of probable cause. The first is that the affidavit must contain underlying circumstances on which the informant based his knowledge and conclusions and the second is that the affidavit must



set forth some underlying circumstances from which the officer concluded that the information was reliable or the informant credible. Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964); State v. Glidden, 246 N.W.2d 779, 780 (S.D. 1976).

A magistrate should not hesitate to ask questions of the affiant and complaining person to insure adequate underlying circumstances exist to show probable cause:

"Recognizing that law enforcement officers are not trained legal technicians well versed in the intricacies of the law of search and seizure, we have encouraged -- nay, implored -- our magistrates to ask applicants for search warrants those questions that will yield the information necessary to convert an affidavit of marginal factual sufficiency or outright insufficiency into one that will squarely meet the constitutional requirements of establishing probable cause." State v. Glidden, 246 N.W.2d 779, 781 n. 4 (S.D. 1976).

When a magistrate asks questions of the officer, there should be a record of the questions and answers. It is suggested that the magistrate write down questions asked and the answer given by the officer and sign them. This may be done right on the affidavit or on a separate sheet of paper which is attached to and made a part of the affidavit.

As initially stated, a search warrant can be issued only if there is a sworn affidavit to establish grounds of the application. It is therefore important that the officer or person making the affidavit not only sign the affidavit, but that he swear to the contents of the affidavit. The magistrate should go through the formal procedure of having the officer raise his right hand and swear or affirm as follows: "Do you solemnly swear (affirm) that the statements contained in this affidavit are true, so help you God. (This you do under the pains and penalties of perjury.)"

#### Contents of Warrant

If the magistrate finds probable cause he must issue the search warrant. SDCL 23-15-9. The search warrant must be signed by him, SDCL 23-15-9; State v. Cochrane, 84 S.D. 527, 532, 173 N.W.2d 495, 497 (1970), with his name of office, addressed to a peace officer in his county, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate, and also to arrest the person in whose possession the same may be found, to be dealt with according to law. SDCL 23-15-9.

The place to be searched must be adequately described so that the officer executing the warrant can locate the place; so that the occupant can know from the warrant that the place the officer is directed to search is indeed those premises; and so that the magistrate can determine that property is within his jurisdiction. 79 C.J.S. Searches and Seizures §75, (1952). If the purpose of the

warrant is to seize specific property, it must be particularly described. If the property is of a specified character, the character of such property must be described. The person to be searched should be described with particularity, with name if known. 79 C.J.S. Searches and Seizures §81 (1952).

The search warrant must include a direction as to the time of day that the warrant is to be served. SDCL 23-15-16. Most often this demands that the warrant state that the search must be made in the daytime. If the warrant authorizes a nighttime or Sunday search there must be a foundation for this in the accompanying affidavit and the affidavit should be checked by the magistrate to be certain that there is:

- (1) a positive showing that the property to be seized is on the person or in the place to be searched; or
- (2) probable cause to believe that the property to be seized is about to be removed, secreted, disposed of, or destroyed. SDCL 23-15-16.

It is important that the magistrate check the warrant to be sure it states whether the search is to be made in the daytime or any time of day or night. If the warrant authorized a nighttime search, further check must be made that the affidavit sets forth one of the two standards stated above. If both of these matters are not tended to, the search warrant may be invalidated.

#### Return of Search Warrant

After the search warrant has been executed, the officers who have executed it must forthwith return the warrant to the magistrate and deliver to him a written inventory of the property taken. This inventory must be made public or in the presence of the person from whom possession was taken and of the applicants for the warrant, if they be present. The inventory must be verified, that is sworn to, by the officer and taken before the magistrate to the following effect:

"I, \_\_\_\_\_, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant." SDCL 23-15-18.

The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant. SDCL 23-15-18. The warrant must be executed and returned within ten (10) days or it becomes void. SDCL 23-15-12.

If a search warrant is returned and no property was found, the documents are docketed and filed as any other paper in a criminal proceeding. In addition it may be helpful if on the docket book you make a notation similar to the following: "Warrant returned. No property found."



### Disposition of Seized Property

When property taken under a search warrant is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it in one of two ways. If the magistrate is satisfied that the owner has proved title of the stolen property, and has paid for the expenses of preservation of such property, the magistrate shall deliver the property or cause it to be delivered to the owner. SDCL 23-15-21, 23-16-3. On the other hand if the property stolen or embezzled is not claimed by the owner before expiration of six (6) months from the conviction of the person stealing or embezzling the property, the magistrate having the property in his custody must, on payment of the necessary expenses incurred in preserving the property, deliver the property to the county commissioners. SDCL 23-15-21, 23-16-4.

If the property was taken on a warrant issued on the grounds that it was to be used as an instrumentality in committing a crime, as defined by SDCL 23-15-4 and 23-15-5, the magistrate must retain the property in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property was taken is triable. SDCL 23-15-22.

If it appears that the property taken is not the same as that described on the warrant, or there is no probable cause for believing the existence of the grounds upon which the warrant was issued, the magistrate must cause all property to be restored to the person from whom it was taken. SDCL 23-15-23.

### Issuance of Warrant Contested

If the grounds on which a warrant was issued be contested or controverted, the magistrate must proceed to take testimony in relation thereto. The testimony must be taken, reduced to writing, authenticated by the magistrate, and preserved or transmitted by him in the manner prescribed in cases of preliminary hearings and examinations of defendants. SDCL 23-15-19. It would probably be wise for the magistrate to use the same procedure under this situation as the magistrate would in a preliminary hearing. After the hearing the magistrate must attach together the depositions or transcript of testimony, the search warrant and return, and the inventory, and forthwith return them to any court of the county having power to inquire into the offense in respect to which the search warrant was issued. SDCL 23-15-20.

## SEARCH WARRANTS - CHECKLIST

### I. Contents of Affidavit.

#### A. Probable cause shown.

1. Underlying facts and circumstances.
2. Time of observation and occurrences.
3. Circumstances leading to conclusion that property seized still on premises or person(s) to be searched.
4. Reliable information.
  - a. Affiant's personal knowledge.
  - b. Victim, eye witness, named person, or accomplice.
  - c. Independent factual corroboration.
  - d. Evidence of past reliability.

#### B. If warrant contains directive for nighttime or Sunday search.

1. Positive showing that the property to be seized is on the person or at the place to be searched; or
2. Probable cause to believe that the property is about to be removed, disposed of, secreted, or destroyed.

#### C. Under oath - signed by officer or prosecuting witness.

### II. Contents of Warrant.

#### A. Description.

1. Place to be searched - must be in county of magistrate issuing warrant.
2. Person to be searched.
3. Property to be seized.

#### B. Directive as to nighttime and Sunday searches and seizures if required.

#### C. Signature and office of magistrate.

### III. Property Seized Returned with Warrant and Inventory.



# SMALL CLAIMS AND MISCELLANEOUS

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## SMALL CLAIMS

### Jurisdiction

"A magistrate court shall have concurrent jurisdiction with the circuit courts, in noncontested civil actions or noncontested small claims proceedings where the amount of money or damages does not exceed one thousand dollars, to take the necessary evidence and enter a judgment." SDCL 16-12A-19.

The lay magistrate has jurisdiction only in noncontested cases. He must therefore transfer to a law-trained magistrate or circuit court any case in which the defendant states a defense or responds by claiming a setoff or by counterclaiming.

If claim for trial by jury is made by defendant or plaintiff the matter will be transferred to a law-trained magistrate or circuit court. SDCL 15-39-17, 15-39-18, 15-39-19, and 15-39-21. If one or more of several defendants demand trial by jury, an attested copy of the record must be transmitted to the clerk of the circuit court. SDCL 15-31-22. In other cases the original docket entries are transmitted. SDCL 15-39-18.

Though technically a civil action of a \$1,000 or less may be commenced with a summons and complaint, this will probably never be a reality. If this should occur the magistrate may wish to confer with his presiding judge as to how he wishes the matter to be handled. In any event, the circuit court has concurrent jurisdiction and it is likely that your judge will wish the matter to be handled in circuit court.

### Initiation of Small Claims Action

A case may be filed in small claims for the loss of money or property valued not in excess of one thousand dollars (\$1000) plus filing costs. SDCL 15-39-1. The claim is initiated when the plaintiff presents his claim to the clerk of courts or magistrate. It is the clerk's or magistrate's duty to reduce the plaintiff's claim to concise written form and to obtain the plaintiff's signature thereon. SDCL 15-39-8. It is also the clerk's or magistrate's duty if he deems it necessary to note on the small claims docket, from inquiry of the plaintiff, the address, usual place of business, and place of employment for both plaintiff and defendant. SDCL 15-39-9.

The clerk or magistrate must also fix the time for hearing. The time of the hearing "shall not be less than five days from the beginning of the action." SDCL 15-39-12. However, since notice to defendant is via certified mail, it may be a good policy to allow at least ten days from the date of filing to the hearing date. A memorandum of the time and place of hearing shall be given to the plaintiff. SDCL 15-39-12.

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As in any other civil action the cause may be initiated by either plaintiff or his attorney. SDCL 15-39-7 defines "attorney" as anyone who is an active member of the state bar of the state of South Dakota, one of a number of partners or joint plaintiffs acting for all, or an officer, manager, or local manager of a corporation acting for it. Further, unless the action is transferred to circuit court the word "attorney" also embraces the assignee of a claim if the assignment is bona fide and for a valuable consideration. Assignments made for collection purposes are presently considered bona fide and thus collection agencies may bring the action in their own names, unless the action has been transferred to circuit court. SDCL 15-39-7.

#### Notice to Defendant

The clerk or magistrate must prepare and mail to the defendant by registered or certified mail, return receipt requested, a notice in substantial compliance with the form set forth in SDCL 15-39-13. Note must then be made on the docket of "the mailing date and address, the date of delivery shown by the return receipt and the name of the addressee or agent signing the receipt." SDCL 15-39-14. If the notice returns "refused," the notice is valid and the refusal should be filed. If the notice returns undelivered without refusal, the clerk or magistrate may issue, at the expense of plaintiff, such further notice as the court may order. SDCL 15-39-15.

#### Venue

Generally a small claims action may be brought in the county of residence of at least one of the defendants. SDCL 15-5-6. (But, note: "Actions for conversion of personal property, or for the recovery of damages to persons or property, may at the option of the plaintiff be brought and tried in the county where the damages were inflicted or the cause of action arose." SDCL 15-5-8.)

If plaintiff arrives at your office to file a claim and he is a resident of the county in which he seeks to initiate the action and the defendant is an out-of-county resident you may do any one of the following:

- (1) Encourage plaintiff to go to defendant's county of residence to initiate action;
- (2) Reduce plaintiff's statement to writing and attest his signature, advise plaintiff of required fees and have plaintiff mail statement and fees to the clerk of court of defendant's county of residence; or
- (3) If the plaintiff insists on initiating the action in an improper county he may be discouraged by telling him that defendant may change it to the proper county upon request or that the court may refuse to hear the case if it finds a jurisdictional problem. If plaintiff persists permit him to

file the claim and initiate the action and let the defendant and court make the determination of the outcome of the matter.

#### When Minor Is Party to an Action

SDCL 26-1-3 states: "A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must be appointed to conduct the same." SDCL 15-6-17(c) states that if an infant (minor) does not have a general guardian to sue in his behalf then a guardian ad litem must be appointed by the court on behalf of the minor. Thus clearly the minor must be the plaintiff to the action, but he must have some express representation. The pleadings, for example, would read: Mr. and Mrs. \_\_\_\_\_, on behalf of \_\_\_\_\_, a child, plaintiff, vs. \_\_\_\_\_. On the small claims docket, the child's name would be filled in on the blank with the guardian's name on another line followed by the word guardian or both the guardian's name and child's name on the line for plaintiff, e.g., \_\_\_\_\_, an infant by \_\_\_\_\_, his guardian. On the back of the docket the guardian would sign as guardian of plaintiff.

Two statutes govern the rule of the liability of a minor in civil suits. SDCL 26-1-4 states: "A minor is civilly liable for a wrong done by him, in like manner as any other person ...." Though this statute places liability upon the minor there may still be a cause of action against his parents to the limited degree and situations set forth in SDCL 25-5-15:

"Any person ... suffering damages to real, personal or mixed property, through the malicious and willful act or acts of a minor child or children under the age of eighteen years while residing with their parents, shall have therefor a cause of action against and recover of the parents of such child or children. In each case the amount of recovery against one or both of the parents shall be limited to actual damages of three hundred dollars and the taxable court costs, and shall not apply to damages proximately caused through the operation of a motor vehicle by said minor child or children."

It should be noted that the liability set forth in SDCL 25-5-15 is limited in that only parents (not other guardians) may be liable, only a certain dollar figure may be collected, and only certain instances are applicable, e.g., proximate damages caused by operation of a motor vehicle are exempt, as are damages which are not the result of a malicious and willful act of the child. Because of these limitations it would be advisable to name both parents and child as party defendants in suits where a minor is allegedly at fault.

A minor defendant must be represented by a guardian. SDCL 15-6-17(c), 15-6-55(b)(1). Thus the pleadings might read \_\_\_\_\_ vs. \_\_\_\_\_, a child, represented by \_\_\_\_\_, his guardian (ad litem), and \_\_\_\_\_, his



parents. The minor's parents may thus be named twice in the pleadings: in the first instance as representatives of the child and in the second as defendants.

With respect to giving notice or service of process when a minor is involved -- if the defendant is 14 years of age or younger, only the parent or guardian needs to be served; however, if the child is over the age of 14 both the child and the parent or guardian must be served. SDCL 15-6-4(d).

#### Docketing

A money judgment in a small claims action must be docketed in the judgment docket book. Docketing is accomplished by entering each judgment in the docket book as follows:

- (1) the names, alphabetically, of the judgment debtor or debtors; if two or more debtors, repeat each entry under the initial letter of the surname of each, as well as under the name of each party against whom a judgment for costs is rendered;
- (2) the names of the party or parties in whose favor the judgment was rendered;
- (3) the amount of the judgment in figures (if judgment involves property you may simply make reference to the judgment, e.g., "see divorce decree" or "see decree of quiet title");
- (4) the date of the judgment;
- (5) the year, day, hour and minute when the judgment roll or transcript was filed;
- (6) the year, day, hour and minute when the judgment was docketed;
- (7) the page in the judgment book where the same is entered (this may no longer be applicable where recording is done by microfilming);
- (8) the name of the court in which the judgment was rendered; and
- (9) the name of the attorney or attorneys for the party recovering the judgment. SDCL 15-16-6.

The costs of \$6.55 are also usually awarded plaintiff in a small claims action and when so awarded must be docketed in the judgment docket book.

#### Fees

The amount of fees collected on initiation of the suit is four

dollars (\$4.00) for entry fee (SDCL 15-39-5), one dollar (\$1.00) for law library fee (SDCL 14-6-1), and one dollar and fifty-five cents (\$1.55) postage for each notice mailed (SDCL 15-39-13). Usually the total costs initially collected in an action against one defendant will thus be six dollars and fifty-five cents (\$6.55).

Upon request for trial by jury, an additional ten dollars (\$10.00) is collected. SDCL 15-39-17.

In addition, if the request for trial by jury is made by defendant, "an undertaking must be given by defendant to secure to the plaintiff the costs to which he may be adjudged entitled ... not exceeding twenty-five dollars ...." SDCL 15-39-20.

As to the manner of handling funds received, refer to Accounting portion of this manual.

#### Sample Complaint Forms

To assist the clerks in reducing the plaintiff's claim to writing, the following suggested forms may be used for some of the more common actions that will be handled.

Complaint on a promissory note.

- (1) Defendant on or about \_\_\_\_\_, 19\_\_\_\_, executed and delivered to plaintiff a promissory note whereby defendant promised to pay to plaintiff or order on \_\_\_\_\_, 19\_\_\_\_, the sum of \_\_\_\_\_ dollars with interest thereon at the rate of \_\_\_\_\_ per cent per annum.
- (2) Defendant owes to plaintiff the amount of said note and interest.

Complaint for goods sold and delivered.

- (1) Defendant owes plaintiff \_\_\_\_\_ dollars for goods sold and delivered by plaintiff to defendant between \_\_\_\_\_, 19\_\_\_\_, and \_\_\_\_\_, 19\_\_\_\_.

Complaint for money lent.

- (1) Defendant owes plaintiff \_\_\_\_\_ dollars for money lent by plaintiff to defendant on \_\_\_\_\_, 19\_\_\_\_.

Complaint for money paid by mistake.

- (1) Defendant owes plaintiff \_\_\_\_\_ dollars for money paid by plaintiff to defendant by mistake on \_\_\_\_\_, 19\_\_\_\_, under the following circumstances: (here state the circumstances with particularity--see SDCL 15-6-9(b)).



Complaint for money had and received.

- (1) Defendant owes plaintiff \_\_\_\_\_ dollars for money had and received from \_\_\_\_\_ on \_\_\_\_\_, 19\_\_\_\_, to be paid by defendant to plaintiff.

Complaint for negligence.

- (1) On \_\_\_\_\_, 19\_\_\_\_, in a public highway called \_\_\_\_\_ in \_\_\_\_\_, South Dakota, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.
- (2) As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of \_\_\_\_\_ dollars.

Complaint for conversion.

- (1) On or about \_\_\_\_\_, 19\_\_\_\_, defendant converted to his own use ten bonds of the \_\_\_\_\_ company (here insert brief identification as by number and issue) of the value of \_\_\_\_\_ dollars, the property of plaintiff.

Complaint on an Account.

- (1) Defendant owes plaintiff \_\_\_\_\_ dollars according to the account hereto annexed as Exhibit A.

See these and additional forms in the Appendix of Forms following SDCL 15-6.

## SOLEMNIZING MARRIAGES

### Authority

Authority to solemnize marriages is vested in magistrates by SDCL 25-1-30 and 16-12A-11.

### Requirements before Solemnizing a Marriage

Before solemnizing a marriage between parties, the magistrate must ascertain the following:

- "(1) The identity of the parties;
- "(2) Their real and full names and places of residence;
- "(3) That they are of sufficient age to be capable of contracting marriage; and
- "(4) The name and place of residence of the witness, or two witnesses if more than one is present." SDCL 25-1-32.

The age of consent for both males and females is eighteen (18) years of age. SDCL 25-1-9. A person between the ages of sixteen (16) and eighteen (18), unless otherwise disqualified, is capable of consenting if there is written consent of the parent or guardian. SDCL 25-1-9, 25-1-13. A female under the age of sixteen (16) is capable of consenting if she is pregnant or has given birth to a child if such fact is attested to by affidavit of a physician and has written consent of parents or guardians. SDCL 25-1-12. A female between the ages of sixteen (16) and eighteen (18) who is pregnant or has given birth to a child is deemed capable of consent without written consent of her parents. SDCL 25-1-9, 25-1-12.

A magistrate who solemnizes any marriage where either of the parties is known to the magistrate to be under the age of legal consent or possessing any legal impediment is guilty of a Class 1 misdemeanor. SDCL 25-1-33.

Persons wishing to be married must also first obtain a marriage license. SDCL 25-1-10. The marriage solemnization must take place within twenty (20) days after issuance or the license is void. SDCL 25-1-24. If a marriage is solemnized without a license, the parties so married and all persons aiding in such marriage are guilty of a Class 1 misdemeanor. SDCL 25-1-31.

### Duties after Solemnization

When the ceremony is complete, the magistrate must deliver the marriage certificate to the persons married. Within thirty days he must return the license and record of marriage to the county treasurer issuing the license. If the marriage is solemnized out of the county where the license is issued, a copy of the marriage record shall be filed with the treasurer of the county where the marriage is



solemnized. The record of marriage must be properly signed by the person solemnizing the marriage and by two witnesses. SDCL 25-1-35.

The magistrate must also enter the facts ascertained by him pursuant to SDCL 25-1-32 (set forth supra under Requirements before Solemnizing a Marriage) and the date of solemnization in a book kept by him for that purpose.

#### Suggested Ceremony

No special ceremony is required in South Dakota except that both parties must declare their present intent to marry. The following is a suggested ceremony:

"The union into which you two are now about to enter is the closest and tenderest into which human beings can come. It is a union founded upon mutual respect and affection. Marriage is an institution intended for the happiness and welfare of mankind. You are about to assume mutual relationship and responsibilities. You are about to pledge to each other an undying devotion and fidelity. Your paths will be parallel, your responsibilities will increase, but your joy will be multiplied if you are sincere and earnest in your relations one with another.

"[To the Man-Woman:]. Will you have this woman [man] to be your wedded wife [husband]; to love her [him], comfort her [him], honor and keep her [him], and, forsaking all others, keep you only unto her [him], so long as you both shall live? [I will.] [REPEAT FOR WOMAN.]

"Take right hands and each repeat separately: I \_\_\_\_\_, take you, \_\_\_\_\_, to be my wedded wife [husband], to have and to hold from this day forward, for better, for worse, for richer, for poorer, to love, and to cherish, and thereto I plight my troth. [REPEAT FOR WOMAN.]

"[RING.] Do you have a ring? Place the same on her fourth finger and repeat: 'With this ring I thee wed.' [REPEAT FOR DOUBLE RING.]

"Let this ring be given and received as a token of your affection, sincerity and fidelity towards one another.

"Forasmuch as \_\_\_\_\_ and \_\_\_\_\_ have consented together in wedlock and have witnessed the same before this company, and thereto have given and pledged their troth, each to the other, and have declared the same by joining hands, by the authority vested in me by the State of South Dakota, I now pronounce them man and wife."

#### Another suitable marriage ceremony

"We are assembled here to join this man and this woman in marriage, which is held in honor among all men. Those who enter into this relation must learn to cherish a mutual esteem and love; to bear with each other's infirmities and weaknesses; to comfort each other in sickness, trouble and sorrow; in honesty and industry to provide for each other and for their household, in temporal things; and to live together as the heirs of the grace of life.

"If there by any here present who knows any just cause why they may not be lawfully joined in marriage, you do now confess it."

(Then speaking unto the persons who are to be married:) "I charge you both, that if either of you know any reason why you may not be lawfully joined in marriage, you do now confess it."

(Then calling the man by his Christian name):  
"\_\_\_\_\_, will you have this woman to be your wife, in all love and honor, in all duty and service, in all faith and tenderness, to live with her and cherish her, and hold in the bond of marriage?" (The man shall answer:) "I will."

(Then take the woman's right hand, and join it with the man's right hand and have them repeat:) "I \_\_\_\_\_, take thee, \_\_\_\_\_, to be my wedded wife [husband] and I do promise and covenant, before these witnesses, to be thy loving and faithful husband [wife], in plenty and want, in joy and in sorrow, in sickness and in health, as long as we both shall live."

(Take the ring, give it to the man, who shall then put it on the woman's left hand, and have him repeat:) "This ring I give you, in token and in pledge of our constant faith and abiding love."

(If a second ring is provided, a similar order shall be followed, the woman repeating the same words.)

"By the authority committed unto me as Judge of the Magistrate Court, according to the law of the state, I declare that \_\_\_\_\_ and \_\_\_\_\_ are now husband and wife."

#### Fees

The magistrate may collect and retain, in addition to his salary, fees for solemnizing a marriage. SDCL 16-12A-11.



## PATERNITY PROCEEDINGS

### Initiation of Paternity Suit

Paternity cases greatly resemble criminal actions (see generally SDCL 25-8-16 through 25-8-19); however, they are technically civil. State ex rel. Patterson v. Pickering, 29 S.D. 207, 136 N.W. 105 (1912). The action is commenced with a complaint made to a judge or magistrate. SDCL 25-8-13, 16-12A-14 and 16-12A-21. Though the proceedings may be instituted in magistrate court, the jurisdiction of the magistrate court is limited to the issuance of process and holding of preliminary examination to determine if defendant should be discharged or bound over to circuit court. SDCL 25-8-20.

The suit is commenced with a complaint "brought by the mother, or if the child is or is likely to be a public charge, by the authorities charged with its support. After the death of the mother or in case of her disability, it may also be brought by the child acting through its guardian or next friend." SDCL 25-8-10. The complaint may be in writing or oral. If oral, the magistrate should reduce it to writing and the complainant must sign it under oath or affirmation. SDCL 25-8-14. If after the complaint the mother dies or becomes mentally ill or cannot be found within the jurisdiction, the child is substituted as complainant. SDCL 25-8-11. The state's attorney is by statute designated to represent the complainant in a paternity proceeding. SDCL 7-16-12.

The complaint must allege that the person named as defendant is the father of the child. SDCL 25-8-15. The mother of the child must have been unmarried at the time of the birth of the child. SDCL 7-16-12, 25-8-17; State ex rel. King v. Hopps, 44 S.D. 125, 182 N.W. 632 (1921). The complaint must also demand that the defendant be brought before the judge or magistrate to answer the charge. SDCL 25-8-15. A sample complaint can be found at D 40.

