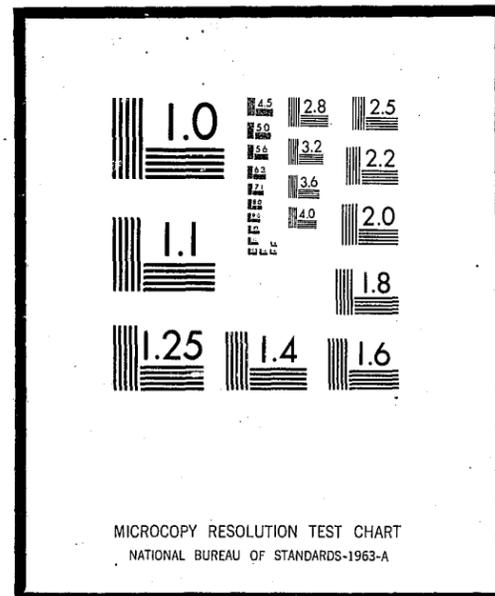


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ANNOTATION:

HANDY REFERENCE SOURCE IN LOOSE LEAF FORM.

ABSTRACT:

TODAY'S LAW ENFORCEMENT OFFICER MUST KNOW A GREAT MANY THINGS TO FUNCTION EFFECTIVELY IN OUR CHANGING SOCIETY. NEW LAWS, COURT DECISIONS, IMPROVED PROCEDURES AND TECHNIQUES ARE BEING ADDED CONTINUALLY TO THE ALREADY LARGE AMOUNT OF INFORMATION HE MUST HAVE AT HIS DISPOSAL. THIS HANDBOOK PROVIDES A HANDY SOURCE OF REFERENCE. IN THE LOOSE LEAF FORM, AS CHANGES OCCUR IT WILL BE POSSIBLE TO SUPPLY EACH USER OF THIS HANDBOOK WITH APPROPRIATE REPLACEMENT PAGES TO KEEP THE BOOK CURRENT. TOPICS COVERED INCLUDE POLICE CITIZEN RELATIONSHIP, JURISDICTION AND LEGAL AUTHORITY, CRIMINAL PROCEDURE, STATE AND FEDERAL-CRIMINAL OFFENSES, EVIDENCE, INTERROGATIONS, SEARCH AND SEIZURE, AND IDENTIFICATION AND STATISTICS. (AUTHOR ABSTRACT MODIFIED)

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NOTICE

THE BOARD OF DIRECTORS

OF THE



**SOUTH DAKOTA  
LAW ENFORCEMENT  
OFFICER'S  
HANDBOOK**

*Prepared by*

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1968

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## PREFACE

Today's law enforcement officer must know a great many things to function effectively in our changing society. New laws, court decisions, improved procedures and techniques are being added continually to the already large amount of information he must have at his disposal.

We hope this handbook will provide a handy source of reference for some of the most frequently encountered questions. No attempt has been made to include everything a good law enforcement officer should know. On the contrary, the content was deliberately limited so that essential information would be easier to find.

In the loose leaf form we believe that as changes occur it will be possible to supply each user of this handbook with appropriate replacement pages to keep the book current.

We invite your suggestions and comments regarding improvements to this book and are confident that through this process it can become a useful tool for all law enforcement officers in South Dakota.

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## LAW ENFORCEMENT CODE OF ETHICS

As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . .law enforcement.

**CHAPTER I**  
**POLICE-CITIZEN RELATIONS**

## POLICE-CITIZEN RELATIONS

A law enforcement agency can be effective only if it receives public cooperation and support. This support and the respect that all law enforcement agencies require to do their job properly is not automatic — it must be earned!

Gaining this acceptance and respect by the public should be a goal of every department. The actions of the individual officer, however, are the significant factors in reaching this goal.

A citizen judges a law enforcement agency through his personal experience. A single contact with one officer may very well determine his attitude, not only about one department, but about all law enforcement officers. The officer whose citizen contacts reflect competence and courtesy creates favorable impressions of his agency. On the other hand, one dishonest, rude or thoughtless act by a law enforcement officer can become magnified in the eyes of citizens and destroy respect for all law enforcement.

Many lists of desirable qualities for police officers have been compiled. Honesty and personal integrity, both on and off duty, certainly must be on the top of any such list. These coupled with knowledge of your job, personal appearance, courtesy and "common sense" will assure that you create a favorable image for your department.

Analyze your conduct. Think about the last time an irate citizen was displeased with you when you felt you were "only doing your job". Perhaps how you were doing it had more impact than what you were doing.

**CHAPTER II**  
**JURISDICTION AND LEGAL AUTHORITY**

## Chapter II

**JURISDICTION AND LEGAL AUTHORITY** – To the law enforcement officer, jurisdiction refers to responsibility for the investigation and handling of various types of crimes.

### I. CITY

- A. Violation of city ordinances are primarily the responsibility of the city police department. The city police have the power to execute all warrants issued by the municipal court and county district court. Ordinarily the investigative responsibility and jurisdiction of a municipal policeman with respect to city ordinance violations does not extend beyond the city limits except in cases of hot pursuit.
- B. City police have an overlapping responsibility with other law enforcement officers with respect to violations of state law committed within the city limits. They may pursue and arrest any person fleeing from justice in any part of the state.<sup>1</sup>

### II. COUNTY

- A. The county sheriff has the duty to keep and preserve the peace within his county. He must pursue and apprehend all felons, and must execute all writs, warrants, and other processes legally directed to him by any court or magistrate.<sup>2</sup>
- B. Deputies may be appointed by the board of county commissioners to assist the sheriff in the performance of his duties. The sheriff is responsible for the acts of such deputies.<sup>3</sup>

### III STATE

- A. All state laws may be enforced by any peace officer in the state, including sheriffs, constables, marshals, chiefs of police, policemen,<sup>4</sup> highway patrolmen,<sup>5</sup> and agents of the State Division of Criminal Investigation.<sup>6</sup>
- B. Peace officers of the state have concurrent jurisdiction with federal agencies where an offense constitutes a violation of both federal and local law. Violations of liquor and narcotics laws, counterfeiting, bank robbery, burglary, extortion, and kidnapping are some of the common areas of this dual responsibility.

C. The state of South Dakota has no jurisdiction with respect to crimes committed by or against an Indian within Indian country.<sup>7</sup> Thus, jurisdiction of state courts over crimes committed within Indian country extends only to offenses committed by non-Indians against non-Indians.<sup>8</sup>

1. The term "Indian country" generally means all land within the limits of an Indian reservation under the jurisdiction of the Federal government.<sup>9</sup>

#### IV. FEDERAL

A. Violations of federal criminal laws are generally handled by the FBI unless the federal law specifically delegates jurisdiction to another federal agency. The FBI has no authority to investigate violations of state law or city ordinances, although it may cooperate with local law enforcement officers where there is a violation of both federal and local law.

B. Other federal agencies generally have limited jurisdiction with respect to specific matters. Some examples are:

1. Bureau of Narcotics and Dangerous Drugs -- Federal narcotics and marijuana laws -- marijuana, cocaine, opium, heroin, and other opium derivatives, and synthetic opiates. Illegal sale and possession of certain drugs: for example amphetamines, barbiturates, some tranquilizer drugs, and hallucinogenic drugs, such as LSD.

2. Federal Food and Drug Administration -- Prescription drugs, adulterated food, mislabeling.

3. Alcohol and tobacco tax division -- Alcohol, tobacco, firearms, and gambling tax laws.

4. United States Secret Service -- Forged or counterfeit coins and securities of the United States or foreign governments, protection for the President and his immediate family.

5. Internal Revenue Service, Intelligence Division -- Income tax and other tax frauds.

6. Postal inspectors -- Violations of various postal laws, mail frauds, thefts.

## JURISDICTION AND LEGAL AUTHORITY

### NOTES

1. SDCL 1967, § 9-29-19.
2. SDCL 1967, § 7-21-1.
3. SDCL 1967, § 7-12-9.
4. SDCL 1967, § 23-21-7.
5. SDCL 1967, § 32-2-9.
6. SDCL 1967, § 23-3-10.
7. 18 U.S.C. §§ 1152, 1153 (1964).
8. Comment, South Dakota Indian Jurisdiction, 11 S.D. L. Rev. 101, 114 (1966).
9. 18 U.S.C. § 1151 (1964).

**CHAPTER III**  
**CRIMINAL PROCEDURE**

## CHAPTER III

### CRIMINAL PROCEDURE

Criminal actions are generally commenced by the filing of either a complaint or preliminary information in the proper court against the party accused of a crime. A complaint or preliminary information consists of a verified statement in writing charging one or more persons with the commission of a designated public offense. If the judge or magistrate to whom the complaint or preliminary information is presented is satisfied that the offense charged has been committed and that there are reasonable grounds to believe that the defendant has committed it, he will issue a warrant of arrest for the defendant.

Once the defendant is arrested he must be taken before a magistrate without unnecessary delay. The magistrate must inform the defendant of the charge against him and advise him of his rights, such as his right to have an attorney. The amount of bail, if any, must be set at this time and the defendant must decide whether he wishes to waive his right to a preliminary hearing. If the preliminary hearing is waived, the defendant will be directly bound over to the proper court for trial.

If the defendant elects to have a preliminary hearing, the prosecutor must produce enough evidence to convince the magistrate that a crime has been committed and that there is probable cause to believe the defendant committed it. The purpose of the preliminary hearing is not to determine the guilt or innocence of the defendant, but only whether there is sufficient cause to hold him for trial. If so, the defendant will be bound over to the proper court for trial.

The state's attorney may then either file an information with the trial court formally charging the defendant with a crime or seek a grand jury indictment of the defendant. A grand jury has the power to inquire into all public offenses committed or triable in the county, and occasionally a criminal action will be commenced by a presentment of a grand jury rather than by a complaint or preliminary information. In either case, however, the proceedings for a warrant of arrest and a preliminary hearing for the defendant are similar.

When the information or grand jury indictment is presented to the trial court, the defendant is arraigned on the charges contained therein and required to enter a plea. If the defendant does not plead guilty, he is entitled to a jury trial with the assistance of an attorney. He has a right to confront and cross-examine the witnesses against him and to

have compulsory process to secure the presence in court of witnesses on his own behalf.

In all criminal actions the defendant is presumed to be innocent until properly convicted. Although this presumption sometimes conflicts with the natural feelings that some persons have with respect to those accused of a crime, it nevertheless reflects an important principle concerning the prerequisites for the proper exercise of the coercive powers of the government under the criminal law. The practical effect of the presumption is to require the prosecution to satisfy an unbiased and independent tribunal that the defendant is guilty as charged. In addition, the prosecution must prove its case beyond a reasonable doubt. Thus, any ambiguities or inadequacies in the proof presented must be resolved in favor of the defendant. Finally, the accused has the right to remain silent at his trial, as well as at all other stages of the criminal process.

If the defendant is convicted, either upon his guilty plea or after trial, the court will impose sentence after making a presentence investigation, or hearing other evidence which would be helpful in determining the proper sentence.

CHAPTER IV  
PRINCIPAL CRIMINAL OFFENSES

Chapter IV  
PRINCIPAL CRIMINAL OFFENSES  
STATE

I. INTRODUCTION

- A. A crime or public offense is any act or omission prohibited by statute,<sup>1</sup> the violation of which is punished by:
1. Death;
  2. Imprisonment;
  3. Fine;
  4. Removal from office; or
  5. Disqualification from holding public office.<sup>2</sup>
- B. Crimes are either felonies or misdemeanors.<sup>3</sup>
1. A felony is a crime which is or may be punishable by death or imprisonment in the state penitentiary.
  2. Every other crime is a misdemeanor.
- C. All persons are considered capable of committing crimes except:
1. Children under the age of ten years;
  2. Children between the ages of ten and fourteen, unless it appears that at the time of committing the act charged against them they knew of its wrongfulness;
  3. Mentally ill persons, and all persons of unsound mind, including persons temporarily or partially deprived of reason, if it appears that at the time of committing the act charged against them they were incapable of knowing its wrongfulness;
  4. Persons who act or fail to act under an ignorance or mistake of fact which disproves any criminal intent. (But ignorance of the law is no excuse for its violation.);

5. Persons committing an act without being conscious thereof;
  6. Persons acting or failing to act while involuntarily subjected to the power of superiors.<sup>4</sup>
- D. **Principals**—All persons concerned in the commission of a crime, whether it be a felony or a misdemeanor, may be punished for the crime, regardless of whether they directly commit the act constituting the offense or merely aid and abet in committing it, and whether they are actually present at the scene of the crime.<sup>5</sup>
1. For example, in the case of a robbery or burglary, a person who stands watch outside the building while others complete the crime is a principal to the crime. Likewise, a guard or night watchman who purposely absents himself from the scene in order to facilitate the crime would also be a principal.
- E. **Accessories after the fact**—All persons who, after the commission of a felony, conceal or aid the offender with knowledge that he has committed a felony and with intent that he may avoid or escape from arrest, trial, conviction, or punishment, are accessories to the crime.<sup>6</sup>
1. Accessories after the fact to a felony are also guilty of a felony.<sup>7</sup>
  2. There are no accessories to misdemeanors.<sup>8</sup>
- F. **Compounding a crime**—Taking anything of value to compound or conceal a crime, to withhold evidence thereof, or to abstain from prosecution therefor, is also a crime.<sup>9</sup>
- G. **Attempt**—An attempt to commit a crime, although unsuccessful, is itself a crime. However, there must be some act done toward the commission of the crime.<sup>10</sup> Mere preparation is not enough.<sup>11</sup>
- H. **Conspiracy**—If two or more persons conspire to commit any offense against the state or to defraud the state or any county, township, school district, or municipal corporation, and any of the parties do any act to carry out the object of such conspiracy, all of the parties to the conspiracy are guilty of a felony.<sup>12</sup>

## II. CRIMES AGAINST THE PERSON

### A. Homicide—The killing of one human being by another.<sup>13</sup>

1. **Murder (felony)**—The unlawful killing of one human being by another human being
  - a. with a premeditated design to effect the death of the person killed or any other human being; <sup>14</sup> or
  - b. by an act imminently dangerous to others and evincing a depraved mind, regardless of human life, even though without any premeditated design to effect the death of any particular individual or any actual intent to injure others;<sup>15</sup> or
  - c. while engaged in the commission of any felony, even though without a design to effect death.<sup>16</sup>
  
2. **First degree manslaughter (felony)**—A homicide committed by a person
  - a. while engaged in the commission of a misdemeanor involving moral turpitude, but without a design to effect death;<sup>17</sup> or
  - b. in a heat of passion without a design to effect death, but in a cruel or unusual manner or by means of a dangerous weapon;<sup>18</sup> or
  - c. unnecessarily while resisting an attempt by the person killed to commit a crime or after such an attempt has failed.<sup>19</sup>
  
3. **Second degree manslaughter (felony)**—A homicide committed by a person without a design to effect death
  - a. while operating a motor vehicle in a negligent manner while under the influence of intoxicating liquor or narcotic drugs;<sup>20</sup> or
  - b. in any other manner which is not excusable or justifiable, or does not amount to murder or first degree manslaughter.<sup>21</sup>

- (1) A killing which is the result of accident or misfortune is an excusable homicide.<sup>22</sup>
- (2) A killing which is commanded or authorized by law, including a killing in self-defense, is a justifiable homicide.<sup>23</sup>

## B. Suicide

1. Aiding suicide (felony)—It is unlawful for any person to willfully advise, encourage, abet, or assist another in taking his own life.<sup>24</sup>
2. Any law enforcement officer who has knowledge that a person has attempted to take his own life is required by law to investigate such attempt and inform the county judge in the county where the attempt took place of the facts thereof.<sup>25</sup>

## C. Dueling (felony)—Combat with deadly weapons between two persons upon a previous agreement or quarrel.<sup>26</sup>

1. The crime is complete if the duel is fought, even though no one is killed or injured.<sup>27</sup> It is also a felony to:
  - a. Challenge another to fight a duel;
  - b. Accept such a challenge;
  - c. Deliver or carry such a challenge; or
  - d. Aid, advise, or encourage a duel.
2. It is a misdemeanor to:
  - a. Seek to provoke or induce another to issue a challenge to duel; or
  - b. Downgrade another for not accepting such a challenge.<sup>28</sup>
3. A person who leaves the state with intent to evade the statute against dueling may be prosecuted on his return to the state in any county for any dueling done outside the state.<sup>29</sup>

D. **Abortion (felony)**—Any attempt, whether successful or not, to procure the miscarriage of a pregnant woman unless it is necessary to save her life.<sup>30</sup>

1. **Manslaughter (felony)**—Anyone who causes the death of an unborn child or its mother while intentionally attempting to destroy a quick fetus is also guilty of first degree manslaughter, unless such action was necessary to preserve the life of the mother.<sup>31</sup>

a. If the unborn child is not quick and death results to the mother, the crime is second degree manslaughter.<sup>32</sup>

2. **Soliciting or submitting to abortion (misdemeanor)**—Although the woman on whom an abortion is performed is not a party to the crime of abortion, she may be guilty of soliciting or submitting to an abortion.<sup>33</sup>

3. **Concealing stillbirth or death of child (misdemeanor)**—Concealing the stillbirth or death of a bastard child under the age of two years by its mother.<sup>34</sup>

a. All such offenses after the first are punishable as felonies.<sup>35</sup>

E. **Maiming (felony)**—Any person who intentionally inflicts any injury upon himself or another which

1. disfigures personal appearance,

2. disables any member or organ of the body, or

3. seriously diminishes physical vigor,

is guilty of maiming.<sup>36</sup>

F. **Assault and battery**

1. An assault is any willful and unlawful attempt or offer to physically harm another by force or violence.<sup>37</sup>

2. A battery is any willful and unlawful use of force or violence upon another person.<sup>38</sup>

3. Assault or assault and battery are misdemeanors<sup>39</sup> unless committed

- a. with a dangerous weapon;<sup>40</sup>
- b. with intent to commit a felony;<sup>41</sup>
- c. with intent to kill;<sup>42</sup> or
- d. with intent to inflict great bodily injury;<sup>43</sup>

in which cases the offense is a felony.

