

SOUTH DAKOTA CRIMINAL AND TRAFFIC LAW MANUAL

2022-2023 EDITION

Current through the 2022 Regular Session
of the South Dakota Legislature

Blue360°
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**This publication is dedicated to the hard-working
law enforcement officers who risk their lives
every day to protect and serve the community.**

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PREFACE

We are pleased to offer to the law enforcement community this 2022-2023 edition of **South Dakota Criminal and Traffic Law Manual**. All statutes included in the book are fully up to date through the 2022 Regular Session of the South Dakota Legislature.






In planning this publication, suggestions as to format and content were solicited from many sources, and we are indebted to all those professionals who provided us with direction and guidance.

We are committed to providing law enforcement professionals with the most comprehensive, current, and useful publications possible. If you have comments and suggestions please call the Blue360° Media Publisher, 1-844-599-2887; email us at *support@blue360media.com*; or visit our website at *www.blue360media.com*. Your valuable comments help keep this publication handy and more useful every year.

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TITLE 22 CRIMES

CHAPTER 22-1 DEFINITIONS AND GENERAL PROVISIONS

22-1-1. Construction.

The rule of the common law that penal statutes are to be strictly construed has no application to this title. All its criminal and penal provisions and all penal statutes shall be construed according to the fair import of their terms, with a view to effect their objects and promote justice.

History.

SDC 1939, § 13.0101; SL 1977, ch 189, § 1; 2005, ch 120, § 356.

22-1-2. Definitions.

Terms used in this title mean:

(1) If applied to the intent with which an act is done or omitted:

(a) The words, “malice, maliciously,” and all derivatives thereof import a wish to intentionally vex, annoy, or injure another person, established either by proof or presumption of law;

(b) The words, “intent, intentionally,” and all derivatives thereof, import a specific design to cause a certain result or, if the material part of a charge is the violation of a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, a specific design to engage in conduct of that nature;

(c) The words, “knowledge, knowingly,” and all derivatives thereof, import only a knowledge that the facts exist which bring the act or omission within the provisions of any statute. A person has knowledge if that person is aware that the facts exist which bring the act or omission within the provisions of any statute. Knowledge of the unlawfulness of such act or omission is not required;

(d) The words, “reckless, recklessly,” and all derivatives thereof, import a conscious and unjustifiable disregard of a substantial risk that the offender’s conduct may cause a certain result or may be of a certain nature. A person is reckless with respect to circumstances if that person consciously and

unjustifiably disregards a substantial risk that such circumstances may exist;

(e) The words, “neglect, negligently,” and all words derived thereof, import a want of attention to the nature or probable consequences of an act or omission which a prudent person ordinarily bestows in acting in his or her own concerns;

(f) If the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge, intent, or malice also constitutes sufficient culpability for such element. If recklessness suffices to establish an element of the offense, then knowledge, intent or malice also constitutes sufficient culpability for such element. If knowledge suffices to establish an element of an offense, then intent or malice also constitutes sufficient culpability for such element. If intent suffices to establish an element of an offense, then malice also constitutes sufficient culpability for such element;

(2) “Actor,” the person who takes the active part in a transaction;

(3) “Affirmative defense,” an issue involving an alleged defense to which, unless the state’s evidence raises the issue, the defendant, to raise the issue, must present some credible evidence. If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense;

(4) “Antique firearm,” any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured before 1899, and any replica of any firearm described in this section if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or if it uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(5) “Check,” any check, draft, order or other commercial device which orders a financial institution to pay a sum certain of money on its presentment;

(6) “Concealed,” any firearm that is totally hidden from view. If any part of the firearm is capable of being seen, it is not concealed;

(7) “Consideration,” any type of property or thing of legal value, whether delivered in the past, present or to be delivered in

the future. The term includes an unfulfilled promise to deliver. The term may include an advantage or benefit to the promisor or a loss or detriment to the promisee. Any amount, advantage or inconvenience, no matter how trifling, is sufficient to constitute consideration;

(8) “Controlled weapon” includes any firearm, silencer, machine gun, or short shot-gun, as those terms are defined in subdivisions (17), (23), and (46) of this section;

(9) “Crime of violence,” any of the following crimes or an attempt to commit, or a conspiracy to commit, or a solicitation to commit any of the following crimes: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact as defined in § 22-22-7, felony child abuse as defined in § 26-10-1, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device;