The proper place for a paternity case to be commenced is in the county where the alleged father is permanently or temporarily a resident, or in the county in which the mother or child resides or is found. SDCL 25-8-23. The suit may be commenced in the county of residence of the defendant, even if the complaining mother or child reside outside of the state. SDCL 25-8-23; State v. Etter, 24 S.D. 636, 124 N.W. 957 (1910).

A paternity suit may not be commenced after a lapse of more than two years from the birth of the child. SDCL 25-8-9. This is a limitation on the right itself and need not be pleaded by the father. Deckert v. Burns, 75 S.D. 229, 62 N.W.2d 879 (1954). In such a case the magistrate should refuse to receive the complaint. This two year statute of limitations does not apply in suits to compel support wherein paternity has already been established. SDCL 25-8-9.

### Warrant or Summons

Upon receipt of a complaint the magistrate proceeds by issuing a warrant or a summons. If a warrant of arrest is issued for the alleged father's arrest, it shall be directed to any officer in the state authorized to execute warrants and may be executed in any part of the state. SDCL 25-8-16. As an alternative to the issuance of a warrant the magistrate may issue a summons as in any other civil action. A summons should not issue without the consent of the complainant and it must be personally served. SDCL 25-8-16. Samples of a warrant and summons can be found at D 41 and D 42.

### Hearing

Upon the return of the warrant or upon return of the summons showing service on the defendant the magistrate proceeds with an examination of complainant and any other witness or evidence related to the charge against defendant. The defendant has a right to be present at the examination and to controvert the charge. SDCL 25-8-18. This examination may be paralleled to a preliminary examination in a criminal charge in as much as the purpose of the examination is to determine if there is probable cause. SDCL 25-8-19, 25-8-20.

If no probable cause is found the defendant is discharged. Upon a finding of probable cause, the magistrate proceeds to set bail or release on personal recognizance. SDCL 25-8-20. (See Bail procedure under Criminal Proceedings). Upon failure to produce sufficient bail the defendant must be committed to jail to await trial. SDCL 25-8-20. The jurisdiction of the magistrate ceases at this stage of the proceeding and the defendant is bound over to circuit court. SDCL 25-8-20. All papers including the warrant, the examination reduced to writing and the security are transferred to circuit court. SDCL 25-8-21.

If upon examination evidence is presented to show that there exists an agreement or compromise between complainant and defendant, this should not be treated as a bar to the suit. Such agreement is not binding on the parties unless it has been approved by the circuit court. SDCL 25-8-8. Such an agreement may, however, serve as an acknowledgment of paternity which would toll the statute of limitations.

### Docketing

Since paternity proceedings are civil in nature and the only civil dockets in magistrate court are the small claims docket, it becomes necessary to utilize the criminal docket form when paternity suits are initiated in magistrate court. Because of the use of a criminal docket form in magistrate court, the magistrates are requested to make some obvious notation on the docket form or attach an independent note to the docket indicating that the matter is civil in nature. This should be done before transferring it to circuit court to insure proper docketing in that court.



## PATERNITY - CHECKLIST

1. Complaint received.
  - a. If oral reduce to writing.
  - b. Subscribed by complainant under oath.
  - c. Contains allegation that defendant is father.
  - d. Defendant or mother or child resident of county.
  - e. Child under 2 years of age.
  - f. Mother unmarried at time of birth of child.
2. Summons or warrant issues. If summons, must have consent of complainant.
3. Examination of complainant.
  - a. Witnesses subpoenaed.
  - b. Oath administered to witnesses.
  - c. Witnesses examined.
  - d. Defendant given opportunity to cross-examine.
  - e. Defendant given opportunity to present controverting evidence.
4. Finding
  - a. Probable cause - set bail and bind over to circuit court.
  - b. No probable cause - discharge defendant.
5. Transfer of papers to circuit court.

## MAGISTRATE AS CORONER

### Duties Outlined

SDCL 23-14-2 authorizes any committing magistrate to perform "the duties of coroner in relation to dead bodies," when there is no coroner or in case of the coroner's absence or inability to act. There are three duties a coroner has "in relation to dead bodies." Perhaps the most important of these duties is that of holding inquests. Another duty is that of preparing a medical certificate and return (death certificate), where death has occurred without the attendance of a licensed physician. The coroner also has the duty to take or cause to be taken blood samples of persons who have died from apparent violence, suicide or motor vehicle, agricultural or industrial accident. All of these duties are discussed below.

### Preparation of Death Certificate

SDCL 34-25-21 states:

"In case of any death occurring without the attendance of a licensed physician, it shall be the duty of the funeral director or other person in charge of the body to notify the county coroner of such death, and when so notified such county coroner shall make the medical certificate and return from the statement of relatives or other persons having adequate knowledge of the facts. In the absence of a coroner or deputy coroner, or if the coroner is unable to act, and only in such case, the local registrar shall prepare the death certificate from the statement of relatives or other person having knowledge of the facts."

The history of this statute reveals that under a prior statute the local registrar was primarily responsible for the preparation of all death certificates of persons having died without the attendance of a licensed physician; and if it appeared to the local registrar that the death was by other than natural means it became the duty of the registrar to notify the coroner. This statute makes the coroner primarily responsible for preparation of the death certificate of one who has died without the attendance of a licensed physician. It would appear that the reason for this statute is to allow the coroner an opportunity to view the decedent's body in order that he might make a determination as to the need for an inquest. Consequently it appears that it would be statutory intent that in the absence of the coroner the magistrate would be called upon as deputy coroner to fulfill this duty and that the local registrar would not act unless neither the coroner nor the committing magistrate was available.

### Violent Deaths

SDCL 34-25-22.1 provides:

"The county coroner of each county shall take or cause to be



taken blood samples of persons who have died from apparent violence, suicide or motor vehicle, agricultural, or industrial accident. The samples shall be taken within four hours after death or a reasonable time thereafter, and forthwith transmitted to the state chemical laboratory."

It should be noted that though an inquest is not held unless someone has died of supposedly unlawful means, the duty to take blood samples applies to all violent deaths.

#### Coroner's Inquest

It is the duty of a coroner to "hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means." SDCL 23-14-1. The purpose of an inquest is to determine whether a criminal act was responsible for the death and to furnish a foundation for a criminal prosecution in case the death is shown to be felonious. State v. Halvorsen, 79 S.D. 209, 214, 110 N.W.2d 132, 135 (1961). Whether an inquest is to be called "rests in the sound discretion of the coroner based upon a reasonable inquiry into the facts and circumstances surrounding the case." A.G. Report 1917-18, pp. 439, 440 (emphasis added). This acknowledges that some investigatory procedure on the part of the coroner is performed prior to the decision to hold an inquest. In conducting this investigation the coroner may rely on the knowledge and skill of others. For example, SDCL 34-25-22 commands investigation by law enforcement personnel:

"If the county coroner has reason to believe that the death may have been due to other than natural causes, he shall then refer the case to the state's attorney, sheriff or police for further investigation."

Further, SDCL 23-14-9.1 authorizes the coroner to order a physician to perform an autopsy for a medical opinion as to the cause of death. This appears to indicate that the authority exists prior to calling of an inquest for purposes of determining if an inquest is necessary.

Upon determination that the decedent died of supposedly unlawful means the coroner must issue a warrant to the sheriff of his county who, in turn, summons an inquest jury composed of three electors with the qualifications of jurors. SDCL 23-14-3.\* If the services of the

#### \* Juror Qualifications

1. S.D. citizen. SDCL 16-13-10.
2. Resident of county. SDCL 16-13-10.
  - a. Intend as permanent home. SDCL 12-1-4.
3. Registered to vote. SDCL 16-13-10.
  - a. U.S. citizen S.D. Const. Art. VII, 2.
  - b. 18 years old
  - c. mentally competent
4. Sound mind. SDCL 16-13-10.

sheriff cannot be conveniently procured then the coroner may summon qualified jurors from the bystanders. SDCL 23-14-3. In general it is the jury's duty to inquire how, in what manner, and by whom or what the body which lies dead came to its death, and into all material circumstances connected with the death, and to make up and sign a verdict and deliver it to the coroner. 18 AM. JUR. 2d Coroners or Medical Examiners § 12 (1965). Upon impaneling the jury it is recommended that the magistrate acting as coroner administer to them an oath, the form of which is found in the Forms section of this manual.

The inquest proceeds with the testimony of witnesses. The coroner has the power to issue subpoenas for the attendance of witnesses and the power to enforce such attendance by punishing any witness for contempt when his process is disobeyed. SDCL 23-14-7. Each of the witnesses should be administered an oath before testifying, which form is found in the Forms section of this manual. If one of the subpoenaed witnesses is also the suspected or accused he should not be permitted to testify at an inquest unless he fully understands his right against self-incrimination. If during the inquest it becomes apparent that a witness may have caused the decedent's death by criminal means, the witness should be fully advised of his right to remain silent and, if possible, time should be allowed for the witness to consult with an attorney. State v. Halvorsen, 79 S.D. 209, 110 N.W.2d 132 (1961). The inquest is not a trial and a suspected person is not entitled to counsel as a matter of constitutional right, nor does he have a right to cross-examine witnesses (18 AM. JUR. 2d Coroners or Medical Examiners § 10 (1965)), but care must be taken that his constitutional right against self-incrimination is not violated. The jury must arrive at a verdict as to whether or not the death of the body upon whom inquest is held was caused by unlawful means and if possible to uncover other evidence such as when, how, and by what person, means, weapons or accident he came to his death. This verdict is derived from a view of the body, testimony of witnesses, and hearing the results of an autopsy. If the latter has not been ordered prior to the holding of the inquest or if for some other reason it appears necessary either the coroner or the jury or the state's attorney may require an autopsy to be performed at the inquest. SDCL 23-14-9, 34-26-5. If it is determined that a crime was responsible for the death of the deceased and an accused is named, the coroner may order the arrest of the named accused, if he is present, or issue a warrant for his arrest if he is not (SDCL 23-14-13) and upon his arrest the magistrate may proceed with him as a

(\* cont.)

5. Can read, write and understand English language SDCL 16-13-10.
6. No felony convictions
  - a. Exception: where civil rights restored. SDCL 16-13-10.
7. No commission of any offense which disqualifies them from jury service. SDCL 16-13-10.
8. Not subject to disability which prevents competent performance of duty. SDCL 16-13-10.



committing magistrate (SDCL 23-14-2, 23-14-14), i.e., as the magistrate would proceed with any accused brought before him for initial appearance after service of an arrest warrant. Following the inquest the findings of the inquest must be forwarded to the Bureau of Criminal Statistics, Office of the Attorney General, Pierre, South Dakota, 57501. SDCL 23-6-17.

An inquest is not a trial and need not be open to the public. This is substantiated by SDCL 23-14-12 which requires that in the event an arrest warrant is issued by the coroner, the result of the inquest must not be made public until after the arrest of the accused.

It is the duty of the coroner to see to the disposition of the body and property found on the body of the decedent following the inquest. The coroner must deliver the body to the person entitled to receive it. SDCL 7-14-3, 34-26-14 and 34-26-16. If there are no persons so entitled then the coroner must see to a proper burial and the expense paid from the property found on decedent. SDCL 7-14-3. If there is insufficient property on decedent to defray costs of burial then a notice must be given to the dean of the Department of Medicine at the University of South Dakota. If requisition of the body is made, the body must be forwarded within twenty-four (24) hours at the expense of the University of South Dakota. SDCL 7-14-4.

Any property found on decedent in excess of that needed for burial must be delivered to the county treasurer within thirty days unless it is claimed by the legal representatives of decedent. SDCL 7-14-5.

The coroner must also return to the circuit court the inquisition, together with the written evidence and a list of witnesses who testified to material matters. SDCL 23-14-16.

The testimony of all witnesses must be reduced to writing and subscribed by the witnesses. SDCL 23-14-10. The magistrate may wish to record the testimony himself; however, he is authorized to retain a stenographer for that purpose. A.G. Report 1945-46, p. 283. The coroner must return to the circuit court the inquisition, the written evidence, and a list of the witnesses who testified to material matters. SDCL 23-14-16.

#### Fees

The coroner is reimbursed by the county commissioners for all necessary and reasonable expenditures incurred in the discharge of his duty. SDCL 7-14-2. Before the fees are paid the coroner must make a verified statement by his oath in writing of any money or property found on decedent, stating that the property has been delivered to the legal representatives of decedent or to the county treasurer. SDCL 7-14-7.

The amount of fees to which the coroner is entitled is as follows:

1. For view of the body and examination of the circumstances surrounding the death, twenty dollars (\$20.00), SDCL 7-14-1; and
2. Traveling expenses for each mile traveled in the discharge of his official duties not to exceed the state mileage rate. SDCL 7-14-1, 7-7-24.

Each elector impaneled as a juror is entitled to twenty dollars (\$20.00) per day and fifteen (15) cents per mile actually and necessarily traveled. SDCL 23-14-3, 16-13-46.

Any physician summoned is entitled to a reasonable fee for a post mortem examination. SDCL 23-14-9.

Stenographical fees are authorized. SDCL 23-14-10, A.G. Report 1945-46, p. 283.



## CORONER'S INQUEST - SAMPLE DIALOGUE

"Let the record show that this is the time and place scheduled for an inquest into the death of [name or description], of [address if known]; that these proceedings are being conducted at \_\_\_\_\_; and that present are the magistrate, acting as coroner, and three jurors who have been summoned by him to inquire into the cause of the death of \_\_\_\_\_. All three jurors have viewed the body and we will now proceed with swearing in the jury. Would you all raise your right hand?

"You do solemnly swear (affirm) that you will diligently inquire, and true presentment make, when, how, and by what means the person whose body here lies dead came to his death, according to your knowledge and the evidence given you."

Jurors reply: "I do."

"For the record will each of the jurors state your name and address?"

"This is a rather informal type of proceeding and the purpose of it is to determine whether or not death of \_\_\_\_\_ was a result of criminal activity. The testimony will basically be statements given by people who investigated and (or) witnesses of the death and they will relate to you what they saw and discovered as a result of their investigation or observation. As jurors you may question them at any time and I encourage you to do so. If during their statements you have a question either interrupt them and ask them or wait until they are finished and ask them. Keep in mind that it is the duty of you three jurors to determine whether any foul play was involved and you should be satisfied in your own minds before you make your decision. We will now begin with the testimony of \_\_\_\_\_ (who witnessed the accident) (who was the person to begin the investigation in the death of \_\_\_\_\_)."

TO THE WITNESS: "Please raise your right hand.

"You do solemnly swear (affirm) that the testimony which you shall give to this inquest, concerning the death of (the person here lying dead) (\_\_\_\_\_, deceased), shall be the truth, the whole truth, and nothing but the truth, so help you God. (This you do under the pains and penalties of perjury.)

"Please begin by stating your name, address and occupation and then in your own words relate to all present (what you witnessed) (what you discovered as a result of your investigation)."

PROCEED IN SIMILAR MANNER WITH EACH WITNESS. IF AFTER STATEMENTS OF THE WITNESSES AND JURY'S QUESTIONS IT SEEMS NECESSARY TO CONTINUE THE HEARING IN ORDER TO OBTAIN FURTHER WITNESSES OR TO AWAIT THE RESULT OF INVESTIGATORY TEST, YOU MAY ADJOURN SETTING A TIME AND PLACE

FOR RECONVENING. UPON RECONVENING YOU WOULD PROCEED MUCH AS OUTLINED ABOVE, BUT STATING IT IS THE CONTINUANCE OF AN INQUEST, E.G., "LET THE RECORD SHOW THAT THIS IS THE TIME AND PLACE SCHEDULED FOR THE CONTINUANCE OF THE INQUEST INTO THE DEATH OF \_\_\_\_\_ ...."

"If there is nothing further we can go off the record."

DIRECT JURORS TO A PLACE WHERE THEY MAY MADE THEIR DELIBERATIONS. GIVE THEM A COPY OF A VERDICT FORM, AND ASK THEM TO RETURN WITH THEIR VERDICT. ADVISE WITNESSES THAT THEIR TESTIMONY WILL BE REDUCED TO WRITING FOR THEIR SIGNATURE. UPON THE RETURN OF THE JURORS:

"Have you arrived at a verdict? What is your conclusion?"

"This will conclude this inquest."

ADVISE JURORS THAT THEIR VERDICT WILL BE REDUCED TO WRITING FOR THEIR SIGNATURES.



### CORONER'S INQUEST - CHECKLIST

1. Investigate and determine if inquest necessary.
2. Summon jurors.
  - a. Issuance of warrant with service by sheriff.
  - b. Coroner selects from bystanders.
3. Swear jurors.
4. Magistrate charges jurors.
5. Magistrate and jury view and examine body.
6. Order autopsy if deemed necessary.
7. Subpoena witnesses.
8. Obtain stenographer.
9. Adjourn to convenient place to hear testimony.
10. Swear witnesses.
11. Examine witnesses.
12. Deliberation of jury.
13. Return of verdict.
14. Prepare written statements for witnesses to sign.
15. Prepare written verdict for jurors to sign.
16. Warrant of arrest (if indicated).
17. Transmit record of inquest to Bureau of Criminal Statistics.
18. Transmit documents to circuit court.
19. Disposition of property found on decedent.
20. Disposition of body of decedent.

### OATHS AND ACKNOWLEDGMENTS

Pursuant to SDCL 16-12A-12 magistrates have the authority to administer oaths and take acknowledgments. Before taking an acknowledgment the magistrate must either know the person making the acknowledgment or be furnished with satisfactory evidence that the person making the acknowledgment is the person described in and executing the instrument. SDCL 18-5-5. If the magistrate acknowledges an instrument which will be ultimately used in another county, then the certificate of acknowledgment must be accompanied by a certificate "of the clerk of courts of the county in which the magistrate resides, setting forth that such magistrate at the time of taking such proof or acknowledgment was authorized to take the same, and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine." SDCL 18-4-24.

There are several statutory forms for certificates or acknowledgment which must be endorsed or attached to an instrument upon taking an acknowledgment. SDCL 18-5-7. These certificates are set out at D 44 through D 46 of this manual. The certificate is subscribed by the magistrate. Immediately below his signature his name should be typed, legibly stamped or printed with pen and ink. It must also bear his official seal, if he has one, and the title of his office. If he is a notary public the date his commission expires must also be placed thereon.

SDCL 18-4-16 authorizes the magistrate to tax twenty-five cents for each deed or instrument acknowledged and ten cents for each oath administered.



## SUBPOENA AND ATTENDANCE OF WITNESSES

### Issuance of Subpoena

SDCL 15-6-45(a) and SDCL 23-40-2 authorize a magistrate to issue subpoenas for witnesses when application is made by a party having a cause or matter pending before him. Three examples of when the need for a lay magistrate to issue a subpoena may arise are: (1) at the time of or prior to a preliminary hearing (SDCL 23-40-2); (2) when the magistrate, acting as coroner, conducts an inquest (SDCL 23-14-7); and (3) when the magistrate orders a deposition (SDCL 15-6-30(a), SDCL 19-5-4 and SDCL 23-41-9).

The subpoena must state:

- (1) the name of the court or tribunal;
- (2) the title of the action or proceeding;
- (3) a command ordering each person to whom it is directed to attend and give testimony at a specified time and place;
- (4) the name of the party for whom the testimony is required;
- (5) the seal of the court or officer (the seal must be on the original and all copies). SDCL 15-6-45(a).

Sample forms of both civil and criminal subpoenas are found in the Forms section of this manual at D 28 through D 31.

### Enforcement of Subpoenas

Disobedience to either a civil or criminal subpoena may be punished by the magistrate as contempt. SDCL 19-5-7, 15-6-45(f), and 23-40-10. If a person appears and refuses to be sworn or affirmed as a witness, or once sworn refuses to answer any material question, his refusal is contempt and constitutes a misdemeanor. SDCL 16-15-5. A witness may be guilty of contempt even when he refuses to testify on the ground that the testimony given might incriminate him, if such refusal is made in the presence of the state's attorney who has assured the witness that the testimony given cannot be used against the witness in any action or proceeding. SDCL 23-40-12.

When a witness disobeys a subpoena and fails to attend, the magistrate may issue an attachment for the arrest of the witness. SDCL 19-5-8. The attachment is addressed to the sheriff or peace officer of the county of issuance and commands such officer to bring the witness before the court at a given time and place to give testimony and answer for the contempt. SDCL 19-5-8. If the attachment is not for immediately bringing the witness before the court a sum may be fixed in which the witness may give an undertaking with surety for his appearance. This sum shall be endorsed on back of the attachment and if no sum is endorsed, the sum shall be one hundred

dollars. SDCL 19-5-10.

When the witness appears, but refuses to be sworn or affirmed or refuses to testify, the witness may be imprisoned. SDCL 19-5-12. The order of commitment is addressed to the sheriff or peace officer of the county where the disobeying witness is located and is executed by committing such witness to the jail of such county. SDCL 19-5-9. Both the attachment and order of commitment must also contain the official seal of the court or officer, must specify the cause of arrest or commitment, and, if the commitment be for refusing to answer a question, such question must be stated in the order. SDCL 19-5-9.

In lieu of the attachment or order of commitment, if the witness is not personally served, the court may issue an order to show cause why an attachment should not issue. Sample forms for Warrant of Attachment, Order of Commitment and Order to Show Cause are found in the Forms section of this manual at D 32, D 33 and D 34.

### Liability for Contempt

The punishment for contempt when a witness fails to attend in obedience to the subpoena is a fine not in excess of fifty dollars. SDCL 19-5-12. The punishment for refusal to be sworn or refusal to testify is a fine, not in excess of fifty dollars nor less than five, or imprisonment in the county jail until he shall submit to be sworn or testify. SDCL 19-5-12.

In addition to the penalties given above the witness is also civilly liable to the party injured for any damages occasioned by his failure to attend or his refusal to be sworn or testify. SDCL 19-5-14.

### Fees

Witnesses are entitled to compensation as follows:

- (1) for each day's attendance before any court, board or tribunal, except judges and magistrates acting as committing magistrates, in all civil and criminal cases, four dollars (SDCL 19-5-1);
- (2) for each day's attendance in magistrate court or before any judge acting as a committing magistrate, three dollars (SDCL 19-5-1);
- (3) if the witness is a court-appointed expert, the compensation is fixed by the court at a reasonable amount (SDCL 19-15-16); and
- (4) mileage at the rate of fifteen cents per mile for each mile actually traveled by the usual route of travel, one way. If the witness is from out of state mileage is limited to the distance from the place of trial to the point where such witness first entered the state (SDCL 19-5-1).



In criminal cases these fees are paid to all the state's witnesses and material witnesses of the defendant unless otherwise ordered by the court. SDCL 19-5-1.

## TAKING DEPOSITIONS

### Definition and Authorization

"A deposition is a written declaration under oath made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine; or upon written interrogatories." SDCL 19-3-3. Pursuant to SDCL 16-12A-12 magistrates have the authority to take depositions. However, there are times when a magistrate must disqualify himself from taking a deposition, viz., when the magistrate is "a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action." SDCL 15-6-28(c).

Most depositions are taken without leave of court, but leave of court must be obtained before taking a deposition when the deposition is taken:

- (1) before commencement of an action (SDCL 15-6-27(a));
- (2) pending appeal (SDCL 15-6-27(b));
- (3) by plaintiff after commencement of the action and prior to the expiration of thirty days after service of the summons and complaint unless defendant has served notice of taking deposition or otherwise sought discovery, or if notice states that the person to be examined is about to go out of state, out of the United States, or is bound on a voyage to sea, and facts are set forth to support this (SDCL 15-6-30(a));
- (4) of a witness who is confined to prison (SDCL 15-6-31(a) and SDCL 23-41-3); and
- (5) in criminal cases in which the witness for defendant is about to leave the state or is sick or infirm (SDCL 23-41-2).

### Scope of the Examination

Deposition-discovery rules are to be broadly construed to ensure that all parties have knowledge of the relevant facts. State ex rel. Department of Transportation v. Grudnik, 243 N.W.2d 796 (S.D. 1976). Parties may thus ask questions regarding any matter, not privileged, which is relevant to the subject matter. Therefore, it is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. SDCL 15-6-26(b)(1). Unless the court orders otherwise the number of depositions in any case or of any individual is unlimited. SDCL 15-6-26(a).



### Procedure

Before a deposition is commenced, notice of the time and place must be given in writing to every other party in the action. SDCL 15-6-30(b)(1). Attendance of witnesses may be compelled by subpoena. SDCL 15-6-30(a), SDCL 19-5-4 and SDCL 23-41-9. The officer before whom the deposition is to be taken shall put the witness on oath. SDCL 15-6-30(c) and SDCL 23-41-5. Disobedience of a subpoena, a refusal to be sworn, or a refusal to answer as a witness may be punished as contempt. SDCL 19-5-7. Examination and cross-examination of witnesses proceed much as at trial.

A party who does not participate in the oral examination may serve written questions in a sealed envelope on the party taking the deposition who must transmit them to the officer, who shall propound them to the witness and record the answers verbatim. SDCL 15-6-30(c).