G. Robbery (felony)—The wrongful taking of personal property of another from his person or in his presence by force or by putting him in fear.<sup>44</sup>

1. To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If employed merely as a means of escape, it does not constitute robbery.<sup>45</sup>
2. The taking of property from the person of another is not robbery where it clearly appears that the taking was completed without his knowledge.<sup>46</sup>

H. Kidnapping (felony)—The unlawful abduction or carrying away of another person and holding or detaining such person.<sup>47</sup>

1. The kidnapping statute does not apply to actions taken with respect to an unmarried minor by his parent.<sup>48</sup>
2. It is not necessary that the person be held for ransom.<sup>49</sup>

I. Abduction of minor females (felony)—Enticing or taking away any female from her father, mother, or guardian or anyone having legal charge of her person

1. for the purpose of marriage if she is under fifteen years of age and her father, mother or guardian or the person having legal charge of her has not consented; or
2. for immoral purposes if she is under eighteen years of age.<sup>50</sup>

- J. **Child stealing (felony)**—Maliciously, forcibly or fraudulently enticing or taking away any child under twelve years of age with intent to detain and conceal such child from its parent or guardian or other person having lawful charge of such child.<sup>51</sup>
- K. **Rape (felony)**—An act of sexual intercourse accomplished with a female, not the wife of the perpetrator
1. without her consent; or
  2. where the female is under eighteen years of age.<sup>52</sup>
- L. **Seduction under promise of marriage (felony)**—Seduction and illicit intercourse with an unmarried female of previous chaste character with promise of marriage.<sup>53</sup>
1. A subsequent marriage of the parties is a defense to the crime.<sup>54</sup>
- M. **Adultery (felony)**—Sexual intercourse by a married person with one of the opposite sex other than the husband or wife of the offender.<sup>55</sup>
1. If the crime is committed by a married person with an unmarried person, both are guilty of adultery.<sup>56</sup>
- N. **Desertion of wife (felony)**—A husband who willfully abandons his wife in a destitute condition, unless by her misconduct he is justified in doing so, is guilty of desertion.<sup>57</sup>
1. Deserting child under six years of age (felony)—Desertion of a child under the age of six years with the intent to wholly abandon it by a parent or person to whom such child has been confided for nurture or education.<sup>58</sup>
- O. **Abuse of children (misdemeanor)**
1. Unlawful employment—No child under fourteen years of age may be employed or exhibited:
    - a. As a mendicant, peddler, actor, performer or singer on the streets;
    - b. In any variety theater;

- c. For any illegal, obscene, indecent or immoral purpose; or
  - d. For any business, exhibition or vocation injurious to the health or morals or dangerous to the life or limb of such child.<sup>59</sup>
2. Abuse or neglect—It is unlawful to deprive a child under fourteen years of age of necessary food, clothing, shelter or medical attendance or to unnecessarily expose, torture, cruelly punish or willfully neglect such a child.<sup>60</sup>
  3. Furnishing tobacco to child under sixteen—It is unlawful for any person to sell, give or furnish tobacco in any form to any child under sixteen years of age.<sup>61</sup>
  4. Furnishing nonintoxicating beer or wine to child under nineteen—It is unlawful for any person to sell or give nonintoxicating beer or wine (not more than 3.2% alcohol) for use as a beverage to any person under nineteen years of age unless it is done in the immediate presence of a parent, guardian, or husband of such minor.<sup>62</sup>

### III. CRIMES AGAINST PROPERTY

- A. Arson (felony)—A willful burning of any building or similar structure or any personal property having a value in excess of \$25,00.<sup>63</sup>
  1. A person may be guilty of arson for burning a building or similar structure whether it is owned by him or by another person.<sup>64</sup>
  2. But, in the case of personal property including standing timber or vegetation, the property must belong to another person.<sup>65</sup> It is not arson for a person to burn his own personal property unless he does so with intent to defraud the insurer of such property.<sup>66</sup>
  3. Attempted arson is also a felony.<sup>67</sup> For example, placing any explosive or combustible material near property which can be the subject of arson in preparation to eventually burning such property would constitute attempted arson.<sup>68</sup>

- B. Burglary (felony)**—Generally speaking, burglary consists of breaking or entering any building, booth, tent, railroad car, vessel, vehicle, or other structure with intent to commit some crime therein.
1. In South Dakota there are four degrees of burglary depending on such factors as the type of building entered, the time of entry, the method of breaking and entering, and the type of crime intended upon gaining entry.<sup>69</sup>
  2. If the entry does not amount to burglary but is made with intent to commit a felony, larceny, or malicious mischief, the crime is only a misdemeanor.<sup>70</sup>
  3. It is not necessary that the crime intended upon gaining entry be consummated.<sup>71</sup>
- C. Possessions of burglary tools (felony)**—It is unlawful to possess any weapon, instrument, or explosive useful for the commission of burglary, with the intent to commit burglary. The possession of any such implement or explosive by any person except a bonafide merchant or dealer is prima facie evidence of a violation.<sup>72</sup>
- D. Larceny**—The taking of personal property by fraud or stealth with intent to deprive the owner of his property.<sup>73</sup>
1. Grand larceny (felony)—The larceny is grand larceny in the following cases:
    - a. When the property taken is of a value exceeding \$50.00;
    - b. When such property, although not of a value exceeding \$50.00, is taken from the person of another; and
    - c. When the property taken is livestock.<sup>74</sup>
  2. Petit larceny (misdemeanor)—In all other cases the larceny is petit larceny.<sup>75</sup>
  3. Lost property—If a person finds lost property or stray animals and keeps the same without taking the

appropriate steps required by law to find the owner thereof, he is guilty of larceny.<sup>76</sup>

4. Fixtures and crops—If fixtures attached to real estate or crops growing thereon are severed from the land, they become personal property and the taking thereof may constitute larceny.<sup>77</sup>
  5. Larceny outside the state—If a person steals property outside the state of South Dakota and brings the property into the state, he may be charged with larceny in any county into or through which the stolen property was moved.<sup>78</sup>
  6. Embezzlement distinguished—To constitute larceny, possession of the property must be obtained wrongfully. If a person has already been entrusted with possession of property by the owner thereof, his unlawful appropriation of the goods to his own use would constitute embezzlement.<sup>79</sup>
  7. Obtaining property by false pretenses distinguished—Where possession of the property is obtained by fraud it is larceny only if the owner did not intend to part with title to the property. If a person fraudulently induces the owner to give him both possession and title to the property through false representations, the crime would be obtaining property by false pretenses.<sup>80</sup> For example, a person who buys property on credit would ordinarily receive both possession and title to the property and he would not be guilty of larceny even though he had no intention of paying for the goods at the time he purchased them.<sup>81</sup> But, if it could be established that he misrepresented his intention, thereby inducing the owner to sell the goods, he could be guilty of obtaining property by false pretenses.
- E. Receiving stolen property—It is unlawful for any person to buy or receive stolen property knowing the same to have been stolen.<sup>82</sup>
1. Receiving stolen property is a felony when the property has a value exceeding \$50.00, or when the property consists of livestock regardless of value. In all other cases it is a misdemeanor.

- F. **Shoplifting (misdemeanor)**--Willfully taking possession of any goods, wares, or merchandise offered for sale by any store or other mercantile establishment with the intention of keeping the same without paying the purchase price thereof.<sup>83</sup>
1. If unpurchased goods or merchandise are found concealed upon a person while on the premises or outside the premises of a store, it is prima facie presumed that such unpurchased goods or merchandise were concealed by that person with the intent to keep the same without paying the purchase price.<sup>84</sup>
  2. Persons so concealing such goods may be detained in a reasonable manner for a reasonable length of time by a merchant or his employee until the arrival of the police or other duly authorized law enforcement authorities, provided such authorities are promptly notified of the detention.<sup>85</sup>
- G. **Embezzlement**--The fraudulent appropriation of property by a person to whom it has been entrusted.<sup>86</sup>
1. The punishment for embezzlement is the same as for larceny. Thus, if a larceny of the property involved would have constituted grand larceny, then the embezzlement is a felony. Otherwise, it is a misdemeanor.<sup>87</sup>
- H. **Obtaining property by false pretenses (felony)**--Obtaining money, property, or the signature of any person to any written instrument by the use of any false token, writing, or other false pretense or representation.<sup>88</sup>
1. False pretense is a false representation of a past or existing fact knowingly made with intent to deceive or defraud.<sup>89</sup>
  2. The false representation must be relied upon, at least in part, by the owner of the property.<sup>90</sup>
  3. Giving a worthless check, knowing it to be worthless, is generally considered to be a false pretense.
  4. Making, distributing or using slugs, tokens, counterfeit coins, or other means for fraudulently operating public vending machines or telephones is a misdemeanor.<sup>91</sup>

- I. **Insufficient fund checks (misdemeanor)**—Willfully drawing a check on any bank knowing that there are insufficient funds in such bank to pay the check and all other checks then outstanding against the account, with intent to defraud.<sup>92</sup>
- J. **Extortion**—Obtaining property from another with his consent, but where such consent is induced by wrongful use of force or fear, or under color of official right.<sup>93</sup>
1. The fear may be induced by a threat:
    - a. To do an unlawful injury to the person or property of an individual or to any member of his family;
    - b. To accuse him or any member of his family of any crime;
    - c. To expose or impute to him or them any deformity or disgrace; or
    - d. To expose any secret affecting him or them.<sup>94</sup>
  2. Extortion by wrongful use of force or fear is a felony.<sup>95</sup>
  3. Extortion under color of official right is a misdemeanor.<sup>96</sup>
  4. Attempted extortion—It is also a felony to send any person a letter or other writing containing a threat sufficient to constitute extortion, whether successful or not.<sup>97</sup> An unsuccessful verbal threat sufficient to constitute extortion is a misdemeanor.<sup>98</sup>
- K. **Forgery (felony)**—The false making or material alteration with intent to defraud of any writing which, if genuine, would apparently be legally effective.
1. A material alternation is anything which significantly alters the effect of the instrument. For example, raising the amount of a check, changing the date of a deed, or substituting a name in a will, would be material alterations.<sup>99</sup>
  2. In addition forgery may consist of:
    - a. Signing another's name without authority to do so;<sup>100</sup>

- b. Signing one's own name with intent to defraud by passing the document off as one executed by another person having the same name;101
  - c. Signing a fictitious or assumed name with intent to defraud; 102 or
  - d. Counterfeiting United States coins, currency or postage stamps.103
3. A person is also guilty of forgery if he passes a forged instrument, knowing that it is forged, and with intent to defraud.104
- L. Malicious mischief—Maliciously injuring, defacing, or destroying any real or personal property belonging to another.105
- 1. Malicious mischief is usually a misdemeanor except in certain specified cases where the harm or potential harm to the public is especially great. For example, it is a felony to maliciously interfere with or obstruct any railroad, highway, street, bridge, or other public place.106
  - 2. In addition to the general definition of malicious mischief, many other interferences with certain kinds of property have been prohibited by statute. For example:
    - a. Opening or reading any sealed letter addressed to another without authority to do so;107
    - b. Disclosing the contents of a telegraph or telephone message addressed to another without written permission to do so;108
    - c. Maliciously concealing a telegraph message addressed to another;109
    - d. Unauthorized wire tapping;110
    - e. Obstructing or delaying the sending of any message by telephone or telegraph;111
    - f. Interference with any ditch, flume, or dam used for irrigating.112

#### IV. CRIMES AGAINST THE PUBLIC PEACE

A. **Disturbing the public peace (misdemeanor)**—Any willful and wrongful act which grossly disturbs the public peace is a misdemeanor.<sup>113</sup> The offense may consist of:

1. Grossly disturbing the peace and quiet of a neighborhood;
2. Disturbing or breaking up any lawful assembly or meeting;<sup>114</sup> or
3. Disturbing an individual in such a manner as to provoke a breach of the peace.
4. Using any abusive, profane, or obscene language in the presence of or in reference to another person or member of his family with intent to provoke an assault or breach of the peace is also a misdemeanor.<sup>115</sup>

B. **Unlawful assembly (misdemeanor)**—An unlawful assembly occurs whenever three or more persons assemble with intent to do an unlawful act by force or violence, or with intent to do anything to disturb the public peace.<sup>116</sup>

1. An unlawful assembly may be a felony if criminal syndicalism is involved.<sup>117</sup> Criminal syndicalism is any doctrine which advocates the use of crime, sabotage, violence, or other methods of terrorism for the accomplishment of social, economic, or political ends.<sup>118</sup>

C. **Rout (misdemeanor)**—A rout is an unlawful assembly which has attempted to do any act in furtherance of its unlawful purpose.<sup>119</sup>

D. **Riot**—A riot is the unlawful use of force or violence by three or more persons acting together, or any threat by them to use such force or violence accompanied by immediate power of execution.<sup>120</sup>

1. Participating in a riot is a felony if:
  - a. The person carries a firearm or other deadly or dangerous weapon;<sup>121</sup>

- b. The person was disguised:122
  - c. The person directed, advised, encouraged, or solicited other persons to participate in a riot;123 or
  - d. The purpose of the riot was to resist the execution of any federal or state law or obstruct any public officer in the performance of his duty.124
2. In addition, any person participating in a riot may be guilty of murder, maiming, robbery, rape, or arson if those crimes were committed by anyone during the course of the riot.125
  3. In all other cases rioting is a misdemeanor.126
  4. Any person present at a riot who refuses to obey a lawful command to aid a magistrate or peace officer in arresting any rioter is himself guilty of participating in the riot.127
  5. Failure to disperse from any place of riot, rout, or unlawful assembly when lawfully warned to do so is a misdemeanor.128
- E. **Vagrancy (misdemeanor)**—A vagrant is an idle person, having no legitimate means of support, who does not seek or desire lawful employment, and who subsists through charity of others or by unlawful means.129
1. There is a prima facie presumption of vagrancy if any person who is able to work:
    - a. Wanders about in idleness or lives in idleness without property sufficient for his support;
    - b. Leads an idle, immoral, or profligate life and does not work;
    - c. Loafs, loiters, or idles in any town or upon a public highway or about any public place without any regular employment and without sufficient property for his support;
    - d. Trades or barter stolen property;
    - e. Unlawfully sells or barter intoxicating liquor;

- f. Attends or operates any gambling device or apparatus;
  - g. Engages in practicing any trick or device to procure money or other things of value;
  - h. Engages in any unlawful calling;
  - i. If an able-bodied married man, neglects or refuses without lawful excuse to provide support for his family;
  - j. Beggars in any public place or from house to house, or induces children or others to do so;
  - k. Falsely represents himself as a collector of alms for a charitable purpose.<sup>130</sup>
- F. **Forcible entry and detainer (misdemeanor)**—Using force or violence to unlawfully enter or detain the land of another.<sup>131</sup>
- 1. A person who returns to possession of land after being removed therefrom by process of law is also guilty of a misdemeanor, even though no force or violence is used.<sup>122</sup>
- G. **Endurance contest (misdemeanor)**—It is unlawful to operate, attend, or participate in any physical endurance contest or exhibition which continues or is intended to continue for a period of more than four consecutive hours in any 24 hour period.<sup>133</sup>
- H. **Eavesdropping (misdemeanor)**—Secretly loitering about any building with intent to overhear discourse therein and repeat or publish the same to vex, annoy, or injure others is a misdemeanor.<sup>134</sup>
- I. **Dead human bodies**
- 1. **Neglect of burial (misdemeanor)**—A person who has the duty of burying the remains of a deceased person is guilty of a misdemeanor if he fails to perform that duty within a reasonable time.<sup>135</sup>
  - 2. **Unlawful dissection (misdemeanor)**—Any dissection of a dead human body, except by authority of law or pursuant to the permission of the decedent.<sup>136</sup>

3. **Arresting or attaching dead human body (misdemeanor)**—Arresting or attaching the dead body of a human being upon any debt or demand is a misdemeanor.<sup>137</sup>
4. **Unlawful removal of dead (felony)**—Unlawfully removing all or any part of the dead body of a human being from any grave or other place of burial, or opening any grave or place of burial with intent to unlawfully remove any part of the dead body is a felony.<sup>138</sup>

#### J. Crimes against animals

1. **Malicious killing or injury of animals**—It is unlawful for a person to maliciously kill or injure any animal belonging to himself or to another.<sup>139</sup>
  - a. If the animal killed or injured is a horse, mule, ass, sheep, or cattle belonging to another, the crime is a felony. Anyone who kills or injures any other animal belonging to another or any animal whatever belonging to himself is guilty of a misdemeanor.
  - b. **Poisoning animals (felony)**—Poisoning any animal belonging to another or maliciously exposing any poisonous substance for that purpose is a felony.<sup>140</sup>
2. **Abuse of domestic animals (misdemeanor)**—It is unlawful to willfully or negligently mistreat or abuse any domestic animal by:
  - a. Exposure to heat or cold;
  - b. Deprivation of food or water; or
  - c. Leaving it hitched in the open air during cold weather or storm, or in the nighttime.<sup>141</sup>
3. **Animal fights (misdemeanor)**—It is unlawful to maliciously instigate or encourage any fight between animals, or to hold such a fight for any bet, stake, or reward.<sup>142</sup>
  - a. Keeping any house, pit, or other place for animal fights is also a misdemeanor.