(9A) “Critical infrastructure facility,” any of the following facilities, whether in operation, idle, or under construction, maintenance or repair, that are enclosed by a fence or other physical barrier that is obviously designed to exclude trespassers and are clearly marked with a sign that is posted on the property and reasonably likely to come to the attention of any trespasser that indicates that entry is forbidden, or any pole or tower used for any of the purposes in this subdivision, whether enclosed or marked with a sign or not:

(a) Electric utility facility, including a power generation facility, an electric transmission facility, an electric station or substation, or any other facility used to support the generation, transmission, or distribution of electricity;

(b) Water tower, municipal or rural water system well, water intake structure, or water treatment facility;

(c) Natural gas utility facility, including a regulator station, a compressor station, an odorization facility, a mainline valve, a natural gas storage facility, or any other facility used to support the acquisition, transmission, distribution, or storage of natural gas;

(d) Tank farm, pipeline terminal, pipeline, pump or compressor station or storage facility for gasoline, crude or refined or synthetic oil, ethanol, propane, liquid natural gas, or other hazardous liquid;

(e) Transportation facility, including a port, railroad switching yard, or trucking terminal;

(f) Hazardous waste storage, treatment, or disposal facility;

(g) Oil and gas locations, facilities, and equipment, including temporary drilling rigs, permanent oil and gas product facilities, and artificial lift equipment;

(h) Communications services facility, infrastructure or equipment involved in the carriage of essential communications services for both wired and wireless communications, switching, routing, repeater/amplifier equipment or other electronic equipment, macro and micro wireless towers using federally licensed spectrum, video headend equipment, and satellite communications receiver or transmission equipment;

(i) Dam that is owned by the state or a subdivision;

(j) Facility either (i) whose owner or operator is required to submit a risk management plan under the federal Chemical Safety Information, Site Security, and Fuels Regulatory Relief Act (42 U.S.C. 7412(r)); or (ii) is identified and regulated by the United States Department of Homeland Security Chemical Facility Anti-Terrorism Standards (CFATS) program; or

(k) Any construction area, pipe yard, or laydown yard for any of the above, whether permanent or temporary in nature;

(10) “Dangerous weapon” or “deadly weapon,” any firearm, stun gun, knife, or device, instrument, material, or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm;

(11) “Dealer in stolen property,” any person who:

(a) Is found in possession or control of property stolen from two or more persons on separate occasions; or

(b) Has received stolen property in another transaction within the year preceding the commencement of the prosecution; or

(c) Trades in property similar to the type of stolen property received and acquires such property for a consideration which that person knows is substantially below its reasonable value;

(12) “Deprive,” to take or to withhold property of another or to dispose of property of another so as to make it unlikely that the owner will receive it;

(13) “Destructive device,”

(a) Any bomb, grenade, explosive missile, or similar device or any launching device therefor; or

(b) Any breakable container which contains a flammable liquid with a flashpoint of one hundred and fifty degrees Fahrenheit or less and has a wick or similar device capable of being ignited;

(c) The term does not include "permissible fireworks," defined by § 34-37-5; any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device; surplus ordnance sold, loaned or given by the secretary of the army pursuant to the provisions of 10 U.S.C. §§ 4684(2), 4685, or 4686; or any other device which is an antique or is a rifle which the owner intends to use solely for sporting purposes;

(14) "Explosive," any substance, or combination of substances, that is used for the purpose of detonation and which, upon exposure to any external or internal force or condition, is capable of a relatively instantaneous release of gas and heat. The term does not include "permissible fireworks," as defined by § 34-37-5;

(15) "Financial institution," a bank, insurance company, credit union, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment;

(16) "Firearm," any weapon from which a projectile or projectiles may be discharged by gunpowder. As used in this subdivision, the term, gunpowder, includes any propellant that upon oxidization emits heat and light and is commonly used in firearms cartridges;

(17) "Firearm silencer," any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any such weapon;

(18) "Government," the United States, any state, county, municipality, school district, or other political unit, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of any of the foregoing;

(19) "Immediate family," any spouse, child, parent, or guardian of the victim;

(20) "Insanity," the condition of a person temporarily or partially deprived of reason,

upon proof that at the time of committing the act, the person was incapable of knowing its wrongfulness, but not including an abnormality manifested only by repeated unlawful or antisocial behavior;