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition unless:

- (1) the person producing the materials substitutes copies to be marked for identification after affording all parties fair opportunity to verify the copies by comparison to the original; and
- (2) the person producing the materials requests their return after the officer marks the materials and allows all parties the opportunity to copy and inspect them. SDCL 15-6-30(f)(1).

Evidence objected to shall be taken subject to the objections and all objections shall be noted by the officer upon the deposition (SDCL 15-6-30(c)) with the following exceptions:

- (1) If during the taking of the deposition a party requests termination of the examination upon a showing that the examination is being conducted in bad faith or to unreasonably annoy, embarrass or oppress the deponent, the magistrate should suspend the taking of the deposition to allow objecting party to make his motion to the court for an order thereon (SDCL 15-6-30(d)); and
- (2) If the state's attorney or other counsel appears on behalf of the state in a criminal case and shows that the reason for the application for depositions was to avoid the examination of the witness on the trial. SDCL 23-41-8.

### Transcription in Civil Cases

The testimony must be taken stenographically unless otherwise ordered by the court. If requested by one of the parties, the testimony must be transcribed. SDCL 15-6-30(c). When the testimony

is fully transcribed the deposition must be signed by the witness unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. Before obtaining the signature of the witness the deposition must be submitted to the witness for examination and any change in form or substance which the witness desires must be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. If the deposition is not signed by the witness within 15 days of its submission to him, the officer shall sign it and state on the record the fact of waiver, illness, absence or refusal of witness to sign, as the case might be, together with the reason, if any, given therefor. SDCL 15-6-30(e). A refusal of the witness to sign may be punished as contempt. SDCL 19-5-7.

The officer must certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. SDCL 15-6-30(f)(1). Upon payment of reasonable charges the officer shall furnish a copy of the deposition to any party or to the deponent. SDCL 15-6-30(f)(2). The original is sealed in an envelope endorsed with the title of the action and marked "Deposition of [name of witness]" and is promptly filed with the court in which the action is pending. SDCL 15-6-30(f)(1). When the deposition is taken upon written interrogatories the officer before filing the deposition must attach thereto a copy of the notice and the questions received by him.

### Transcription in Criminal Cases

In criminal cases the testimony given by the witness whose deposition is being taken must always be reduced to writing. SDCL 23-41-10. The magistrate before whom the examination is had may, in his discretion, order the testimony and proceedings to be taken down in shorthand, and for that purpose he may appoint a shorthand reporter. SDCL 23-41-10.

The transcribed testimony of the witness must be authenticated in the following manner:

- "(1) It must state the name of the witness, his place of residence, and his business or profession;
- "(2) It must contain the questions put to the witness and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth; except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him;
- "(3) If a question be objected to on either side and overruled, or the witness declines answering it, that fact with the ground on which the question was overruled, or the answer declined, must be stated;
- "(4) The deposition must be signed by the witness, or if he



refuses to sign it his reason for refusing must be stated in writing as he gives it; except in cases where the deposition is taken down in shorthand, it need not be signed by the witness;

"(5) It must be signed and certified by the magistrate when reduced to writing by him or under his direction, and when taken down in shorthand the manuscript of the reporter, appointed as aforesaid, when written out in longhand or typewriting and certified as being a correct statement of the testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings." SDCL 23-41-11.

When the signature of the witness is required pursuant to number (4) above and the witness refuses to sign, his refusal may be punished as contempt. SDCL 19-5-7.

Within five days after the close of the examination, the reporter must transcribe the testimony into longhand or typewriting, certify same and deliver it to the magistrate, who must certify it and transmit such testimony and proceedings in a carefully sealed envelope to the clerk of court in which the action is pending or may come for trial. SDCL 23-41-12.

#### Out-of-State Witness in Criminal Cases

A defendant accused of a public offense may have witnesses either residing or being out of the state examined on his behalf. SDCL 23-41-15. Notice of taking a deposition out of state must be served upon the state's attorney. SDCL 23-41-16. "The deposition must be written by the officer before whom it is noticed to be taken or, in his presence, by the witness or some disinterested person and must be subscribed by the witness." SDCL 23-41-17. The authentication and certification of depositions taken out of state is the same as that in civil cases. SDCL 23-41-18. Following such certification it is enclosed, sealed and endorsed with the title of the action and the name of the officer taking the deposition and by him addressed and transmitted to the clerk of the court where the action is pending. SDCL 23-41-19.

#### DEPOSITIONS - CHECKLIST

1. Order from the court where leave of court required.
2. Has notice to all parties been given?
3. Stenographer.
4. Stipulation between parties, if any.
5. Witness placed on oath.
6. Direct examination of deponent.
7. Cross-examination of deponent.
8. Any written questions by non-appearing party?
9. Cross-examination.
10. Documents and things produced marked with opportunity of all parties to examine.
11. Objections recorded, but not ruled upon
  - a. unless termination requested upon showing of bad faith, or
  - b. showing of conduct to unreasonably annoy, embarrass, or oppress the deponent, or
  - c. showing by state's attorney that the application for deposition was to avoid examination at trial.
12. Transcription in civil cases
  - a. transcribed on request of a party.
  - b. stipulation or examination by and signature of witness.
  - c. certification by officer.
  - d. copies to parties or deponent upon payment of reasonable charges.
  - e. original placed in envelope, sealed and endorsed.
  - f. filed.
13. Transcription in criminal cases
  - a. always reduced to writing.
  - b. authentication of transcribed testimony.
  - c. certification by transcriber.
  - d. certification by magistrate.
  - e. transmit to clerk of court.



FORMS  
TABLE OF CONTENTS

Introduction

The following forms are intended to serve as useful guidelines. They are suggested forms only and it is not intended that substitute similar forms cannot be utilized. For your benefit some of the forms contain instructional notes. An outline of all the forms contained herein and the page on which they are found follows. For your convenience they are listed beneath a procedure heading with which you are most likely to use them.

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|---|----------------------------------|
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| Arrest<br>Bench Warrant<br>Warrant of Arrest  | D 2<br>D 3                       |
| Bail<br>Form Letter to Automobile Club<br>Cash or Property Bond<br>Personal Recognizance<br>Unsecured Appearance Bond<br>Waiver of Extradition Rights   | D 4<br>D 5<br>D 7<br>D 9<br>D 11 |
| Initial Appearance<br>Dialogue Form<br>Application for Bond Reduction<br>Voucher for Compensation and Expenses of Court-Appointed Attorney<br>Application and Order for Court-Appointed Counsel | D 13<br>D 15<br>D 17<br>D 19     |
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| Attendance of Witnesses<br>Criminal Subpoena<br>Civil Subpoena<br>Warrant of Attachment for Contempt  | D 28<br>D 30<br>D 32             |



Order of Contempt  
Order to Show Cause

Coroner's Inquest

Warrant to Summon Jurors  
Subpoena to Witness for Appearance Before Coroner's Inquest  
Subpoena For Physician to Make Examination  
Oath by Coroner's Jury  
Oath by Witness Before Coroner's Inquest  
Verdict of Coroner's Jury  
Warrant of Arrest  
Certificate - Physician's Services  
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Certificate - Juror's Fees

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FORM A

STATE OF SOUTH DAKOTA  
UNIFORM TRAFFIC TICKET  
COMPLAINT

STATE OF S. DAK. }  
COUNTY OF \_\_\_\_\_ } SS A HP

CITY OF \_\_\_\_\_

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_  
THE UNDERSIGNED PLACE OFFICER COMPLAINS AND STATES THAT  
ON OR ABOUT \_\_\_\_\_ AT OR NEAR LOCATION \_\_\_\_\_ MILE POST \_\_\_\_\_ AT TIME \_\_\_\_\_ AM PM

NAME \_\_\_\_\_ WITHIN THE COUNTY AND STATE AFORESAID HEIGHT \_\_\_\_\_ SEX \_\_\_\_\_

ADDRESS \_\_\_\_\_ WEIGHT \_\_\_\_\_ RACE \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ BIRTH DATE \_\_\_\_\_

DRIVER'S LICENSE NO. \_\_\_\_\_ STATE \_\_\_\_\_

DID OPERATE VEHICLE MAKE \_\_\_\_\_ BODY STYLE \_\_\_\_\_  
UNLAWFULLY STATE LICENSE NO. \_\_\_\_\_ YEAR \_\_\_\_\_ STATE \_\_\_\_\_

AND THEN AND THERE COMMIT FOLLOWING OFFENSE TO WIT  
DESCRIBE VIOLATION IN VIOLATION OF S.D.C. AS REVISED OR AMENDED \_\_\_\_\_

OFFICER ISSUING SUMMONS NO. \_\_\_\_\_ CITY \_\_\_\_\_ COUNTY \_\_\_\_\_ STATE \_\_\_\_\_  
ADVISE (COMPLAINANT) TITLE AS I TRULY BELIEVE OFFICER SIGN IN PRESENCE OF COURT OR NOTARY DATE \_\_\_\_\_

SUBSCRIBED AND SHOWN TO ME THIS DATE \_\_\_\_\_ DATE \_\_\_\_\_  
I PROMISE TO APPEAR NAME AND TITLE \_\_\_\_\_

DEFENDANT'S SIGNATURE \_\_\_\_\_ COURT APPEARANCE REQUIRED YES ☐ NO ☐

AT TIME \_\_\_\_\_ AM PM COURT ADDRESS \_\_\_\_\_

This citation may be handled in the following manner:

The arresting officer may permit you to use a power of attorney in lieu of a court appearance for routine, scheduled offenses. However, the officer has the discretion to require a court appearance (1) when the violation charged involves an accident or injury; (2) when the officer believes you do not have a valid driver's license in force; or (3) when the officer believes the violation was hazardous because of highway conditions, visibility, traffic, repetition or other aggravated circumstances.

**COURT APPEARANCE REQUIRED:** If the arresting officer requires a court appearance, you must appear in court.

**POWER OF ATTORNEY:** If, however, the arresting officer permits you to use a power of attorney, you must mail a fully executed power of attorney/bail bond, with cash in the amount of the scheduled fine plus costs to the clerk of courts in the presence of the officer. If you do not appear for your scheduled court hearing, the clerk of courts will enter a plea of guilty on your behalf. The bond will be used to pay your fine and the court costs. If you wish to appear in court after you have completed and mailed a power of attorney, you may do so by merely appearing in court at the scheduled time and place. You may then proceed as you would at any regular court appearance.

FORM B

STATE OF SOUTH DAKOTA  
UNIFORM TRAFFIC TICKET  
COMPLAINT

STATE OF SOUTH DAKOTA }  
COUNTY OF \_\_\_\_\_ } NO. B HP

CITY OF \_\_\_\_\_

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_  
THE UNDERSIGNED PLACE OFFICER COMPLAINS AND STATES THAT  
ON OR ABOUT \_\_\_\_\_ AT OR NEAR LOCATION \_\_\_\_\_ MILE POST \_\_\_\_\_ AT TIME \_\_\_\_\_ AM PM

NAME \_\_\_\_\_ WITHIN THE COUNTY AND STATE AFORESAID HEIGHT \_\_\_\_\_ SEX \_\_\_\_\_

ADDRESS \_\_\_\_\_ WEIGHT \_\_\_\_\_ RACE \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ BIRTH DATE \_\_\_\_\_

DRIVER'S LICENSE NO. \_\_\_\_\_ STATE \_\_\_\_\_

DID OPERATE VEHICLE MAKE \_\_\_\_\_ BODY STYLE \_\_\_\_\_  
UNLAWFULLY STATE LICENSE NO. \_\_\_\_\_ YEAR \_\_\_\_\_ STATE \_\_\_\_\_

AND THEN AND THERE COMMIT FOLLOWING OFFENSE TO WIT  
DESCRIBE VIOLATION IN VIOLATION OF S.D.C. AS REVISED OR AMENDED \_\_\_\_\_

OFFICER ISSUING SUMMONS NO. \_\_\_\_\_ CITY \_\_\_\_\_ COUNTY \_\_\_\_\_ STATE \_\_\_\_\_  
ADVISE (COMPLAINANT) TITLE AS I TRULY BELIEVE OFFICER SIGN IN PRESENCE OF COURT OR NOTARY DATE \_\_\_\_\_

SUBSCRIBED AND SHOWN TO ME THIS DATE \_\_\_\_\_ DATE \_\_\_\_\_  
I PROMISE TO APPEAR NAME AND TITLE \_\_\_\_\_

DEFENDANT'S SIGNATURE \_\_\_\_\_ COURT APPEARANCE REQUIRED YES ☐ NO ☐

AT TIME \_\_\_\_\_ AM PM COURT ADDRESS \_\_\_\_\_

**PETTY OFFENSES:** If charged with a petty offense involving the operation and use of a motor vehicle and you possess or have proof of a valid South Dakota driver's license, you may choose alternatives 1, 2, or 3 below. If unable to meet the license requirement or if charged with a non-traffic offense, you may choose alternative 2 or 3 below. Upon refusal of the following alternatives, you will be taken immediately to a magistrate for a hearing.

1. **Promise to Appear:** You may sign the complaint as a written promise to appear. Intentional failure to appear is a Class 2 misdemeanor.

2. **Admission and Deposit:** You may sign a stipulation admitting the allegations in the complaint which, together with the required deposit, will be filed with the clerk of court.

3. **Deposit:** You may immediately mail said deposit to the clerk of court or personally make the deposit, either alternative to be in the presence of the officer. Refer to schedule of petty offenses for amounts required for the deposit.

If you choose alternative 2 or 3 and do not appear in court on the date specified, the clerk will enter judgment against you and you will forfeit your deposit. You may appear in court after signing an admission and the court may, upon motion, relieve you from the stipulation and the effects thereof.



**CONTINUED**

**1 OF 3**



STATE OF SOUTH DAKOTA) )  
COUNTY OF \_\_\_\_\_) SS

IN MAGISTRATE COURT  
BEFORE \_\_\_\_\_  
Magistrate

STATE OF SOUTH DAKOTA,  
Plaintiff,  
-vs-

BENCH WARRANT

\_\_\_\_\_  
Defendant.

\* \* \*

\* \* \*

THE STATE OF SOUTH DAKOTA TO ANY SHERIFF OR OTHER PEACE OFFICER IN THIS STATE:

A (complaint) (information) having been filed on the day of \_\_\_\_\_, 19\_\_\_\_, in the (magistrate) (circuit) court in and for \_\_\_\_\_, County, South Dakota, charging the above-named defendant, \_\_\_\_\_, with the crime of \_\_\_\_\_, (and the defendant failing to appear as required by a promise to appear or court order).

YOU ARE THEREFORE COMMANDED forthwith to arrest the above-named defendant and bring him/her before that court, to answer said (complaint) (information); or if the court has adjourned for the term, that you deliver him/her into the custody of the sheriff of the county of \_\_\_\_\_, or if he/she requires it that you take him/her before any magistrate in that county or in the county in which you arrest him/her, that he/she may be given bail to answer the charge.

The defendant is to be admitted to bail in the sum of \$\_\_\_\_\_.

Given under my hand, and with the seal of said court affixed, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

BY ORDER OF THE COURT.

\_\_\_\_\_  
(Clerk of Court) (Magistrate)

(SEAL)

(. . .)-Strike if not applicable

STATE OF SOUTH DAKOTA ) )  
COUNTY OF \_\_\_\_\_) SS ) IN MAGISTRATE COURT  
BEFORE \_\_\_\_\_  
Magistrate

\* \* \*

STATE OF SOUTH DAKOTA,  
Plaintiff,  
-vs-  
\_\_\_\_\_  
Defendant.

WARRANT OF ARREST

\* \* \*

THE STATE OF SOUTH DAKOTA TO ANY SHERIFF OR OTHER PEACE OFFICER IN THIS STATE:

INFORMATION UPON OATH having been this day laid before me that the crime of \_\_\_\_\_

has been committed and accusing \_\_\_\_\_ thereof.

YOU ARE THEREFORE COMMANDED forthwith to arrest the above-named (defendant on any day of the week and at any time of the day or night) and bring \_\_\_\_\_ before me at my office in the \_\_\_\_\_ in said county, or in case of my absence or inability to act, then before the nearest or most accessible magistrate in this county.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 19\_\_\_\_.

\_\_\_\_\_  
Magistrate

RETURN OF OFFICER

STATE OF SOUTH DAKOTA ) )  
COUNTY OF \_\_\_\_\_) SS )

I hereby certify that by virtue of the foregoing warrant, I have arrested the \_\_\_\_\_ within \_\_\_\_\_ named \_\_\_\_\_ defendant \_\_\_\_\_ and have \_\_\_\_\_ now before the court in custody.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 19\_\_\_\_.

\_\_\_\_\_  
of \_\_\_\_\_ County, South Dakota.

(. . .)-Strike if not applicable



GENTLEMEN: This is to inform you that:

\_\_\_\_\_  
Name OF \_\_\_\_\_  
Address

\_\_\_\_\_  
Name of AAA Club Membership Number

Was arrested for \_\_\_\_\_ on \_\_\_\_\_  
Violation Date

At \_\_\_\_\_ and released on \$ \_\_\_\_\_  
Place of Arrest

bond. Trial date was set for \_\_\_\_\_

This is to notify you that bond was forfeited and to request payment from your club.

\*Please make check payable to:

\_\_\_\_\_  
\_\_\_\_\_  
Street  
\_\_\_\_\_  
City & State Zip

STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ ) IN \_\_\_\_\_ COURT  
SS \_\_\_\_\_ JUDICIAL CIRCUIT

,Plaintiff,

,Defendant.

\_\_\_\_\_  
BAIL BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_ as principal,  
and \_\_\_\_\_  
of the State of South Dakota, as sureties, are held and firmly bound unto  
State of South Dakota, in the penal sum of \_\_\_\_\_  
DOLLARS, for the payment of which we bind  
ourselves jointly and severally, by these presents.

THE CONDITIONS of the above obligation are such that, whereas,  
the said principal is under arrest and in the custody of the \_\_\_\_\_  
of \_\_\_\_\_  
(Name of Law Enforcement Agency)  
South Dakota, charged with \_\_\_\_\_  
and has been admitted to bail thereon in the sum of \$ \_\_\_\_\_.

NOW THEREFORE, if said principal first above named shall  
personally be and appear at and before the (Circuit) (Magistrate) Court, in  
the Courthouse before the Court, in the City of \_\_\_\_\_ on the  
day of \_\_\_\_\_ A.D., 19 \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M. to answer to said  
charge and shall remain in attendance upon said Court then and thereafter  
from term to term and from day to day of each term until final  
sentence or order of said Court, and shall not depart from said Court  
without leave thereof, and shall abide the judgment of said Court upon  
said charge, and shall observe and obey all the orders of said Court  
in that behalf, then this obligation to be null and void; otherwise,  
to remain in full force and effect.

THE SIGNERS hereof individually acknowledged their understanding  
of the terms of this Bond and of the fact that non-compliance therewith  
by the Defendant will result in forfeiture of the full amount thereof  
to the State of South Dakota.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 19 \_\_\_\_\_

\_\_\_\_\_  
Witness to Principal (SEAL)  
\_\_\_\_\_  
Witness to Surety (SEAL)  
\_\_\_\_\_  
Witness to Surety (SEAL)

\_\_\_\_\_  
JUSTIFICATION OF SURETIES  
STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ ) SS

\_\_\_\_\_  
and \_\_\_\_\_, being duly  
sworn, say each for himself, that he is a surety in the within named Bond,  
that he is a resident and freeholder of the said State, and worth the  
sum of \_\_\_\_\_ DOLLARS, over and above his debts and liabilities,  
and exclusive of his property exempt from execution.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_



APPROVAL OF ABAIL BOND

Approved as to form: I find the within undertaking sufficient, and do approve and allow the same:

Attorney Judge

RECEIPT FOR CASH BOND

Received from the sum of \$ cash money in lieu of statutory sureties, to be held pursuant to the terms of the within and foregoing Bail Bond.

Clerk of Courts

ORDER RELEASING BOND

The above entitled case having been disposed of, the Sureties upon the Bail Bond are exonerated from liability thereunder, and the Clerk is hereby directed to return any cash bail to the persons entitled thereto.

Done at S. D., this day of 19.

BY THE COURT:

ATTEST:

Judge

Clerk

ORDER RELEASING DEFENDANT

The within undertaking having been approved as to form and sufficiency,

IT IS ORDERED that said defendant be released from custody in conformity with the terms thereof.

Done at S. D., this day of 19.

BY THE COURT:

ATTEST:

Judge

Clerk

INFORMATIONAL NOTE: This form is used whenever a cash or property bond is posted. If a surety signs this form you must take care that upon the appearance of the defendant the cash bond is returned to the person who posted the bond and not to the defendant.

STATE OF SOUTH DAKOTA )  
COUNTY OF ) SS

IN COURT  
JUDICIAL CIRCUIT

\*\*\*

STATE OF SOUTH DAKOTA,

Plaintiff,

-vs-

Defendant.

PERSONAL

RECOGNIZANCE

BOND

\*\*\*

The above-named defendant being charged with the offense of , and the court having set bond in the amount of \$ ; and it appearing to the court that the defendant is an appropriate, fit and proper person to be released upon his/her own recognizance, under conditions set forth below;

IT IS ORDERED that the defendant may be released on personal recognizance under the following conditions:

(1) that the defendant shall appear before the court at the County Courthouse, South Dakota, on 19 at o'clock .M., and at such other times and places as this or any other court may direct;

(2) that the defendant will violate no state or federal law or municipal or tribal ordinance;

(3) that the defendant keep the court, or his/her attorney if represented by counsel, advised of his/her whereabouts at all times; (and that the defendant will not leave the county of residence without prior permission of the court;)

(4) that if the defendant fails to obey or perform any of these conditions, payment of this bond shall be due forthwith and a warrant will be issued for the defendant's arrest. After arrest the terms and conditions of any further release will be redetermined. If the defendant appears as ordered and otherwise obeys and performs the conditions of this bond, then this bond is to be void.



IT IS FURTHER ORDERED that upon the defendant agreeing to the aforesaid conditions and by signing the agreement provided below, he may be released.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

BY THE COURT:

\_\_\_\_\_  
(Circuit Judge) (Magistrate)

-----  
DEFENDANT'S AGREEMENT TO CONDITIONS OF BOND  
-----

I, \_\_\_\_\_, understand the methods and conditions of my release which are specified above and the penalties and forfeitures applicable in the event I violate any condition or fail to appear as required.

I agree to comply fully with each of the conditions imposed upon my release and to notify the court promptly in the event I change the address indicated below.

Dated \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Defendant's Signature

WITNESS:

\_\_\_\_\_  
Def. Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone No. \_\_\_\_\_  
S.D. Driver's License No. \_\_\_\_\_

Approved \_\_\_\_\_, 19\_\_\_\_.

By \_\_\_\_\_  
Title \_\_\_\_\_

(. . .)-Strike if not applicable

STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ ) SS

IN \_\_\_\_\_ COUNTY  
\_\_\_\_\_ JUDICIAL CIRCUIT

\* \* \*

STATE OF SOUTH DAKOTA,  
Plaintiff,

-vs-

UNSECURED  
APPEARANCE BOND

\_\_\_\_\_  
Defendant.

\* \* \*

We, the undersigned, jointly and severally acknowledge that we and our personal representatives, jointly and severally, are bound to pay to the County of \_\_\_\_\_, State of South Dakota, the sum of \$\_\_\_\_\_.

The conditions of this bond are that the defendant, \_\_\_\_\_, is to appear before the \_\_\_\_\_ Court of \_\_\_\_\_ County, in the \_\_\_\_\_ Judicial Circuit, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_ M., and at such other times and places as the defendant may be required to appear, in accordance with any and all orders and directions relating to the defendant's appearance in the above-entitled matter, as may be given or issued by a magistrate or judge in the \_\_\_\_\_ Judicial Circuit for the County of \_\_\_\_\_, State of South Dakota; that the defendant is not to depart from the jurisdiction of said county or the State of South Dakota except in accordance with such orders or permission as may be issued by a magistrate or circuit judge; and that the defendant is to abide any judgment entered in such matter by surrendering himself/herself to serve any sentence imposed and obeying any order or direction in connection with such judgment as the court imposing it may prescribe.

If the defendant appears as ordered and otherwise obeys and performs the conditions of this bond, then this bond is to be void, but if the defendant fails to obey or perform any of these conditions, payment of the amount of this bond shall be forthwith due. Forfeiture of this bond for any breach of its conditions may be declared by any magistrate or judge having cognizance of the above-entitled matter at the time of such breach and if the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in the circuit court against each debtor jointly and severally for the amount above stated, together with interest and costs, and execution may be issued and payment secured as provided in the laws of the State of South Dakota.

Each of the sureties states that he/she is a resident and



It is agreed and understood that this is a continuing bond which shall continue in full force and effect until such time as the undersigned are duly exonerated.