**I. Public nuisance (misdemeanor)—Maintaining or committing any public nuisance is a misdemeanor.143**

1. An accumulation of garbage, refuse, junk or other waste material or offensive matter within 20 rods of any public highway, public park, or other public ground, except in a public dump ground, in such manner as to be unsightly or otherwise offensive to persons using such public places, is a public nuisance.144
2. It is a misdemeanor to place any garbage, refuse, ashes, junk, or other waste material or offensive matter on any public highway public park, public waters, or other public ground, except as authorized by the proper public officials in charge of such places.145

**V. CRIMES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS**

**A. Any act which grossly endangers the public health, injures the person or property of another, or openly outrages public decency and is injurious to public morals, is a misdemeanor.146**

**B. Poison**

1. It is a felony to:
  - a. Poison any food, drink, or medicine with intent that it be taken by a human being; or
  - b. Poison any spring, well, or reservoir of water.147
2. It is a misdemeanor to lay out poison within the limits of any city, or within one mile of any dwelling house, or any barn, stable, or outbuilding used for keeping horses, cattle, sheep, or swine, or within one-half mile of any traveled highway.148
  - a. It is not unlawful, however, for a landowner or lessee to lay out poison on his own land for the control of ground squirrels, pocket gophers, mice, prairie dogs, rabbits, or other crop destroying rodents, or magpies and insects. Poison may also be laid out by the State

Game and Fish Commission or the United States Department of Agriculture for the control of such rodents or the extermination of predatory animals.149

**C. Spreading disease germs or contagious disease**

1. It is a felony to release or spread any disease germs with intent to infect any person or domestic animal.150
2. Any person who exposes himself or another person infected with a contagious disease in any public place or thoroughfare, except as necessary to removal in a manner not dangerous to the public health, is guilty of a misdemeanor.151

**D. Polluting rivers (misdemeanor)**—It is unlawful to place any manure, butchers offal, carcasses of animals, or any other deleterious substance in any river, stream, or lake, or upon the banks thereof in such proximity that such substance may be washed into the water or water course.152

**E. Smoking by minors**

1. It is a misdemeanor to:
  - a. Give any person under the age of 18 years any cigarette or cigarette paper; or
  - b. Allow such person to smoke cigarettes in a public place.153

**F. Injuring or destroying property with explosives (felony)**—Injuring or destroying any real or personal property, or attempting to do so, with explosives is a felony.154

1. It is also a felony to place explosives near such property with intent to destroy it, even though no damage is done, if human lives or safety would thereby be in danger.155
2. Making or keeping gun powder or saltpeter within any city or town is a misdemeanor.156
3. Any person who sells dynamite or any other high explosive, except gunpowder, must make a record of:
  - a. The date of sale;

- b. The name and address of the purchaser;
- c. The name and quantity of the article sold;
- d. The purpose for which it is required; and
- e. The name of the person, if any, who introduced the purchaser. If the purchaser is unknown to the seller he must be introduced by some person known to the seller. Any violation of these requirements is a misdemeanor.<sup>157</sup>

**G. Firecrackers and fireworks**—All wholesalers and retailers of fireworks in the state of South Dakota must be licensed by the State Fire Marshal.<sup>158</sup> All fireworks sold or held for sale in the state must be examined and approved by the State Fire Marshal.<sup>159</sup>

- 1. It is a misdemeanor to bring, sell, or hold fireworks for sale in this state without a license, except that fireworks may be transported through the state by regulated carriers without a license.<sup>160</sup>
- 2. Fireworks may be sold to individuals at retail only during the period of June 27 through July 5.<sup>161</sup>

**H. Firearms and other weapons**

- 1. **Carrying concealed weapons (felony)**—It is unlawful to carry these concealed weapons:
  - a. Any loaded firearm, unless licensed to do so;<sup>162</sup> or
  - b. Any sharp or dangerous weapon such as is usually employed in attack or defense of the person.<sup>163</sup>
  - c. Law enforcement officers and other persons with the duty to execute warrants or make arrests are excepted.<sup>164</sup>
- 2. **Discharging guns in public places (misdemeanor)**—It is unlawful to discharge any firearm, airgun, or other weapon, or throw any missile in any public place, or in any place where there is another person to be endangered thereby.<sup>165</sup>
  - a. However, it would not be a violation for a person to

shoot a gun in a public place in self-defense, or for an officer to discharge a firearm in the necessary performance of his duty.166

3. **Unlawful use by persons under 15 (misdemeanor)**

- a. It is unlawful for any person under the age of 15 years to have or use any kind of firearm without the knowledge and consent of his parent or guardian.
- b. Such consent can not be given to use a loaded firearm within one mile of any city or town.167

4. **Slung-shots**

- a. It is a misdemeanor to manufacture, sell, keep for sale, or give away a slung-shot.
- b. It is a felony to carry, use, or attempt to use any slung-shot against another person.168

5. **Switch blade knives**—It is a misdemeanor to manufacture, possess, display, offer, sell, lend, give away, or purchase any knife which has a blade that opens automatically by handle pressure applied to a button, spring, or other device in the handle.169

I. **Fire**—It is a misdemeanor to:

1. Willfully or negligently kindle a fire in any woods, brush, fields, marshes, or prairies and leave it unquenched;
2. Negligently or carelessly permit a fire to spread out of control so as to endanger the property of another;
3. Fail to give immediate warning on finding an uncontrolled fire burning and make a reasonable attempt to quench it;
4. Disobey the lawful orders of any public official or fireman attempting to control a fire;
5. Refuse to assist in controlling a fire or interfere with any officer attempting to do so;170

6. Throw a burning match, cigarette, cigar, ashes of a pipe, or other burning substance from any vehicle or other means of transportation;<sup>171</sup> or
  7. Carelessly or negligently set fire to the bedding, furniture, curtains, drapes, or any part of the building in a hotel or rooming house so as to endanger life or property in any way.<sup>172</sup>
- J. **Bigamy (felony)**—A person who marries while still legally married to another person who is still living is guilty of bigamy.<sup>173</sup>
1. Exceptions—There is no offense where:
    - a. The husband or wife by the former marriage has been absent and his or her whereabouts unknown for 5 years;
    - b. The husband or wife by the former marriage has been absent from the United States for 5 years;
    - c. The former marriage has been pronounced void, annulled, or dissolved by the judgment of a competent court, unless such marriage was dissolved on the ground of adultery committed by the person seeking the second marriage; or
    - d. The husband or wife by the former marriage has been sentenced to imprisonment for life.
  2. A person who knowingly marries a bigamist is also guilty of a felony.<sup>174</sup>
- K. **Incest (felony)**—Adultery, fornication, or marriage between persons who are related within the degrees of consanguinity wherein marriage is prohibited by law.<sup>175</sup>
1. Marriage is prohibited between:
    - a. Parents and children, or ancestors and descendants of every degree;
    - b. Brothers and sisters of half as well as whole blood;

- c. Uncles and nieces, or aunts and nephews; and
  - d. Cousins of half as well as whole blood.<sup>176</sup>
- L. **Sodomy (felony)**—The South Dakota statute prohibits “the detestable and abominable crime against nature committed with mankind or with a beast.”<sup>177</sup>
- 1. This has been interpreted by the South Dakota Supreme Court to include “every unnatural carnal copulation”, including sodomy per annum and unnatural carnal copulation by means of the mouth.<sup>178</sup>
- M. **Indecent molestation of a child (felony)**—It is unlawful for a person to willfully commit any lewd or lascivious act upon or with the body, or any part, or member thereof, of a child under the age of 15 years, with the intent of arousing, appealing to, or gratifying the lust, passion, or sexual desires of such person, or of such child.<sup>179</sup>
- N. **Prostitution (misdemeanor)**—It is unlawful for a person to resort to a house of ill fame or to be found in any hotel, boarding house, or other place leading a life of prostitution.<sup>180</sup>
- 1. Keeping a house of ill fame, or any boat or vehicle used for the purposes of prostitution is a felony.<sup>181</sup>
  - 2. Keeping a disorderly house which disturbs the public peace, or knowingly letting any building or portion thereof for an immoral purpose is a misdemeanor.<sup>182</sup>
- O. **Indecent exposure (felony)**—It is unlawful for any person to expose his or her person, or the private parts thereof, to public view or to the view of any number of persons in such a manner as to be offensive to decency or adapted to excite vicious or lewd thoughts or acts.<sup>183</sup>
- P. **Sale or distribution of obscene matter (misdemeanor)**—It is unlawful to knowingly sell or distribute obscene matter.<sup>184</sup>
- 1. Material is obscene if, considered as a whole by contemporary community standards, it has as its dominant theme or purpose an appeal to prurient interest.<sup>185</sup>

2. Prurient interest is a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters and which as a matter of state public policy is utterly without redeeming social importance.186
3. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience, the appeal of the subject matter may be judged with reference to such audience.187
4. If the material is distributed to minors under 18 years of age, the appeal of the subject matter may be judged with reference to an average person in the community of the actual age of the minor or minors to whom such materials are being distributed.188
5. Advertising or promoting the sale or distribution of matter represented or held out to be obscene is also a misdemeanor, even though such matter may not in fact be obscene.189
6. A paid entertainer who knowingly sings or speaks any obscene song, ballad, or other obscene words in a public place is guilty of a misdemeanor.190
7. All violations of the obscenity statute after the first offense are punishable as felonies.191

**Q. Profane swearing or obscene language (misdemeanor)**

1. Blasphemy and profane swearing are unlawful.192
2. It is unlawful to use or speak any obscene or lascivious language in any public place or in the presence of females or children under 10 years of age.193

**R. Minors in pool rooms (misdemeanor)**—It is unlawful for any person under the age of 19 years to enter or frequent any pool or billard hall or room where nonintoxicating beer and wine (not more than 3.2% alcohol) are sold for consumption on the premises unless accompanied by his parent or guardian. It is

also an offense for the proprietor or employee of such a place to allow such unaccompanied minor to enter or frequent the place.<sup>194</sup>

- S. **Public intoxication** (misdemeanor)—Any person found intoxicated in a public place is guilty of a misdemeanor.<sup>195</sup>

## VI. CRIMES INVOLVING JUDICIAL PROCESS

- A. **Escape from prison** (felony)—Any person who escapes from prison or other lawful custody is guilty of a felony.<sup>196</sup>

1. **Attempted escape**

a. Attempted escape from the state penitentiary is a felony.<sup>197</sup>

b. Attempted escape from any other prison or lawful custody is a misdemeanor.<sup>198</sup>

2. **Assisting escape**

a. Assisting a prisoner to escape from prison is a felony if the prisoner was confined for a felony, and is a misdemeanor if the prisoner was confined for a misdemeanor.<sup>199</sup>

b. Assisting a prisoner to escape from the custody of any officer or person having lawful charge of such prisoner is a misdemeanor.<sup>200</sup>

3. A peace officer who willfully or negligently permits a prisoner in his custody to escape is guilty of a misdemeanor.<sup>201</sup>

- B. **Arrest**—It is a misdemeanor for:

1. A public officer or person pretending to be a public officer acting under the pretense or color of any process or other legal authority to arrest any person or seize his property without due and legal process;<sup>202</sup>

2. Any person to refuse or neglect to arrest another person after having been lawfully commanded to do so by a magistrate;<sup>203</sup>

3. Any person to refuse or neglect to aid an officer in arresting another person or in executing any legal process after having been lawfully commanded to do so;204 or
4. Any person who has arrested another person to delay in taking such person before a magistrate.205

C. Search Warrant—It is a misdemeanor for:

1. Any person to maliciously procure a search warrant to be issued without probable cause;206 or
2. A peace officer to willfully exceed his authority in executing a search warrant.207

## VII. MISCELLANEOUS OFFENSES

A. Gambling (misdemeanor)—Gambling in any form with cards, dice, or other apparatus of any kind whereby anything of value is wagered on the outcome is unlawful.208

1. It is also a misdemeanor to:

- a. Keep or let any establishment or equipment for gambling;209
- b. Travel from place to place for the purpose of gambling;210
- c. Frequent any place where gambling is permitted;211 or
- d. Persuade another person to visit a gambling house.212

2. A race between horses or other animals for any bet, stake, or reward is unlawful,213 except that pari-mutual betting is authorized.214

B. Lottery (misdemeanor)—An unlawful lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property.215

1. Such a lottery is unlawful whether it is called a lottery, a

raffle, a gift enterprise, or some other name, and whether the drawing is held within this state or in another state.<sup>216</sup>

- C. **Criminal libel (misdemeanor)**—Any willful and malicious publication of untrue statements, other than by words spoken orally, which injures the good name or reputation of another is unlawful.<sup>217</sup>
- D. **Desecration of flag (misdemeanor)**—It is unlawful to mutilate, deface, injure, or destroy or publicly cast contempt upon any flag of the United States or the state of South Dakota.<sup>218</sup>

## FEDERAL

### I. INTRODUCTION

- A. Because of the limits of federal jurisdiction, most federal crimes involve some aspect of interstate or foreign commerce.
- B. Classification—Under federal law, any offense punishable by death or imprisonment for a term exceeding one year is a felony. All other federal offenses are misdemeanors.<sup>219</sup>

### II. SELECTED FEDERAL CRIMES

- A. **Bank robbery and embezzlement (felony)**—Robbery, burglary, larceny, and embezzlement from the following banks or organizations are federal crimes:<sup>220</sup>
  - 1. Member banks of the Federal Reserve System;
  - 2. A bank insured by the Federal Deposit Insurance Corporation;
  - 3. A bank organized or operated under the laws of the United States (national banks);
  - 4. A federal savings and loan association;
  - 5. An institution insured by the Federal Savings and Loan Insurance Corporation; and
  - 6. A federal credit union.
- B. **Bribery of public officials (felony)**—It is unlawful for any person to offer or give a bribe to an employee or agent of the United States for the purpose of influencing any official action by him. Likewise, it is a violation for such employee or agent to accept or solicit such a bribe.<sup>221</sup>
- C. **Civil rights (felony)**—It is a crime to conspire to deprive a person of any right or privilege secured to him by the laws or Constitution of the United States.<sup>222</sup>
- D. **Counterfeiting and forgery (felony)**—Imitating or counterfeiting coins, currency, or other obligations of the United States, or publishing or passing such counterfeit or forged coins or currency is a felony.<sup>223</sup> Forgery or

counterfeiting of postage stamps is also prohibited.<sup>224</sup> Federal law also forbids the interstate transportation of such money or securities and any tools, dies, or plates to be used in counterfeiting or forgery.<sup>225</sup>

- E. **Election law violations (felony)**—The purchasing or selling of votes, as well as conspiring to deprive a person of his right to vote or have his vote counted as cast, are violations of federal law if candidates for federal office are involved in the election.<sup>226</sup>
- F. **Extortion (felony)**—It is unlawful to use the United States mails or other forms of interstate communication to convey:
  - 1. A threat to kidnap or injure another person;
  - 2. A demand for ransom or reward; or
  - 3. A threat to injure the property or reputation of another with intent to extort.<sup>227</sup>
- G. **Blackmail (misdemeanor)**—Demanding or receiving anything of value as consideration for not informing against a violation of federal law is a misdemeanor.<sup>228</sup>
- H. **Fraudulent claims against the government (felony)**—The presentation of false or fictitious claims against the federal government and the misrepresentation or concealment of facts concerning matters within the jurisdiction of the United States government are violations of federal law.<sup>229</sup>
- I. **False personation (felony)**—It is unlawful for any person to falsely assume or pretend to be an officer or employee of the United States government or a citizen of this country.<sup>230</sup>
- J. **Interstate transportation of stolen cattle, motor vehicles, or aircraft (felony)**—The transportation in interstate commerce of any stolen cattle, motor vehicles, or aircraft, or other stolen property of a value of \$5,000 or more, knowing the same to have been stolen, is a federal offense. It is also a crime to receive, conceal, store, sell, or dispose of such items with knowledge that they have been stolen.<sup>231</sup>
- K. **Kidnapping (felony)**—If a person is kidnapped, taken across a state line, and held for ransom, there is a federal violation.<sup>232</sup>

- L. **Mail fraud (felony)**—It is unlawful to use the United States mails to defraud another or to obtain anything of value by false or fraudulent pretenses, representations, or promises.<sup>233</sup>
- M. **Theft from interstate shipment**—Theft or embezzlement of any goods from a shipment moving in interstate or foreign commerce, and the receipt or possession of such stolen goods with knowledge that they are stolen, are federal crimes.
1. If the value of the goods taken does not exceed \$100, the crime is a misdemeanor.
  2. In all other cases, the theft or embezzlement is a felony.<sup>234</sup>
- N. **Theft of government property**—Theft, embezzlement, or robbery of United States government property is a violation of federal law, as is the receipt or possession of such property with knowledge that it was stolen.
1. The crime is a misdemeanor if the value of the property does not exceed \$100.
  2. Otherwise, the theft is punishable as a felony.<sup>235</sup>
- O. **White slave traffic (felony)**—The interstate transportation of a female for the purpose of prostitution, debauchery, or any other immoral purpose is a federal crime.<sup>236</sup>
- P. **Offenses on Indian reservations**—The following crimes are federal offenses when committed by any Indian within Indian country under the jurisdiction of the United States:<sup>237</sup>
1. Murder;
  2. Manslaughter;
  3. Rape;
  4. Carnal knowledge of a female, not his wife, who is under sixteen years of age;
  5. Assault with intent to commit rape;
  6. Incest;

7. Assault with intent to kill;
8. Assault with a dangerous weapon;
9. Arson;
10. Burglary;
11. Robbery; and
12. Larceny.

## PRINCIPAL CRIMINAL OFFENSES

### NOTES

1. SDCL 1967, § 22-1-8.
2. SDCL 1967, § 22-1-3.
3. SDCL 1967, § 22-1-4.
4. SDCL 1967, § 22-3-1.
5. SDCL 1967, § 22-3-3.
6. SDCL 1967, § 22-3-5.
7. SDCL 1967, § 22-6-3.
8. SDCL 1967, § 22-3-5.
9. SDCL 1967, § 22-3-6.
10. SDCL 1967, § 22-4-1.
11. State v. Judge, 81 S.D. 128, 131 N.W.2d 573 (1964);  
State v. Pepka, 72 S.D. 503, 37 N.W.2d 189 (1949);  
State v. Wood, 19 S.D. 260, 103 N.W. 25 (1905).
12. SDCL 1967, § 22-3-8.
13. SDCL 1967, § 22-16-1.
14. SDCL 1967, § 22-16-4.
15. SDCL 1967, §§ 22-16-7 and 22-16-8.
16. SDCL 1967, § 22-16-9.
17. SDCL 1967, § 22-16-15.
18. SDCL 1967, § 22-16-16.
19. SDCL 1967, § 22-16-17.
20. SDCL 1967, § 22-16-21.
21. SDCL 1967, § 22-16-20.
22. SDCL 1967, §§ 22-16-30 and 22-16-31.
23. SDCL 1967, §§ 22-16-32 to -35.
24. Ch. 31, § 1, (1968) S.D. Sess. Laws 47.
25. Ch. 31, § 2, (1968) S.D. Sess. Laws 47-48.
26. SDCL 1967, § 22-15-1.
27. SDCL 1967, § 22-15-3.
28. SDCL 1967, § 22-15-2.
29. SDCL 1967, § 22-15-5.
30. SDCL 1967, § 22-17-1.
31. SDCL 1967, § 22-16-18.
32. SDCL 1967, § 22-16-20.
33. SDCL 1967, § 22-17-2.
34. SDCL 1967, § 22-17-3.
35. SDCL 1967, § 22-17-4.
36. SDCL 1967, § 22-18-15.
37. SDCL 1967, § 22-18-1.
38. Id.
39. SDCL 1967, § 22-18-8.

40. SDCL 1967, § 22-18-11.
41. SDCL 1967, §§ 22-18-10 and 22-18-14.
42. SDCL 1967, §§ 22-18-9 and 22-18-13.
43. SDCL 1967, § 22-18-12.
44. SDCL 1967, § 22-30-1.
45. SDCL 1967, § 22-30-2.
46. SDCL 1967, § 22-30-4.
47. SDCL 1967, § 22-19-1.
48. Id.
49. State v. Percy, 81 S.D. 519, 137 N.W.2d 888 (1965);  
State v. Strauser, 75 S.D. 266, 63 N.W.2d 345 (1954).
50. SDCL 1967, § 22-22-6.
51. SDCL 1967, § 22-19-7.
52. SDCL 1967, § 22-22-1.
53. SDCL 1967, § 22-22-13.
54. SDCL 1967, § 22-22-14.
55. SDCL 1967, § 22-22-17.
56. Id.
57. SDCL 1967, § 25-7-4.
58. SDCL 1967, § 25-7-15.
59. SDCL 1967, §§ 26-10-1 and 26-10-2.
60. Id.
61. SDCL 1967, § 26-10-4.
62. SDCL 1967, § 26-10-3.
63. SDCL 1967, §§ 22-33-1 to -5.
64. SDCL 1967, §§ 22-33-1 and 22-33-2.
65. SDCL 1967, §§ 22-33-3 and 22-33-5.
66. SDCL 1967, § 22-33-4.
67. SDCL 1967, § 22-33-6.
68. SDCL 1967, § 22-33-7.
69. SDCL 1967, §§ 22-32-1 to -13.
70. SDCL 1967, § 22-32-16.
71. State v. Peck, 82 S.D. 561, 150 N.W.2d 725 (1967).
72. SDCL 1967, § 22-32-17.
73. SDCL 1967, § 22-37-1.
74. SDCL 1967, § 22-37-2.
75. Id.
76. SDCL 1967, §§ 22-37-11 and 22-37-14.
77. SDCL 1967, § 22-37-9.
78. SDCL 1967, § 22-37-8.
79. SDCL 1967, § 22-38-1.
80. SDCL 1967, § 22-41-4.
81. State v. Troutner, 80 S.D. 398, 125 N.W.2d 55 (1963).
82. SDCL 1967, § 22-37-18.
83. SDCL 1967, § 22-37-20.