(21) "Intoxication," a disturbance of mental or physical capacities resulting from the introduction of substances into the body. Intoxication is not, in itself, a mental disease or defect;

(22) "Law enforcement officer," any officer, prosecutor, or employee of the state or any of its political subdivisions or of the United States, or, while on duty, an agent or employee of a railroad or express company or security personnel of an airline or airport, who is responsible for the prevention, detection, or prosecution of crimes, for the enforcement of the criminal or highway traffic laws of the state, or for the supervision of confined persons or those persons on supervised release or probation;

(22A) "Loaded firearm," any functional firearm that contains a cartridge, shell, or projectile in the chamber, including any chamber in the cylinder of a revolver;

(23) "Machine gun," any firearm, whatever its size and usual designation, that automatically discharges two or more cartridges by a single function of the firing device;

(24) "Mental illness," any substantial psychiatric disorder of thought, mood or behavior which affects a person at the time of the commission of the offense and which impairs a person's judgment, but not to the extent that the person is incapable of knowing the wrongfulness of such act. Mental illness does not include abnormalities manifested only by repeated criminal or otherwise antisocial conduct;

(25) "Moral turpitude," an act done contrary to justice, honesty, principle, or good morals, as well as an act of baseness, villainess, or depravity in the private and social duties which a person owes to his fellow man or to society in general;

(26) "Motor vehicle," any automobile, motor truck, motorcycle, house trailer, trailer coach, cabin trailer, or any vehicle propelled by power other than muscular power;

(27) "Obtain,"

(a) In relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the actor or another; or

(b) In relation to labor or service, to secure performance thereof;

(28) "Occupied structure," any structure:

(a) Which is the permanent or temporary habitation of any person, whether or not any person is actually present;

(b) Which at the time is specially adapted for the overnight accommodation of any person, whether or not any person is actually present; or

(c) In which at the time any person is present;

(29) “Offense” or “public offense,” any crime, petty offense, violation of a city or county ordinance, or act prohibited by state or federal law;

(30) “Pass,” to utter, publish or sell or to put or send forth into circulation. The term includes any delivery of a check to another for value with intent that it shall be put into circulation as money;

(31) “Person,” any natural person, unborn child, association, limited liability company, corporation, firm, organization, partnership, or society. If the term is used to designate a party whose property may be the subject of a crime or petty offense, it also includes the United States, any other country, this state, and any other state or territory of the United States, and any of their political subdivisions, agencies, or corporations;

(32) “Pistol,” any firearm with a barrel less than sixteen inches in length, designed to expel a projectile or projectiles by the action of an explosive;

(33) “Private place,” a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access;

(34) “Process,” any writ, warrant, summons, or order issued in the course of judicial proceedings;

(35) “Property,” anything of value, including, but not limited to, motor vehicles, real estate, tangible and intangible personal property, contract rights, choses-in-action, and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power, services, and signatures which purport to create, maintain, or extinguish any legal obligation;

(36) “Property of another,” property in which any person other than the actor has an interest upon which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of an actor may not be deemed property of another who has only a security interest therein, even if legal title is in

the creditor pursuant to a conditional sales contract or other security agreement;

(37) “Public employee,” any person employed by the state or any of its political subdivisions, who is not a public officer;

(38) “Public office,” the position held by a public officer or employee;

(39) “Public officer,” any person who holds a position in the state government or in any of its political subdivisions, by election or appointment, for a definite period, whose duties are fixed by law, and who is invested with some portion of the sovereign functions of government;

(40) “Public record,” any official book, paper, or record created, received, or used by or in any office or agency of the state or of any of its political subdivisions;

(41) “Publish,” to disseminate, circulate or place before the public in any way, other than by speech which is not mechanically or electronically amplified;

(42) “Receive,” to acquire possession, control or title, or to lend or borrow on the security of the property;

(43) “Service,” labor that does not include a tangible commodity. The term includes, but is not limited to: labor; professional advice; telephone, cable television and other utility service; accommodations in hotels, restaurants or elsewhere; admissions to exhibits and entertainments; the use of machines designed to be operated by coin or other thing of value; and the use of rental property;

(44) “Seller,” any person or employee engaged in the business of selling pistols at retail;