(. . .)-Strike if not applicable

D 10

\* \* \*

Defendant.

\* \* \*

The defendant by signing this instrument hereby acknowledges his/her understanding of the terms of this instrument and acknowledges he/she has executed the same for the purpose of securing his/her release on

D 11



his/her own personal recognizance or on a bond with himself/herself as the sole surety or with others, to answer the charges contained in a criminal case pending against him/her in the above-entitled court.

Signed and dated at \_\_\_\_\_, South Dakota, this  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Defendant's Signature

WITNESS:  
\_\_\_\_\_

# INITIAL APPEARANCE - DIALOGUE FORM

The Magistrate Court for \_\_\_\_\_ Judicial Circuit,  
State of South Dakota, is now in session. This is the case of the  
State of South Dakota against \_\_\_\_\_.

1. What is your true name?
2. Have you received a copy of the Complaint/Citation which was just read?
3. Do you understand the charge against you?\*
4. Do you understand that you have a right to be represented by counsel and, if you cannot afford one, one will be appointed for you? Do you wish to have additional time to consult with an attorney?
5. You are entitled to a preliminary hearing at which time the state would have to show that there was sufficient evidence to establish that you probably committed the crime with which you are charged. If at the conclusion of the preliminary hearing the judge should find that sufficient evidence has been shown to establish that you probably committed the crime with which you are charged then you will be bound over to circuit court for further proceedings. If, however, sufficient evidence has not been shown then the charge against you will be dismissed and you will be released. Do you understand what a preliminary hearing is? Do you wish to have a preliminary hearing on this charge? (Having waived your right to a preliminary hearing, you will be bound over to circuit court for further proceedings and must make an appearance on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ m.) (Having requested a preliminary hearing, you are hereby advised that the preliminary hearing is hereby scheduled to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ m. in the courtroom of the \_\_\_\_\_ County Courthouse in the City of \_\_\_\_\_). You are further advised that

\* You have been charged with driving under the influence. I wish to further advise you that upon your first conviction or plea of guilty to this charge your driver's license will be revoked for a minimum of thirty days (SDCL 32-23-2). Further, if within four years of this violation you are convicted or plead guilty a second time to this charge, that your license will be revoked for a minimum of sixty days (SDCL 32-23-3); and that for a third or subsequent conviction or guilty plea within a four-year period the violation becomes a felony and subject to a penitentiary sentence and revocation of your driver's license for a period of not less than one year following the date of final discharge (SDCL 32-23-4).



at this time the state will produce witnesses to show that there is probable cause to believe that an offense has been committed and that you have committed it. Any witnesses you wish to produce will also be examined. If, from the preliminary examination, there is probable cause to believe that an offense has been committed and that you have committed it, you will be bound over for trial; otherwise, you will be discharged.)

6. Constitutional and statutory rights other than the right to an attorney and the right to a preliminary hearing afforded to you are as follows:
- a. You have a constitutional right to remain silent which means that you do not have to give any statement to the police or any other law enforcement officer. You are reminded that anything you do say may be used against you at any later hearing or proceeding.
  - b. You have a constitutional right to a speedy public trial by an impartial jury selected from this community and at this trial the state has the burden of proving your guilt beyond reasonable doubt. You do not have to prove yourself innocent.
  - c. You have a constitutional right to confront, that is, to see, hear, question and cross-examine, all the witnesses who will testify against you at the time of trial, but you do not have to testify and you cannot be forced to testify against yourself. Further, any statement you make may be used against you.
  - d. You have a constitutional right to summon and compel witnesses to be present to testify in your behalf.
  - e. You will be presumed to be innocent until the state proves your guilt beyond reasonable doubt.
  - f. In addition to these rights, you have a right to have a reasonable bail set and, once it is posted, to be at liberty on bail while your case is pending.

DO YOU UNDERSTAND THESE RIGHTS? DO YOU HAVE ANY QUESTIONS CONCERNING THESE RIGHTS--WHAT THEY ARE OR HOW THEY APPLY TO YOU?

The above statement of my rights has been explained to me and I fully understand what my rights are.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Defendant

STATE OF SOUTH DAKOTA, COUNTY OF \_\_\_\_\_  
IN CIRCUIT COURT, \_\_\_\_\_ JUDICIAL CIRCUIT

THE STATE OF SOUTH DAKOTA vs. THE DEFENDANT HEREAFTER NAMED

APPLICATION FOR REDUCTION OF BOND  
OR FOR RELEASE ON PERSONAL RECOGNIZANCE

The undersigned, being first duly sworn on oath, hereby makes this application for:

\_\_\_\_ Reduction of bond to \$ \_\_\_\_\_; or

\_\_\_\_ Release on personal recognizance bond

and presents the following information to the court:

NAME OF DEFENDANT: \_\_\_\_\_ Age: \_\_\_\_\_

RESIDENCE FOR LAST FIVE YEARS:

| Place | Date                |
|-------|---------------------|
| _____ | From _____ to _____ |
| _____ | From _____ to _____ |
| _____ | From _____ to _____ |

MARITAL STATUS: \_\_\_\_ Married \_\_\_\_ Single \_\_\_\_ Divorced

If married, name of spouse: \_\_\_\_\_

Are you living with spouse: \_\_\_\_ Yes \_\_\_\_ No

Number of children age 17 or less in household: \_\_\_\_\_

OFFENSE CHARGED: \_\_\_\_\_

AMOUNT OF BAIL SET: \$ \_\_\_\_\_

CASH OR PROPERTY YOU HAVE AVAILABLE FOR BAIL: Cash \$ \_\_\_\_\_

Other property: \_\_\_\_\_

NAME OF LEGAL COUNSEL: \_\_\_\_\_

(If counsel requested and you are unable to hire counsel due to lack of funds, please fill out and submit application for court-appointed counsel.)

EMPLOYMENT STATUS: \_\_\_\_ Employed \_\_\_\_ Unemployed

If employed, name of employer: \_\_\_\_\_

Where employed: \_\_\_\_\_

NAMES OF OTHER CLOSE RELATIVES THAT LIVE IN COMMUNITY:

RECORD OF PRIOR CRIMINAL OFFENSE CONVICTIONS:



RECORD OF PRIOR APPEARANCES IF PREVIOUSLY RELEASED ON BOND:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAMES OF RESPONSIBLE PERSONS IN COMMUNITY THAT WILL RECOMMEND YOUR RELEASE ON PERSONAL RECOGNIZANCE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I agree that if granted release on reduced bond or personal recognizance that I will execute bond forms and extradition waivers (when applicable) and promise to appear on the date set by the magistrate for my next appearance in court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ORDER

The court having duly considered the application for reduction of bond or for release on personal recognizance:

IT IS HEREBY ORDERED:

- \_\_\_\_\_ That the request is denied.
- \_\_\_\_\_ That the defendant's bond be reduced to \$\_\_\_\_\_.
- \_\_\_\_\_ That the defendant be released on his own recognizance upon the written acceptance of the conditions set forth in the bond form delivered herewith.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

BY THE COURT:

\_\_\_\_\_  
Circuit Judge

ATTEST:

\_\_\_\_\_  
Clerk of Court

INFORMATIONAL NOTE: This form is used only when the judge is not immediately available. See page B 5 for further instruction on use of this form.

VOUCHER FOR COMPENSATION AND EXPENSES OF COURT APPOINTED ATTORNEY

County

State of South Dakota vs. \_\_\_\_\_ defendant.

Criminal Number \_\_\_\_\_

Claim of \_\_\_\_\_ Address \_\_\_\_\_

(Note: Insert dates of services and time spent in hours and fractional quarter hours.)

I. Time spent before Committing Magistrate \_\_\_\_\_ Total Hours

II. Time spent in Open Court:

(a) Arraignment and Plea: \_\_\_\_\_

(b) Trial: \_\_\_\_\_

(c) Other (Specify): \_\_\_\_\_

III. Time spent in Preparation (out of Court):

(a) Interviews with Defendant: \_\_\_\_\_

(b) Legal Research: \_\_\_\_\_

(c) Investigative Work: \_\_\_\_\_

(1) Interviews with Witnesses named: \_\_\_\_\_

(2) Interviews with Officials named: \_\_\_\_\_

(3) Other (specify): \_\_\_\_\_

IV. Itemized Statement of Travel and Other Expenses: \_\_\_\_\_ Amount

SUMMARY OF CLAIM

Item I \_\_\_\_\_ hours \_\_\_\_\_ minutes at \$\_\_\_\_\_ an hour

Item II \_\_\_\_\_ hours \_\_\_\_\_ minutes at \$\_\_\_\_\_ an hour

Item III \_\_\_\_\_ hours \_\_\_\_\_ minutes at \$\_\_\_\_\_ an hour

Total Compensation Claimed \_\_\_\_\_

Item IV Expenses Claimed \_\_\_\_\_

Total Compensation and Expenses Claimed \_\_\_\_\_

It is hereby ordered the above claim is approved in the amount of \$\_\_\_\_\_, and the County Treasurer is directed to pay said sum forthwith upon presentation of this order.

Dated \_\_\_\_\_ of \_\_\_\_\_, 19\_\_\_\_.

Judge



To be paid from ..... fund

Warrant No. ....

CLAIM OF

AGAINST

STATE OF SOUTH DAKOTA, }  
COUNTY OF ..... } SS

..... COUNTY, SOUTH DAKOTA

For .....

CHAPTER 490 LAWS OF 1953

Eliminates necessity of Notarizing

I declare and affirm under penalties of perjury  
that this claim has been examined by me,  
and to the best of my knowledge and belief,  
is in all things true and correct.

..... day of ....., 19.....

Signed .....

Filed ....., 19.....

County Auditor

By ..... Deputy

\$..... Amount Claimed, Allowed .....

This ..... day of ....., 19.....

Chairman, Board of County Commissioners

D 18

Procedures Manual for Lay Magistrates  
January, 1979



STATE OF SOUTH DAKOTA  
-vs-  
Defendant

}  
}  
}  
}

APPLICATION & ORDER  
FOR COURT-APPOINTED COUNSEL

APPLICATION

The above-named defendant having been charged with the offense of .....  
..... a (felony) (misdemeanor), does hereby, having been duly sworn, depose  
and say, under oath and penalty of law:  
(1) He is financially unable to hire counsel to represent him in his defense to said action;  
(2) He is (employed) (un-employed) (self-employed); if employed or self-employed, his weekly income  
is \$ .....;  
(3) His number of dependents is .....;  
(4) That the following amounts accurately represent his assets and liabilities:

ASSETS

|   |          |
|---|----------|
| Cash on hand and in banks .....         | \$ ..... |
| Accts. and notes receivable .....       | \$ ..... |
| Investments (bonds, stocks, etc.) ..... | \$ ..... |
| Real estate .....                       | \$ ..... |
| Automobile (type and year .....) .....  | \$ ..... |
| Household goods .....                   | \$ ..... |
| Other personal property .....           | \$ ..... |
| Any other assets .....                  | \$ ..... |

TOTAL ASSETS ..... \$ .....

LIABILITIES

|                                   |          |
|-----------------------------------|----------|
| Notes payable to banks .....      | \$ ..... |
| Notes payable to others .....     | \$ ..... |
| Mortgages on real estate .....    | \$ ..... |
| Mortgages on other property ..... | \$ ..... |
| Other debts .....                 | \$ ..... |

TOTAL LIABILITIES ..... \$ .....

(5) Any anticipated receivables, such as land sales, gifts, inheritances, allotments, etc. are \$ .....  
Dated this ..... day of ....., 19.....

Defendant

Subscribed and sworn to before me this ..... day of ....., 19.....  
(Magistrate) (Circuit Judge) (Notary Public)

ORDER

Upon reading the above and foregoing application and the Court being satisfied that the defendant is  
indigent and financially unable to obtain counsel,  
IT IS ORDERED that ..... of .....  
South Dakota, being a member of the Bar is hereby appointed to represent the defendant in all matters  
pertaining to this action unless or until relieved by this Court, all pursuant to South Dakota statute.  
Dated this ..... day of ....., 19.....

BY THE COURT:

ATTEST: .....  
Clerk

Judge



STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ ) SS.

IN CIRCUIT COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

THE STATE OF SOUTH DAKOTA, )  
Plaintiff, )  
vs. )  
\_\_\_\_\_ )  
Defendant. )

COMMITTING MAGISTRATE'S  
RETURN

-----  
TO THE CLERK OF THE ABOVE-NAMED COURT:

On \_\_\_\_\_, 19\_\_\_\_, a preliminary hearing was held before me in the above entitled action in compliance with SDCL 23-27.

The parties appeared and were represented as follows:

The defendant is charged with the following offense on the date hereinafter set forth:

\_\_\_\_\_, 19\_\_\_\_.

The state called and offered the sworn testimony of the following witnesses:

who were cross-examined by counsel for the defendant.

The following exhibits were marked and offered:

The defendant called and offered the sworn testimony of the following witnesses:

The proceedings were reported in their entirety by \_\_\_\_\_, one of the official court reporters of the \_\_\_\_\_ Judicial Circuit of South Dakota. The court ordered transcripts of the proceedings as follows:

ORDER HOLDING DEFENDANT TO ANSWER

It appearing to me that the offense of \_\_\_\_\_

has been committed and that there is sufficient cause to believe the within named defendant guilty thereof, I ORDER that he/she be held to answer the same in circuit court pursuant to the provisions of SDCL 23-27-16 and 23-27-21.

It appearing to me that the bail previously furnished by the defendant is \_\_\_\_\_ adequate, he/she is released on bail in the amount of \$\_\_\_\_\_.

The defendant shall appear for arraignment before the circuit court of this county on the date and at the time hereinafter set forth:

\_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_ M.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate

COMMITMENT ORDER UPON ADJOURNMENT OF PRELIMINARY HEARING (SDCL 23-27-7)

The within named \_\_\_\_\_, having been brought before me under this warrant, and having failed to give bail for his/her appearance, is committed to the sheriff of the county of \_\_\_\_\_ (or other peace officer as the case may be), to await examination on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock, at which time you will have his/her body before me at my office.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate



ORDER HOLDING TO ANSWER (SDCL 23-27-16)

It appearing to me that the offense in the within information (state briefly the offense and the time and place of its occurrence as accurately as possible) has been committed, and that there is sufficient cause to believe that the within named \_\_\_\_\_ is guilty thereof, I order that he/she be held to answer the same.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Magistrate

COMMITMENT FOR TRIAL (SDCL 23-27-20)

County of \_\_\_\_\_  
The State of South Dakota to the Sheriff of the  
County of \_\_\_\_\_

An order having been this day made by me that \_\_\_\_\_ be held to answer upon a charge of (state briefly the nature of the offense with the time and place of its occurrence as accurately as possible), you are commanded to receive him/her into your custody, and detain him/her until legally discharged.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Magistrate

ORDER DISCHARGING DEFENDANT (SDCL 23-27-13)

There being no sufficient cause to believe the within named \_\_\_\_\_ guilty of the offense within mentioned, I order him/her to be discharged.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Magistrate

STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ ) SS

SEARCH WARRANT

THE STATE OF SOUTH DAKOTA to any sheriff or other peace officer in the County of \_\_\_\_\_: PROOF by affidavit having been made before me by \_\_\_\_\_ that there is probable cause to believe that the property described herein may be found at the locations set forth herein and that it falls within the following grounds:

You are therefore COMMANDED to SEARCH (describe premises or area with legal description or particularity)

for the following property (describe with particularity):

and to SEIZE it if found and bring it forthwith before me, or this court, at the courthouse of this court, and also arrest the person in whose possession the same may be found.

Good cause having been shown by affidavit, you may do the following if it bears my initials:

\_\_\_\_\_  
You may serve this Warrant at any time of the day or night, according to SDCL 23-15-16.

Given under my hand and dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Magistrate

Judge of the \_\_\_\_\_ Court \_\_\_\_\_ Judicial Circuit



Case No. IN MAGISTRATE COURT } COUNTY OF \_\_\_\_\_ SOUTH DAKOTA  
IN CIRCUIT COURT

|                          |  |                       |  |                          |  |
|--------------------------|--|-----------------------|--|--------------------------|--|
| Def't. Address           |  | Hearing set for 19    |  | Continued to 19          |  |
|                          |  | Notice Mailed         |  | Delivered                |  |
|                          |  |                       |  | Returned undel.          |  |
| Phone Residence Business |  | Sheriff's Serv. Auth. |  | Served                   |  |
| Def'ts. Atty             |  |                       |  | Ret. Unserv'd            |  |
| Pltff                    |  | Default 19            |  | Notice of Def. Mailed 19 |  |
| Address                  |  | Judgment for \$ 19    |  | Costs \$ 19              |  |
|                          |  | X                     |  | Judge Magistrate         |  |
| Phone Residence Business |  | Remarks               |  |                          |  |
| Pltff. Atty              |  |                       |  |                          |  |
| Judgment Docketed 19     |  | Book                  |  | Page                     |  |
| Satisfied 19             |  |                       |  |                          |  |
| Signature X              |  |                       |  |                          |  |
| Dismissed 19             |  |                       |  |                          |  |

MEMORANDUM TO PLAINTIFF (SDCL 15-39-12)

To \_\_\_\_\_

The case of yourself vs. \_\_\_\_\_ will  
be heard on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock  
\_\_\_\_\_ m. at \_\_\_\_\_.

If your claim is supported by witnesses, books of account,  
or documents they should be produced at the hearing.

If your claim is an unliquidated claim the amount of damage  
must be proved at the hearing whether the defendant defends or not.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Clerk or Magistrate



NOTICE TO DEFENDANT

JUDICIAL CIRCUIT  
STATE OF SOUTH DAKOTA

County of.....

} ss.

IN MAGISTRATE COURT  
IN CIRCUIT COURT

..... Plaintiff vs. .... DEFENDANT

NOTICE BY MAIL TO DEFENDANT

TO .....

..... asks judgment in this court against you for .....

upon the following claim .....

The court will give a hearing upon this claim at .....

at ..... o'clock in the ..... on .....

If you deny the claim, in whole or in part, you must, not later than ..... personally or by attorney, state to the clerk, orally or in writing, your full and specific defense to said claim, and you must also appear at the hearing. Unless you do both, judgment may be entered against you by default. If your defense is supported by witnesses, account books, receipts or other documents, you should produce them at the hearing. Subpoenas for witnesses, if requested, will be issued by the clerk without fee.

If you admit the claim, but desire time to pay, you must, not later than ..... personally or by attorney, state to the clerk, orally or in writing, that you desire time to pay, and you must also appear at the hearing and show your reasons for desiring time to pay.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

(SEAL)

Magistrate

Clerk of the Circuit Court

by: .....

Deputy Clerk

Form #UCS011

STATE OF SOUTH DAKOTA )

COUNTY OF )

) ss.

IN MAGISTRATE COURT  
JUDICIAL CIRCUIT

..... Plaintiff, )

VS. )

..... Defendant.)

ORDER AND NOTICE TRANSFERRING  
ACTION TO CIRCUIT COURT

The Defendant herein having requested removal of this action to the Circuit Court, alleging that there are questions of fact requiring trial by Jury and that such trial is intended in good faith and having deposited with the Clerk of this Court the sum of ten dollars (\$10.00), and said Defendant having in all things complied with the provisions of SDCL 15-39-17;

Now, Therefore, It Is Ordered that the above-entitled action be and the same is hereby transferred to the Circuit Court for trial by Jury at the next regular Jury Term thereof; that a Complaint stating Plaintiff's cause of action shall be served upon the Defendant or his Attorney within \_\_\_\_ days after Plaintiff has received a copy of this Order, with the original of said Complaint to be filed with the Clerk of this Court; otherwise, the Defendant will be entitled to a dismissal of this action, without prejudice.

It Is Further Ordered that a copy of this Order shall be forthwith served personally or by mail upon the above-named Plaintiff.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

BY THE COURT:

\_\_\_\_\_  
Judge

ATTEST: \_\_\_\_\_

Clerk

Copy of this Order mailed to Plaintiff at address given this  
\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Clerk



UCS014

STATE OF SOUTH DAKOTA,

ss.

IN \_\_\_\_\_ COURT

County of \_\_\_\_\_

STATE OF SOUTH DAKOTA,

vs.

## SUBPOENA

THE STATE OF SOUTH DAKOTA TO \_\_\_\_\_

You are commanded to appear before the above named Court at the court room of said Court in the city of \_\_\_\_\_ in said County and State on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M., of that day, then and there to testify and give evidence as a witness in a criminal action prosecuted by the State of South Dakota against \_\_\_\_\_, Defendant,

and you are required also to bring with you the following books, papers or documents: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

WITNESS the Honorable \_\_\_\_\_

Judge



No. \_\_\_\_\_

**SUBPOENA**  
CRIMINAL

In \_\_\_\_\_ Court

STATE OF SOUTH DAKOTA

vs.

Filed this \_\_\_\_\_ day

of \_\_\_\_\_, 19 \_\_\_\_\_

STATE OF SOUTH DAKOTA

County of \_\_\_\_\_ } ss.

I, the undersigned \*(Certify and return)  
\*(being first duly sworn, on oath depose and  
say) that I am and was at the time of making  
the service as hereinafter set forth (an elector)  
\*( \_\_\_\_\_ Sheriff)  
of the county of \_\_\_\_\_ state

of South Dakota; that on the \_\_\_\_\_ day

of \_\_\_\_\_, 19 \_\_\_\_\_ at \_\_\_\_\_  
in said county I did then and there delivering to  
and leaving with \_\_\_\_\_ a true

copy thereof \*(at the dwelling house of said \_\_\_\_\_

\_\_\_\_\_ with said \_\_\_\_\_

who was then a member of \_\_\_\_\_ h \_\_\_\_\_ fam-  
ily (or of the family with which \_\_\_\_\_ he \_\_\_\_\_  
reside \_\_\_\_\_) over fourteen years of age, and  
that the service was so made for the reason that  
I could find the said \_\_\_\_\_

conveniently in said county); that I know the  
person \_\_\_\_\_

so served to be the person \_\_\_\_\_ described in  
the within subpoena

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

(Name of office)

Fees:

Service ..... \$ \_\_\_\_\_

Copies ..... \$ \_\_\_\_\_

Mileage ..... \$ \_\_\_\_\_

Total ..... \$ \_\_\_\_\_

Stamps if not applicable

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Procedures Manual for Lay Magistrates  
January, 1979



STATE OF SOUTH DAKOTA, }  
County of ..... } ss. .... Judicial Circuit

CIVIL SUBPOENA

THE STATE OF SOUTH DAKOTA

To, .....

You are hereby commanded to be and appear before our said ..... Judicial Circuit Court  
within and for the County of ..... in the State of South Dakota, at the Court Room  
in the City of ..... in said County and State, on the .....  
day of ..... 19....., at ..... o'clock ..... M., of that day, then and there to testify on  
the part of the ..... in a case now pending in said  
Court, between ..... Plaintiff ..... and  
..... Defendant .....; and you are  
required also to bring with you the following books, papers or documents .

WITNESS the Honorable ..... Judge of said Circuit Court,  
and my hand and the seal of said Court, this ..... day of ..... 19.....  
..... or ..... Clerk

Attorney of Record for the .....  
in the above entitled matter.

UJS-015



CIVIL SUBPOENA

vs.

STATE OF SOUTH DAKOTA,  
County of \_\_\_\_\_ } ss.

I hereby certify that the within Subpoena  
came to my hands on the \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_, and  
that I served the same on the within named

on the \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_ at \_\_\_\_\_ in  
the County of \_\_\_\_\_ S. D.,

by showing it to him, each of them, and de-  
livering a true copy thereof to him, each of  
them, personally.

Sheriff \_\_\_\_\_ County  
By \_\_\_\_\_ Deputy

Returned and filed in my office this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Clerk

Service of Subpoena . . . \$ \_\_\_\_\_  
Copy . . . . . \$ \_\_\_\_\_  
Mileage . . . . . \$ \_\_\_\_\_

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Procedures Manual for Lay Magistrates  
January, 1979



STATE OF SOUTH DAKOTA)  
COUNTY OF \_\_\_\_\_ )SS.

IN MAGISTRATE COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

\_\_\_\_\_, )  
Plaintiff, )  
VS. )  
\_\_\_\_\_, )  
Defendant. )

WARRANT OF ATTACHMENT  
FOR CONTEMPT

THE STATE OF SOUTH DAKOTA TO THE SHERIFF OR OTHER PEACE  
OFFICER OF \_\_\_\_\_ COUNTY:

YOU ARE COMMANDED forthwith to attach \_\_\_\_\_ and  
have him/her appear before this court on \_\_\_\_\_,  
19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m.. then and there to show cause why  
he/she should not be punished for contempt of court because of his/her  
disobedience of a subpoena of this court duly served on him/her,  
summoning him/her to appear in this court as a witness on  
\_\_\_\_\_, 19\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate



STATE OF SOUTH DAKOTA)  
COUNTY OF \_\_\_\_\_ )SS.