84. SDCL 1967, § 22-37-23.
85. SDCL 1967, § 22-37-24.
86. SDCL 1967, § 22-38-1.
87. SDCL 1967, § 22-38-12.
88. SDCL 1967, § 22-41-4.
89. State v. Alick, 62 S.D. 220, 252 N.W. 644 (1934).
90. State v. Wood, 77 S.D. 120, 86 N.W.2d 530 (1957).
91. SDCL 1967, §§ 22-37-26 and 22-39-35.
92. SDCL 1967, § 22-41-1.
93. SDCL 1967, § 22-31-1.
94. SDCL 1967, § 22-31-2.
95. SDCL 1967, § 22-31-3.
96. SDCL 1967, § 22-31-5.
97. SDCL 1967, § 22-31-6.
98. SDCL 1967, § 22-31-7.
99. SDCL 1967, §§ 22-39-7 and -22.
100. SDCL 1967, § 22-39-14.
101. SDCL 1967, § 22-39-23.
102. SDCL 1967, § 22-39-26; State v. Larson, 39 S.D. 120, 163 N.W. 566 (1917).
103. SDCL 1967, §§ 22-39-8 to -10 and -15 to -16.
104. SDCL 1967, § 22-39-25.
105. SDCL 1967, § 22-34-1.
106. SDCL 1967, §§ 31-32-1, -2, and 49-27-9.
107. SDCL 1967, § 22-21-2.
108. SDCL 1967, § 49-31-26.
109. SDCL 1967, § 49-31-27.
110. SDCL 1967, § 49-32-9.
111. Id.
112. SDCL 1967, § 46-7-13.
113. SDCL 1967, § 22-13-1.
114. SDCL 1967, §§ 22-13-2, -3, -27-3, and 12-26-11.
115. SDCL 1967, § 22-13-7.
116. SDCL 1967, § 22-10-9.
117. SDCL 1967, §§ 22-8-8 and -10-12.
118. SDCL 1967, § 22-8-6.
119. SDCL 1967, § 22-10-8.
120. SDCL 1967, § 22-10-1.
121. SDCL 1967, § 22-10-5.
122. Id.
123. SDCL 1967, § 22-10-6.
124. SDCL 1967, § 22-10-4.
125. SDCL 1967, § 22-10-3.
126. SDCL 1967, § 22-10-7.
127. SDCL 1967, § 22-10-2.

128. SDCL 1967, § 22-10-11.
129. SDCL 1967, § 22-13-12.
130. SDCL 1967, § 22-13-13.
131. SDCL 1967, § 22-35-1.
132. SDCL 1967, § 22-35-4.
133. SDCL 1967, § 42-5-1.
134. SDCL 1967, § 22-21-1.
135. SDCL 1967, § 34-26-18.
136. SDCL 1967, § 34-26-13.
137. SDCL 1967, § 22-12-11.
138. SDCL 1967, § 34-27-19.
139. SDCL 1967, § 40-1-22.
140. SDCL 1967, § 40-1-20.
141. SDCL 1967, § 40-1-18.
142. SDCL 1967, § 40-1-19.
143. SDCL 1967, § 22-36-1.
144. SDCL 1967, § 41-16-9.
145. Id.
146. SDCL 1967, §§ 22-24-6 and -34-19.
147. SDCL 1967, § 34-20-23.
148. SDCL 1967, § 34-20-24.
149. Id.,
150. SDCL 1967, § 34-16-2.
151. SDCL 1967, § 34-22-5.
152. SDCL 1967, § 46-25-17.
153. SDCL 1967, § 26-10-7.
154. SDCL 1967, §§ 22-34-22 and 22-34-23.
155. SDCL 1967, § 22-34-24.
156. SDCL 1967, § 34-36-1.
157. SDCL 1967, § 34-36-2.
158. SDCL 1967, § 34-37-2.
159. SDCL 1967, § 34-37-6.
160. SDCL 1967, § 34-37-16.
161. SDCL 1967, § 34-37-10.
162. See SDCL 1967, § 23-7-5.
163. SDCL 1967, § 22-14-1.
164. Id.
165. SDCL 1967, § 22-14-2.
166. State v. Bute, 57 S.D. 609, 234 N.W. 605 (1931).
167. SDCL 1967, § 26-10-9.
168. SDCL 1967, § 22-14-4.
169. SDCL 1967, § 22-14-3.
170. SDCL 1967, § 34-35-9.
171. SDCL 1967, § 34-35-8.
172. SDCL 1967, § 34-34-5.

173. SDCL 1967, § 22-22-15
174. SDCL 1967, § 22-22-16.
175. SDCL 1967, § 22-22-19.
176. SDCL 1967, § 23-1-6
177. SDCL 1967, § 22-22-21.
178. State v. Whitmarsh, 26 S.D. 426, 128 N.W. 580 (1910).
179. SDCL 1967, § 22-22-7.
180. SDCL 1967, § 22-23-1.
181. SDCL 1967, §§ 22-23-3 and -7.
182. SDCL 1967 §§ 22-23-5 and -6.
183. SDCL 1967, §§ 22-24-1 and -2.
184. Ch. 29, § 2, (1968) S.D. Sess. Laws 44.
185. Ch. 29, § 1 (a), Laws (1968) S.D. Sess. Laws 43.
186. Ch. 29, § 1(b), (1968) S.D. Sess. Laws 43.
187. id.
188. Id.
189. Ch. 29, § 5 (1968) S.D. Sess. Laws 44.
190. Ch. 29, § 6 (1968) S.D. Sess. Laws 44.
191. Ch. 29, § 9 (1968) S.D. Sess. Laws 45.
192. SDCL 1967, §§ 22-13-8 and 22-13-9.
193. SDCL 1967, § 22-24-5.
194. Ch. 30, (1968) S.D. Sess. Laws 46-47.
195. SDCL 1967, § 22-13-4.
196. SDCL 1967, §§ 24-12-1 and 24-12-2.
197. SDCL 1967, § 24-12-1.
198. SDCL 1967, § 24-12-2.
199. SDCL 1967, § 24-12-4.
200. SDCL 1967, § 23-25-2.
201. SDCL 1967, § 23-25-3.
202. SDCL 1967, § 22-12-10.
203. SDCL 1967, § 23-22-35.
204. SDCL 1967, § 23-22-34.
205. SDCL 1967, § 23-22-21.
206. SDCL 1967, § 23-15-11.
207. SDCL 1967, § 23-15-17.
208. SDCL 1967, § 22-25-1.
209. Id.
210. SDCL 1967, § 22-25-2.
211. Id.
212. SDCL 1967, § 22-25-3.
213. SDCL 1967, § 22-25-6.
214. SDCL 1967, § 42-7-9.
215. SDCL 1967, § 22-25-8.
216. SDCL 1967, § 22-25-12.
217. SDCL 1967, §§ 22-28-1 and 22-28-6.

218. SDCL 1967, §§ 22-9-1 and 22-9-7.
219. 18 U.S.C. § 1 (1964).
220. 18 U.S.C. §§ 656, 2113 (1964).
221. 18 U.S.C. § 201 (1964).
222. 18 U.S.C. § 241 (1964).
223. 18 U.S.C. §§ 471, 485 (1964).
224. 18 U.S.C. § 501 (1964).
225. 18 U.S.C. § 2314 (1964).
226. 18 U.S.C. §§ 594, 597 (1964).
227. 18 U.S.C. §§ 875, 876 (1964).
228. 18 U.S.C. § 873 (1964).
229. 18 U.S.C. §§ 287, 1001 (1964).
230. 18 U.S.C. §§ 911, 912 (1964).
231. 18 U.S.C. §§ 2312-17 (1964).
232. 18 U.S.C. § 1201 (1964).
233. 18 U.S.C. § 1341 (1964).
234. 18 U.S.C. § 659 (1964).
235. 18 U.S.C. § 641 (1964).
236. 18 U.S.C. § 2421 (1964).
237. 18 U.S.C. § 1153 (Supp. 1966).

CHAPTER V  
EVIDENCE

**Chapter V**  
**EVIDENCE**  
**LEGAL ASPECTS**

- A. **Definition**—Evidence is anything which tends to prove or disprove any fact which is in dispute.
- B. **Forms of evidence**—Evidence is not limited to testimony of witnesses, but includes tangible things also.
1. **Real evidence**—Physical or tangible objects which may be viewed or examined by the court or jury, such as a gun, bullet, knife, or blood stain.
    - a. It is important that real evidence be properly identified before being introduced in court. For example, a gun by itself may not be good evidence unless it can be positively identified as the gun found at the scene of the crime.
    - b. Care should be taken to properly identify and preserve physical evidence so that it will still be in its original condition when offered into evidence. If the evidence has been tampered with or altered in any way, it may not be admissible. Thus, an officer who, in the course of an investigation, acquires fingerprints, weapons, items of clothing, paint samples, or other material which might later be used as evidence, should take steps to insure that it will be preserved for later use by the prosecuting attorney. Photographs, recordings, and measurements are often useful in this regard.
    - c. Certain types of real evidence, such as blood samples, fingerprints, and bullets, usually must be analyzed or tested by an expert. In such cases it is necessary to show the chain of possession for the evidence and establish that the right material was analyzed or tested.
  2. **Documentary evidence**—A written statement or confession which tends to prove some issue in the case.
    - a. To be admissible in evidence, it must be established that the document is authentic, and that it is what it purports to be.

- b. The contents of a written statement are best proved by the writing itself, and other evidence of the contents will ordinarily be excluded if the writing is available.
3. Testimony—Statements made by witnesses under oath in court.
- a. Opinions of witnesses are ordinarily not admissible as evidence. However, there are some exceptions:
    - (1) Opinions by expert witnesses are often admitted where special knowledge and skill are necessary to interpret the facts. Thus, a fingerprint expert would be allowed to testify that he believes that two sets of fingerprints belong to the same individual.
    - (2) Opinions may sometimes be given by non-experts where they relate to everyday occurrences with which the ordinary person is familiar, such as distance, time, or speed.

### C. Types of Evidence

1. Direct evidence—Evidence which, if true, positively establishes an element of the crime. In a homicide trial, for example, testimony by a witness that he saw the accused inflict the wound that caused death would be direct evidence.
2. Circumstantial evidence—Evidence of facts which, if true, may give rise to an inference or presumption with respect to some element of the crime. Circumstantial evidence is only indirect proof of the facts in dispute. For example, if a brick is found inside a room near a broken window, it may be inferred that the brick was thrown through the window.
3. Hearsay—Evidence which is merely a repetition of statements made by others. Hearsay evidence is usually not admissible because it is not based on the personal knowledge of the witness, and because the person who is the true source of the testimony is not under oath and cannot be cross-examined. However, there are many

exceptions to the hearsay rule. The following types of hearsay evidence are generally admissible:

- a. Admissions—Any admission by the defendant which is inconsistent with his present position.
- b. Confessions—The defendant acknowledges that he is guilty of the crime charged.
- c. Dying declarations—A statement made by the victim of a homicide, rape or abortion under a belief that death is imminent, provided death actually has occurred.
- d. Res gestae—Declarations or words which are an integral part of the crime, such as a robber telling his victim, "Hand over the money, or I'll shoot."
- e. Business records—A record made in a trustworthy manner in the regular course of business, at or near the time of the transaction recorded.
- f. Public records—Entries in public books or records made by public officials in the course of their official duties.
- g. Reputation—Evidence concerning the defendant's personal reputation or character, if this is an issue in the case.

D. **Admissibility**—Generally speaking, all evidence is admissible which is relevant, material, and competent.

1. Evidence is relevant if it tends to prove the facts for which it is offered.
2. Evidence is material if it pertains to issues which are in dispute in the case.
3. Competency refers to both the nature and the source of the evidence. The evidence must be legally adequate and it must come from a qualified source or witness.
4. Some evidence may be excluded because its probative value or trustworthiness is suspect. For example, the

results of polygraph or lie detector tests have generally been inadmissible because it has not been shown with reasonable certainty that the tests are scientifically accurate. But, many other types of scientifically gathered evidence are admissible, such as the results of:

- a. Urine, blood and breath tests for alcoholic content;
  - b. Ballistics tests;
  - c. Fingerprint and handwriting analysis;
  - d. Speed timers and radar; and
  - e. Physical and psychiatric examinations.
- E. **Evidence obtained illegally**—Under recent decisions of the courts, almost all evidence which has been obtained illegally by the police may be excluded from criminal trials. Some examples are:
1. Evidence obtained by an unreasonable search and seizure;<sup>1</sup>
  2. Evidence obtained in violation of due process of law;<sup>2</sup>
  3. Evidence obtained by illegal eavesdropping or wiretapping;<sup>3</sup>
  4. Evidence obtained incident to an illegal arrest;<sup>4</sup>
  5. A confession obtained by duress or coercion, or by a promise of leniency or immunity from prosecution;<sup>5</sup>
  6. A confession obtained from a defendant in custody without warning him of his constitutional rights or without allowing him access to an attorney.<sup>6</sup>
- F. **Entrapment**—Unlawful entrapment occurs when the police solicit or encourage an otherwise innocent person to commit a crime solely for the purpose of arresting him. In such a case, the defendant cannot be convicted.
1. The principle question is whether the crime was conceived and instigated by the police rather than the

accused. The defense of entrapment is usually limited to the situation where:

- a. The criminal conduct was the product of creative activity by the police; and
  - b. The defendant was not otherwise predisposed to commit the crime.
2. Where the criminal idea originates in the mind of the defendant, it is not entrapment for officers to use decoys or untruthful statements to furnish an opportunity for the crime to be committed. Cooperation with a person suspected of an intention to commit a crime is not entrapment so long as he is not induced to commit acts which he is not predisposed to do.
- a. For example, it is not unlawful entrapment for an officer to ask for liquor in a tavern suspected of selling liquor without a license, for the purpose of getting evidence of such a violation.<sup>7</sup>
  - b. But, an officer who induces a reformed narcotics addict to resume the use and sale of narcotics, would be guilty of entrapment.<sup>8</sup>

## PRESERVATION

**Crime Scene Protection.** Whenever an officer is called to, or discovers a crime scene he should, from the very beginning, conduct his investigation as if the case will end up in court. Many times criminal cases cannot be successfully prosecuted because evidence is overlooked, destroyed, or improperly preserved. As a consequence an officer must take every precaution at every crime scene to see that all physical evidence is collected, identified and preserved according to established procedures. He should obtain the names and addresses of all witnesses and make a written record of what he observes and hears. In most cases photographs of the scene should be taken. Interviewing, sketching, developing latent fingerprints and making plaster casts are additional techniques essential for preserving evidence.

**Assistance From Other Agencies.** Where serious crimes are involved the first officer on the scene will usually require assistance in making a proper search and preserving all evidence. Whether this assistance is requested from his own department or from another agency, such as

the Division of Criminal Investigation, the officer should make every effort to preserve the scene exactly as it was when he first observed it. Nothing should be touched, moved or altered (except for rendering first aid or removal of injured persons) until the scene has been thoroughly searched by someone trained in the technique for preserving evidence. When it is believed that assistance will be required in any investigation, the agency from whom such assistance is sought should be notified immediately, so that all departments and persons working on the case can work together as a team.

Officers at the crime scene should remember that evidence is sometimes very fragile and easily destroyed. All unauthorized persons should be kept away from the area. Some of the common items of evidence found at crime scenes include: fingerprints, foot and tire impressions, tool marks, bullets, weapons, glass fragments, and stains. Some of these may not be apparent to the casual observer, so great care must be taken if the evidence is to be preserved.

**Laboratory Examination.** Although very few departments in South Dakota maintain a laboratory for scientific examination of evidence, this service is available to all departments. Services of the Division of Criminal Investigation laboratory in Pierre, and the Federal Bureau of Investigation laboratory in Washington, D.C. are available without cost to all law enforcement agencies in South Dakota.

## EVIDENCE

### NOTES

1. Mapp v. Ohio, 367 U.S. 643 (1961).
2. Rochin v. California, 342 U.S. 165 (1952).
3. Katz v. United States, 389 U.S. 347 (1967); Berger v. New York, 388 U.S. 41 (1967); Silverman v. United States, 365 U.S. 505 (1961).
4. Wong Sun v. United States, 371 U.S. 471 (1963); Henry v. United States, 361 U.S. 98 (1959). See Ker v. California, 374 U.S. 23 (1963).
5. Brooks v. Florida, 389 U.S. 413 (1967); Clewis v. Texas, 386 U.S. 707 (1967); Garrity v. New Jersey, 385 U.S. 493 (1967). See State v. Hinz, 78 S.D. 442, 103 N.W. 2d 656 (1960).
6. Miranda v. Arizona, 384 U.S. 436 (1966); Escobedo v. Illinois, 378 U.S. 478 (1964).
7. City of Sioux Falls v. Famestad, 71 S.D. 98, 21 N.W. 2d 693 (1946); State v. Plucker, 71 S.D. 78, 21 N.W. 2d 280 (1946).
8. Sherman v. United States, 356 U.S. 369 (1958).

CHAPTER VI  
INTERROGATION AND INTERVIEWS

## Chapter VI

### INTERROGATION AND INTERVIEWS

- A. The Fifth Amendment to the United States Constitution provides: "No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . ." <sup>1</sup>
- B. The Sixth Amendment to the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." <sup>2</sup>
- C. To be admissible in evidence, any statement or confession must be given freely and voluntarily without any threats, promises, duress, coercion, or other improper influences by the police. "Third degree" methods of physical or mental abuse will invalidate the confession for legal purposes.
- D. Rights of the accused—Prior to questioning by a police officer, any person accused of a crime must be informed that:
1. He has a right to remain silent;
  2. Any statement he makes may be used as evidence against him;
  3. He has a right to the presence of an attorney at any stage of the proceedings; and
  4. If he is without sufficient funds to retain an attorney, one will be appointed to represent him. <sup>3</sup>
- E. When warnings must be given—A law enforcement officer is only required to warn a person of his constitutional rights if that person has been taken into custody or otherwise become the special object of suspicion concerning a specific crime.
1. The warnings are not necessary for general on-the-scene questioning as to the facts surrounding a crime or other general questioning of citizens during an investigation.
  2. Likewise, there is no requirement that law enforcement officers stop a person who enters a police station and states that he wishes to confess to a crime, or a person

who telephones the police to offer a confession or any other statement he desires to make.