(44A) “Serious bodily injury,” such injury as is grave and not trivial, and gives rise to apprehension of danger to life, health, or limb;

(45) “Short rifle,” any rifle having a barrel less than sixteen inches long, or an overall length of less than twenty-six inches;

(46) “Short shotgun,” any shotgun having a barrel less than eighteen inches long or an overall length of less than twenty-six inches;

(47) “Signature,” any name, mark or sign written with intent to authenticate any instrument or writing;

(48) Deleted by SL 2005, ch 120, § 357;

(49) “Structure,” any house, building, outbuilding, motor vehicle, watercraft, aircraft, railroad car, trailer, tent, or other edifice, vehicle or shelter, or any portion thereof;

(50) “Stun gun,” any battery-powered, pulsed electrical device of high voltage and low or no amperage that can disrupt the central nervous system and cause

temporary loss of voluntary muscle control of a person;

(50A) “Unborn child,” an individual organism of the species homo sapiens from fertilization until live birth;

(51) “Unoccupied structure,” any structure which is not an occupied structure;

(52) “Vessel,” if used with reference to shipping, any ship of any kind and every structure adapted to be navigated from place to place;

(53) “Victim,” any natural person against whom the defendant in a criminal prosecution has committed or attempted to commit a crime;

(54) “Voluntary intoxication,” intoxication caused by substances that an actor knowingly introduces into his or her body, the tendency of which is to cause intoxication; and

(55) “Written instrument,” any paper, document, or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying, or recording information, and any money, credit card, token, stamp, seal, badge, trade mark, service mark or any evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

History.

SDC 1939, § 13.0102; SL 1976, ch 158, § 1-1; 1977, ch 189, § 2; 1994, ch 351, § 41; 1995, ch 122, §§ 1, 2; 2001, ch 145, § 2; 2002, ch 102, § 1; 2005, ch 120, §§ 114, 357; 2007, ch 141, § 1; 2011, ch 114, § 1; 2020 ch 79, § 1, effective July 1, 2020; 2022 ch 60, § 1, effective July 1, 2022.

22-1-4. “Felony” and “misdemeanor” defined.

Any crime is either a felony or a misdemeanor. A felony is a crime which is or may be punishable by imprisonment in the state penitentiary. Every other crime is a misdemeanor.

History.

SDC 1939, § 13.0103; SL 1976, ch 158, § 1-7; 2005, ch 120, § 359.

22-1-6. Failure to perform act performed by another.

No person may be convicted for the failure to perform an act if the act has been performed by another person, acting on the other person’s behalf, who is competent by law to perform it.

History.

SDC 1939, § 13.0106; SL 1976, ch 158, § 1-4; 2005, ch 120, § 360.

22-1-7. Element of sending letter — When deemed complete.

In the various cases in which the sending of a letter is made criminal by the statutes of this state, the offense is deemed complete from the time when such letter is deposited in any post office or any other place or delivered to any person with intent that it be forwarded.

History.

SDC 1939, § 13.0107; SL 1976, ch 158, § 1-8; 2005, ch 120, § 361.

22-1-8. Act or omission — Criminal only as prescribed.

No act or omission may be deemed criminal or punishable except as prescribed or authorized by this title or by some other statute of this state.

History.

SDC 1939, § 13.0103; 2005, ch 120, § 362.

22-1-9. Element of possession — Law enforcement officer as part of official duties.

If the possession of an object is made an offense, no law enforcement officer may be convicted of that offense if that law enforcement officer came into and retained possession of that object in the course of performing official duties.

History.

SL 1976, ch 158, § 1-5; 2005, ch 120, § 363.

CHAPTER 22-2 REMEDIES OTHER THAN CRIMINAL PROSECUTION

22-2-1. Civil liability not affected.

The omission to specify or affirm in this title any liability to any damages, penalty, forfeiture, or other remedy imposed by law and allowed to be recovered or enforced in any civil action or proceeding for any act or omission declared punishable in this title does not affect any right to recover or enforce the same.

History.

SDC 1939, § 13.0110; 2005, ch 120, § 367.

22-2-2. Forfeiture of office or power of removal not affected.

The omission to specify or affirm in this title any ground of forfeiture of a public office or other trust or special authority conferred

by law to impeach, remove, depose, or suspend any public officer or other person holding any trust, appointment, or other special authority conferred by law does not affect such forfeiture or power or any proceeding authorized by law to carry into effect such impeachment, removal, deposition, or suspension.