IN MAGISTRATE COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

\_\_\_\_\_,  
Plaintiff, )  
VS. )  
\_\_\_\_\_,  
Defendant. )

ORDER OF CONTEMPT

THE STATE OF SOUTH DAKOTA TO THE SHERIFF OR OTHER PEACE OFFICER OF THE COUNTY OF:

WHEREAS, on \_\_\_\_\_, 19\_\_\_\_, and during the hearing of the above-entitled action and in the immediate view and presence of the court, and while the court was in session, \_\_\_\_\_ (refused to be duly sworn as a witness,) (was duly sworn as a witness, and was being examined as a witness, and \_\_\_\_\_, attorney for \_\_\_\_\_, in the action, asked the witness this question \_\_\_\_\_, which question was and is material and relevant under the issues in the action, and the witness thereupon declined to answer the question, notwithstanding he/she was then and there ordered by the court to answer the same, and he/she still refuses to answer the question,)

NOW, THEREFORE, you are required and commanded to forthwith attach \_\_\_\_\_ and commit him/her to the county jail of \_\_\_\_\_ County and detain him/her there as a punishment for his/her contempt until he/she consents to answer such question or be discharged according to law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate

STATE OF SOUTH DAKOTA)  
COUNTY OF \_\_\_\_\_ )SS.

IN MAGISTRATE COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

\_\_\_\_\_,  
Plaintiff, )  
VS. )  
\_\_\_\_\_,  
Defendant. )

ORDER TO  
SHOW CAUSE

Upon reading and filing the annexed affidavit of \_\_\_\_\_, from which it appears that \_\_\_\_\_ was served on \_\_\_\_\_, 19\_\_\_\_, with a subpoena, issued by this court on \_\_\_\_\_, 19\_\_\_\_, commanding him/her to appear in the court on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.m., as a witness on behalf of \_\_\_\_\_, and that \_\_\_\_\_ has not obeyed the subpoena and did not appear as a witness at the trial on that date,

It is ordered that \_\_\_\_\_ appear before this court at \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.m., or as soon thereafter as he/she or counsel can be heard, then and there to show cause why he/she should not be adjudged guilty of, and punished for, contempt of court because of his/her disobedience of the subpoena.

It is further ordered that a copy of the affidavit of \_\_\_\_\_ be attached to this order and that both be served on \_\_\_\_\_ at least five days before the time fixed herein for showing cause.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate



WARRANT TO SUMMON JURORS

STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ ) ss

TO THE SHERIFF OR ANY PEACE OFFICER OF SAID COUNTY:

In the name of the State of South Dakota, you are hereby required to summon forthwith three electors having the qualifications of jurors of your county to appear before me at (name of place) at (day and hour), then and there to hold an inquest on the dead body of \_\_\_\_\_, there lying, and find by what means he died.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Magistrate of \_\_\_\_\_ County

SUBPOENA TO WITNESS FOR APPEARANCE BEFORE  
CORONER'S INQUEST

STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ ) ss

TO THE SHERIFF OR ANY PEACE OFFICER OF SAID COUNTY:

You are hereby commanded to summon forthwith \_\_\_\_\_ to appear at a coroner's inquest, to be held at \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M., to testify concerning the matter of the death of \_\_\_\_\_.

You are also commanded to make a return thereof, showing how you have executed the same.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Magistrate of \_\_\_\_\_ County

(. . .)-Strike if not applicable

SUBPOENA - FOR PHYSICIAN TO MAKE EXAMINATION

STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ ) ss

TO: \_\_\_\_\_

You are hereby commanded to be and appear before the undersigned at \_\_\_\_\_ on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M., to inspect the body of \_\_\_\_\_, upon whose body an inquest is being held, and to give a professional opinion as to the cause of the death of said person.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Magistrate of \_\_\_\_\_ County

OATH BY CORONER'S JURY

You do solemnly (swear) (affirm) that you will diligently inquire, and true presentment make, when, how, and by what means the person whose body here lies dead came to his death, according to your knowledge and the evidence given you.

OATH BY WITNESS BEFORE CORONER'S INQUEST

You do solemnly (swear) (affirm) that the testimony which you shall give to this inquest concerning the death of the person here lying dead shall be the truth, the whole truth, and nothing but the truth(.) (so help you God.) (This you do under the pains and penalties of perjury.)

(. . .)-Strike if not applicable



VERDICT OF CORONER'S JURY

STATE OF SOUTH DAKOTA )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

In inquisition held at \_\_\_\_\_ in said county and state, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before \_\_\_\_\_, magistrate of said county, upon the body of \_\_\_\_\_ there lying dead, by the jurors whose names are hereto subscribed. The jurors upon their oaths do say (here state when, how, by what person, means, weapon, or accident, he came to his death, and whether feloniously).

In testimony whereof the said jurors have hereunto set their hands, the day and year aforesaid.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Magistrate

WARRANT OF ARREST

STATE OF SOUTH DAKOTA )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

TO THE SHERIFF OR ANY PEACE OFFICER OF SAID COUNTY:

An inquisition having been this day found by a coroner's jury before me stating that \_\_\_\_\_ has come to his death by the act of \_\_\_\_\_, by criminal means, you are therefore commanded forthwith to arrest the above-named \_\_\_\_\_ and bring him before me or the nearest or most accessible magistrate in the county.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate

CERTIFICATE - PHYSICIAN'S SERVICES

STATE OF SOUTH DAKOTA )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I, a committing magistrate of the County of \_\_\_\_\_, State of South Dakota, (held an inquest upon the body of \_\_\_\_\_;) (that I) caused \_\_\_\_\_ a physician residing at \_\_\_\_\_ (to be subpoenaed as a witness) to inspect the body of decedent and to give his professional opinion as to the cause of death; that he appeared at the inquest and inspected the body and gave his professional opinion as to the cause of death; (that he was detained by me at the inquest for \_\_\_\_\_ hours;) and that I consider his services were of the value of \$\_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate

CERTIFICATE - WITNESS FEES

STATE OF SOUTH DAKOTA )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

I hereby certify that \_\_\_\_\_ was summoned and served as a witness at the inquest in the case of \_\_\_\_\_ called for hearing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. Witness served for a total of \_\_\_\_\_ days, thereby entitling him to a fee of \$\_\_\_\_\_, and traveled \_\_\_\_\_ miles, thereby entitling him to mileage in the sum of \$\_\_\_\_\_, and thus entitling him to the total sum of \$\_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate

(. . .)-Strike if not applicable



CERTIFICATE - JUROR'S FEES

STATE OF SOUTH DAKOTA )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

I hereby certify that \_\_\_\_\_ was summoned and served as a juror at the inquest in the case of \_\_\_\_\_ called for hearing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. Juror served for a total of \_\_\_\_\_ days, thereby entitling him to a fee of \$\_\_\_\_\_, and traveled \_\_\_\_\_ miles, thereby entitling him to mileage in the sum of \$\_\_\_\_\_, and thus entitling him to the total sum of \$\_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate

STATE OF SOUTH DAKOTA )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

IN MAGISTRATE COURT

\_\_\_\_\_ JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA )  
 ex rel. \_\_\_\_\_ , )  
 Plaintiff, )  
 vs. )  
 \_\_\_\_\_ , )  
 Defendant. )

COMPLAINT

\_\_\_\_\_ being first duly sworn on oath makes complaint as follows:

1. That complainant now resides in the County of \_\_\_\_\_, State of \_\_\_\_\_;

2. That complainant is the (natural mother) (guardian) of a \_\_\_\_\_ (male) (female) child born out of wedlock on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_;

3. That defendant is the father of said child and resides in the County of \_\_\_\_\_, State of South Dakota; and

4. That said child is now alive and has not been legitimated, adopted or emancipated.

WHEREFORE, complainant prays that said \_\_\_\_\_ be forthwith apprehended and dealt with according to law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Complainant

I, \_\_\_\_\_, the complainant above named, being duly sworn, say as follows:

I have read the foregoing complaint and know the contents thereof and the same are true of my own knowledge.

\_\_\_\_\_  
Complainant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(SEAL)

(. . .)-Strike if not applicable

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_



STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ ) ss. IN MAGISTRATE COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA )  
ex rel. \_\_\_\_\_ , )  
Plaintiff, )  
vs. )  
\_\_\_\_\_ , )  
Defendant. )

SUMMONS

THE STATE OF SOUTH DAKOTA TO THE ABOVE-NAMED DEFENDANT,  
GREETINGS:

You are hereby summoned and required to appear before this court  
on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m.  
to answer the complaint of \_\_\_\_\_, which is herewith  
served upon you. The court shall at the place and time above set  
forth determine if there is probable cause to hold you to answer the  
allegations contained in said complaint.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate

STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ ) ss. IN MAGISTRATE COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA )  
ex rel. \_\_\_\_\_ , )  
Plaintiff, )  
vs. )  
\_\_\_\_\_ , )  
Defendant. )

WARRANT

TO ANY SHERIFF OR OTHER PEACE OFFICER AUTHORIZED TO EXECUTE  
WARRANTS:

Complaint on oath having been made before me by \_\_\_\_\_  
that she is the mother of a child born out of wedlock and charging  
\_\_\_\_\_, the defendant, with being the father of said child;

YOU ARE THEREFORE COMMANDED forthwith to arrest the said  
\_\_\_\_\_ and bring him before me at \_\_\_\_\_ in the City of  
\_\_\_\_\_, County of \_\_\_\_\_, State of South Dakota.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate



STATE OF SOUTH DAKOTA )  
COUNTY OF \_\_\_\_\_ ) ss.

IN MAGISTRATE COURT  
\_\_\_\_\_ JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA )  
ex rel. \_\_\_\_\_ )  
Plaintiff, )  
vs. \_\_\_\_\_ )  
Defendant. )

MAGISTRATE'S RETURN

TO THE CLERK OF COURT OF THE ABOVE COUNTY:

1. In compliance with the statutes in such case made and provided, I herewith make return to you of all proceedings had before me in the above-captioned action, together with all papers in said cause, which are herewith attached.

2. Pursuant to the attached complaint charging defendant with paternity of a child born out of wedlock, the defendant (appeared) (failed to appear) before me by (summons) (warrant) on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at which time a preliminary examination was held, and upon finding of probable cause the defendant was bound over to circuit court to appear for proceedings in that court on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

3. Bond has been set in the amount of \$\_\_\_\_\_ and defendant (was admitted to bail as per the attached documents) (remains in custody).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate

(. . .)-Strike if not applicable

CERTIFICATES OF ACKNOWLEDGMENT

When acknowledgment by individual (SDCL 18-5-8):

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name \_\_\_\_\_ subscribed to the within instrument, and acknowledged that \_\_\_\_\_ he \_\_\_\_\_ executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
(Name typed, stamped or printed)

\_\_\_\_\_  
Title of officer

(SEAL)

\_\_\_\_\_  
My commission expires

When acknowledgment by corporation (SDCL 18-5-9):

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged \_\_\_\_\_ self to be the \_\_\_\_\_ of \_\_\_\_\_, a corporation, and that he/she, as such being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as \_\_\_\_\_.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
(Name typed, stamped or printed)

\_\_\_\_\_  
Title of Officer

(SEAL)

\_\_\_\_\_  
My commission expires



When acknowledgment by attorney (SDCL 18-5-10):

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me,  
\_\_\_\_\_, the undersigned officer, personally appeared  
\_\_\_\_\_, known to me or satisfactorily proven to  
be the person whose name is subscribed as attorney in fact for  
\_\_\_\_\_, and acknowledged that he/she executed the  
same as the act of his/her principal for the purposes therein  
contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
(Name typed, stamped or printed)

\_\_\_\_\_  
Title of Officer

(SEAL)

\_\_\_\_\_  
My commission expires

When acknowledgment by public official (SDCL 18-5-11):

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me,  
\_\_\_\_\_, the undersigned officer, personally appeared  
\_\_\_\_\_, of the state, county or city as the case  
may be of \_\_\_\_\_, known to me or satisfactorily  
proven to be the person described in the foregoing instrument,  
and acknowledged that he/she executed the same in the capacity  
therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
(Name typed, stamped or printed)

\_\_\_\_\_  
Title of Officer

(SEAL)

\_\_\_\_\_  
My commission expires

When acknowledgment by partner (SDCL 18-5-12):

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me,  
\_\_\_\_\_, the undersigned officer, personally appeared  
\_\_\_\_\_, who acknowledged himself/herself to be  
one of the partners of \_\_\_\_\_, a partnership, and  
that he/she, as such partner, being authorized so to do, executed  
the foregoing instrument for the purposes therein contained by  
signing the name of the partnership by himself/herself as a  
partner.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
(Name typed, stamped or printed)

\_\_\_\_\_  
Title of Officer

(SEAL)

\_\_\_\_\_  
My commission expires



OATHS AND AFFIRMATIONS

(Oath) (Affirmation) Administered to Witnesses

"You do solemnly (swear) (affirm) that the evidence you shall give relative to the matter in difference now in hearing between \_\_\_\_\_, plaintiff, and \_\_\_\_\_, defendant, shall be the truth, the whole truth and nothing but the truth(,)(.) (so help you God.) (This you do under the pains and penalties of perjury.)" SDCL 19-3-5 and SDCL 19-3-6.

Oath (Affirmation) Administered to Interpreter If Witness Does Not Speak English

"You do solemnly (swear) (affirm) that you will justly, truly, and impartially interpret to (name of witness) the (oath) (affirmation) about to be administered to him/her; and the questions which may be asked him/her and the answers that he/she shall give to such questions, relative to the cause now under consideration before this (court) (officer)(,)(.) (so help you God.) (This you do under the pains and penalties of perjury.)" SDCL 19-3-9.

Oath (Affirmation) Administered to Interpreter for a Deaf or Mute Person

"You do solemnly (swear) (affirm) that you will justly, truly, and impartially interpret in an understandable manner to (name of deaf or mute person) and that you will repeat the statements of (deaf or mute person) in the English language to the best of your skill and judgment(,)(.) (so help you God.) (This you do under the pains and penalties of perjury.)" SDCL 19-3-13.

(. . .)-Strike if not applicable

STATE OF SOUTH DAKOTA )

IN MAGISTRATE COURT

COUNTY OF \_\_\_\_\_ ) SS

\_\_\_\_\_ JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, )  
Plaintiff, )

-vs- )

MAGISTRATE'S RETURN

\_\_\_\_\_, )  
Defendant. )

TO THE CLERK OF COURT OF THE ABOVE COUNTY:

1. In compliance with the statutes in such case made and provided, I herewith make return to you of all proceedings had before me in the above-captioned action, together with all papers in said cause, which are herewith attached.

2. Pursuant to the attached (complaint) (preliminary information) filed with me charging the defendant \_\_\_\_\_ with the offense of \_\_\_\_\_, the defendant appeared before me on \_\_\_\_\_, 19\_\_\_\_.

3. The defendant was arraigned, informed of the nature of the accusation against him/her, advised of the presumption of innocence and his/her right to counsel, to a speedy public trial, to have compulsory process issued, to confront witnesses, against self-incrimination, and to have the case transferred to circuit court (and to have a preliminary hearing).

4. The defendant pled not guilty and (waived preliminary hearing) (requested a preliminary hearing which was held on \_\_\_\_\_, 19\_\_\_\_).

5. Defendant was (transferred) (bound over) to circuit court and directed to appear for proceedings in that court on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.

6. Bond has been set in the amount of \$\_\_\_\_\_ and defendant (was admitted to bail as per the attached documents) (remains in custody).

Dated \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Magistrate

(. . .)-Strike if not applicable



SCHEDULES  
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IN CIRCUIT COURT  
JUDICIAL CIRCUIT  
STATE OF SOUTH DAKOTA

\*\*\*\*\*

Order promulgating a schedule of fines and bonds for Class 2 misdemeanors and authorizing lay magistrates to fix bonds in other offenses in the counties of.

\*\*\*\*\*

I

BOND SCHEDULE

Comes now the Presiding Judge of the \_\_\_\_\_ Judicial Circuit and makes the following order, superceding all previous such orders, and authorized magistrates to fix bond or take personal recognizance of persons charged with offenses as follows:

A

FELONIES

1. Murder, first degree manslaughter and kidnapping are to be brought before a Circuit Judge or Law Trained Magistrate for the first appearance by special arrangement.
2. Second degree manslaughter - - \$250.00 to \$5,000.00
3. Grand Larceny - - \$250.00 to \$5,000.00
4. Burglary - - \$250.00 to \$5,000.00
5. Bad Checks - - \$250.00 to \$5,000.00
6. D W I (third offense) - - \$500.00 to \$2,500.00
7. Robbery - - \$500.00 to \$10,000.00
8. Molestation - - \$500.00 to \$10,000.00
9. Rape - - \$500.00 to \$10,000.00
10. Forgery - - \$250.00 to \$5,000.00
11. All other felonies - - \$250.00 to \$10,000.00

B

CLASS 2 MISDEMEANORS AND ORDINANCES  
(\$100.00 fine and/or 30 day maximum)

Schedule II following, sets forth the bond and "mail in" schedules for



use where applicable.

If not listed on Schedule II the bond shall not exceed \$100.00 to be determined in the sound discretion of the magistrate.

C

CLASS 1 MISDEMEANORS AND ORDINANCES

1. D W I (first and second offense) - - \$225.00 to \$500.00
2. Reckless Driving - - \$150.00 to \$200.00
3. Bad Checks - - \$100.00 to \$500.00
4. All other Class 1 misdemeanors - - \$75.00 to \$1,000.00

II

FINE, BOND AND MAIL-IN SCHEDULE

A

TRAFFIC OFFENSES

| Statute   | Offense  | Fine or Bond | LEOTF  | Total   |
|-----------|--|--------------|--------|---------|
| 32-3-12   | Operation of vehicle without certificate   | \$10.00      | \$2.00 | \$12.00 |
| 32-5-49.1 | Operation of nonresident harvest vehicle without compensation certificate                        | \$25.00      | \$2.00 | \$27.00 |
| 32-5-98   | Operation of vehicle without license plates or without plates conspicuously displayed            | \$25.00      | \$2.00 | \$27.00 |
| 32-5-103  | Substitution of license plates   | \$75.00      | \$3.75 | \$78.75 |
| 32-12-22  | No valid driver's license  | \$25.00      | \$2.00 | \$27.00 |
| 32-15A    | Equipment violations and failure to comply with written warning                                  | \$25.00      | \$2.00 | \$27.00 |
| 32-17-3   | Parking light violations   | \$15.00      | \$2.00 | \$17.00 |
| 32-17-4   | Operation vehicle without headlights   | \$25.00      | \$2.00 | \$27.00 |
| 32-21-2   | Motor vehicle safety inspection  | \$25.00      | \$2.00 | \$27.00 |
| 32-17-5&6 | Improper construction and adjustment of headlights   | \$10.00      | \$2.00 | \$12.00 |
| 32-17-7   | Failure to dim headlights  | \$25.00      | \$2.00 | \$27.00 |
| 32-17-10  | Improper use of red or amber rotary beacon light by tow truck                                    | \$10.00      | \$2.00 | \$12.00 |
| 32-17-16  | Clearance and identification lamps required by vehicles transporting passengers for compensation | \$25.00      | \$2.00 | \$27.00 |

|                      |   |         |              |         |
|----------------------|---|---------|--------------|---------|
| 32-17-19             | Improper aiming and adjustment of spot lamps  | \$10.00 | \$2.00       | \$12.00 |
| 32-17-20             | Improper adjustment of any lamps other than head lamps or spot lamps  | \$10.00 | \$2.00       | \$12.00 |
| 32-17-27             | Lights on parked vehicles   | \$25.00 | \$2.00       | \$27.00 |
| 32-17-42             | Invalid installation or use of blue light by firemen  | \$10.00 | \$2.00       | \$12.00 |
| 32-22                | Generally. Weight, size and load restriction. Only two violations within this chapter are petty offenses, viz., 32-22-11 - operating vehicles in saddlemount without permit and 32-22-48 - crossing bridge with overweight vehicle. | \$50.00 | \$2.50       | \$52.50 |
| 32-24-2              | Coasting downhill in neutral or with clutch out   | \$15.00 | \$2.00       | \$17.00 |
| 32-25                | Speeding, up to 25 MPH over legal limit   |         | MPH x \$2.00 |         |
| (see schedule below) |   |         |              |         |

| MPH Over Legal Limit                     | Fine Assessed for MPH Over                             | LEOTF                                     | Total Fine Plus LEOTF             |
|--|--|---|-----------------------------------|
| 1-20                                     | MPH x \$2.00   | \$2.00                                    | MPH over x \$2.00 plus \$2.00     |
| 21                                       | \$42.00  | \$2.10                                    | \$44.10                           |
| 22                                       | \$44.00  | \$2.20                                    | \$46.20                           |
| 23                                       | \$46.00  | \$2.30                                    | \$48.30                           |
| 24                                       | \$48.00  | \$2.40                                    | \$50.40                           |
| 25                                       | \$50.00  | \$2.50                                    | \$52.50                           |
| Speeding over 25 m.p.h. over legal limit |  |   | MPH x \$3.00 (see schedule below) |
| 26                                       | \$ 78.00   | \$3.90                                    | \$ 81.90                          |
| 27                                       | \$ 81.00   | \$4.05                                    | \$ 85.05                          |
| 28                                       | \$ 84.00   | \$4.20                                    | \$ 88.20                          |
| 29                                       | \$ 87.00   | \$4.35                                    | \$ 91.35                          |
| 30                                       | \$ 90.00   | \$4.50                                    | \$ 94.50                          |
| 31                                       | \$ 93.00   | \$4.65                                    | \$ 97.65                          |
| 32 & Over                                | \$ 95.00   | \$5.00                                    | \$100.00                          |
| 32-25-5                                  | Failure to observe minimum speed on interstate highway | \$2/mile below 1-20 mph below \$2 minimum | over 21 mph below 5%              |
| 32-25-3                                  | Overdriving road conditions                            | \$25.00                                   | \$2.00 \$27.00                    |
| 32-26-1                                  | Driving on wrong side of road                          | \$25.00                                   | \$2.00 \$27.00                    |
| 32-26-6                                  | Illegal lane changing                                  | \$20.00                                   | \$2.00 \$22.00                    |
| 32-26-9                                  | Illegal barrier or median crossing                     | \$25.00                                   | \$2.00 \$27.00                    |
| 32-26-17 thru 20                         | Illegal turning  | \$15.00                                   | \$2.00 \$17.00                    |
| 32-26-13 thru 16                         | Violation of right of way                              | \$25.00                                   | \$2.00 \$27.00                    |



|             |   |         |        |         |
|-------------|---|---------|--------|---------|
| 32-26-25    | Illegal U-turn  | \$25.00 | \$2.00 | \$27.00 |
| 32-26-26    | Illegal following, overtaking and passing   | \$25.00 | \$2.00 | \$27.00 |
| 32-29       | Traffic sign or signal violation  | \$25.00 | \$2.00 | \$27.00 |
| 32-29-5     | Railroad crossing stop  | \$25.00 | \$2.00 | \$27.00 |
| 32-32-6     | Failure to stop for school patrol or school bus while loading or unloading                                  | \$75.00 | \$3.75 | \$78.75 |
| 32-34-7     | Failure to immediately report accident-minor damage-etc.  | \$25.00 | \$2.00 | \$27.00 |
| 32-34-6     | Hit and run property damage   | \$50.00 | \$2.50 | \$52.50 |
| 32-15-19    | Improperly equipped vehicles on highway   | \$25.00 | \$2.00 | \$27.00 |
| 32-30-20    | Unsafe backing  | \$25.00 | \$2.00 | \$27.00 |
| 32-30-21    | Backing on controlled access highway  | \$25.00 | \$2.00 | \$27.00 |
| 32-18-1     | Brakes required   | \$25.00 | \$2.00 | \$27.00 |
| 32-19-9     | No safety chain   | \$25.00 | \$2.00 | \$27.00 |
| 32-27-1     | Failure to yield to pedestrians at proper crossing  | \$25.00 | \$2.00 | \$27.00 |
| 32-27-2     | Failure of driver to yield at controlled intersection to pedestrian who has started to cross on "go" signal | \$25.00 | \$2.00 | \$27.00 |
| 32-29-4     | Failure to stop for railway grade crossing signal or sign   | \$25.00 | \$2.00 | \$27.00 |
| 32-17-28&29 | Flares required and use   | \$25.00 | \$2.00 | \$27.00 |
| 32-34-3.1   | Failure to report accident to police authority when persons entitled to information disabled                | \$25.00 | \$2.00 | \$27.00 |
| 32-34-4     | Failure to stop and report after accident with unattended vehicle   | \$50.00 | \$2.50 | \$52.50 |
| 32-34-9     | Failure of occupant to report accident when driver unable to do so  | \$25.00 | \$2.00 | \$27.00 |

# B

## PARKING OFFENSES

|           |   |         |        |         |
|-----------|---|---------|--------|---------|
| 32-30-1   | Parking on highway  | \$25.00 | \$2.00 | \$27.00 |
| 32-30-2   | Standing or parking, remaining space or unobstructed view | \$25.00 | \$2.00 | \$27.00 |
| 32-30-2.1 | Position for parking on two way road                      | \$25.00 | \$2.00 | \$27.00 |
| 32-30-2.2 | Position for parking on one way road                      | \$25.00 | \$2.00 | \$27.00 |
| 32-30-20  | Unsafe backing  | \$25.00 | \$2.00 | \$27.00 |
| 32-30-21  | Backing on controlled-access highway                      | \$25.00 | \$2.00 | \$27.00 |

# C

## MOTOR CARRIER OFFENSES

|          |   |         |        |         |
|----------|---|---------|--------|---------|
| ** 32-9  | Compensation and ton mileage violations motor carrier failure to have compensation or ton mileage shall have a bond or fine in the amount of  | \$50.00 | \$2.50 | \$52.50 |
| 49-28-33 | Failure of interstate motor carriers to receive authority or register Public Utilities Commission Rule No. 26 and 27-will be Rules Concerning Motor Carriers with ICC Authority No. 20:10:03 and Rules Concerning Motor Carriers with Exempt ICC Authority No. 20:10:04 | \$50.00 | \$2.50 | \$52.50 |
| 49-28-33 | Failure of intrastate carriers display Public Utilities Commission numbers  | \$50.00 | \$2.50 | \$52.50 |
| 49-28-10 | Public Utilities Commission Rule No. 7-will be General Motor Carrier Rule No. 20:10:02:08   | \$50.00 | \$2.50 | \$52.50 |
| 49-28-21 | Failure to comply with authority granted or laws on commodities to be hauled. Public Utilities Commission Rule No. 1-will be General Motor Carrier Rule No. 20:10:02:01   | \$50.00 | \$2.50 | \$52.50 |
| 49-28-33 | Failure to have proper bill of lading. Public Utilities Commission Rule No. 19-will be General Motor Carrier Rules No. 20:10:02:21 and 20:10:02:22  | \$50.00 | \$2.50 | \$52.50 |
| 49-28-33 | Failure to follow Motor Carrier leasing regulations. Public Utilities Commission Rule No. 20-will be General Motor Carrier Rules No. 20:10:02:23 and 20:10:02:24  | \$50.00 | \$2.50 | \$52.50 |
| 49-28-33 | Failure to follow safety regulations. Public Utilities Commission Rule No. 24-will be General Motor Carrier Rule No. 20:10:02:27  | \$50.00 | \$2.50 | \$52.50 |
| 49-28-61 | Motor carrier refuses to stop and submit his vehicle to an inspector  | \$50.00 | \$2.50 | \$52.50 |
| 49-45-1  | Failure to register and/or comply with grain buyers' regulations  | \$50.00 | \$2.50 | \$52.50 |

\*\*See specifically §§32-9-6, 7, 14, 23, 23.3 and 45. Violation of SDCL 23-9-23.5 is a petty offense.