- F. **Consent to questioning**—The accused may waive any or all of his rights, provided he does so voluntarily, knowingly, and intelligently. But, if he indicates in any manner at any stage of the interrogation that he wishes to consult with an attorney before speaking, there can be no further questioning until he has had a chance to do so. Likewise, if the accused indicates in any manner at any time prior to or during the questioning that he wishes to remain silent, the interrogation must cease.

## INTERROGATION AND INTERVIEWS

### NOTES

1. See S.D. Const., Art. VI, § 9; SDCL 1967 § 23-2-14.
2. See S.D. Const., Art. VI, § 7; SDCL 1967 § 23-2-7.
3. Miranda V. Arizona, 384 U.S. 436 (1966). SDCL 1967, § 23-44-2.

**CHAPTER VII**  
**SEARCH AND SEIZURE**

## Chapter VII

### SEARCH AND SEIZURE

- A. **The Fourth Amendment** to the United States Constitution 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."<sup>1</sup>
- B. **Search without a warrant**—The general rule is that a search warrant is necessary for all searches and seizures.<sup>2</sup>
1. The principal exceptions to the warrant requirement are for searches conducted:
    - a. In open fields or public places;
    - b. With the consent of the person searched;
    - c. Incidental to a lawful arrest; and
    - d. In certain emergency situations where there is no time to procure a warrant.
  2. Generally, the courts are more willing to find probable cause for the search if a warrant is first obtained.<sup>3</sup> Therefore, a search warrant should always be sought where practicable, even though it might not be required.
- C. **Open fields and public places**—There is no constitutional requirement of a warrant for a search of an open field or public place, such as a park or street.<sup>4</sup>
1. However, a warrant is necessary to search the curtilage of a dwelling house or place of business. This includes the open space and buildings, if any, immediately surrounding the dwelling which can reasonably be considered as part of the house or business establishment. Examples of curtilage would be:
    - a. The backyard of a residence;
    - b. A farmer's barn located close to his house;

- c. A trash can near the back door of a house.
- 2. Privately owned premises which are open to the public, such as stores, hotel lobbies, or bus depots, may also be searched without a warrant.
  - a. But, such a search must be limited to those areas which are open to the public and cannot extend to strictly private portions of the premises.
- D. Search by consent—A search without a warrant may be made with the express consent of the person involved, provided the consent is given voluntarily and with knowledge of the right to refuse the search.
  - 1. Any threats, promises, deception, coercion, or physical or mental intimidation by the police, whether actual or implied, will invalidate the consent. For example, under certain circumstances, a drawn gun or the presence of a great number of officers might be considered an unusual display of force which would make the consent involuntary.
  - 2. To counteract any implied coercion in a police request for consent to search, the individual should at least be informed that:
    - a. He is not required to consent; and
    - b. Any evidence found in the search may be used against him.<sup>5</sup>
  - 3. If possible, the consent should always be obtained in writing since this will help establish that it is valid.
  - 4. Who may consent—Generally speaking, the right of privacy granted by the Fourth Amendment is personal and can be waived only by the person who has legal possession and control of the property. Thus, a landlord ordinarily has no authority to consent to a search of a tenant's premises during the term of lease or rental.<sup>6</sup>
    - a. But, where two or more persons have equal rights in property, such as joint owners or business partners, either may consent to a search of that property. In

such case, any evidence seized may be used against either or both parties.

E. **Search incidental to a lawful arrest**—A limited search of the person and the immediate premises under his control may be made without warrant as an incident to a lawful arrest.<sup>7</sup>

1. **The arrest must be lawful** and based on probable cause. If the arrest is made merely on suspicion or as an excuse to make a search, both the search and the arrest are illegal.
2. **The principal reasons for allowing the search incidental to a lawful arrest without a warrant** are (1) to protect the arresting officer, (2) to prevent escape, and (3) to prevent the destruction of evidence. Therefore, the following limitations are ordinarily imposed on such a search:
  - a. The search must be conducted by the arresting officer or officers.
  - b. The search must be contemporaneous with the arrest.
    - (1) But, it must be remembered that the arrest should be made first.
    - (2) If it is not feasible to search immediately upon arrest, the search should be made as soon as the reason for not making the search has passed.
  - c. The search must be limited to the immediate area under the control of the arrested person at the time of the arrest.
  - d. The search must be for specific items and based on reasonable grounds for believing that those items will be found.
    - (1) General or exploratory searches are not authorized. The arresting officer must have a particular objective in mind and not merely be engaged in a fishing expedition to see what can be found.
    - (2) With the exception of weapons, only items

connected with the crime for which the arrest was made can be sought.

- c. The intensity of the search must be reasonable in view of the crime involved and the circumstances of the arrest. For example, the extent of the search may be limited by the size and nature of the objects sought and the potential hiding places for such objects on the premises.
3. **Search of the person**—Generally, the arrested person may be thoroughly searched, including:
    - a. Anything in his possession or within his reach, such as a suitcase, his desk if he is sitting at it, or his automobile if he is in it when arrested;<sup>8</sup>
    - b. Anything in open view at the place of arrest; and
    - c. Anything concealed on or in his body which may be dangerous or destroyed if not removed.
      - (1) A search may be made for things concealed in body cavities if:
        - (a) There is good reason to believe that the person has inside him something which must be taken out immediately;
        - (b) The search is made by a qualified doctor working under sanitary conditions and in a medically approved way; and
        - (c) Unnecessary force is not used in making the person submit to the examination.<sup>9</sup>
  4. **Search of the premises**—Only the premises under the immediate custody and control of the person arrested may be searched.
    - a. The person usually must be arrested on the premises before a search thereof may be made as an incident of the arrest. Thus, if a person is arrested outside his home, it cannot be searched without a warrant.<sup>10</sup>

- b. Maneuvering or luring the defendant to the premises before making the arrest in order to validate a search is not permissible.
  - c. In some cases the search may extend beyond the room where the arrest occurs. However, the search must be limited to areas where the objects sought might reasonably be expected to be found.
5. Search of vehicles—A vehicle may be searched without a warrant as an incident of a lawful arrest of its operator. Generally, the arrest must take place in or near the vehicle and must be contemporaneous with the arrest.<sup>11</sup>
- a. Other occupants of the vehicle cannot be searched unless they are also first arrested.
  - b. As a general rule, an arrest for an ordinary traffic violation would not justify a search of the vehicle, because nothing could be found which would relate to the traffic violation and there is no probable cause to search for anything else.
    - (1) If, however, the offense is such that there are reasonable grounds to believe that something related to the crime will be found, then the search may be made. For example, if a person is properly arrested for driving while intoxicated, there might be a search of the vehicle for open bottles.
    - (2) If there is probable cause, the person arrested in a vehicle may always be searched or frisked for weapons.
6. Objects of the search—An officer conducting a search incidental to a lawful arrest may search for and seize weapons, contraband, fruits of the crime, instrumentalities of the crime, or evidence of the crime.<sup>12</sup>
- a. However, there must always be probable cause for making the search based on information known to the police prior to the search. An exploratory search cannot be justified by what is found.

- b. If there is probable cause for a search and items are discovered which relate to a crime different from that for which the arrest was made, these may be seized even though it would not have been proper to search for them alone. For example, if the defendant is arrested for larceny and his briefcase is searched for the stolen goods, forged checks found therein could also be seized.
- F. **Emergencies**—In certain emergency situations where there is no time to get a warrant and immediate police action is necessary, a search may be conducted without a warrant.<sup>13</sup>
- 1. An emergency generally exists only where the evidence will be removed or destroyed if there is a delay to procure a search warrant.
  - 2. If there is probable cause, vehicles may usually be searched without a warrant because their inherent mobility creates a substantial risk that the evidence will be removed from the jurisdiction.<sup>14</sup> No emergency exists, however, where:
    - a. The vehicle follows a particular route on a periodic basis, such as a delivery truck; or
    - b. The vehicle is immobilized for some reason, such as for repairs.
  - 3. **Roadblocks**—Except for searches at international boundaries, a general roadblock designed to stop all vehicles so that they may be searched is illegal because there is no probable cause for searching any one of the vehicles stopped.
    - a. However, a roadblock designed to stop a specific vehicle for search upon probable cause would be valid.
    - b. In addition, temporary road blocks may be established for the purpose of identifying drivers and apprehending violators of the law.<sup>15</sup>
- G. **Search with a warrant**—All persons have the right to be secure against unreasonable searches and seizures and no search

warrants may 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.<sup>16</sup>

1. The warrant—A search warrant is
  - a. an order in writing,
  - b. in the name of the state,
  - c. signed by a magistrate,
  - d. directed to a peace officer,
  - e. commanding him to search for personal property and bring it before the magistrate.<sup>17</sup>
  
2. The affidavit—Before a magistrate may issue a search warrant he must be presented with a complaint in writing, given under oath, which sets forth the facts tending to establish the grounds for the application or probable cause for believing that such grounds exist.<sup>18</sup> The affidavit should:
  - a. Identify the property to be seized;
  - b. Identify the person or premises to be searched;
  - c. State the facts which justify the search;
  - d. State the source of such information;
    - (1) Facts within the personal knowledge of the officer are best. If information obtained from an informer is relied upon, it must be shown that he is reliable and trustworthy.
  - e. Identify the person or persons making the complaint.<sup>19</sup>
  
3. If, after taking the complaint, the magistrate is satisfied of the existence of the grounds for the application or that there is probable cause to believe their existence, he must
  - a. issue a search warrant,

- b. signed by him with the name of his office,
  - c. directed to a peace officer in his county,
  - d. commanding him to search the person or place named for the property specified, and to bring it before the magistrate, and
  - e. commanding the arrest of the person in whose possession the property is found.<sup>20</sup>
- H. **Probable cause**—The facts which will support the issuance of a warrant must be such that a reasonably cautious person would believe that (a) a crime has been committed, (b) the property will be found in the specified place, and (c) it is property which may lawfully be seized.
- 1. Probable cause for a search cannot be established by what is actually found.<sup>21</sup> Only the facts and circumstances known prior to the search may be considered.
  - 2. The fact that no innocent parties are injured by a search conducted without probable cause does not relieve the officer making the search of liability or allow the fruits of the search to be used as evidence in court.<sup>22</sup>
- I. **Persons authorized to issue search warrants**
- 1. Magistrates authorized to issue search warrants for violations of state law are:
    - a. Judges of the supreme court;
    - b. Judges of the circuit court;
    - c. Judges of the county and county district court;
    - d. Judges of the municipal court;
    - e. County and township justices of the peace; and
    - f. City and town police magistrates.<sup>23</sup>
  - 2. For violations of federal law, a warrant may be issued by any of the following in the district where the property is located:

- a. A judge of the United States;
  - b. A judge of any state court of record; or
  - c. A United States commissioner.<sup>24</sup>
- J. **Types of property** for which a search warrant may be issued—Generally, a search warrant may be issued for:
- 1. Property stolen or embezzled<sup>25</sup> (fruits of crime);
  - 2. Property used for committing a felony<sup>26</sup> or intended to be used in committing a public offense<sup>27</sup> (instrumentalities of crime); and
  - 3. Unlawful possession of alcoholic beverages,<sup>28</sup> narcotics,<sup>29</sup> or hallucinogenic drugs<sup>30</sup> (contraband).
- K. **Execution of the warrant**—The property described in the warrant may be taken from the person in possession thereof, from any place occupied by him or under his control, or from any house or other place in which it is concealed.<sup>31</sup>
- 1. **Time limit**—A search warrant must be executed and returned within ten days to the magistrate by whom it was issued. Unless executed within such period of time, the warrant is void.<sup>32</sup>
  - 2. **Time of execution**—Generally, a search warrant may be executed only in the daytime and this will be so stated in the warrant.<sup>33</sup>
    - a. However, if the affidavit asking for the warrant is positive that the property is on the person or in the place to be searched, the magistrate may direct that the warrant may be served at any time of the day or night.<sup>34</sup>
    - b. In addition, if the magistrate is satisfied from the affidavit that the property is being or is about to be hidden, removed, disposed of, or destroyed, he may direct that the warrant may be served upon any day or night including Sunday.<sup>35</sup>
  - 3. **Persons authorized to execute the warrant**—A search

warrant may be served only by the officer or officers to whom it is directed. However, if such an officer requires assistance, other persons may aid him while he is present in executing the warrant.<sup>36</sup>

4. **Getting into the premises**—If an officer is refused admittance after giving notice of his authority and purpose, he may use reasonable force to break into any building, structure, or container to execute a search warrant.<sup>37</sup>
  5. **Getting out of the premises**—The officer executing a search warrant may break open any building, structure, or container for the purpose of liberating himself or another person who, having entered to aid in the execution of the warrant, is detained therein.<sup>38</sup>
- L. **Limitations under a search warrant**—The terms of the search warrant must be strictly complied with. Deviations from the command of the warrant may invalidate the search.
1. In executing a search warrant, an officer may stay on the premises only during the time reasonably necessary to search for and seize the property described in the warrant.
    - a. The amount of time needed will depend a great deal on the type of property being sought and the nature of the premises being searched. Generally, the search must be conducted in the shortest possible time.
    - b. For example, a search for forged checks might take longer than a search for a stolen automobile tire.
  2. Having a search warrant for a residence or other premises does not mean that all persons present therein may be searched also.
    - a. However, people may be ordered to stay on the premises until it can be ascertained that they are not removing the property to be seized under the warrant.
    - b. If there is probable cause, persons on the premises may be arrested and searched as an incident of such arrest.

3. If an officer executing a search warrant discovers property other than that described in the warrant and which is related to a different crime, he may seize such property if there is a substantial danger that it will be concealed or removed. Otherwise, the premises should merely be kept under surveillance while a new warrant is procured.
- M. **Returning the warrant to court**—The officer must forthwith return the warrant to the magistrate who issued it together with a written inventory of the property taken.<sup>39</sup>
1. The inventory should be made publicly or, if they are available, in the presence of the person from whom the property was taken or the person who applied for the warrant.
  2. The inventory must be verified by the officer executing the warrant as follows:

“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.”
  3. If requested to do so, the magistrate must deliver a copy of the inventory to the person from whom the property was taken and to the applicant for the warrant.
- N. **Receipt for property seized**—When money or other property is taken from a defendant arrested upon a charge of having committed a public offense, the officer taking it must, at that time, make duplicate receipts specifying particularly the amount of money or the kind of property taken. One of the receipts must be delivered to the defendant and the other must be filed with the court in which the defendant is triable.<sup>40</sup>

## SEARCH AND SEIZURE

### NOTES

1. See S.D. Const., Art. VI, § 11; SDCL 1967, § 23-15-2.
2. *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967).
3. *United States v. Ventresca*, 380 U.S. 102 (1965); *Aguilar v. Texas*, 378 U.S. 108 (1964).
4. *Hester v. United States*, 265 U.S. 57 (1926); *McDowell v. United States*, 383 F.2d 599 (8th Cir. 1967).
5. *United States v. Blalock*, 255 F. Supp. 268 (E.D. Pa. 1966).
6. *Stoner v. California*, 376 U.S. 483 (1964); *McDonald v. United States*, 335 U.S. 451 (1948).
7. *United States v. Rabinowitz*, 339 U.S. 56 (1950).
8. *Harris v. United States*, 331 U.S. 145 (1947).
9. *Schmerber v. California*, 384 U.S. 757 (1966); *Murgia v. United States* 285 F.2d 14 (9th Cir. 1960), cert. denied 366 U.S. 977 (1961); *Blackford v. United States*, 247 F.2d 745 (9th Cir. 1957), cert. denied 356 U.S. 914 (1958).
10. *James v. Louisiana*, 382 U.S. 36 (1965).
11. *Preston v. United States*, 376 U.S. 364 (1964).
12. *Warden v. Hayden*, 387 U.S. 294 (1967).
13. *Schmerber v. California*, 384 U.S. 757 (1966).
14. *Carroll v. United States*, 267 U.S. 132 (1925).
15. SDCL 1967, § 32-33-10.
16. SDCL 1967, § 23-15-2.
17. SDCL 1967, § 23-15-1.
18. SDCL 1967, § 23-15-8.
19. *Aguilar v. Texas*, 378 U.S. 108 (1964).
20. SDCL 1967, § 23-15-9.
21. *State v. Lane*, 76 S.D. 544, 82 N.W.2d 286 (1957).
22. *State v. McCreary*, 82 S. D. 111, 142 N.W.2d 240 (1966).
23. SDCL 1967, § 23-21-4.
24. Fed. R. Crim. P. 41(a).
25. SDCL 1967, § 23-15-3.
26. SDCL 1967, § 23-15-4.
27. SDCL 1967, § 23-15-5.
28. SDCL 1967, § 23-15-6.
29. Ch. 94, § 18 (1968) S.D. Sess. Laws 122-24.
30. Ch. 95, § 5 (1968) S.D. Sess. Laws 128-30.
31. SDCL 1967, § 23-15-7.
32. SDCL 1967, § 23-15-12.
33. SDCL 1967, § 23-15-10.
34. SDCL 1967, § 23-15-16.

35. Id.
36. SDCL 1967, § 23-15-13.
37. SDCL 1967, § 23-15-14.
38. SDCL 1967, § 23-15-15.
39. SDCL 1967, § 23-15-18.
40. SDCL 1967, § 23-16-1.

CHAPTER VIII

ARREST

## Chapter VIII

### ARREST

- A. **Definition**—An arrest is the taking of a person into custody so that he may be held to answer for a public offense.<sup>1</sup> Temporary detention for routine questioning is usually not an arrest.
- B. **What constitutes an arrest**—An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.<sup>2</sup>
1. **Mere words alone are not enough to make an arrest unless the defendant submits to the custody of the officer.** However, at no time should the defendant be subjected to any more restraint than is necessary for his arrest and detention.
  2. **Use of force**—If, after notice of intention to arrest the defendant, he either flees or forcibly resists, the person making the arrest may use all necessary means to effect the arrest.<sup>3</sup>
    - a. **Felony**—Deadly force, such as shooting, is justified if necessarily used in attempting by lawful ways and means to apprehend any person for a felony.<sup>4</sup>
      - (1) Needless to say, use of deadly force should be extremely limited. The officer should always be certain that a felony has actually been committed and that the person he is shooting at is the guilty party. Otherwise, the officer himself may be both civilly and criminally liable.
    - b. **Misdemeanor**—Generally, use of deadly force is not justified in arresting for a misdemeanor unless it is necessary for the self-defense of the officer in overcoming resistance to the arrest.
      - (1) Thus, if the person being arrested for a misdemeanor flees, an officer would not be

justified in shooting, whether his purpose is to wound the fugitive or merely to prevent his escape.