History.

SDC 1939, § 13.0111.

22-2-3. Act or omission punishable under laws of another state.

No act or omission declared punishable by any statute of this state is less so because it is also punishable under the laws of another state, government, or country, unless the contrary is expressly declared by statute.

History.

SDC 1939, § 13.0108; 2005, ch 120, § 368.

22-2-4. Military authority not affected.

This title does not affect any power conferred by law upon any court martial or other military authority or officer to impose or inflict punishment upon offenders.

History.

SDC 1939, § 13.0112.

22-2-5. Power of contempt not affected.

This title does not affect any power conferred by law upon any public body, tribunal, or officer to impose or inflict punishment for a contempt.

History.

SDC 1939, § 13.0112.

22-2-6. Act punishable as contempt.

No criminal act is less punishable as a crime because it is also declared to be punishable as contempt.

History.

SDC 1939, § 13.0109; 2005, ch 120, § 369.

CHAPTER 22-3 PARTIES TO CRIMES

22-3-1. Capacity — Minors — Mistake — Lack of consciousness — Duress.

Any person is capable of committing a crime, except those included in the following classes:

- (1) Any child under the age of ten years;

- (2) Any child of the age of ten years, but under the age of fourteen years, in the absence of proof that at the time of the committing the act or neglect charged, the child knew its wrongfulness;

- (3) Any person who committed the act or made the omission charged under ignorance or mistake of fact which disproves any criminal intent. However, ignorance of the law does not excuse a person from punishment for its violation;

- (4) Any person who committed the act charged without being conscious thereof; or

- (5) Any person who committed the act or made the omission charged while under involuntary subjection to the power of superiors.

History.

SDC 1939, § 13.0201; SL 1968, ch 28, §§ 1, 2; 1976, ch 158, §§ 3-1, 3-5; 1983, ch 174, § 3; 1985, ch 192, § 10; 2005, ch 120, § 370.

22-3-1.1. Voluntary consumption of alcohol or controlled substance.

No person who is under the influence of voluntarily consumed or injected alcohol or controlled substances at the time of committing the act charged is for that reason insane.

History.

SL 1983, ch 174, § 4; 2005, ch 120, § 371.

22-3-3. Aiding and abetting.

Any person who, with the intent to promote or facilitate the commission of a crime, aids, abets, or advises another person in planning or committing the crime, is legally accountable, as a principal to the crime.

History.

SDC 1939, § 13.0203; SL 1976, ch 158, § 3-2; 2005, ch 120, § 372.

22-3-3.1. Principals — Felony.

The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated. Any person connected with the commission of a felony, whether that person directly commits the act constituting the offense or aids and abets in its commission, though not present, shall be prosecuted, tried, and punished as a principal.

History.

SDC 1939 & Supp 1960, § 34.0504; SDCL, § 23-10-3; SL 1978, ch 185, § 2; 2005, ch 120, § 373.

22-3-5. Accessory to a crime — Penalty.

A person is an accessory to a crime, if, with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a felony, that person renders assistance to the other person. There are no accessories to misdemeanors.

The term, render assistance, means to:

- (1) Harbor or conceal the other person;
- (2) Warn the other person of impending discovery or apprehension, other than a warning given in an effort to bring the other person into compliance with the law;
- (3) Provide the other person with money, transportation, a weapon, a disguise, or any other thing to be used in avoiding discovery or apprehension;
- (4) Obstruct anyone by force, intimidation, or deception in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person; or
- (5) Conceal, destroy, or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person.

A violation of this section is a Class 5 felony.

History.

SDC 1939, § 13.0203; SL 1976, ch 158, § 3-3; 2005, ch 120, § 374.

22-3-5.1. Prosecution of accessory not dependent on principal.

An accessory to the commission of a felony may be prosecuted, tried, and punished, even if the principal is not prosecuted or tried, or even if the principal was acquitted.

History.

SDC 1939 & Supp 1960, § 34.0505; SDCL, § 23-10-5; SL 1978, ch 185, § 3; 2005, ch 120, § 375.

22-3-8. Conspiracy against state or local government — Penalty.