32-25-7 Motor carrier speeding-Frost Law  
40 m.p.h. to 70 m.p.h. \$25.00 plus \$2/mile from  
40 m.p.h. to 70 m.p.h.

70 m.p.h. and up \$50.00 plus \$50.00 not to  
exceed \$100.00 (see schedule  
below)

| MPH       | Flat<br>Fine | MPH Over<br>x \$2.00 | Total<br>Fine | LEOTF  | Total Fine<br>PLUS LEOTF |
|-----------|--------------|----------------------|---------------|--------|--------------------------|
| 40        | \$25.00      | \$ -0-               | \$ 25.00      | \$2.00 | \$ 27.00                 |
| 41        | \$25.00      | \$ 2.00              | \$ 27.00      | \$2.00 | \$ 29.00                 |
| 42        | \$25.00      | \$ 4.00              | \$ 29.00      | \$2.00 | \$ 31.00                 |
| 43        | \$25.00      | \$ 6.00              | \$ 31.00      | \$2.00 | \$ 33.00                 |
| 44        | \$25.00      | \$ 8.00              | \$ 33.00      | \$2.00 | \$ 35.00                 |
| 45        | \$25.00      | \$10.00              | \$ 35.00      | \$2.00 | \$ 37.00                 |
| 46        | \$25.00      | \$12.00              | \$ 37.00      | \$2.00 | \$ 39.00                 |
| 47        | \$25.00      | \$14.00              | \$ 39.00      | \$2.00 | \$ 41.00                 |
| 48        | \$25.00      | \$16.00              | \$ 41.00      | \$2.05 | \$ 43.05                 |
| 49        | \$25.00      | \$18.00              | \$ 43.00      | \$2.15 | \$ 45.15                 |
| 50        | \$25.00      | \$20.00              | \$ 45.00      | \$2.25 | \$ 47.25                 |
| 51        | \$25.00      | \$22.00              | \$ 47.00      | \$2.35 | \$ 49.35                 |
| 52        | \$25.00      | \$24.00              | \$ 49.00      | \$2.45 | \$ 51.45                 |
| 53        | \$25.00      | \$26.00              | \$ 51.00      | \$2.55 | \$ 53.55                 |
| 54        | \$25.00      | \$28.00              | \$ 53.00      | \$2.65 | \$ 55.65                 |
| 55        | \$25.00      | \$30.00              | \$ 55.00      | \$2.75 | \$ 57.75                 |
| 56        | \$25.00      | \$32.00              | \$ 57.00      | \$2.85 | \$ 59.85                 |
| 57        | \$25.00      | \$34.00              | \$ 59.00      | \$2.95 | \$ 61.95                 |
| 58        | \$25.00      | \$36.00              | \$ 61.00      | \$3.05 | \$ 64.05                 |
| 59        | \$25.00      | \$38.00              | \$ 63.00      | \$3.15 | \$ 66.15                 |
| 60        | \$25.00      | \$40.00              | \$ 65.00      | \$3.25 | \$ 68.25                 |
| 61        | \$25.00      | \$42.00              | \$ 67.00      | \$3.35 | \$ 70.35                 |
| 62        | \$25.00      | \$44.00              | \$ 69.00      | \$3.45 | \$ 72.45                 |
| 63        | \$25.00      | \$46.00              | \$ 71.00      | \$3.55 | \$ 74.55                 |
| 64        | \$25.00      | \$48.00              | \$ 73.00      | \$3.65 | \$ 76.65                 |
| 65        | \$25.00      | \$50.00              | \$ 75.00      | \$3.75 | \$ 78.75                 |
| 66        | \$25.00      | \$52.00              | \$ 77.00      | \$3.85 | \$ 80.85                 |
| 67        | \$25.00      | \$54.00              | \$ 79.00      | \$3.95 | \$ 82.95                 |
| 68        | \$25.00      | \$56.00              | \$ 81.00      | \$4.05 | \$ 85.05                 |
| 69        | \$25.00      | \$58.00              | \$ 83.00      | \$4.15 | \$ 87.15                 |
| 70 and Up | \$45.00      | \$50.00              | \$ 95.00      | \$5.00 | \$100.00                 |

(all cases)

D

#### HUNTING OFFENSES

|         |   |          |   |          |
|---------|---|----------|---|----------|
| 41-6-1  | Without license, non-resident               | \$100.00 | 0 | \$100.00 |
| 41-11-5 | During closed season, non-resident          | \$100.00 | 0 | \$100.00 |
| 41-6-18 | Unlawful tagging, failure to tag small game | \$ 50.00 | 0 | \$ 50.00 |

|           |  |          |   |          |
|-----------|--|----------|---|----------|
| 41-14-32  | Unlawful possession/transportation/insufficient plumage, small game          | \$ 25.00 | 0 | \$ 25.00 |
| 41-8-34   | With artificial light  | \$ 50.00 | 0 | \$ 50.00 |
| 41-11-5   | Over limit of small game and game birds hunting before or after legal hour-- |          |   |          |
|           | less than 30 minutes   | \$ 25.00 | 0 | \$ 25.00 |
|           | more than 30 minutes   | \$ 40.00 | 0 | \$ 40.00 |
| 41-9-1.1  | Hunting within 660 feet of occupied farm buildings                           | \$ 50.00 | 0 | \$ 50.00 |
| 41-9-1    | Trespassing  | \$ 25.00 | 0 | \$ 25.00 |
| 41-1-4    | Wanton waste of game   | \$ 50.00 | 0 | \$ 50.00 |
| 41-8-37   | Shooting from motor vehicle  | \$ 25.00 | 0 | \$ 25.00 |
| 41-8-30   | Exceeding legal limit of party group hunters                                 | \$ 25.00 | 0 | \$ 25.00 |
| 41-9-2    | Hunting in prohibited portions of fire protection district                   | \$ 25.00 | 0 | \$ 25.00 |
| 41-9-5    | Damaging, removing or destroying posted notices                              | \$ 25.00 | 0 | \$ 25.00 |
| 41-8-31   | Illegal hunting method   | \$ 25.00 | 0 | \$ 25.00 |
| 32-20A-12 | Hunting from snowmobile  | \$ 25.00 | 0 | \$ 25.00 |
| 41-6-1    | w/o license-resident   | \$ 35.00 | 0 | \$ 35.00 |
| 41-14-1   | Unlawful possession tagging big game   | \$ 50.00 | 0 | \$ 50.00 |
| 32-20A-11 | Carrying an uncased gun on snowmobile  | \$ 25.00 | 0 | \$ 25.00 |

E

#### FISHING OFFENSES

|         |                                    |            |   |          |
|---------|------------------------------------|------------|---|----------|
| 41-6-1  | Without license-resident           | \$ 35.00   | 0 | \$ 35.00 |
| 41-6-1  | Without license-non-resident       | \$ 50.00   | 0 | \$ 50.00 |
| 41-12-1 | Unlawful transportation/possession | \$ 50.00   | 0 | \$ 50.00 |
| 41-12-1 | During closed season               | \$ 50.00   | 0 | \$ 50.00 |
| 41-12-1 | Over limit of fish:                | \$ 2/each  |   |          |
|         | a. pan fish                        |            |   |          |
|         | b. other species of fish           | \$ 15.00   |   |          |
| 41-12-6 | Too many lines                     | \$ 25/each |   |          |
| 41-12-7 | Unattended lines                   | \$ 10/each |   |          |

F

#### VEHICLE OFFENSES ON PUBLIC LAND OFF ROADS

|            |  |          |        |          |
|------------|--|----------|--------|----------|
| 41:3:02:01 | Operation of motor propelled vehicle off designated motor vehicle roads and parking areas on land leased or controlled by the department | \$ 25.00 | \$2.00 | \$ 27.00 |
| 41:3:2:2   | 25 mph speed limit on any roads in any state parks or recreation areas under jurisdiction of GF&P  | \$ 25.00 | \$2.00 | \$ 27.00 |

Procedures Manual for Lay Magistrates  
January, 1979



|                |   |          |        |          |
|----------------|---|----------|--------|----------|
| 41:3:2:3       | May not ride, permit or allow snowmobiles, mini-bikes or all terrain vehicles except on designated roads, parking lots and trails in any park or recreation area.   | \$ 25.00 | \$2.00 | \$ 27.00 |
| 41:3:2:4       | Disobedience of traffic signs in park or recreation area  | \$ 25.00 | \$2.00 | \$ 27.00 |
| 41:3:2:5       | Exhibition driving prohibited in parks or recreation areas  | \$ 25.00 | \$2.00 | \$ 27.00 |
| 41:5:1:2: thru |   |          |        |          |
| 41:05:01:05    | No hunting within state waterfowl, state game, state game bird or federal refuge  | \$ 25.00 | \$2.00 | \$ 27.00 |
| 41:06:04:05    | Waterfowl hunting restrictions  |          |        |          |
|                | a. No gun larger than 10 gauge maximum capacity 3 shells  | \$ 25.00 | \$2.00 | \$ 27.00 |
|                | b. No person shall trespass on any federal wildlife refuge or operate a motor vehicle on any federal waterfowl production area  | \$ 25.00 | \$2.00 | \$ 27.00 |
|                | c. Federal Migratory Stamp required to hunt waterfowl of 16 year old or older   | \$ 35.00 | \$2.00 | \$ 37.00 |
| 41:06:04:06    | Use of Motor Vehicle to disturb game prohibited. (can't use motor vehicle to harass, disperse, rally, drive, chase, intercept, pursue or otherwise disturb any big game, or small game or migratory waterfowl)                                      | \$ 25.00 | \$2.00 | \$ 27.00 |
| 41:06:04:07    | Protrusion of firearms from any motor vehicle or conveyance attached thereto on any public highway during any hunting season is illegal   | \$ 25.00 | \$2.00 | \$ 27.00 |
| 41:06:04:08    | Use of CB radios in hunting prohibited. No person shall send or receive any messages by radio in any motor vehicle for the purpose of making it easier or less difficult to take or attempt to take any big game, small game or migratory waterfowl | \$ 25.00 | \$2.00 | \$ 27.00 |

ALL VIOLATION LISTED ARE VIOLATIONS OF GF&P REGULATIONS, AND NONE ARE PETTY OFFENSES.

FF

PARK AND RECREATION AREA VIOLATIONS

|             |                 |         |        |         |
|-------------|-----------------|---------|--------|---------|
| 41:03:03:03 | No park license | \$25.00 | \$2.00 | \$27.00 |
|-------------|-----------------|---------|--------|---------|

|             |                           |         |        |         |
|-------------|---------------------------|---------|--------|---------|
| 41:03:04:02 | No camping permit         | \$25.00 | \$2.00 | \$27.00 |
| 41:03:04:08 | Leaving camper unattended | \$25.00 | \$2.00 | \$27.00 |
| 41:03:02:01 | Driving off roads         | \$25.00 | \$2.00 | \$27.00 |
| 41:03:02:05 | Exhibition driving        | \$50.00 | \$2.50 | \$52.50 |

G

BOATING OFFENSES

|               |  |          |        |          |
|---------------|--|----------|--------|----------|
| 42-8          | Boating violation                              | \$ 25.00 | \$2.00 | \$ 27.00 |
|               | Boating equipment violation                    | \$ 10.00 | \$2.00 | \$ 12.00 |
| 42-8-3        | Operating without being numbered               | \$ 25.00 | \$2.00 | \$ 27.00 |
| 42-8-48 to 51 | Regulation on waterskiing, etc.                | \$ 25.00 | \$2.00 | \$ 27.00 |
| 42-8-52       | Tampering with vessel or motor-boat of another | \$ 95.00 | \$5.00 | \$100.00 |
| 42-8-56 to 58 | Accident reporting                             | \$ 25.00 | \$2.00 | \$ 27.00 |

H

VEHICLE EQUIPMENT OFFENSE

|          |   |          |        |          |
|----------|---|----------|--------|----------|
| 32-15-11 | Sirens and whistles prohibited  | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-15-17 | No dropping, sifting or leaking load  | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-18    | Generally. Brakes required. Different kinds of brakes for different kinds of vehicles | \$ 25.00 | \$2.00 | \$ 27.00 |

I

MOTORCYCLE OFFENSES

|           |  |          |        |          |
|-----------|--|----------|--------|----------|
| 32-18-1   | Brakes required  | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-20-2   | Operating without driver's license   | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-20-4   | Helmet required-under 18 yrs.  | \$ 15.00 | \$2.00 | \$ 17.00 |
| 32-20-6.1 | Passenger seat   | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-20-6.2 | Position of motorcyclist   | \$ 15.00 | \$2.00 | \$ 17.00 |
| 32-20-6.3 | Carrying of package which prohibits driver from keeping both hands on handlebars | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-20-6.4 | Rider interfering with control or view of operator                               | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-20-6.5 | Attachment of driver or cycle to another vehicle                                 | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-20-6.6 | Carrying loaded or uncased gun   | \$ 50.00 | \$2.50 | \$ 52.50 |
| 32-20-9.1 | Operating cycle in manner depriving another of full use of driving lane          | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-20-9.2 | Cyclist overtaking and passing   |          |        |          |



|           |  |          |        |          |
|-----------|--|----------|--------|----------|
| 32-20-9.3 | motor vehicle in same lane                                   | \$ 25.00 | \$2.00 | \$ 27.00 |
|           | Operating cycle between adjacent lanes of traffic            | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-20-9.5 | Operating cycle more than two abreast in single traffic lane | \$ 25.00 | \$2.00 | \$ 27.00 |

J

LIVESTOCK TRANSPORTATION OFFENSES

|          |  |          |        |          |
|----------|--|----------|--------|----------|
| 40-20-4  | Leaving brand inspection area                        | \$ 35.00 | \$2.00 | \$ 37.00 |
| 40-20-10 | Transporting livestock without shipper's agreement   | \$ 35.00 | \$2.00 | \$ 37.00 |
| 40-20-15 | Transporting livestock without transportation permit | \$ 35.00 | \$2.00 | \$ 37.00 |
| 42-20-18 | Failure to exhibit transportation permit upon demand | \$ 35.00 | \$2.00 | \$ 37.00 |

K

SNOWMOBILE OFFENSES

|           |  |          |        |          |
|-----------|--|----------|--------|----------|
| 32-20A-2  | Operating at excessive speed or recklessly | \$ 50.00 | \$2.50 | \$ 52.50 |
|           | Operating without required muffler         | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-20A-5  | Improper use on controlled access highway  | \$ 25.00 | \$2.00 | \$ 27.00 |
|           | Operation on railroad right-of-way         | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-20A-7  | Improper operation on or across a roadway  | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-20A-10 | Operating without lights when dark         | \$ 25.00 | \$2.00 | \$ 27.00 |

L

EMERGENCY VEHICLE OFFENSES

|           |   |          |        |          |
|-----------|---|----------|--------|----------|
| 32-31-6   | Failure of motorist to pull to edge of curb on proper audible signal of emergency vehicle | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-31-6.1 | Failure to stop upon approaching stopped emergency vehicle using signals                  | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-31-7   | Following fire apparatus  | \$ 25.00 | \$2.00 | \$ 27.00 |
| 32-31-8   | Driving over fire hose  | \$ 25.00 | \$2.00 | \$ 27.00 |

OPTIONAL MUNICIPAL USE

|   |          |   |          |
|---|----------|---|----------|
| Wrong way on a one-way street                                   | \$ 15.00 | 0 | \$ 15.00 |
| Excessive horn honking  | \$ 10.00 | 0 | \$ 10.00 |
| Parking in a snow removal area                                  | \$ 15.00 | 0 | \$ 15.00 |
| All other parking violations except meter violations            | \$ 5.00  | 0 | \$ 5.00  |
| Exhibition Driving  | \$ 25.00 | 0 | \$ 25.00 |
| Open container in unauthorized place other than a motor vehicle | \$ 50.00 | 0 | \$ 50.00 |
| Open container in a motor vehicle                               | \$100.00 | 0 | \$100.00 |

Other traffic offenses if not covered by ordinance, the same as the state schedule.

A municipal Officer has the discretion to cite a violator before a magistrate.

This order of Schedules shall become effective \_\_\_\_\_, 1978 and shall continue in effect until further Order of this Court.

Dated at \_\_\_\_\_, South Dakota this \_\_\_\_\_ day of \_\_\_\_\_, 1978.

BY THE COURT

Presiding Circuit Judge

ATTEST:

Clerk



#### SUGGESTED GUIDELINES FOR OVERWEIGHT CASES

IN OVERWEIGHT CASES LAY MAGISTRATES DO NOT HAVE JURISDICTION BECAUSE OF THE PENALTIES INVOLVED.

32-22-52 Overweight is a Class Two Misdemeanor 30 days or a \$100.00 fine or both.

There is an additional fine not subject to suspension as set out below:

Law Trained Magistrates and Circuit Judges shall deduct one thousand pounds from the additional fine 32-22-55 penalty only when the excess is two thousand pounds or less.

In all other cases the additional fine penalty shall be assessed on the total overweight at the rate set out in 32-22-55 SDCL 1967, for such total overweight.

THUS:

- A.. One thousand to two thousand pounds total overweight, the cost penalty is .03 cents per pound on all overweight over one thousand pounds but less than two thousand pounds.
- B. Up to three thousand pounds total overweight; the cost penalty is .05 cents per pound on the total overweight.
- C. Up to four thousand pounds total overweight; the cost penalty is .06 cents per pound on the total overweight.
- D. Up to five thousand pounds total overweight; the cost penalty is .08 cents per pound on the total overweight.
- E. Over five thousand pounds total overweight; the cost penalty is .10 cents per pound on the total overweight.

For an absolutely overweight vehicle beyond the greatest permissible compensation plate weights for a vehicle of its class, the pounds by which the vehicle is so overweight may be assessed at double the penalties set out above.

To the above determined amount of fine and additional fine penalty added, unless hardship is found pursuant to Chapter 194 of the Laws of 1977, 5% of the total fine and additional fine penalty must be assessed.

GENERAL NOTE: Any portion of the fine but not the additional fine penalty, which is suspended, shall be deducted from the above computation.

#### CLASSIFICATION OF CRIMES AND SCHEDULE OF PUNISHMENTS

Immediately below is a list of the classes of crime and their attendant maximum punishment. This is followed by a list of crimes pursuant to Title 22 of SDCL and motor vehicle offenses pursuant to Title 32. This schedule is intended to assist the magistrate in setting bail for crimes not listed on the fine and bond schedule.

- (1) Class A felony: life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class A felony.
- (2) Class 1 felony: life imprisonment in the state penitentiary. In addition, a fine of twenty-five thousand dollars may be imposed.
- (3) Class 2 felony: twenty-five years imprisonment in the state penitentiary. In addition, a fine of twenty-five thousand dollars may be imposed.
- (4) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine of fifteen thousand dollars may be imposed.
- (5) Class 4 felony: ten years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed.
- (6) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine of five thousand dollars may be imposed.
- (7) Class 6 felony: two years imprisonment in the state penitentiary or a fine of two thousand dollars, or both.