C. **Arrest without a warrant**—A peace officer may arrest a person without a warrant for any offense committed or attempted in the officer's presence.<sup>5</sup> This includes any offense which the officer reasonably believes is being committed in his presence.

1. **Felony**—If a felony is not committed or attempted in the presence of the officer, two separate questions must be dealt with in determining the officer's authority to arrest without a warrant: (a) Whether a felony has been committed; and (b) Whether the person to be arrested committed the offense.

a. Has a felony been committed?

(1) **In the daytime**—Under South Dakota law, an officer may not arrest anyone in the daytime without a warrant unless a felony has in fact been committed by someone.<sup>6</sup> Thus, if an arrest is made in the daytime without a warrant and it turns out that no felony has in fact been committed, the arrest is illegal. But, if another person has, upon reasonable cause, accused the person to be arrested of a crime, then the officer may arrest him.<sup>7</sup>

(2) **At night**—An officer may arrest a person at night if he has reasonable cause to believe that a felony has been committed, even though it might appear later that no felony had in fact been committed.<sup>8</sup>

b. Did the person to be arrested commit the felony?

(1) In any case where an arrest is made without a warrant, the officer must have reasonable cause to believe that the person arrested committed the felony. Thus, it is not necessary that the person arrested actually did commit the offense. It is sufficient if the officer had reasonable grounds to believe that he did.

2. **Misdemeanor**—Generally, an officer has no authority to make an arrest without a warrant for a misdemeanor unless it is committed or attempted in his presence.<sup>9</sup> However, an officer may take custody of a person lawfully arrested by another private individual for any public offense.<sup>10</sup>
3. **Reasonable cause**—There is reasonable cause for an arrest only if the facts and circumstances known to the police would justify a reasonably prudent man in believing that the person to be arrested has committed a felony.
  - a. Mere suspicion or “hunch” is not sufficient. An officer arresting on reasonable cause must be able to explain and justify his actions.
  - b. An officer may rely on information given him by others provided it is information upon which a reasonably prudent man would rely. In this regard, the officer should evaluate both the source of the information and the information itself.
    - (1) **Source of the information**—The officer must determine that the source of the information is reliable. Thus, if the information is a tip from an informer, there must be some basis for concluding that the informant is reliable.
    - (2) **The information itself**—The information must be credible or believable by a reasonable man. It is always important in this regard to compare the information received from another person with any facts which the officer may already know concerning the crime.
4. **Arrest on suspicion**—No one can be lawfully arrested on a mere suspicion that he has committed a crime. Such arrests, even for purposes of investigation, are beyond the authority of peace officers and may subject them to both civil liability and criminal penalties.<sup>11</sup>
5. **Information as to authority and cause of arrest**—Unless the person to be arrested is actually engaged in the commission of the offense or is being pursued immediately after an escape, the officer making an arrest

without a warrant must inform him of his authority and the crime for which he is being arrested.<sup>12</sup>

D. **Arrest with a warrant**—A magistrate may, upon probable cause, issue a warrant of arrest for any public offense.<sup>13</sup> Except in emergency situations, it is always desirable to procure a warrant because this helps establish that there is probable cause for making the arrest.

1. Before a magistrate may issue a warrant of arrest he must be presented with a complaint or preliminary information containing a statement of the essential facts constituting the offense charged.<sup>14</sup>

a. If the magistrate is satisfied that the offense charged has been committed and that there is reasonable cause to believe that the defendant committed it, he must issue a warrant of arrest for the defendant.<sup>15</sup>

2. The warrant—A warrant of arrest is

a. an order in writing,

b. in the name of the state,

c. signed by a magistrate,

d. commanding the arrest of the defendant.<sup>16</sup>

3. The warrant must specify:

a. The name of the defendant;

(1) If the name of the defendant is unknown, he may be designated by any name.

b. The offense with which the defendant is charged;

c. The time of issue; and

d. The county, city, or town where it is issued.<sup>17</sup>

4. Warrants may be directed generally to any sheriff or other peace officer in the state. A warrant may be executed by any peace officer to whom it is delivered.<sup>18</sup>

state of South Dakota if a peace officer is in fresh pursuit of a person who is reasonably believed by him to be guilty of committing a felony in the state.<sup>30</sup>

1. Many states have passed laws which authorize peace officers from other states to make arrests if they enter the state in fresh pursuit of a felon or a person reasonably believed to have committed a felony.<sup>31</sup>
  2. It is also a federal crime to travel in interstate commerce with intent to avoid prosecution for a felony, to avoid giving testimony as a witness in a felony case, or to avoid custody or confinement after conviction of a felony.<sup>32</sup> The FBI will aid in finding and arresting such fugitives from justice.
  3. Breaking into buildings—If any person with authority to make an arrest is refused admittance after he has given notice of his intention, he may break open any door or window of a dwelling house or other structure for the purpose of making the arrest.<sup>33</sup>
  4. In addition, any person authorized to make an arrest may break open any door or window of a dwelling house or other structure for the purpose of liberating another person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.<sup>34</sup>
- H. Search—Any person making a lawful arrest is authorized to take from the arrested person all offensive weapons which he has about his person. Such weapons must be delivered to the magistrate before whom the defendant is taken.<sup>35</sup>
- I. Disposition after arrest—In all cases, the defendant must be taken before a magistrate without unnecessary delay following his arrest.<sup>36</sup> A willful delay in taking the arrested person before the proper magistrate is punishable as a misdemeanor.<sup>37</sup>
1. Reasonable time—While there is no specific maximum amount of time the arresting officer may hold the defendant before taking him to the magistrate, the delay must be reasonable under all the circumstances of the particular case. The longer the delay, the greater the

probability that prosecution of the defendant may be jeopardized.

2. **Arrest without a warrant**—If the defendant is arrested without a warrant, he should be taken before a magistrate in the county where the offense was committed.
3. **Arrest with a warrant**
  - a. **Felony**—If the offense charged in the warrant is a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant in the county where the offense was committed. In case the magistrate who issued the warrant is absent or unable to act, the defendant must be taken before the nearest and most accessible magistrate in the county in which the warrant was issued.<sup>38</sup>
  - b. **Misdemeanor**—Generally, the defendant arrested under a warrant charging a misdemeanor should also be taken before the magistrate who issued the warrant.
    - (1) **Arrest in another county**—However, if the arrest is made in another county, the defendant may request that he be taken before a magistrate in that county for the purpose of being admitted to bail.<sup>39</sup> In such a case, the arresting officer must take the defendant before a magistrate in the county of arrest.
    - (2) **Admitted to bail**—If bail is undertaken by the defendant, the magistrate must certify that fact on the warrant and deliver it to the officer in charge of the defendant. The officer must then discharge him from arrest, and must without delay deliver the warrant to the clerk of the court at which the defendant is required to appear.<sup>40</sup>
    - (3) **Bail refused**—Where the defendant does not put up bail when required to do so, the arresting officer must proceed to take him before the magistrate who issued the warrant, or some

- a. However, all warrants issued by the municipal court or a police magistrate for violation of any state law must be directed to the sheriff or any constable of the county, or to the chief of police or any policeman of the municipality.<sup>19</sup>
- b. Private persons are given no authority by statute to arrest by warrant. But, every person who is requested to do so, must aid an officer in the lawful execution of a warrant of arrest.<sup>20</sup>

**E. Persons authorized to issue warrants**

1. Magistrates authorized to issue warrants of arrest for violations of state and local law are:
  - a. Judges of the supreme court;
  - b. Judges of the circuit court;
  - c. Judges of the county court;
  - d. Judges of the municipal court;
  - e. County and township justices of the peace; and
  - f. City and town police magistrates.<sup>21</sup>
2. For violations of federal law, a warrant of arrest may be issued by any United States commissioner.<sup>22</sup>

**F. Execution of warrant of arrest**—The person executing a warrant of arrest must inform the defendant that he acts under the authority of the warrant, and must also show the warrant if requested to do so.<sup>23</sup> However, it is usually not necessary that the officer making the arrest actually have the warrant in his possession at the time.

1. **Persons authorized to execute warrants**—A warrant of arrest may be executed by any peace officer to whom it is delivered.<sup>24</sup>
  - a. **Telegraphic copies**—A copy of the warrant or an abstract thereof may be sent by telegraph or teletype to any number of peace officers in the state. Such

copy or abstract is as effectual as the original and the officer receiving it must proceed in the same manner as if the original warrant were issued to him.<sup>25</sup>

b. Abstract of warrant—If an abstract of the warrant is sent, it must contain the following:

- (1) The charge;
- (2) The court of issuance;
- (3) The subject's name, address, and description;
- (4) The bail;
- (5) The name of the issuing magistrate; and
- (6) Whether the offense charged is a felony or a misdemeanor.

c. Certification for telegraphic copies—Every officer who sends a telegraphic copy or abstract of a warrant must:

- (1) File a copy of the warrant in the telegraph office; and
- (2) Return the original warrant to the magistrate together with a statement of his actions thereunder.<sup>26</sup>

2. Time of making arrest—There is no specific time limit on the execution of a warrant of arrest. However, the arrest must be made within a reasonable time after the warrant is issued.<sup>27</sup>

a. Felony—If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night.<sup>28</sup>

b. Misdemeanor—If the crime charged is a misdemeanor the arrest cannot be made at night unless the magistrate has so directed in the warrant.<sup>29</sup>

G. Place of arrest—An arrest may be made anywhere within the

other magistrate in the county in which the warrant was issued in case the magistrate who issued it is absent or unable to act.<sup>41</sup>

c. Whenever a defendant is taken before a magistrate other than the one who issued the warrant, the preliminary information on which the warrant was granted must be sent to that magistrate. If it cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony again.<sup>42</sup>

4. **Preliminary information filed in another county**—When a preliminary information is filed with a magistrate in the county where the defendant is present, alleging the commission of a public offense triable in another county, the warrant issued by the magistrate must require that the defendant be taken before the nearest and most accessible magistrate of the county in which the offense is triable. The preliminary information, together with any depositions of witnesses, must be delivered by the magistrate to the officer along with the warrant.<sup>43</sup>

a. Generally, an offense is triable in the county in which it was committed.

b. **Misdemeanor**—If the defendant is arrested for a misdemeanor, he may request that the officer take him before a magistrate in the county in which the warrant was issued so that he may be admitted to bail.<sup>44</sup>

J. **Post arrest procedures**—Care must be taken following a lawful arrest that none of the legal rights of the defendant are violated. A police officer may be both civilly and criminally liable for certain unwarranted intrusions upon the defendant's rights. In addition, successful prosecution of the case may be jeopardized if evidence is obtained as an incident of improper treatment of the defendant.

1. **Identification**—The defendant may be required to submit to reasonable procedures for the purpose of identification. For example, all persons arrested for an offense other than one arising solely out of violations of the fish, game, conservation, or traffic laws, except driving while intoxicated, may be:

- a. Fingerprinted and photographed;<sup>45</sup>
  - b. Required to submit samples of handwriting;<sup>46</sup> or
  - c. Required to stand in a line-up.<sup>47</sup>
    - (1) However, the defendant must be informed that he has a right to the presence of an attorney at the line-up.<sup>48</sup>
2. The defendant may not be subjected to the following procedures against his will:
- a. Physical or mental coercion;<sup>49</sup>
  - b. Drugged or given a truth serum;<sup>50</sup>
  - c. Forced to take a lie detector test; or
  - d. Forced to take a blood test or breath test to determine alcoholic content.<sup>51</sup>
    - (1) However, if a blood test is refused when a police officer has reasonable ground to believe that the defendant was driving while intoxicated, his driver's license may be revoked for one year.<sup>52</sup>

### STOP AND FRISK

- A. **Authority**—South Dakota has no statute specifically giving peace officers authority to stop or frisk suspects except where an arrest is being made. Obviously, an officer can ask questions of any individual who is willing to subject himself to investigatory questioning, but it is not clear whether a person may be detained against his will during an investigation. Courts of other states have disagreed on whether the police may detain a person for questioning prior to arrest. Until the authority of the police is more clearly defined in this area, individuals should not be detained against their will unless there is probable cause for making an arrest.
- B. **Limitations**—In any event, if field interrogation is carried out, the following limitations should be observed:
  1. A person should be stopped for questioning only when an officer has good reason to believe that:

- a. He is about to commit a crime;
  - b. He has committed a crime; or
  - c. A crime has been committed and he has knowledge of material value to the investigation.
2. Field interrogations should not be used at all for minor crimes such as vagrancy or loitering.
  3. Adequate reason should be based on the actions of the person, his presence near the scene of a crime, or similar factors raising substantial suspicion. A person should never be questioned merely on the basis of his race, poverty, age, or presence in a certain neighborhood.
  4. A person should never be detained for more than a very limited time.
  5. The sole purposes should be:
    - a. To obtain the person's identification;
    - b. To verify his identification by readily available information;
    - c. To request his cooperation in the investigation of a crime; and
    - d. To verify by readily available information any account of his presence or any other information given by him.
  6. The person questioned should always be addressed politely and given suitable explanation of the questioning.
  7. An officer should conduct a search of the person only if he has good reason to believe that his safety or the safety of others requires it.
- C. **Constitutional requirements**—The United States Supreme Court has indicated that a stop and frisk does not violate the fourth amendment to the United States Constitution in certain narrowly drawn situations.

1. When an officer is justified in believing that an individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or others, then the officer may conduct a limited search for weapons.<sup>53</sup>
  - a. It is not necessary that the officer have probable cause to arrest the individual, nor does he have to be absolutely certain that the individual is armed. But, the officer must be conducting a bonafide investigation and he must have reasonable grounds for believing that the suspect is dangerously armed. A police officer is not entitled to seize and search every person whom he sees on the street or of whom he makes inquiries.
  - b. Since the sole justification for a search in this situation is the protection of the officer and others nearby, the search must be confined to looking for guns, knives, clubs or other hidden instruments of assault. This generally means only a quick patting down of the outer clothing. In one case the search was held to be unreasonable where an officer had thrust his hand into the suspect's pocket without first patting him down for weapons. Thus, the narcotics discovered therein by the policeman were not admissible in evidence.<sup>54</sup>
2. Police officers must be careful to avoid conduct which is overbearing or harassing, or which intrudes upon the personal security or privacy of the individual without objective justification under the circumstances. The officer must be able to point to specific and articulable facts which reasonably warrant the stop and frisk.

## ARREST

### NOTES

1. SDCL 1967, § 23-22-1.
2. SDCL 1967, § 23-22-4.
3. SDCL 1967, § 23-22-5.
4. SDCL 1967, §§ 22-16-32 and 22-16-33.
5. SDCL 1967, § 23-22-7 (1).
6. SDCL 1967, § 23-22-7 (2) and (3).
7. SDCL 1967, § 23-22-7 (4).
8. SDCL 1967, § 23-22-8.
9. SDCL 1967, § 23-22-7.
10. SDCL 1967, §§ 23-22-11 and 23-22-16.
11. SDCL 1967, § 22-12-10.
12. SDCL 1967, § 23-22-9.
13. SDCL 1967, § 23-21-3.
14. SDCL 1967, §§ 23-19-1 and 23-19-2.
15. SDCL 1967, § 23-21-5.
16. SDCL 1967, § 23-21-1.
17. SDCL 1967, § 23-21-2.
18. SDCL 1967, § 23-21-6.
19. SDCL 1967, § 23-21-8.
20. SDCL 1967, § 23-22-3.
21. SDCL 1967, § 23-21-4.
22. Fed. R. Crim. P. 4.
23. SDCL 1967, § 23-22-6.
24. SDCL 1967, § 23-21-6.
25. SDCL 1967, § 23-22-31.
26. SDCL 1967, § 23-22-32.
27. State v. Nagels, 80 S.D. 625, 129 N.W.2d 537 (1964).
28. SDCL 1967, § 23-22-13.
29. Id.
30. SDCL 1967, § 23-22-39.
31. E.g., SDCL 1967 § 23-23-1; Iowa Code Ann. § 756.1(1950); Minn. Stat. Ann. § 626.65 (1947); Mont. Rev. Codes Ann. § 95-619 (1967); Neb. Rev. Stat. §29-416 (Reissue 1964); N.D. Cent. Code § 29-06-05 (1960).
32. 18 U.S.C. § 1073 (1964).
33. SDCL 1967, § 23-22-18.
34. SDCL 1967, § 23-22-19.
35. SDCL 1967, § 23-22-17.
36. SDCL 1967, § 23-22-20.
37. SDCL 1967, § 23-22-21.
38. SDCL 1967, § 23-22-22.

39. SDCL 1967, § 23-22-23.
40. SDCL 1967, § 23-22-25.
41. SDCL 1967, § 23-22-24.
42. SDCL 1967, § 23-22-27.
43. SDCL 1967, § 23-22-28.
44. SDCL 1967, § 23-22-30.
45. SDCL 1967, § 23-5-1.
46. *Gilbert v. California*, 388 U.S. 263 (1967).
47. *United States v. Wade*, 388 U.S. 218 (1967).
48. *Id.*
49. *Beecher v. Alabama*, 88 S. Ct. 189 (1967).
50. *Townsend v. Sain*, 372 U.S. 293 (1963).
51. SDCL 1967, § 32-23-10.
52. SDCL 1967, § 32-23-11.
53. *Terry v. Ohio*, 88 S. Ct. 1868 (1968).
54. *Sibron v. New York*, 88 S. Ct. 1889 (1968).

**CONTINUED**

**1 OF 2**

CHAPTER IX  
FIREARMS

## Chapter IX

### FIREARMS

- A. **Pistols**—A pistol is defined as any firearm with a barrel less than sixteen inches long.<sup>1</sup> Unless specifically exempted by law, every person who carries a pistol in any vehicle or concealed on or about his person must have a license to do so.<sup>2</sup>
1. Any person who has been convicted of a crime of violence is strictly forbidden to own a pistol or have one in his possession or under his control.<sup>3</sup> In addition, it is unlawful for any person to deliver a pistol to:
    - a. Any person under the age of eighteen; or
    - b. Anyone whom he has reasonable cause to believe:
      - (1) Has been convicted of a crime of violence;
      - (2) Is a drug addict;
      - (3) Is an habitual drunkard; or
      - (4) Is of unsound mind.<sup>4</sup>
  2. **License**—A license to carry a pistol must be secured from a judge of a court record, chief of police, or sheriff by showing good reason for carrying a pistol.<sup>5</sup>
    - a. The license must show:
      - (1) The name, address, description, and signature of the licensee; and
      - (2) The reason given by him for desiring a license.<sup>6</sup>
    - b. The license must be issued in triplicate on a form prescribed by the secretary of state.
      - (1) The original must be given to the licensee.
      - (2) The duplicate must be sent to the secretary of state within seven days by registered or certified mail.