If two or more persons conspire, either to commit any offense against the State of South Dakota, or to defraud the State of South Dakota, or any county, township, school district, or municipal corporation in any manner or for any purpose, and one or more of the parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy is guilty of conspiracy and may be punished up to the maximum penalty which may be imposed for a crime which is one level below the penalty prescribed for the crime underlying the conspiracy. However, it is not a crime to conspire to commit a Class 2 misdemeanor or a petty offense.

History.

SL 1941, ch 45, § 1; SDC Supp 1960, § 13.0306; SL 1976, ch 158, § 3-4; 2005, ch 120, § 376.

22-3-9. Accessory out of state for crime committed in state.

Any person who, while out of the state, causes, aids, advises, or encourages another person to injure any person or property in this state by means of any act or neglect which is a crime in this state, is liable to punishment under the laws of this state.

History.

SDC 1939, § 13.0602 (4); SDCL, § 23-9-15; SL 1978, ch 185, § 1.

CHAPTER 22-4 ATTEMPTS TO COMMIT CRIME

22-4-1. Penalty where not otherwise specified.

Unless specific provision is made by law, any person who attempts to commit a crime and, in the attempt, does any act toward the commission of the crime, but fails or is prevented or intercepted in the perpetration of that crime, is punishable for such attempt at maximum sentence of one-half of the penalty prescribed for the underlying crime. However, any person who attempts to commit a Class A, Class B, or Class C felony is guilty of a Class 2 felony.

History.

SDC 1939, § 13.0401; SL 1972, ch 137; 1976, ch 158, § 4-1; 2005, ch 120, § 377.

22-4-2. Commission of another crime during attempt — Penalty.

The provisions of § 22-4-1 do not protect a person who, in attempting unsuccessfully to commit a crime, commits another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

History.

SDC 1939, § 13.0402; 2005, ch 120, § 378.

CHAPTER 22-4A SOLICITATION

22-4A-1. Criminal solicitation — Penalties.

Any person who, with the intent to promote or facilitate the commission of a crime, commands, hires, requests, or solicits another person to engage in specific conduct which would constitute the commission of such offense or an attempt to commit such offense, is guilty of criminal solicitation.

Criminal solicitation is a:

- (1) Class 1 felony if the offense solicited is a Class A, B or C felony;
- (2) Class 2 felony if the offense solicited is a Class 1 felony;
- (3) Class 3 felony if the offense solicited is a Class 2 felony;
- (4) Class 4 felony if the offense solicited is a Class 3 felony;
- (5) Class 5 felony if the offense solicited is a Class 4 felony;
- (6) Class 6 felony if the offense solicited is a Class 5 felony; or
- (7) Class 1 misdemeanor if the offense solicited is a Class 6 felony.

History.

SL 2005, ch 120, § 438.

22-4A-2. Defense to prosecution for criminal solicitation — Certain defenses not available.

It is not a defense to prosecution for criminal solicitation that the person solicited neither committed or attempted to commit the offense solicited nor was capable of committing or attempting to commit the offense solicited.

History.

SL 2005, ch 120, § 439.

22-4A-3. Proof required for conviction of criminal solicitation.

No person may be convicted of criminal solicitation upon the uncorroborated testimony of the person allegedly solicited, and there must be proof of circumstances corroborating both the solicitation and the defendant's intent.

History.

SL 2005, ch 120, § 440.

22-4A-4. Renunciation of criminal intent — Burden of proof.

No person may be convicted of criminal solicitation if, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, the defendant:

- (1) Notified the person solicited of his or her renunciation; and
- (2) Gave timely and adequate warning to the law enforcement authorities or

otherwise made a substantial effort to prevent the commission of the criminal conduct solicited.

The burden of injecting this issue is on the defendant, but this does not shift the burden of proof.

History.

SL 2005, ch 120, § 441.

CHAPTER 22-5 DEFENSES

22-5-1. Duress.

No person may be convicted of a crime based upon conduct in which that person engaged because of the use or threatened use of unlawful force upon himself, herself, or another person, which force or threatened use of force a reasonable person in that situation would have been lawfully unable to resist.

History.

SDC 1939, § 13.0501; SL 1976, ch 158, § 5-1; 1977, ch 189, § 14; 1978, ch 158, § 3; 2005, ch 120, § 379.

22-5-5. Voluntary intoxication.

No act committed by a person while in a state of voluntary intoxication may be deemed less criminal by reason of such condition. But if the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time in determining the purpose, motive, or intent with which the accused committed the act.