# TREASON

| CRIME  | CLASSIFICATION      |
|--|---------------------|
| SDCL 22-8-1. Treason   | Class 1 felony      |
| MISUSE OF FLAGS  |                     |
| SDCL 22-9-1. Desecration of flag.  | Class 2 misdemeanor |
| RIOT AND UNLAWFUL ASSEMBLY   |                     |
| SDCL 22-10-1. Riot   | Class 4 felony      |
| SDCL 22-10-5. Aggravated riot  | Class 3 felony      |
| SDCL 22-10-6. Encouraging or soliciting violence in riot                         | Class 2 felony      |
| SDCL 22-10-6.1. Encouraging or soliciting violence in riot without participating | Class 5 felony      |
| SDCL 22-10-9. Unlawful assembly  | Class 1 misdemeanor |
| SDCL 22-10-11. Refusal to disperse or refrain from riot or unlawful assembly     | Class 1 misdemeanor |

# OBSTRUCTION OF JUSTICE

|  |                     |
|--|---------------------|
| SDCL 22-11-1. Resisting execution of process.                            | Class 2 misdemeanor |
| SDCL 22-11-2. Obstructing officer in charge of personal property         | Class 1 misdemeanor |
| SDCL 22-11-3. Obstructing public officer                                 | Class 2 misdemeanor |
| SDCL 22-11-4. Resisting arrest   | Class 1 misdemeanor |
| SDCL 22-11-6. Obstructing law enforcement officer, jailer or firefighter | Class 1 misdemeanor |
| SDCL 22-11-8. Impersonation of officer causing injury or fraud           | Class 2 misdemeanor |

# OBSTRUCTION OF JUSTICE

| CRIME   | CLASSIFICATION  |
|---|---|
| SDCL 22-11-9. False reporting to authorities  | Class 1 misdemeanor   |
| SDCL 22-11-9.1. False fire alarm causing injury or death as felony                    | Class 5 felony  |
| SDCL 22-11-10. Compounding a felony or misdemeanor                                    | Compounding felony:<br>Class 6 felony<br>Compounding misdemeanor:<br>Class 1 misdemeanor  |
| SDCL 22-11-12. Misprision of felony   | Class 1 misdemeanor   |
| SDCL 22-11-15. Threatening or intimidating judicial or ministerial officers or others | Class 5 felony  |
| SDCL 22-11-16. Attempt to influence jurors, arbitrators or referees                   | Class 6 felony  |
| SDCL 22-11-17. Jurors and judicial officers receiving unlawful communications         | Class 1 misdemeanor   |
| SDCL 22-11-18. Agreement to give particular verdict                                   | Class 6 felony  |
| SDCL 22-11-19. Tampering with a witness   | Class 6 felony  |
| SDCL 22-11-20. Solicitations and agreements by witnesses                              | Class 6 felony  |
| SDCL 22-11-21. Offer of forged or fraudulent evidence                                 | Class 5 felony  |
| SDCL 22-11-22. Falsification of evidence  | Class 6 felony  |
| SDCL 22-11-23. Falsification of public records  | If by public officer or employee having custody of the record,<br>Class 1 misdemeanor.<br>If by any other person,<br>Class 2 misdemeanor. |



# OBSTRUCTION OF JUSTICE

| CRIME  | CLASSIFICATION   |
|--|--|
| SDCL 22-11-24. Destruction or impairment of public record  | If by public officer or employee having custody of the record, Class 5 felony. If by any other person, Class 6 felony.           |
| SDCL 22-11-25. Unlawful retention of public record   | If by public officer or employee having custody of the record, Class 1 misdemeanor. If by any other person, Class 2 misdemeanor. |
| SDCL 22-11-26. Discharge of public employee--Refusal to discharge employee                               | Class 2 misdemeanor  |
| SDCL 22-11-27. Alteration or removal of serial number--Possession of property with altered serial number | Class 6 felony   |

# ABUSE OF JUDICIAL PROCESS

|  |                     |
|--|---------------------|
| SDCL 22-12-1. Barratry                                       | Class 2 misdemeanor |
| SDCL 22-12-5. Uttering simulated process                     | Class 1 misdemeanor |
| SDCL 22-12-10. Arrest or seizure of property without process | Class 1 misdemeanor |
| SDCL 22-12-11. Detention of dead body                        | Class 2 misdemeanor |

# IMPROPRIETIES AND BRIBERY IN PUBLIC OFFICE

|   |                     |
|---|---------------------|
| SDCL 22-12A-1. Unlawful assumption of public office                     | Class 1 misdemeanor |
| SDCL 22-12A-2. Receiving consideration for allowing unlawful assumption | Class 1 misdemeanor |
| SDCL 22-12A-4. Bribery or unlawful influence of legislators             | Class 4 felony      |
| SDCL 22-12A-5. Solicitation of bribes by legislators                    | Class 4 felony      |

# IMPROPRIETIES AND BRIBERY IN PUBLIC OFFICE

| CRIME  | CLASSIFICATION      |
|--|---------------------|
| SDCL 22-12A-6. Bribery of public officer.                                  | Class 4 felony      |
| SDCL 22-12A-7. Solicitation of bribe by public officer                     | Class 4 felony      |
| SDCL 22-12A-8. Solicitation of unauthorized fee for doing official act     | Class 1 misdemeanor |
| SDCL 22-12A-9. Solicitation of compensation for omission of official duty. | Class 1 misdemeanor |
| SDCL 22-12A-11. Bribery of judicial officer or juror                       | Class 4 felony      |

# BREACH OF THE PEACE AND DISORDERLY CONDUCT

|                                  |                     |
|----------------------------------|---------------------|
| SDCL 22-13-1. Disorderly conduct | Class 2 misdemeanor |
|----------------------------------|---------------------|

# UNLAWFUL USE OF WEAPONS

|   |   |
|---|---|
| SDCL 22-14-5. Possession of firearm with altered serial number  | Class 6 felony  |
| SDCL 22-14-6. Possession of controlled weapon   | Class 6 felony  |
| SDCL 22-14-7. Reckless discharge of firearm or shooting of bow and arrow--Leaving trip device--Possession of loaded firearm while intoxicated | Class 1 misdemeanor   |
| SDCL 22-14-8. Concealment of weapon with intent to commit felony  | Class 5 felony  |
| SDCL 22-14-9. Carrying pistol or revolver without a license   | Class 1 misdemeanor   |
| SDCL 22-14-12. Commission of felony while armed with machine gun or short shotgun--Consecutive sentencing                                     | First conviction: Class 2 felony. Second conviction: Class 1 felony |



# UNLAWFUL USE OF WEAPONS

| CRIME  | CLASSIFICATION   |
|--|--|
| SDCL 22-14-13. Commission of felony while armed with other than machine gun or short shotgun--         | First conviction: Class 3 felony. Subsequent conviction: Class 1 felony    |
| SDCL 22-14-15. Possession of firearm by one with prior violent crime                                   | Class 6 felony   |
| SDCL 22-14-16. Providing firearm to person with known prior violent crime                              | Class 6 felony   |
| EXPLOSIVES AND DESTRUCTIVE DEVICES   |  |
| SDCL 22-14A-4. Sale, transportation, or possession of destructive device                               | Class 4 felony. If previously convicted of a violent crime, Class 3 felony |
| SDCL 22-14A-5. Carrying or placing explosive or device on vehicle or in baggage--                      | Class 2 felony   |
| SDCL 22-14A-6. Possession of explosive or device with intent to injure, intimidate or destroy property | Class 3 felony   |
| SDCL 22-14A-11. Intentional use of device or explosive to cause bodily harm                            | Class 2 felony   |
| SDCL 22-14A-13. Unauthorized possession of substances with intent to make destructive device           | Class 5 felony   |
| SDCL 22-14A-18. Use of explosive or device to destroy another's property                               | Class 4 felony   |
| SDCL 22-14A-19. Use of explosive or device to endanger human life or safety                            | Class 3 felony   |
| SDCL 22-14A-20. Placement of explosive or device as to endanger human life or safety                   | Class 4 felony   |
| SDCL 22-14A-22. Falsely reporting a bomb   | First, Class 1 misdemeanor. Subsequent convictions: Class 6 felony         |

# HOMICIDE AND SUICIDE

| CRIME  | CLASSIFICATION      |
|--|---------------------|
| SDCL 22-16-12. Murder  | Class A felony      |
| SDCL 22-16-15. Manslaughter in the first degree  | Class 1 felony      |
| SDCL 22-16-20. Manslaughter in the second degree   | Class 4 felony      |
| SDCL 22-16-37. Aiding and abetting suicide   | Class 6 felony      |
| UNAUTHORIZED ABORTION  |                     |
| SDCL 22-17-5. Unauthorized abortion  | Class 6 felony      |
| SDCL 22-17-6. Intentional killing of human fetus by unauthorized injury to mother                            | Class 4 felony      |
| ASSAULTS AND PERSONAL INJURIES   |                     |
| SDCL 22-18-1. Simple assault   | Class 1 misdemeanor |
| SDCL 22-18-1.1. Aggravated assault   | Class 4 felony      |
| KIDNAPPING   |                     |
| SDCL 22-19-1. Kidnapping   | Class 1 felony      |
| SDCL 22-19-6. Possession of ransom or reward   | Class 3 felony      |
| SDCL 22-19-7. Taking or enticing away child with intent to conceal   | Class 5 felony      |
| SDCL 22-19-8. Substitution of infant with intent to deceive  | Class 5 felony      |
| INVASIONS OF PRIVACY   |                     |
| SDCL 22-21-1. Trespassing with intent to eavesdrop--Installation or use of unauthorized eavesdropping device | Class 1 misdemeanor |
| SDCL 22-21-3. Window-peeking on private property of another  | Class 2 misdemeanor |



SEX OFFENSES

| CRIME   | CLASSIFICATION                   |
|---|----------------------------------|
| SDCL 22-22-1. Rape<br>Rape where victim is less than<br>15 years of age | Class 2 felony<br>Class 4 felony |
| SDCL 22-22-7. Sexual contact with child under<br>fifteen                | Class 3 felony                   |
| If the actor is less than three<br>years older than the other person    | Class 1 misdemeanor              |
| SDCL 22-22-11. Compelling another to marry                              | Class 4 felony                   |
| SDCL 22-22-15. Bigamy   | Class 6 felony                   |
| SDCL 22-22-19. Incest   | Class 4 felony                   |

PROSTITUTION

|  |                     |
|--|---------------------|
| SDCL 22-23-1. Prostitution                                   | Class 2 misdemeanor |
| SDCL 22-23-2. Procuring or promoting prostitution            | Class 5 felony      |
| SDCL 22-23-8. Pimping as felony--Renting for<br>prostitution | Class 6 felony      |
| SDCL 22-23-9. Hiring prostitute or entering house            | Class 2 misdemeanor |

OBSCENITY AND PUBLIC INDECENCY

|  |                     |
|--|---------------------|
| SDCL 22-24-1. Indecent exposure                                    | Class 2 misdemeanor |
| SDCL 22-24-8. Prophylactic vending machines                        | Class 2 misdemeanor |
| SDCL 22-24-28. Disseminating material harmful<br>to minors         | Class 1 misdemeanor |
| SDCL 22-24-32. Misrepresentation to obtain ad-<br>mission of minor | Class 1 misdemeanor |
| SDCL 22-24-33. Misrepresentation of age by minor                   | Class 2 misdemeanor |

GAMBLING AND LOTTERIES

| CRIME   | CLASSIFICATION      |
|---|---------------------|
| SDCL 22-25-1. Gambling--Keeping gambling<br>establishment--Letting building for<br>gambling | Class 2 misdemeanor |
| SDCL 22-25-13. Keeping slot machines  | Class 1 misdemeanor |
| SDCL 22-25-26. Unauthorized bingo or lottery  | Class 2 misdemeanor |

INTERFERENCE WITH RELIGIOUS PRACTICES

|   |                     |
|---|---------------------|
| SDCL 22-27-1. Preventing practice of religion-- | Class 1 misdemeanor |
| SDCL 22-27-2. Compelling practice of religion-- | Class 1 misdemeanor |

PERJURY AND FALSE OFFICIAL STATEMENTS

|   |  |
|---|--|
| SDCL 22-29-5. Felony classes of perjury.<br>(1) When committed on a trial for<br>a felony | Class 3 felony   |
| (2) When committed on any other<br>trial or proceeding in a court<br>of justice           | Class 4 felony   |
| (3) In all other cases  | Class 5 felony   |
| SDCL 22-29-6. Subornation of perjury  | Punished in the<br>same manner as he<br>would be if per-<br>sonally guilty of<br>the perjury so<br>procured. |
| SDCL 22-29-14. Unsuccessful attempt to obtain<br>assistance                               | Class 1 misdemeanor  |
| SDCL 22-29-15. Obtaining assistance with value<br>of \$200 or less                        | Class 1 misdemeanor  |
| SDCL 22-29-16. Obtaining more than \$200  | Class 6 felony   |

THEFT

|                                |                      |
|--------------------------------|----------------------|
| SDCL 22-30A-4. Theft by Threat | If value of property |
|--------------------------------|----------------------|



THEFT

CRIME

CLASSIFICATION

SDCL 22-30A-10. Embezzlement of property received in trust

exceeds \$200 OR property is livestock or a firearm OR property is taken from the person of another THEN the offense is GRAND THEFT - Class 4 felony.

All other theft is PETTY THEFT - Class 1 misdemeanor.

Same as above AND Return of appropriated property considered in mitigation of punishment SDCL 22-30A-10.1.

ROBBERY

SDCL 22-30-1. Robbery defined  
SDCL 22-30-6. Degrees of robbery  
SDCL 22-30-7. Felony classes of robbery

Robbery in the first degree: Class 2 felony.  
Robbery in the second degree: Class 4 felony

BURGLARY AND UNLAWFUL ENTRY

SDCL 22-32-1. First degree burglary  
SDCL 22-32-3. Second degree burglary  
SDCL 22-32-8. Third degree burglary  
SDCL 22-32-16. Entry of structure to commit any crime  
SDCL 22-32-17. Possession of weapon or tools with intent to commit burglary

Class 2 felony  
Class 3 felony  
Class 4 felony  
Class 1 misdemeanor  
Class 5 felony

ARSON

SDCL 22-33-1. First degree arson  
SDCL 22-33-2. Second degree arson

Class 1 felony  
Class 2 felony

ARSON

CRIME

CLASSIFICATION

SDCL 22-33-3. Third degree arson  
SDCL 22-33-4. Burning to defraud insurer

Class 4 felony  
Class 4 felony

VANDALISM AND INJURIES TO PROPERTY

SDCL 22-34-1. Intentional damage to property--

Value \$20 or less: Class 2 misdemeanor. Value \$200 or less but more than \$20: Class 1 misdemeanor. Value more than \$200: Class 4 felony.

SDCL 22-34-27. Throwing substance upon public ways or at vehicles

Class 1 misdemeanor

SDCL 22-34-28. Intentional interruption of communications, transportation, or utility service

Class 6 felony

UNLAWFUL OCCUPANCY OF PREMISES

SDCL 22-35-5. Entering or remaining in building  
SDCL 22-35-6. Entering or refusing to leave property after notice

Class 2 misdemeanor  
Against posted notice: Class 2 misdemeanor.  
Against personal order: Class 1 misdemeanor.

PUBLIC NUISANCES

SDCL 22-36-1. Nuisances not otherwise proscribed-- Failure to remove public nuisance--

Class 2 misdemeanor

FORGERY AND COUNTERFEITING

SDCL 22-39-36. Forgery  
SDCL 22-39-37. Making or possessing forgery or counterfeiting devices

Class 5 felony  
Class 6 felony



# FORGERY AND COUNTERFEITING

| CRIME  | CLASSIFICATION  |
|--|---|
| SDCL 22-39-38. Possession of known forged instrument with intent to defraud      | Class 6 felony  |
| FALSE IMPERSONATION  |   |
| SDCL 22-40-1. False impersonation with intent to deceive law enforcement officer | Class 1 misdemeanor   |
| FRAUD AND MISREPRESENTATIONS   |   |
| SDCL 22-41-1. Passing check against insufficient funds                           | 1. Check(s) for \$100 or less-Class 2 misdemeanor<br>2. Check(s) for \$200 or less-Class 1 misdemeanor<br>3. Check(s) for more than \$200, Class 6 felony |
| SDCL 22-41-1.2. Passing check against non-existent account                       | Class 5 felony  |
| SDCL 22-41-10. False advertising   | Class 1 misdemeanor   |
| SDCL 22-41-11. Offer of merchandise without intent to sell                       | Class 1 misdemeanor   |
| SDCL 22-41-14. Misrepresentation by manufacturer or dealer in goods              | Class 1 misdemeanor   |

# CONTROLLED SUBSTANCES AND MARIJUANA

|  |   |
|--|---|
| SDCL 22-42-2. Unauthorized manufacture, distribution, counterfeiting or possession of substances with high potential for abuse | Distribution of Schedule I or II substance to minor Class 3 felony. All other violations: Class 4 felony. |
| SDCL 22-42-2.1. Written prescription required to dispense Schedule II substance--Refills prohibited                            | Class 4 felony and may impose civil fine of \$10,000  |

# CONTROLLED SUBSTANCES AND MARIJUANA

| CRIME   | CLASSIFICATION  |
|---|---|
| SDCL 22-42-3. Unauthorized manufacture, distribution, counterfeiting or possession of substance with moderate potential for abuse | Class 5 felony  |
| SDCL 22-42-4. Unauthorized manufacture, distribution, counterfeiting or possession of substance with low potential for abuse      | Class 6 felony  |
| SDCL 22-42-4.1. Prescription required to dispense Schedule III or Schedule II, III, or IV substances without medical purpose      | Class 5 felony and may impose civil fine of \$10,000  |
| SDCL 22-42-4.2. Dispensing Schedule II, III, or IV substances without medical purpose   | Class 6 felony and may impose civil fine of \$10,000  |
| SDCL 22-42-5. Unauthorized possession of controlled substance   | Class 6 felony  |
| SDCL 22-42-6. Possession of marijuana   | One ounce or less, Class 2 misdemeanor. More than one ounce but less than one pound, Class 1 misdemeanor. One pound or more, Class 6 felony.  |
| SDCL 22-42-7. Distribution of specified amounts of marijuana with and without consideration                                       | Less than one-half ounce without consideration, Class 2 misdemeanor. One ounce or less, Class 1 misdemeanor. More than one ounce but less than one-half pound, Class 6 felony. One-half pound or more, Class 5 felony. Distribution of any amount to minor, Class 5 felony. |



| CONTROLLED SUBSTANCES AND MARIJUANA    |  |   |
|--|--|---|
| CRIME                                  |  | CLASSIFICATION  |
| SDCL 22-42-8.                          | Obtaining possession of controlled substance by misrepresentation, forgery or fraud                        | Class 5 felony  |
| SDCL 22-42-9.                          | Manufacture, distribution or possession of equipment for making counterfeit controlled substance           | Class 5 felony  |
| SDCL 22-42-10.                         | Keeping place for use or sale of controlled substances   | Class 5 felony and may impose civil fine of \$10,000  |
| SDCL 22-42-11.                         | Inhabiting room where controlled substances illegally stored or used                                       | Class 1 misdemeanor   |
| THEFT AND MISAPPROPRIATION OF VEHICLES |  |   |
| SDCL 32-4-6.                           | Selling Motor Vehicle with altered serial number   | Class 6 felony  |
| DRIVING UNDER THE INFLUENCE            |  |   |
| SDCL 32-23-1.                          | Driving or control of vehicle prohibited with alcohol in blood or while under influence of alcohol or drug | First offense: Class 1 misdemeanor. Prohibition from operation of motor vehicle upon public highways of this state for 30 days, however court may grant work permit. Court may order revocation of driving privilege for a further period not to exceed one year or restrict the privilege in such manner as it sees fit for a period not to exceed one year. |
| SDCL 32-23-2.                          | Punishment for prohibited driving-First offense  |   |
| SDCL 32-23-3.                          | Punishment for second offense--Revocation or restriction of driving privilege                              | Second offense: Class 1 misdemeanor. Prohibition from operating a motor vehicle upon the  |

| DRIVING UNDER THE INFLUENCE               |  |   |
|---|--|---|
| CRIME                                     |  | CLASSIFICATION  |
|   |  | public highways of this state for 60 days. Court may also order revocation of driving privilege for a further period not to exceed one year or restrict the privilege in such manner as sees fit for a period not to exceed one year. |
| SDCL 32-23-4.                             | Punishment for third or subsequent offense--Period during which driving prohibited | Third offense: Class 6 felony. Prohibition from driving any motor vehicle for such period of time as may be determined by the court, but in no event less than one year from the date of his final discharge.                         |
| RECKLESS AND UNSAFE DRIVING               |  |   |
| SDCL 32-24-1.                             | Definition of reckless driving   | Class 1 misdemeanor   |
| RULES OF THE ROAD                         |  |   |
| SDCL 32-33-13.                            | Traveling through roadblock  | Class 1 misdemeanor   |
| APPREHENSION AND PROSECUTION OF VIOLATORS |  |   |
| SDCL 32-33-19.                            | Fleeing from police  | Class 1 misdemeanor   |
| ACCIDENTS AND ACCIDENT REPORTS            |  |   |
| SDCL 32-34-6.                             | Hit and run accident resulting in property damage                                  | Class 2 misdemeanor   |



## GLOSSARY

### A

ACQUITTAL - The decision by the trial court that an accused person is not guilty. A legal and formal certification of the innocence of a person charged with a crime or offense.

ADJUDICATION - Giving or pronouncing a judgment or decree; also, the judgment given.

ADMISSION - An out-of-court statement or act that merely acknowledges a fact or circumstance from which guilt may be inferred, but is insufficient in itself to establish guilt.

AFFIANT - The person that swears to an affidavit or statement.

AFFIDAVIT - A written statement of facts, voluntarily made, and confirmed by oath or affirmation of the party making it, taken before an officer having authority to administer such oaths.

AFFIDAVIT OF PREJUDICE - A written declaration under oath by a party to an action stating that the affiant (the person making the declaration) has reason to believe and does believe that a fair and impartial trial of the action cannot be had before the judge named therein by reason of the bias or prejudice of such judge. Upon proper filing of an affidavit of prejudice, the judge named therein may not handle further proceedings in the action and the services of another judge must be obtained.

AFFIRM - To uphold a judgment or decree of a lower court.

AFFIRMATION - A solemn and formal declaration that an affidavit is true or that a witness will tell the truth. This is substituted for an oath in certain cases. In an oath, the witness swears that testimony will be true, "so help you God"; in an affirmation, the witness affirms that testimony will be true, "under the pains and penalties of perjury."

ALLEGATION - In a pleading, the assertion, declaration, or statement of a party to an action, setting forth the facts the party expects to prove.

ALIBI - A defense which asserts that the defendant at the time of the commission of the offense charged was at a different place so remote or distant or under such circumstances that he could not have committed the crime alleged in the complaint.

ANSWER - A pleading by which defendant endeavors to resist the plaintiff's allegation of facts in a civil action.

APPEAL - Review by a court of the action of some board or



administrative officer or review by a superior court of the judgment rendered by an inferior court.

APPEARANCE - The formal proceeding by which a defendant submits himself to the jurisdiction of the court. Generally, is accomplished by personal appearance or presence in court (voluntary or involuntary), but may be accomplished by posting bail or appearance by counsel.

ARGUMENT - That portion of the trial after all evidence has been presented in which the prosecution and defense attempt to establish belief by a course of reasoning.

ARRAIGNMENT - Formal stage in a criminal proceeding, conducted in open court, in which the accused is informed of the charge against him, is advised of his rights, and is asked to enter a plea of either guilty, not guilty, or not guilty by reason of mental illness.

ARREST - To take a person into custody for the purpose of having him answer to a criminal charge or complaint.

ARREST WARRANT - A written order from a magistrate directing a peace officer, or some other person specially named, to take the body of the person accused of an offense to be dealt with according to law.

ATTACHMENT - A writ issued by the judge or court clerk under seal in a criminal case commanding a peace officer to take the body of a witness and bring him before the court to testify in behalf of the defense or prosecution.

B

BAIL - 1. Security given for the future appearance in court of a person charged with an offense in order to obtain his release from custody.

2. The temporary release from custody upon security for reappearance.

3. The person(s) or corporate entity who become(s) a surety for the appearance of the defendant in court.

4. Often used for the word "bond." Posting bail or bond refers to the deposit of the security involved. The security may be merely a promise to appear, i.e., a personal recognizance.

BAIL BOND - Surety bond; a written undertaking entered into by the defendant and his sureties which assures the appearance of the defendant before the court to answer a criminal charge.

BENCH WARRANT - Process issued by the court itself, or "from the

bench," for the attachment or arrest of a person.

BOND - The security given by the defendant that he will appear in court to answer the charges against him.

BOND FORFEITURE - A suit initiated in the name of the state, to recover from the defendant or his sureties a bond due to the violation of the conditions of such bond. A bond may be forfeited when a defendant fails to appear in court at the time stated in the bond.

BREATHALYZER - A breath testing device used for the determination of blood alcohol content.

BURDEN OF PROOF - The necessity or duty of proving a fact or facts in dispute in a case before a court. In a criminal matter, the burden of proof always remains with the prosecution to establish the guilt of the defendant.

C

CAPTION - The heading or introductory clause of a pleading or other papers connected with a case in court which shows the names of the parties, name of the court, number of the case, etc.

CASH BOND - A type of appearance bond in which the defendant deposits money with the court for his appearance instead of having sureties sign his bond.

CAUSE - A civil or criminal suit, litigation, or action.

CERTIFIED COPY - A copy of a document or record signed and certified as a true copy by the officer to whose custody the original is entrusted.

CHANGE OF VENUE - The removal of a suit begun in one county or circuit to another for trial, or from one court to another within the same county or circuit.

CHARGE - To accuse; the formal accusation against a defendant; to instruct a jury on matters of law.

CIRCUIT COURTS - The courts of general, "original jurisdiction in all cases except as to any limited original jurisdiction granted to other courts by the Legislature." Constitution Article V, Section 5.

CIRCUMSTANTIAL EVIDENCE - All evidence of indirect nature; the process of decision by which court or jury may reason from circumstances known or proved to establish by inference the principal fact.

CITATION - An order to appear in court issued to a defendant by a police officer or other authorized official.



CIVIL ACTION - A legal and formal demand for enforcement or protection of private rights and prevention or redress of private wrongs. Broadly described as every action other than a criminal action.

COMMIT - To send a person to a prison, asylum, workhouse, or reformatory by lawful authority. If commitment is of one's own free will it is known as a "voluntary commitment"; if against one's will, an "involuntary commitment."

COMMITMENT - An order by a court directing an officer to take a person into custody or to jail.

COMMITTING MAGISTRATE - An inferior judicial officer who has the authority to conduct the preliminary hearings of persons charged with crimes and either discharge them for lack of evidence, commit them to jail to await trial, or accept bail and release them thereon.

COMPETENCY - In the law of evidence, the presence of those characteristics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in court.

COMPLAINANT - Synonymous with "plaintiff."

COMPLAINT - In criminal law, a verified statement in writing, charging one or more persons with the commission of a public offense not requiring the intervention of a grand jury or a preliminary examination. SDCL 23-19-2.

CONCURRENT SENTENCE - Sentences for more than one crime in which the time of each is to be served at the same time, rather than one after another.

CONFESSION - An out-of-court statement, written or oral, admitting guilt of a crime. It is an admission of every essential element of a crime.

CONFRONTATION - Meeting face to face. A defendant in a criminal action has the right to confront the witnesses against him at his trial.

CONSECUTIVE SENTENCES - Sentences served one after the other.