(3) The triplicate must be preserved by the authority issuing the license for six years.<sup>7</sup>

3. Exemption from license—A license to carry a pistol is not required of the following:<sup>8</sup>
- a. Law enforcement officers while on duty;
  - b. Employees of railway or express companies while on duty;
  - c. Members of the armed forces or national guard while on duty;
  - d. Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or the state of South Dakota, provided such members are at or going to or from their place of assembly or target practice;
  - e. Officers or employees of the United States duly authorized to carry a concealed pistol;
  - f. Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of such person while carrying a pistol in the usual course of such business;
  - g. Any person while carrying a pistol unloaded and in a secure wrapper:
    - (1) From the place of purchase to his home or place of business;
    - (2) To a place of repair or back to his home or place of business; or
    - (3) In moving from one place of abode or business to another; or
  - h. Any person who keeps a pistol only in his place of abode or fixed place of business.<sup>9</sup>
4. Purchasing a pistol—Anyone who sells a pistol to another at retail must wait at least forty-eight hours after the

application to purchase before delivering the pistol to the purchaser.<sup>10</sup>

- a. Application for purchase—A person who wishes to purchase a pistol at retail must sign and deliver a statement in triplicate to the seller, stating:
  - (1) His full name, address, occupation, color, and place of birth;
  - (2) The date and hour of the application;
  - (3) The caliber, make, model, and manufacturer's number of the pistol to be purchased; and
  - (4) A statement that he has never been convicted of a crime of violence.
- b. After receiving such application, the seller must sign his name and address thereto and send by registered or certified mail:
  - (1) Within six hours, the original to the chief of police of the municipality or the sheriff of the county in which the seller is a resident; and
  - (2) Within seven days, the duplicate to the secretary of the state.
  - (3) The triplicate must be retained by the seller for six years.<sup>11</sup>
- c. Delivery of the pistol—The pistol must be securely wrapped and unloaded when it is delivered to the purchaser.<sup>12</sup>
- d. License of retail dealer—Any retail dealer of pistols in this state must be duly licensed as provided by law.<sup>13</sup>
- e. Advertising display—No pistol or imitation thereof or a placard advertising the sale of a pistol may be displayed on any premises in such a manner that it can be readily seen from the outside.<sup>14</sup>

5. Alteration of identification marks—It is unlawful to alter

or obliterate the name of the maker, model, manufacturer's number or other mark of identification on any pistol.<sup>15</sup>

B. **Machine guns**—A machine gun is defined as any weapon which fires more than five shots, rapidly or automatically, by a single function of the firing device.<sup>16</sup> With certain exceptions, all machine guns in South Dakota must be registered with the secretary of state.<sup>17</sup> The principal exceptions from registration are:

1. Guns used or to be used by armed forces or by peace officers;
2. Guns possessed for scientific purposes;
3. Guns which cannot be used as a weapon or which are possessed merely as a curiosity, ornament, or keepsake; and
4. Guns which can only use cartridges smaller than .30 in. or 7.63 mm.<sup>18</sup>

C. **Use of firearms by peace officers**—While there are certain restrictions imposed by law on the use of firearms by the police, much is left to the discretion of the individual officer. In order to foster good community relations and insure a maximum degree of safety, the following guidelines should be followed:

1. Deadly force should be restricted to the apprehension of perpetrators who, in the course of their crime, threatened to use deadly force themselves. In addition, an officer would be justified in using firearms if he believes there is a substantial risk that the person whose arrest is sought will cause death or serious bodily harm if his apprehension is delayed. However, firearms should not be used against persons who have committed only a misdemeanor unless it is necessary for the self-defense of the officer or in defense of others.
2. Deadly force should never be used on mere suspicion that a crime, no matter how serious, has been committed or that the person being pursued committed a crime. An officer should either have witnessed the crime or have

sufficient information to be virtually certain that the suspect committed an offense for which the use of deadly force is permissible.

3. Officers should not fire at a felony suspect, even to prevent escape if:
  - a. Lesser force could be used;<sup>19</sup>
  - b. The officer believes that the suspect can be apprehended reasonably soon thereafter without the use of deadly force; or
  - c. There is any substantial danger to innocent bystanders.
4. Officers should never fire warning shots for any purpose. Warning shots may endanger the lives of innocent bystanders or prompt the suspect to return the fire. In addition, a peace officer should never fire a gun from a moving vehicle.
5. It is, of course, proper for an officer to use any necessary force,<sup>20</sup> including deadly force,<sup>21</sup> to protect himself or other persons from death or serious injury.

## FIREARMS

### NOTES

1. SDCL 1967, § 23-7-1.
2. SDCL 1967, § 23-7-5.
3. SDCL 1967, § 23-7-3.
4. SDCL 1967, § 23-7-4.
5. SDCL 1967, § 23-7-7.
6. SDCL 1967, § 23-7-8.
7. Id.
8. SDCL 1967, § 23-7-6.
9. SDCL 1967, § 23-7-5.
10. SDCL 1967, § 23-7-9.
11. SDCL 1967, § 23-7-10.
12. SDCL 1967, § 23-7-9.
13. SDCL 1967, § 23-7-14.
14. SDCL 1967, § 23-7-20.
15. SDCL 1967, § 23-7-21.
16. SDCL 1967, § 23-7-1.
17. SDCL 1967, § 23-7-30.
18. SDCL 1967, § 23-7-26.
19. SDCL 1967, § 23-22-4.
20. SDCL 1967, § 23-22-5.
21. SDCL 1967, §§ 22-16-32 and 22-16-33.

CHAPTER X  
NOTE TAKING AND REPORT WRITING

## Chapter X

### NOTE TAKING

The most satisfactory and practical aid to the officer's memory is a notebook. The investigating officer should not be burdened with the task of trying to remember those events or details which can be jotted down; he must keep his mind free to go on to the next step or phase of the investigation.

Note-taking should not be limited to the police officer engaged in the investigation of an actual crime. The patrolman on the beat should develop the note-taking habit by keeping a notebook in which he might make notes concerning suspicious persons, automobiles, occurrences, dates and times. Such miscellaneous notes taken one day might afford a clue to a crime committed on a subsequent day. An important thing to remember is to have notes pertaining to each subject matter or case on a separate sheet of paper so that the officer can readily organize them for written reports and for use in court testimony.

It is imperative that the notes be neat, legible, and understandable because frequently other officers will have occasion to refer to the notes. A primary objective in law enforcement is the production of competent, admissible evidence in court. Notes may be the chief aid in reaching this goal.

The note-taking habit, well ingrained on the officer, will result in the clear, complete record necessary for intelligent investigation, informative reporting, and able testimony.

### REPORT WRITING

A report is an official record of the officer's accomplishments. Note-taking is vitally important as a basis for report writing. A well-written report is of great assistance to the administration of the department. Complete and accurate reports by officers previously working on a case are of great value to an officer newly assigned to an unsolved case. An adequate and well-written report will acquaint the prosecutor with the facts of the case, will show whether there is sufficient evidence to warrant prosecution, and will indicate which witnesses should be subpoenaed and what facts can be testified to by the officer.

A good report will answer the questions: Who? What? When?

Where? Why? How?. In addition it will indicate those elements that are missing.

The sooner the report is written after the incident has taken place, the greater chance it has of being accurate and complete.

In writing a report, a brief but comprehensive form should be used. The function of the officer is to find the facts and report them, not to report opinions.

Original notes from which a report is written should be retained by the officer for possible future use in court testimony.

CHAPTER XI  
TESTIFYING IN COURT

## Chapter XI

### TESTIFYING IN COURT

- A. In order for a judge or jury to make a correct and wise decision in a criminal case, it is necessary that the evidence be presented truthfully and completely. Thus, the law enforcement officer has an important responsibility to present his testimony effectively. Although a basic knowledge of the rules of evidence will help, the witness should never try to second guess the attorneys or the judge while testifying. Above all, a witness should be (a) thoroughly prepared, (b) sincere, and (c) neat in appearance.
- B. **Preparation**—The law enforcement officer should begin preparing himself for testifying in court during the investigation of the case. All facts should be properly checked and preserved in notes and reports. Don't rely on memory alone.
1. **Before trial**—The case should be completely reviewed immediately prior to the trial. Refresh your memory by reading over all notes and reports and examining again any physical evidence which might have to be identified or referred to. Be candid with the prosecuting attorney, making certain that he knows all the facts, both favorable and unfavorable.
  2. **At the trial**—A witness should always be well dressed and neat appearing. Law enforcement officers should avoid wearing a gun in court if possible. If you are going to refer to any notes or reports from the investigation, make sure these are available and within easy reach when you need them.
- C. **The trial**—There are no definite rules for testifying effectively in court. However, a witness should be confident, straightforward, and sincere. The following are some suggestions for the law enforcement officer to follow when he is a witness:
1. Be serious while taking the oath. Stand upright, facing the officer administering the oath, and say "I do" clearly and positively.

2. The jury gets its first impression of a witness when he takes the witness stand, so be at ease, dignified and alert. And, don't undermine a good impression here by laughing or talking about the case outside the courtroom.
3. While you should have a thorough knowledge of the facts, don't memorize word for word what you are going to say.
4. Look at the attorney asking the question, but direct your testimony to the jury. Speak clearly and loudly enough so that all can hear. Don't mumble or cover your mouth with your hand.
5. Listen carefully to questions asked of you, making certain that you understand the question before answering. Don't pause too long before answering the question, but avoid snap answers without thinking.
6. Answer only the question asked and then stop. Don't volunteer information not asked for. However, if a question cannot truthfully be answered with a simple "yes" or "no", explain your answer.
7. If a wrong or ambiguous answer is given, clarify it immediately.
8. Always tell the truth, even if it is favorable to the defendant. Don't try to distort or exaggerate the facts.
9. Be as specific as possible in answering questions. But, remember that figures for such things as time and distance should be given as approximations only unless you have measured them exactly.
10. Use simple conversational English in answering questions; avoid slang and unnecessary technical terms.
11. Be respectful and courteous at all times. Address the court as "your honor" and the attorneys as "sir".
12. Stop instantly if you are interrupted by the judge or if an attorney objects to a question. But don't wait to see if a difficult question will be objected to before answering.

13. Don't be afraid to admit that you have discussed your testimony with the prosecuting attorney before the trial. This is entirely proper.
14. Don't become angry or argumentative, especially with the defense attorney on cross-examination. You must answer all questions unless an objection to the question is sustained by the judge. But, if you don't know or remember, say so.
15. Try not to appear self-satisfied with your testimony or anxious to convict the defendant. A law enforcement officer who is a witness should appear to be as neutral as possible in presenting the facts in court.

CHAPTER XII  
JUVENILES

## Chapter XII

### JUVENILES

#### I. DEFINITIONS

- A. **Delinquent**—A delinquent child is any child between the ages of ten and eighteen who has violated any federal, state or municipal law, except traffic laws cognizable by a justice of the peace.<sup>1</sup> Justices of the peace have jurisdiction over criminal offenses punishable by a fine of \$100 or less, by imprisonment in the county jail for 30 days or less, or both such fine and imprisonment.<sup>2</sup>
- B. **Child in need of supervision**—A child in need of supervision is one:
1. Who is an habitual truant from school;
  2. Who has run away from home or is otherwise beyond the control of his parent or guardian; or
  3. Whose behavior or condition is such as to endanger himself or the welfare of others.<sup>3</sup>
- C. **Neglected or dependent child**—A child is neglected or dependent if:
1. His parent, guardian, or custodian has abandoned him or subjected him to mistreatment or abuse;
  2. He lacks proper parental care or support;
  3. His environment is injurious to his welfare; or
  4. He is homeless.<sup>4</sup>
- D. **Child**—A child is any person less than eighteen years of age.

#### II. JUVENILE COURT

- A. **Jurisdiction**—The county court has jurisdiction over proceedings involving juveniles.<sup>5</sup>
- B. **Procedure**—A law enforcement officer who sees that a child is,

or appears to be, delinquent, neglected, dependent, or in need of supervision, should notify the county court. The court will then make an investigation, authorize a petition to be filed if the facts warrant, and, if necessary, order that the child be taken into custody.<sup>6</sup>

1. **Temporary custody**—A child may be taken into temporary custody by a law enforcement officer without an order from the court if:
  - a. He is subject to arrest for a criminal violation;
  - b. He is abandoned, seriously endangered in his surroundings, or seriously endangers others and immediate removal appears to be necessary; or
  - c. There are reasonable grounds to believe that he has run away from his parents or guardian.
  
2. **Detention**—When a child is taken into temporary custody, the officer must notify his parents, guardian, or custodian without unnecessary delay. The child may not be held in custody any longer than is reasonably necessary to obtain his name, age, residence, and other necessary information. He should then be returned to his parents or guardian unless his immediate welfare or the protection of the community requires that he be detained.
  - a. In any event, a child may not be detained longer than forty-eight hours, excluding Sundays and court holidays, unless a petition has been filed or the court has so ordered.
  - b. The officer who takes a child into custody is required to:
    - (1) Notify the county court at the earliest opportunity that the child has been taken into custody and where he has been taken; and
    - (2) File a brief written report with the court stating the facts which led to the child being taken into custody and the reason for not releasing the child if he is detained.

- c. The parent or other person to whom a child is released may be required to sign a written promise, on forms supplied by the court, to bring the child before the court at a certain time or at a time to be set later by the court.
  - d. If a child is not released to his parents, guardian, or custodian, they must be notified that he has a right to a prompt hearing to determine whether he is to be detained further.
  - e. Under no circumstances is a child under the age of fifteen to be kept in any common jail or lockup. If such child is unable to give bail, the court may commit him to the care of a peace officer or a probation officer who must then keep him in some suitable place provided by the city or county apart from a jail or police station.
3. **Petition**—Any resident of the state may file a petition with the county court alleging that a child is delinquent, neglected, dependent, or in need of supervision. The petition must state the name, age, and residence of the child and the names and residence of his parents, guardian, or custodian, or if they are unknown, the name of his nearest known relative. If the petition alleges that the child is delinquent, the law or municipal ordinance alleged to have been violated must be cited.<sup>7</sup>
4. **Summons**—After a petition has been filed, the court may issue a summons or citation requiring the person having custody of the child to appear in court with him at a designated time and place.<sup>8</sup>
5. **Warrant**—In certain cases where it appears that a summons may be ineffectual in securing the presence of the child in court, the court may issue a warrant against either the person having custody of the child or the child himself. Under such a warrant, any peace officer or a probation officer of the court may take the child into custody and bring him before the court. However, if the warrant is issued for the child himself, the officer may accept the verbal or written promise of the parent, guardian, or custodian that he will be responsible for the presence of the child at the hearing.<sup>9</sup>

6. **Records**—The records of law enforcement officers concerning all children taken into custody or issued a summons by the court must be maintained separately from records of arrest and may not be disclosed to the public or the names of the children released.<sup>10</sup>

a. However, such records may be inspected:

- (1) By order of the court;
- (2) If the court orders the child to be held for criminal prosecution; or
- (3) When there has been a criminal conviction and a presentence investigation is being made on an application for probation.

b. Except in the case of a felony or misdemeanor involving moral turpitude, no fingerprint, photograph, name, address, or other information concerning a child taken into temporary custody or issued a summons may be transmitted to any other person or agency, including the Federal Bureau of Investigation, unless ordered by the court.

C. **Criminal prosecution**—Although proceedings in juvenile court are technically not criminal prosecutions, juveniles should be accorded the same rights as those enjoyed by adults accused of a crime. This is especially true where the personal liberty of the child may be restrained or limited as a result of being declared a delinquent or a child in need of supervision.<sup>11</sup>

1. Such children and their parents or other person having custody should at least be informed of their rights to:

- a. An attorney;
- b. Remain silent;
- c. Know the charges against the child; and
- d. A prompt hearing.

2. Once a child charged with delinquency has been brought before the county court for a hearing, the judge may in

his discretion permit the child to be prosecuted under the criminal law as if he were an adult.<sup>12</sup>

D. **Arrest of a child**—Whenever any child is arrested on a criminal charge, with or without a warrant, he must be taken directly before the county court rather than being taken to a magistrate or municipal court. If the child is taken before a magistrate or municipal court because a complaint was filed there or for some other reason, the case must be transferred immediately to the county court. In such cases, the county court may proceed to hear and dispose of the case in the same manner as if the child has been brought to that court on a petition originally filed there.<sup>13</sup>

1. The child may be taken before the county court in the county:
  - a. In which the child resides or is present; or
  - b. In which the alleged violation of law or court order took place.<sup>14</sup>
2. If the proceedings are started in another county, the case may be transferred to the county of the child's residence:
  - a. Upon the request of the county court in the county where the child resides if the petition alleges that he is delinquent, neglected, or dependent; and
  - b. Upon the request of any interested party if the petition alleges that the child is in need of supervision and the court finds that the transfer would not be detrimental to the best interests of the child.<sup>15</sup>

## JUVENILES

### NOTES

1. Ch. 164, § 1(8), (1968) S.D. Sess. Laws 221.
2. SDCL 1967, § 16-12-9.
3. Ch. 164, § 1(5), (1968) S.D. Sess. Laws 221.
4. Id. § 1(12).
5. Id. § 2, at 222.
6. Id. § 4, at 223.
7. Id. § 5, at 224.
8. SDCL 1967, § 26-8-13.
9. SDCL 1967, § 26-8-19.
10. Ch. 164, § 14, (1968) S.D. Sess. Laws 231.
11. In re Gault, 387U.S. 1 (1967).
12. Ch. 164, § 10 (1968) S.D. Sess. Laws 228.
13. SDCL 1967, § 26-11-2.
14. Ch. 164, § 3(1968) S.D. Sess. Laws 222-23.
15. Id.

**CHAPTER XIII**  
**MOTOR VEHICLES**

## Chapter XIII

### MOTOR VEHICLES

#### I. PRINCIPAL VIOLATIONS

A. **Drunk driving**—It is unlawful for any person to operate a motor vehicle while under the influence of alcoholic liquor or narcotic drugs.<sup>1</sup>

1. The first two convictions of drunk driving are punishable as misdemeanors.
2. The third and all subsequent convictions are punishable as felonies.
3. **Implied consent law**—Any person who operates a motor vehicle is deemed to have given his implied consent to a chemical analysis of his blood, urine, breath, or other bodily substance for the purpose of determining the amount of alcohol in his blood.<sup>2</sup>
  - a. Such a test may be administered on a person charged with drunk driving if a police officer has reasonable grounds to believe that he was driving while under the influence of alcoholic liquor.
  - b. The officer must request that the person arrested submit to the test and inform him that his driver's license may be revoked for a period of one year if he refuses. No test may be given if the defendant refuses to cooperate.
  - c. In any event, blood may be withdrawn for such a test only by a physician, or a laboratory or medical technician acting at the request of the law enforcement officer.