History.

SDC 1939, § 13.0504; 2005, ch 120, § 380.

22-5-7. Propensity.

A morbid propensity to commit prohibited acts existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts forms no defense to a prosecution therefor.

History.

SDC 1939, § 13.0505; repealed SL 1976, ch 158, § 5-2; re-enacted SL 1977, ch 189, § 15; 2005, ch 120, § 381.

22-5-10. Insanity.

Insanity is an affirmative defense to a prosecution for any criminal offense. Mental disease or defect does not otherwise constitute a defense. The defendant has the burden of proving

the defense of insanity by clear and convincing evidence.

History.

SL 1985, ch 192, § 11.

CHAPTER 22-6

AUTHORIZED PUNISHMENTS

22-6-1. Felonies — Classification — Penalties.

Except as otherwise provided by law, felonies are divided into the following nine classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

(1) Class A felony: death or life imprisonment in the state penitentiary. A lesser sentence than death or life imprisonment may not be given for a Class A felony. In addition, a fine of fifty thousand dollars may be imposed;

(2) Class B felony: life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed;

(3) Class C felony: life imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;

(4) Class 1 felony: fifty years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;

(5) Class 2 felony: twenty-five years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;

(6) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed;

(7) Class 4 felony: ten years imprisonment in the state penitentiary. In addition, a fine of twenty thousand dollars may be imposed;

(8) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed; and

(9) Class 6 felony: two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.

If the defendant is under the age of eighteen years at the time of the offense and found guilty of a Class A, B, or C felony, the maximum sentence may be a term of years in the state penitentiary, and a fine of fifty thousand dollars may be imposed.

The court, in imposing sentence on a defendant who has been found guilty of a felony, shall order in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Nothing in this section limits increased sentences for habitual criminals under §§ 22-7-7, 22-7-8, and 22-7-8.1.

History.

SDC 1939, § 13.0606; SL 1976, ch 158, §§ 6-1, 6-4; 1977, ch 189, § 16; 1978, ch 158, § 4; 1979, ch 160, § 1; 1980, ch 173, § 8; 1985, ch 192, § 2; 1997, ch 143, § 5; 2005, ch 120, § 148; 2013, ch 105, § 1, eff. July 1, 2013; 2016 ch 121, § 1, effective July 1, 2016.

22-6-1.1. Felony — Class 5 or 6 — Imprisonment in county jail.

If a person is convicted of a Class 5 or Class 6 felony, the court may sentence the person so convicted to imprisonment in the county jail of the county where such person was convicted, for a term of not more than one year.

History.

SDC 1939, § 13.0604; SL 1963, ch 55; SDCL, § 23-48-20; SL 1978, ch 185, § 16; 1989, ch 192, § 1.

22-6-1.2. Minimum sentence for subsequent felony convictions for a sex crime.

If an adult has a previous conviction for a felony sex crime as defined by § 22-24B-1, any subsequent felony conviction for a sex crime as defined by subdivisions 22-24B-1(1) to (15), inclusive, and (19) shall result in a minimum sentence of imprisonment equal to the maximum term allowable under § 22-6-1, up to twenty-five years. The court may suspend a portion of the prison sentence required under this section.

History.

SL 2006, ch 121, § 3.

22-6-1.3. Penalty of life imprisonment — Prohibited for offense committed when defendant less than eighteen years of age.

The penalty of life imprisonment may not be imposed upon any defendant for any offense committed when the defendant was less than eighteen years of age.

History.

SL 2016, ch 121, § 2, eff. July 1, 2016.

22-6-2. Misdemeanors — Classification — Penalties.

Misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

(1) Class 1 misdemeanor: one year imprisonment in a county jail or two thousand dollars fine, or both;

(2) Class 2 misdemeanor: thirty days imprisonment in a county jail or five hundred dollars fine, or both.

The court, in imposing sentence on a defendant who has been found guilty of a misdemeanor, shall order, in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Except in Titles 1 to 20, inclusive, 22, 25 to 28, inclusive, 32 to 36, inclusive, 40 to 42, inclusive, 47 to 54, inclusive, and 58 to 62, inclusive, if the performance of an act is prohibited by a statute, and no penalty for the violation of such statute is imposed by a statute, the doing of such act is a Class 2 misdemeanor.