CONTEMPT OF COURT - Any act calculated to embarrass, hinder, or obstruct a court in the administration of justice or calculated to lessen its authority or dignity. Contempts are of two kinds: direct and indirect. Direct contempts are those committed in the immediate presence of the court; indirect contempts chiefly refer to the failure or refusal to obey a lawful order.

CONTINUANCE - The adjournment or postponement of an action pending in court to a later date.

CONTRABAND - Material objects unlawful for a person to possess.

CONTRACT - (1) An agreement for sufficient consideration, between two or more competent persons, creating, modifying or destroying a legal relationship. (2) The writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation.

CONVICTION - The result of criminal proceedings which is a judgment that the accused is guilty of an offense. Often used to designate a finding of guilt by a court or jury, or the entry of a guilty plea.

CORROBORATING EVIDENCE - Evidence supplementary to that already given and tending to strengthen or confirm it.

COURT REPORTER - A person who transcribes by shorthand or who stenographically takes down testimony during court proceedings.

COSTS - An allowance for expenses in prosecuting or defending a suit. Ordinarily does not include attorneys' fees.

COUNTERCLAIM - A claim presented by a defendant in opposition to the claim of a plaintiff in a civil action.

COURTS OF RECORD - Courts whose proceedings are permanently recorded and which have the power to fine or imprison for contempt. Courts not of record are those of lesser authority whose proceedings are not permanently recorded.

CRIMINAL ACTION - A proceeding governed by the rules of criminal procedure brought by the government, representing the public, against one accused of violating a law or ordinance designed for the public's protection.

CROSS-EXAMINATION - The questioning of a witness in a trial, hearing, or in the taking of a deposition by the party opposed to the party who produced the witness.

CUMULATIVE SENTENCES - Separate sentences (each additional to the others) imposed upon a defendant who has been convicted upon an indictment containing several counts, each of such counts charging a distinct offense, or who is under conviction at the same time for several distinct offenses; one of such sentences is made to begin at the expiration of another.

D

DECORUM - An observance of correct judicial procedure and custom.

DEFAULT JUDGMENT - A judgment entered when a defendant omits to plead within the time allowed or fails to appear at the trial when required to do so to protect the defendant's rights and interests in a civil action.



DEFENDANT - The party put upon his defense, or summoned to answer a charge, or complaint, in either civil or criminal action.

DEMONSTRATIVE EVIDENCE - Evidence addressed directly to the senses without intervention of testimony; physical evidence.

DEMUR - To file a pleading (called "a demurrer") admitting the truth of the facts in the pleading, but showing that as alleged the facts are insufficient for the plaintiff to proceed upon or to oblige the defendant to answer all or part of the pleading. In South Dakota, applicable only to criminal proceedings. SDCL 15-6-7(c), 23-36-8 to 23-36-16.

DE NOVO - Anew, afresh. A "trial de novo" is the retrial of a case.

DEPOSITION - A written declaration under oath made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine; or upon written interrogatories. SDCL 19-3-3.

DIRECT EVIDENCE - Proof of facts by witnesses who saw acts done or heard words spoken, as distinguished from circumstantial evidence, which is called indirect; a means of proof which tends to show the existence of a fact in question, without the intervention of the proof of any other fact.

DIRECT EXAMINATION - The first interrogation of a witness by the party on whose behalf the witness is called.

DISCOVERY - A proceeding whereby one party to an action may be informed as to facts known by other parties or witnesses.

DISMISSAL - Termination or final disposition of an action by sending it out of court without a trial of the issues involved. Dismissal "with prejudice" bars further prosecution of the defendant on the same set of circumstances, while dismissal "without prejudice" permits a further or subsequent prosecution of the defendant on the same set of circumstances.

DOMICILE - That place where a person has his true, fixed, and permanent home and principal establishment and to which whenever absent the person intends to return. A person may have several residences, but only one domicile.

DOUBLE JEOPARDY - Common law, constitutional, and statutory prohibition against more than one prosecution for the same offense.

DUE PROCESS - The safeguards and protections of the law given to one accused of a crime; the fundamental rights of an accused to a fair trial; the prescribed lawful procedures for conducting a criminal prosecution. In substantive criminal law, the right to have offenses and punishments clearly defined.

DURESS - Any unlawful constraint exercised upon a person whereby he is

forced to do some act that he otherwise would not have done.

E

ELEMENT OF AN OFFENSE - Each of the various acts, omissions, conditions, and circumstances specified in the statute or ordinance creating the offense.

ENTRAPMENT - The act of officers or agents of a government in inducing a person to commit a crime not contemplated by him, for the purpose of instituting a criminal prosecution against him.

ESTOPPEL - A person's own act, or acceptance of facts, which precludes his later making claims to the contrary.

ET AL. - An abbreviation of et alii, meaning "and others."

ET SEQ. - An abbreviation for et sequentes, or et sequentia, meaning "and the following."

EVIDENCE - Any type of proof legally permitted at a trial through witnesses, records, documents, objects, etc. for the purpose of inducing belief in the mind of the court or a jury as to the contention of an issue.

EXCLUSIONARY RULE - A rule of evidence which prohibits (suppresses) use of evidence illegally obtained by law officers or public officials in the prosecution of criminal or quasi-criminal cases. A result of the Fourth Amendment guarantee against unreasonable searches and seizures.

EXECUTION OF JUDGMENT - Process of putting into effect the final judgment of a court. In criminal cases this may be the conveyance of the convicted to a penal institution. In civil money judgments, an execution is a statutory means provided for enforcement of a judgment.

EXHIBIT - A paper, document, or other article produced and exhibited to a court during a trial or hearing which, on being accepted, is marked for identification, with said mark being annexed to the paper, document, or other article, or filed of record, or otherwise made a part of the case.

EX PARTE - By or for one party; done for, in behalf of, or on the application of one party only.

EXPERT EVIDENCE - Testimony given in relation to some scientific, technical, professional or other specialized matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject.

EX POST FACTO - After the fact; an act or fact occurring after some previous act or fact, and relating thereto.



EXTENUATING CIRCUMSTANCES - Circumstances which render a crime less aggravated, heinous, or reprehensible than it would otherwise be.

EXTRADITION - The surrender of a criminal by another state to which the criminal has fled for refuge from prosecution to the state within whose jurisdiction the crime was committed, upon the demand of the latter state, in order that the criminal may be dealt with according to its laws; term may also apply to other governments, such as an Indian reservation and the state within which it is situated.

F

FALSE ARREST - Any unlawful physical restraint of another's liberty, whether in prison or elsewhere.

FELONY - A crime of a graver nature than a misdemeanor. In South Dakota, an offense punishable by imprisonment in the state penitentiary.

FOREIGN JUDGMENT - A judgment rendered by a court of a state or country politically and judicially distinct from that where the judgment or its effect is brought into question.

FORGERY - The false making, completing, altering, or passing, with intent to defraud, of any written instrument. SDCL 22-39-36.

FRAUD - An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing or legal right.

FRUITS OF A CRIME - Material objects acquired by means of and in consequence of the commission of a crime; sometimes constituting the subject matter of a crime, e.g., the dead body in a homicide.

G

GRAND JURY - A jury of inquiry whose duty is to receive complaints and accusations in criminal cases, hear the evidence, and find bills of indictment in cases where the jury is satisfied that there is probable cause that a crime was committed and that a trial ought to be held. SDCL 23-29-1.

GUARDIAN - One who legally has the care and management of the person, or the estate, or both, of a minor or incompetent.

GUARDIAN AD LITEM - A person appointed by a court to look after the interests of an infant or incompetent who is involved in litigation.

H

HABEAS CORPUS - "You have the body." The name given a variety of

writs whose object is to bring a person before a court or judge. In most common usage, it is directed to the official or person detaining another, commanding him to produce the body of the prisoner or person detained so the court may determine if such person has been denied his liberty without due process of law.

HARMLESS ERROR - In appellate practice, an error committed by a lower court during a trial which was not prejudicial to the rights of the party and for which the court will not reverse the judgment.

HEARING - A proceeding of relative formality, generally public, with definite issues of fact or of law to be tried, in which parties proceeded against have the right to be heard, which is much the same as a trial and may terminate in final order.

HEARSAY - Evidence not proceeding from the personal knowledge of the witness, but from the mere repetition of what the witness has heard others say.

HOSTILE WITNESS - A witness who is subject to cross-examination by the party who called him to testify, because of the witness' evident antagonism toward the calling party as exhibited in his direct examination.

HYPOTHETICAL QUESTION - A combination of facts and circumstances, assumed or proved, stated in such a form as to constitute a coherent state of facts upon which the opinion of an expert can be asked by way of evidence in a trial.

I

IMPEACHMENT OF WITNESS - Presenting proof that a witness who has testified in a cause is unworthy of belief.

INCOMPETENT - A person designated as unfit or unable to manage his own affairs.

IMPOUNDMENT - The act of seizing and holding objects or animals in the custody of the law.

INDETERMINATE SENTENCE - An indefinite sentence of "not less than" and "not more than" so many years, the exact term to be served being afterwards determined by parole authorities within the minimum and maximum limits set by the court or by statute. SDCL 23-48-43.

INDICTMENT - A statement in writing presented by a grand jury to a competent court charging a person with a public offense. SDCL 23-31-1.

INDIGENT - Impoverished; needy. With respect to criminal proceedings, an indigent defendant is one not having the financial resources to provide the services needed, including the assistance of counsel, for



a proper defense.

INDIRECT EVIDENCE - See CIRCUMSTANTIAL EVIDENCE.

INFORMATION - A verified statement in writing, charging a person with the commission of a public offense requiring the intervention of a grand jury or a preliminary examination, filed by the state's attorney in a court having jurisdiction to try and determine the specified offense. SDCL 23-20-1.

INQUEST - An examination for determining whether someone's death was caused by unlawful means.

INSTRUMENTALITIES OF A CRIME - Property designed or intended for use or which is or has been used as the means of committing a criminal offense.

INTERROGATORIES - A set or series of formal written questions used to take testimony or evidence from a witness.

INTERVENTION - A proceeding in an action by which a third person is permitted by the court to become a party to the action.

## J

JOINDER OF PARTIES - The uniting of two or more persons as co-plaintiffs or as co-defendants in one suit.

JUDGMENT - The official decision of a court upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination.

JURISDICTION - The power, authority, capacity, or right of a court or judge to act. "Jurisdiction of the subject matter" is the authority to handle the class of cases to which a particular case belongs. "Jurisdiction of the person" in criminal cases refers to legal control of the defendant by the court and is usually obtained when the defendant appears in court. Jurisdiction is usually circumscribed by geographical limitations.

## L

LEADING QUESTION - One which instructs a witness how to answer or suggests words to be echoed in response; one which suggests to a witness the answer desired. Prohibited on direct examination.

LIEN - An incumbrance on property for payment of some debt, obligation or duty.

LITIGANT - A party to a lawsuit. Litigation is a suit at law.

## M

MAGISTRATE - A judicial official who presides over a court of limited jurisdiction. In South Dakota a magistrate is appointed by the presiding circuit judge. SDCL 16-12A-3. A magistrate may be either law-trained or not law-trained; the former is one who is licensed to practice law in the State of South Dakota. SDCL 16-12A-1.

MALICIOUS PROSECUTION - An action instituted with intention of injuring defendant, without probable cause, and with a final result in favor of the person prosecuted.

MANDAMUS - The name of a writ which issues from a court to any inferior tribunal, corporation, board, or person commanding the performance of a particular act.

MANSLAUGHTER - The unlawful killing of another in the manner described in SDCL 22-16-15 or 22-16-20.

MINOR - An infant or person under the age of legal competence, which by South Dakota state statute is under eighteen years of age. SDCL 26-1-1.

MISDEMEANOR - Offenses less than felonies; generally those punishable by fine or imprisonment other than in the state penitentiary. SDCL 22-1-4. Misdemeanors are subdivided into class 1 and class 2 misdemeanors. Class 1 misdemeanors are punishable by a maximum penalty of confinement for twelve months in a county jail or one thousand dollars fine, or both. Class 2 misdemeanors have a maximum penalty of thirty days imprisonment in a county jail or one hundred dollars fine, or both. SDCL 22-6-2. Non-law-trained magistrates have the jurisdiction to accept guilty pleas of persons charged with a class 2 misdemeanor, but no jurisdiction over class 1 misdemeanants. SDCL 16-12A-16.

MISTRIAL - An erroneous or invalid trial; a trial which cannot stand in law because of lack of jurisdiction, wrong drawing of jurors, or disregard of some other fundamental requisite.

MITIGATING CIRCUMSTANCE - One which does not constitute a justification or excuse for an offense, but which may be considered as reducing the degree of moral culpability.

MOTION - An application to a court for a rule or order which is made in writing, unless made during a hearing or trial, and which shall state the grounds therefor and the relief or order sought. A motion may be supported by affidavit.

MURDER - The unlawful killing of a human being by another as defined in SDCL 22-16-4.



**CONTINUED**

**2 OF 3**



N

NEGLIGENCE - The failure to do something which a reasonable man, guided by ordinary considerations, would do; or the doing of something which a reasonable and prudent man would not do.

NO BILL - This phrase, endorsed by a grand jury on the indictment, is equivalent to "not found" or "not a true bill." It means that, in the opinion of the jury, evidence was insufficient to warrant the return of a formal charge.

NON OBSTANTE VERDICTO - Notwithstanding the verdict. A judgment entered by order of court for one party, although there has been a jury verdict against him.

O

OATH - An affirmation of the truth of a statement, which renders one willfully asserting untrue statements punishable for perjury.

OBJECTION - The act of taking exception to some statement or procedure in trial. Used to call the court's attention to improper evidence or procedure.

OPINION EVIDENCE - Evidence of what the witness thinks, believes, or infers in regard to a fact in dispute, as distinguished from his personal knowledge of the facts.

ORDER - Every direction of a court or judge made or entered in writing and not included in a judgment.

ORDER TO SHOW CAUSE - A court order obtained on motion by a party for another to show cause why the particular relief sought should not be granted.

ORDINANCE - A law enacted by the governing body--the legislative body--of a municipality (city).

OUT OF COURT - One who has no legal status in court is said to be "out of court," i.e., he is not before the court. For example, when a plaintiff, by some act of omission or commission, shows that he is unable to maintain his action, he is frequently said to have put himself "out of court."

P

PER SE - By himself or itself; in itself; taken alone.

PERJURY - Making a false statement in an official proceeding under oath or equivalent affirmation, or swearing or affirming the truth of a false statement previously made, when the statement is material (it

can affect the course or outcome of the official proceeding or the disposition of the matter in which it is made) and the maker does not believe it to be true.

PERSONAL RECOGNIZANCE BOND - The defendant's word or his promise to appear in court to answer criminal charges against him.

PLAINTIFF - The person bringing a legal action. The person complaining or suing in a civil case; the prosecution, an arm of the government, representing the public in a criminal proceeding.

PLEA AGREEMENT - A bargain reached by the defendant, his attorney, and the prosecutor whereby, upon entry of a guilty plea by the defendant to one or more charges, often reduced from the original charge, the prosecutor will move to dismiss other charges and/or make recommendations for sentencing which are favorable to the defendant. The court does not participate in such negotiations and may accept or reject the agreement. Often is called "plea bargaining" or a "negotiated plea."

PLEA OF GUILTY - An admission in court of every material allegation in a complaint by a defendant.

PLEA OF NOT GUILTY - A denial in court of every material allegation in a complaint by a defendant.

PLEADING - The process by which the parties in a suit or action alternately present written statements of their contentions, each responsive to that which precedes, and each serving to narrow the field of controversy, until there evolves a single point, affirmed on one side and denied on the other, called the "issue," upon which they then go to trial.

POINTS - Demerits assigned by law to particular types of traffic violations, the accumulation of which will, at a stated level, result in suspension of the offender's operator's license.

POWER OF ATTORNEY - An instrument authorizing another to act as one's agent or attorney.

PREJUDICIAL ERROR - An error committed in the trial court which warrants an appellate court to reverse the judgment of the trial court; synonymous with "reversible error."

PRELIMINARY HEARING - An examination conducted by a magistrate for the purpose of inquiring into a criminal accusation against a defendant to determine whether there is sufficient evidence of guilt to justify further proceedings against the accused, i.e., probable cause to believe he committed the offense charged. Synonymous with "preliminary examination."

PRELIMINARY INFORMATION - A verified statement in writing, presented to a magistrate, charging one or more persons with the commission of a



designated public offense. SDCL 23-19-1.

PREPONDERANCE OF EVIDENCE - The greater weight of evidence, or the evidence which is more credible and convincing to the mind, as distinct from the greater number of witnesses.

PRESENTMENT - An informal statement in writing by a grand jury to the court that a public offense has been committed which is triable in the county and for which there is reasonable ground for believing a particular individual has committed it. SDCL 23-31-2.

PRIMA FACIE CASE - A case developed with evidence such as will suffice until contradicted and overcome by other evidence.

PRIMA FACIE EVIDENCE - Evidence good and sufficient on its face; such evidence as in the judgment of the law is sufficient to establish a given fact or facts and which, if not rebutted or contradicted, will remain sufficient.

PROBABLE CAUSE - A reasonable ground of suspicion supported by facts or circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the accused is guilty of the offense with which he is charged.

PROBATION - A sentencing alternative whereby, in lieu of incarceration, a convicted defendant is given explicit conditions for his release by the court.

PROSECUTOR - One who instigates the prosecution upon which an accused is arrested or one who brings an accusation against the party whom he suspects to be guilty; also, one who takes charge of a case and performs the function of trial lawyer for the people.

PROSECUTRIX - A female prosecutor.

Q

QUASH - To overthrow; to abate; to vacate; to annul; to make void.

QUASI - As if; almost as it were; analogous to; seemingly. Used to indicate that one subject resembles another in certain characteristics, but that there are material differences between them, e.g., petty offenses may be designated either as quasi-civil or quasi-criminal in nature.

R

REASONABLE DOUBT - A fair doubt based upon reason and common sense arising from the evidence. Is less than all possible doubt and absolute certainty; and is more than a mere possibility of a doubt or doubt based on mere surmise, supposition, or conjecture. "Beyond a

reasonable doubt" is an evidentiary burden of proof in criminal cases.

REBUTTAL - The introduction of rebutting evidence; the showing that statements of witnesses as to what occurred is not true; the state of a trial at which such evidence may be introduced, after the presentation of the defendant's case. SDCL 15-14-1(5), 23-42-6(4).

RECOGNIZANCE, PERSONAL - See PERSONAL RECOGNIZANCE BOND.

REDIRECT EXAMINATION - Interrogation of a witness by the party who called him after cross-examination of such witness.

REMOVAL, ORDER OF - An order by a court directing the transfer of a cause to another court.

REPLY - A pleading in response to an answer. SDCL 15-6-7(a).

REST - A party is said to "rest" or "rest his case" when he has presented all the evidence he intends to offer.

RESTITUTION - Restoring or giving an equivalent for damages resulting from the commission of an offense. May be imposed as a sentence or condition of probation subsequent to a hearing on the matter.

RETURN - A report of the officer executing an arrest warrant showing his compliance with the command of the warrant; or the report of proof of service by the person to whom a summons or subpoena has been given for service upon (delivery to) the defendant or witness.

REVERSIBLE ERROR - In appellate practice, an error warranting the appellate court to reverse the judgment before it; a substantial error which reasonably might have prejudiced a party.

S

SANCTION - A penalty annexed to the violation of a law as a means of enforcing the law. Synonymously used for "sentence."

SEARCH AND SEIZURE - An examination of a person or place by government personnel for concealed contraband, the fruits or instrumentalities of a crime, or evidence of guilt to be taken for use in prosecuting a person for a crime. Constitutional provisions prohibit an unreasonable search and seizure--one conducted without authority of law.

SEARCH WARRANT - An order in writing, in the name of the state, signed by a magistrate, directing a peace officer to search for personal property and bring it before the magistrate. Usually required as a condition precedent to a legal search and seizure. SDCL 23-15-1.

SELF-DEFENSE - The protection of one's person or property against some injury attempted by another. The law of "self-defense" justifies an



act done in the reasonable belief of immediate danger. When acting in justifiable self-defense, a person may not be punished criminally nor held responsible for civil damages. SDCL 20-9-8, 22-16-35, 22-18-4.

**SELF-INCRIMINATION** - Compelled disclosure of information as a witness which tends to subject the witness to criminal or quasi-criminal penalties. The privilege against self-incrimination protects a defendant in a criminal proceeding from giving any involuntary testimony and all witnesses, in any kind of proceeding, from giving self-incriminating testimony.

**SENTENCE** - The judgment formally pronounced by the court upon the defendant after a conviction in a criminal prosecution, stating the punishment to be inflicted.

**SEPARATION OF WITNESSES** - An order of the court requiring all witnesses, other than parties to the action, to remain outside the courtroom until each is called to testify.

**SEQUESTRATION** - Keeping witnesses apart from each other and so they cannot hear other testimony until they have testified; keeping a jury together and in isolation from other persons.

**SERVICE** - Notification of an action or some proceeding given to a person affected either by delivering a proper legal notice personally through an authorized person, by sending it in the mail or by causing it to be published in a newspaper.

**STATUTE** - A particular law enacted and established by the will of the legislative branch of government.

**STAY** - A stopping or arresting of a judicial proceeding by order of the court.

**STIPULATION** - An agreement by attorneys on opposite sides of a case as to any matter before the court. The parties must assent to the stipulation, which ordinarily must be in writing.

**SUBPOENA** - A process to cause a witness to appear and give testimony before a court, magistrate, or other official body.

**SUBPOENA DUCES TECUM** - A process by which the court commands a witness to produce at a hearing certain documents or records in the possession or control of the witness.

**SUBSCRIBING WITNESS** - One who sees a writing executed, or hears it acknowledged, and at the request of the party thereupon signs his name as a witness. The witness to a will is a subscribing witness.

**SUMMONS** - A notice to the defendant that an action has been commenced against him and that judgment will be taken upon failure to answer the complaint. SDCL 15-6-4(a). In a criminal proceeding an order issued by a court and directed to a defendant advising him to appear at a

specified time and place to answer to a charge against him and that if he fails to appear a warrant will issue for his arrest. Is used, under appropriate circumstances, in lieu of the more harsh arrest proceedings.

**SUPPRESSION OF EVIDENCE** - In criminal proceedings, keeping out, not admitting, or excluding illegally obtained evidence.

**SURETY BOND** - A bail bond; a written undertaking entered into by the defendant and his surety to assure the appearance of the defendant before the court to answer a criminal charge.

**SUSPENDED IMPOSITION OF SENTENCE** - Postponed imposition of sentence, usually subject to observance by the defendant of conditions of parole.

**SUSPENDED SENTENCE** - An imposed sentence which is postponed, usually pursuant to observance by convicted of conditions of parole.

## T

**TESTIMONY** - Evidence given by a competent witness under oath or affirmation; distinguished from evidence derived from writings and other sources.

**TORT** - An injury or wrong committed, either with or without force, to the person or property of another, independent of contract.

**TRANSCRIPT** - The official record of proceedings in a trial or hearing; a writing of the oral statements made during a trial or hearing.

**TRIAL DE NOVO** - A new trial or a retrial held in a higher court, an appellate court, in which the whole case is gone into as if no trial whatever had been held in the lower court.

**TRUE BILL** - In criminal practice, the endorsement made by a grand jury upon a bill of indictment when they find sufficient evidence to warrant a criminal charge.

## U

**UNDERTAKING** - A promise or security. Undertaking when used to designate a security is used interchangeably with "security bond."

**UNDUE INFLUENCE** - Whatever destroys free will and causes a person to do something he would not do if left to himself.

## V

**VENUE** - The particular county, city or geographical area in which a



court with jurisdiction may hear and determine a case.

VERBATIM RECORD - Word-for-word record of proceedings taken by a court reporter or recording equipment.

VERDICT - In practice, the formal decision or finding made by a jury, reported to the court, and accepted by the court.

VERIFY - To confirm or substantiate by oath.

VOIR DIRE - To speak the truth. The phrase denotes the preliminary examination which the court may make of one presented as a witness or juror.

W

WAIVER - The act of intentionally relinquishing or abandoning a known right, claim, or privilege.

WAIVER OF IMMUNITY - A means authorized by statutes by which a witness, in advance of giving testimony or producing evidence, may renounce the fundamental right guaranteed by the Constitution that no person shall be compelled to be a witness against himself.

WARD - A person placed by authority of law under the care of a guardian.

WARRANT OF ARREST - A judicial process in the form of a written order by a judge or magistrate which, in the name of the state, is directed to a peace officer commanding him to arrest a named person and bring him before a court to answer a specified charge; must be based on probable cause supported by oath or affirmation.

WEIGHT OF EVIDENCE - The balance of preponderance of evidence; the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.

WITNESS - One who testifies to what he has seen, heard, or otherwise observed.

WRIT - An order issuing from a court of justice requiring the performance of a specified act or giving authority and commission to have it done.

**END**