B. **Reckless driving (misdemeanor)**—A person is guilty of reckless driving if he drives any vehicle upon a highway:

1. Carelessly and heedlessly in disregard of the rights or safety of others; or
2. Without due caution and circumspection and at a speed

or in a manner so as to endanger or be likely to endanger any person or property.<sup>3</sup>

- C. **Hit and run (misdemeanor)**—The driver of any vehicle involved in any accident resulting in injury or death to another person or damage to property must immediately stop and:
1. Give his name and address and show his registration receipt to the person struck or the driver or occupants of the other vehicle involved; and
  2. Render reasonable assistance to any person injured in the accident, including the securing of transportation for such person to a doctor for medical treatment if it is apparent that such treatment is necessary or it is requested by the injured person.<sup>4</sup>
- D. **Failure to yield right of way (misdemeanor)**—When two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left is required to yield the right of way to the vehicle on the right. However, the driver of a vehicle which is traveling at an unlawful speed forfeits his right of way at such intersection.<sup>5</sup>
1. **Left turns**—The driver of a vehicle within an intersection intending to turn to the left must yield the right of way to any vehicle approaching from the opposite direction if such vehicle is already in the intersection or so close thereto as to constitute an immediate hazard. But, after having so yielded and given the proper signal, the driver may make his left turn and the drivers of all other vehicles approaching the intersection from the opposite direction must yield the right of way to the vehicle turning left.
  2. **Private driveways**—Despite the general rule with respect to right of way, the driver of a vehicle about to enter or cross a public highway from a private road or driveway must yield the right of way to all vehicles approaching from either direction on the highway.
  3. **Stop signs**—Any driver approaching a stop sign at an intersection must come to a full stop and make certain that the intersection or highway is free of approaching

traffic which may affect safe passage before proceeding on.<sup>6</sup>

4. **Yield right of way signs**—The driver of a vehicle approaching a yield sign must slow down to a reasonable speed for the existing conditions, or stop if necessary, and yield the right of way to pedestrians and other vehicles.
5. **Pedestrians**—In a business or residential district, drivers must yield the right of way to pedestrians crossing the street in a marked crosswalk or regular pedestrian crossing.<sup>7</sup>
  - a. **Blind persons**—Whenever a pedestrian is crossing or attempting to cross a public street guided by a guide dog or carrying in a raised or extended position a cane or walking stick which is white or white with a red tip, all approaching vehicles must come to a full stop.<sup>8</sup>
6. **Emergency vehicles**—The driver of a vehicle upon a public highway must yield the right of way to police and fire department vehicles and ambulances whenever such vehicles are being operated upon official business with an audible or visual signal such as a siren or flashing red light.
  - a. Upon the approach of an authorized emergency vehicle making use of visual or audible signals, all other vehicles must immediately:
    - (1) Drive to a position as near as possible and parallel to the right-hand edge or curb of the highway; or
    - (2) In the case of a one-way street, to the nearest edge or curb clear of any intersection; and
    - (3) Stop and remain stopped until the emergency vehicle has passed or until directed to do otherwise by a police or traffic officer.<sup>9</sup>
- E. **Passing a schoolbus stopped to load or unload children (misdemeanor)**—If a school bus is stopped on the highway

with flashing red lights for the purpose of receiving or discharging school children, all vehicles approaching from either direction must stop and wait until the red lights are no longer flashing before proceeding past the bus.<sup>10</sup>

- F. **Following too closely**(misdemeanor)--The driver of a motor vehicle must not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and condition of the highway.<sup>11</sup>
1. In any event, a vehicle traveling in excess of forty miles per hour is prohibited from following another vehicle closer than 100 feet except in overtaking and passing such vehicle.
  2. Drivers of motor trucks must maintain a distance of at least 300 feet from other motor trucks except in overtaking and passing them.
- G. **Speeding** (misdemeanor)--In addition to speed limits fixed by law or by the State Highway Commission, it is unlawful for any person to drive a motor vehicle on a highway at a speed greater than is reasonable or prudent under the conditions then existing.<sup>12</sup>
- H. **Driving without an operator's license** (misdemeanor)--It is unlawful for any person to drive a motor vehicle upon a highway unless such person has a valid license to operate a motor vehicle which has not been suspended or revoked,<sup>13</sup> However, the following people are excepted from the license requirement:
1. Employees of the United States while operating a vehicle owned or leased by the United States on official business;
  2. A nonresident who is at least sixteen years of age and who has in his possession a valid operator's license issued to him in his home state if one is required there; and
  3. Students enrolled in an approved driver education class while accompanied by an approved instructor.
- I. **Driving without a registration receipt** (misdemeanor)--The operator of any motor vehicle required to be registered in this state must have a valid registration receipt in his possession for such vehicle.<sup>14</sup>

- J. Counterfeiting or substituting license plates (misdemeanor)—It is unlawful to counterfeit or substitute license plates on a motor vehicle registered in this state.<sup>15</sup>

## II. ACCIDENT INVESTIGATION AND REPORTING

- A. Duty to report accidents—The driver of any vehicle involved in an accident resulting in death, bodily injury or property damage to an apparent extent of \$100 or more must immediately give notice of such accident by the quickest means possible to the nearest available peace officer who has jurisdiction.<sup>16</sup>
1. However, an accident report is not required from any person who is physically incapable of making the report while he is incapacitated. But, if there was another person in the vehicle at the time of the accident who is capable of giving notice of the accident, he must do so.<sup>17</sup>
  2. After receiving notice that an accident has occurred, a peace officer must affix a notice as prescribed by the Superintendent of the Highway Patrol to the vehicle damaged indicating that an accident has been reported to him and that the circumstances surrounding the accident are being investigated. A report of the investigation must be sent to the Superintendent of the Highway Patrol within twelve hours after the investigation is completed.
- B. Financial Responsibility Law—In addition to notifying a peace officer of the accident, the driver must report it to the Commissioner of Motor Vehicles within five days on a form prescribed by the Commissioner.<sup>18</sup>
1. The principal purpose of the report to the Commissioner of Motor Vehicles is to determine the financial responsibility of the driver or owner of the automobile. Such reports are kept confidential and not open to general public inspection. They are generally not admissible into evidence.<sup>19</sup>
  2. If the driver is physically incapable of making the report, he is excused from doing so during the period of his incapacity. But, if the owner of the vehicle is not incapacitated, then he must make the report.<sup>20</sup>

3. Failure to report an accident when required to do so is a misdemeanor.<sup>21</sup>
- C. Arrests for violations of motor vehicle regulations--Most violations of motor vehicle laws are misdemeanors, so arrests cannot be made without a warrant unless the offense is committed in the presence of the arresting officer.<sup>22</sup>
1. Summons--It is not clear under South Dakota law whether a summons issued for a violation of motor vehicle regulations amounts to an arrest for the offense. However, the statute refers to the issuance of a summons to a person already arrested for a misdemeanor, so an arrest is probably being made where a summons is issued by a peace officer.<sup>23</sup>
  2. Authority to issue summons--Whenever any person is arrested for a violation of the motor vehicle regulations which is punishable as a misdemeanor, the arresting officer must take his name and address and the license number of his motor vehicle and issue a summons or otherwise notify him in writing to appear at a specified time before a magistrate within the county where the offense was committed.<sup>24</sup>
    - a. The time specified for appearance must be at least five days after the arrest unless the person arrested demands an earlier hearing, in which case the hearing must be within twenty-four hours.
    - b. If the person arrested gives his written promise to appear at the specified time and place, he must then be released from custody. Any person who refuses to give such written promise to appear must be taken immediately before the nearest or most accessible magistrate by the arresting officer.
    - c. With respect to an arrest for any of the following, no summons can be issued and the person arrested must be taken before the nearest or most accessible magistrate:
      - (1) Any offense causing or contributing to an accident resulting in death or injury to any person;

- (2) Reckless driving;
  - (3) Driving in excess of thirty miles per hour within a business or residential district;
  - (4) Driving in excess of forty-five miles per hour outside a business or residential district;
  - (5) Driving while under the influence of intoxicating liquor or narcotic drugs;
  - (6) Any felony.
3. Speeding—In case of a speeding violation, the summons or notice to appear, and also the complaint, must specify both:
- a. The speed at which the defendant is alleged to have driven; and
  - b. The legal speed limit at the time and place of such violation.<sup>25</sup>
4. Highway Patrolmen—In addition to making arrests for violations of motor vehicle regulations, state highway patrolmen may stop any motor vehicle upon the highways of the state for the purpose of:
- a. Requiring that such vehicle submit to an inspection of its equipment, license plates, registration certificate, or safety inspection certificate;<sup>26</sup>
  - b. Examining or measuring the form or weighing the loads transported; or
  - c. Determining whether any vehicle being operated as a motor carrier is duly registered and licensed and has all the required permits and certificates.<sup>27</sup>

## TRAFFIC PATROL

Traffic Patrol is one of the more important duties performed by the present day Police Officer. This type of duty began in limited form with the advent of the automobile and has increased to the present time when traffic patrol occupies a high percentage of total work time by most Police Departments.

Traffic Patrol is the operation of an automobile to and fro on roads in a given area for the purpose of traffic law enforcement and providing traffic connected services to the public.

Most traffic patrol in South Dakota is done on an area basis. This area can be a city, town, county or several counties. Occasionally Patrolmen are assigned to line patrol which is between two fixed points.

A basic attribute of a good Patrol Officer is a well developed power of observation. His ability to make observations of activities and conditions on patrol and correctly interpret them will determine how successful he will be as a Patrol Officer.

A notebook is an essential part of the Patrol Officer's equipment. It should be used for listing wanted vehicles and persons that may be in the area. It should also be used for noting license numbers of vehicles that are stopped to be checked, facts of investigations and conditions on the Patrol beat that need to be reported to other agencies.

The Patrol Officer should always become well acquainted with his Patrol area. This should include developing a good personal relationship with key people in his area. These contacts can become his eyes and ears in reporting incidents and conditions that should come to his attention as an Officer. In developing these contacts it should be remembered that his Patrol activity should not become so patterned that other people can predict when he will be at a certain point and for how long.

Another basic attribute of a good Officer is his ability to make a good impression. The only contact that most of the public have with a Police Officer is by what they see and hear about him. By this contact they form an impression of the Department. An Officer who is neat in appearance, keeps his equipment in good condition and avoids any offensive mannerisms about his personal conduct or in the operation of his Patrol vehicle develops good public support for his work.

In conducting vehicle patrol on streets or highways, it is most

effective to patrol at slightly under the legal speed limit, both to avoid hindering traffic and to avoid driving too fast for good observation. The Officer driving at this speed does not delay traffic and both oncoming and passing traffic can be observed by the Officer. In observing traffic, pay particular attention to those drivers who take evasive action or look the other way and try to hide their face. These drivers should be checked.

Stopping vehicles, whether for traffic or criminal violations, is a serious business. It should be remembered that the driver stopped for a minor traffic violation may be wanted for a serious crime and may be armed.

A prime consideration in stopping a vehicle is locating a safe place to do so. The Officer must consider his own safety as well as the safety of the driver to be stopped.

When it is safe to stop the other vehicle, the Officer should pull alongside the pursued vehicle, until his front bumper is even with the left front door of the pursued car. He must then reduce his speed to that of the other car and signal the other driver with two horn blasts and a hand signal to stop. The Officer should then drop back and follow the pursued car to a safe stop. The Officer should park fifteen (15) feet behind and offset three (3) feet to the left of the pursued vehicle. In stopping a vehicle at night the red beacon will have to be used and extreme caution be used in approaching the stopped vehicle on foot.

When interviewing the driver, it is important to watch the occupants very carefully. The Officer's gun hand should always be free when he takes licenses and registration to read.

In pursuing any vehicle, Officers should always anticipate the unexpected. The pursued driver may attempt to force them off the road or initiate any type of delaying tactic to avoid capture even though it may be dangerous.

A basic advantage of any Officer in pursuit is his intimate knowledge of the area. Officers should familiarize themselves with the driving hazards and conditions in their assigned areas to avoid unnecessary risks.

Before initiating pursuit the Officer must weigh the hazards to determine if they outweigh the hazard created by the violator to be pursued.

At the initiation of any pursuit, a basic duty is to obtain identification of the pursued vehicle. When this information is obtained it should be relayed to headquarters and State Radio which can alert other units.

In most instances siren and warning lights should be used when pursuing other vehicles but Officers should not rely on them to give the right of way. Officers are not exempted from a legal requirement to drive safely merely because they are in pursuit.

## MOTOR VEHICLES

### NOTES

1. SDCL 1967, § 32-23-1.
2. SDCL 1967, § 32-23-10.
3. SDCL 1967, § 32-24-1.
4. SDCL 1967, § 32-34-3.
5. SDCL 1967, § 32-26-13.
6. SDCL 1967, § 32-29-2.
7. SDCL 1967, § 32-27-1.
8. SDCL 1967, § 32-27-7.
9. SDCL 1967, § 32-31-6.
10. SDCL 1967, § 32-32-6.
11. SDCL 1967, § 32-26-40.
12. SDCL 1967, § 32-25-3.
13. SDCL 1967, § 32-12-22.
14. SDCL 1967, § 32-5-91.
15. SDCL 1967, § 32-5-103.
16. SDCL 1967, § 32-34-7.
17. SDCL 1967, § 32-34-9.
18. SDCL 1967, § 32-34-14.
19. SDCL 1967, § 32-34-22.
20. SDCL 1967, § 32-34-17.
21. SDCL 1967, § 32-34-18.
22. SDCL 1967, §§ 23-22-7 and 32-2-8.
23. SDCL 1967, § 32-33-2.
24. SDCL 1967, § 32-33-2.
25. SDCL 1967, § 32-25-21.
26. SDCL 1967, § 32-21-28.
27. SDCL 1967, § 32-2-7.

**CHAPTER XIV**  
**COMMUNICATIONS**

## Chapter XIV

### COMMUNICATIONS

The State Radio Communications System of South Dakota is organized under the Attorney General's Office to provide communication services for all police agencies in the state.

State Radio Stations are located in the following cities:

1. Webster
2. Huron, which also controls stations at Vayland and Hetland.
3. Parker
4. Kimball
5. Pierre, which also controls relay stations at Isabel and White River.
6. Rapid City, which also controls relay stations on Mt. Terry and Mt. Coolidge.

These Stations are manned continuously with a Chief Dispatcher in charge of each station.

Police teletype service is available through any of the stations to all 48 mainland States through the National Law Enforcement Teletype System. All traffic from one area of the State to another is via the State Radio Teletype System.

Motor Vehicle Registrations and Drivers License data are available from MVD at Pierre, Monday through Friday, 8 a.m. to 1:30 a.m. Requests for Criminal Records and Wanted Felon Checks are available from Division of Criminal Investigation files at any time.

Officers requesting Criminal Record and Drivers License Checks should supply full name and date of birth of subject whenever possible before sending request into Pierre.

The South Dakota Terminal for the National Crime Information Center is located at the State Radio Headquarters in Pierre. Basic information needed for Vehicles Checks, is License Number and/or Vehicle Identification Number. Wanted Felon Checks require name, date of birth, or other unique number, such as subject, social security

number, drivers license number, armed forces serial number or FBI number. Stolen Gun queries require serial number, make, and caliber if possible. Stolen article queries require serial number, make and type of article. All Interstate Teletype messages requesting vehicle, gun, person and article checks are routinely checked with NCIC before sending message out of state.

CHAPTER XV  
IDENTIFICATION AND STATISTICS

## Chapter XV

### IDENTIFICATION AND STATISTICS

#### I. FINGERPRINTS

- A. When required—All peace officers of the state are required to take fingerprints immediately upon the arrest of any person for either a felony or misdemeanor, except that no fingerprints are required for:
1. Violations arising solely out of the fish, game, or conservation laws; or
  2. Traffic violations other than driving a motor vehicle while under the influence of alcoholic beverages.<sup>1</sup>
- B. Taking fingerprints—The fingerprints must be taken in accordance with the identification system established by the Division of Criminal Investigation on forms furnished by that office.<sup>2</sup>
1. The failure of a peace officer to take fingerprints when required to do so is a misdemeanor.
- C. Disposition—The fingerprints must be sent, along with other descriptions of the defendant and a history of the offense alleged to have been committed, to the Division of Criminal Investigation. A copy of the fingerprints is also required to be sent to the Federal Bureau of Investigation in Washington, D.C.
- D. In addition to the above requirements all law enforcement agencies should maintain records of their various activities. These records should be sufficient to show a complete picture of crime in their community and progress made by their department.
- E. Uniform Crime reports are compiled by the Federal Bureau of Investigation with the cooperation of local law enforcement agencies throughout the entire nation. Complete information, instructions and forms are available from the FBI. All local agencies in South Dakota are urged to participate in this program. State agencies do not contribute to the Uniform Crime Reports because this would be repetitious.

## IDENTIFICATION AND STATISTICS

### NOTES

1. SDCL 1967, §§ 23-5-1 and -4.
2. SDCL 1967, § 23-5-4.

**CHAPTER XVI**  
**MISCELLANEOUS POLICE PROCEDURES**

## Chapter XVI

### MISCELLANEOUS POLICE PROCEDURES

- A. **Unexplained Death.** Whenever an officer receives a report of a dead human body, which death apparently occurred unattended, he should notify the Coroner in his jurisdiction immediately. Upon arrival at the scene he should determine, to the best of his ability that the body is, in fact, dead. He should then protect the scene as if it were a crime scene until it is determined if an investigation and inquest will be conducted. If so, anyone who will be requested to assist in the investigation should be notified before the scene is disturbed.
- B. **The Mentally Ill.** Persons suffering from mental illness pose a special problem for law enforcement officers. Although their conduct is frequently in violation of the law, they are not responsible for their actions. As a consequence officers must learn to recognize the symptoms of mental illness and to use exceptionally good judgment in handling persons so afflicted. Since each situation will vary, no exact rules can be formulated, but it might be well to state that "violence breeds violence". Unless an emergency exists take plenty of time and seek help from persons experienced with mentally ill persons. The officer must make every effort to protect the public, the ill person and himself.
- C. **Civil Disorders.** Since most law enforcement agencies in South Dakota are limited in manpower and equipment any large scale riot or disorder would require the services of many departments. For this purpose the Governor may, under existing law, mobilize and direct the State Constabulary, which consists of all law enforcement officers in the state. An alternate plan is in effect which, by Order of the Attorney General in January, 1967, directed each county to file a Civil Disorder Plan with his office. In counties where this was not done, the Order stated that the States Attorney of that county would be responsible for directing officers in the event of a disorder in that county.
- D. **Law Enforcement Training.** The 1966 South Dakota Legislature designated The Division of Criminal Investigation as the agency of state government to administer and coordinate training of law enforcement officers in the state. It also provided for the appointment of an Advisory Commission

to assist the Division in this endeavor. Since that time, a year round program of Basic, Advanced and Specialized training for all law enforcement officers has been carried out by the Division. Efforts are continually being made to improve and expand this program.

Information and consultation on law enforcement training is always available from the Division to all persons concerned with this program.

**END**