History.

SDC 1939, §§ 13.0105, 13.0607; SDCL § 22-1-5; SL 1976, ch 158, §§ 1-3, 6-2, 6-5; 1977, ch 189, § 17; 1978, ch 158, § 5; 1985, ch 192, § 3; 1989, ch 255, § 2; 1990, ch 158, § 1; 1991, ch 186, § 2; 1991, ch 187, § 4; 1991, ch 337, § 1; 1992, ch 158, § 1; 1993, ch 172, § 1; 1994, ch 161; 1995, ch 120, § 1; 1997, ch 126, § 1; 1997, ch 143, § 6; 2005, ch 120, § 173.

22-6-5.1. Crime committed by prisoner — Penalty.

A court may sentence any person convicted of a crime committed while that person was a prisoner as defined by § 22-11A-1, to a term of not more than twice the maximum term allowed by the statute for the commission of the same crime by a person not so confined. However, the provisions of this section do not apply if, for the same offense, the prisoner is subject to an enhanced penalty as an habitual offender.

History.

SL 1961, ch 50, § 2; SDCL, § 23-48-42; SL 1978, ch 185, § 18; 2005, ch 120, § 429; 2006, ch 117, § 4.

22-6-5.2. Enhanced penalty for subsequent violations — Limitations.

No enhanced penalty may be imposed for any second, third, or subsequent violation, except for an offense pursuant to the provisions of chapter 32-23, unless the defendant was convicted of or plead guilty or nolo contendere to the prior offense previous in time to committing

the relevant second, third, or subsequent offense.

History.

SL 2005, ch 120, § 430; 2012, ch 119, § 1, eff. July 1, 2012.

22-6-6.1. Concurrent or consecutive sentences.

If a defendant is convicted of two or more offenses, regardless of when the offenses were committed or when the judgment or sentence is entered, the judgment or sentence may be that the imprisonment on any of the offenses or convictions may run concurrently or consecutively at the discretion of the court.

History.

SDC 1939 & Supp 1960, § 34.3705; SDCL, § 23-48-22; SL 1978, ch 185, § 17; 1983, ch 175; 2001, ch 111, § 1; 2005, ch 120, § 432.

22-6-7. Petty offenses.

Actions for violations of petty offenses are civil proceedings in which the state is the plaintiff. Such actions are governed by chapter 23-1A.

History.

SL 1976, ch 158, § 6-3; 1977, ch 193, § 26; 2005, ch 120, § 433.

22-6-8. Restitution — Availability of insurance policy to compensate victim.

Notwithstanding § 22-6-1 or 22-6-2, if there is an insurer, self insurance, reciprocal insurance, or an insurance pool available to compensate the victim by means of a civil liability determination, the court in imposing sentence on a defendant who has been found guilty of a misdemeanor or felony may order that the defendant make restitution to a victim in accordance with the provisions of chapter 23A-28.

History.

SL 1998, ch 129, § 1; 2005, ch 120, § 434.

22-6-9. Protection order.

Any person who has suffered physical injury as a result of an assault or a crime of violence as defined in subdivision 22-1-2 (9) may petition the court for a protection order. The petition shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the injury and the acts which caused the injury. The petition shall be governed by the procedures and penalties described in §§ 22-19A-8 to 22-19A-16, inclusive.

History.

SL 2000, ch 101, § 1.

22-6-10. Application of penalties to prior offenses prohibited.

Nothing in Session Laws 2005, ch 120 may be construed to permit the imposition of any lesser or greater penalty that may be provided for in Session Laws 2005, ch 120 as punishment for any offense which was committed prior in time to July 1, 2006, regardless of when the sentence for such offense may be imposed.

History.

SL 2005, ch 120, § 435.

22-6-11. Presumptive probation for offender convicted of Class 5 or 6 felony — Exceptions — Departure for aggravating circumstances.

The sentencing court shall sentence an offender convicted of a Class 5 or Class 6 felony, except those convicted under §§ 22-11A-2.1, 22-18-1, 22-18-1.05, 22-18-26, 22-19A-1, 22-19A-2, 22-19A-3, 22-19A-7, 22-19A-16, 22-22A-2, 22-22A-4, 22-24A-3, 22-22-24.3, 22-24-1.2, 22-24B-2, 22-24B-12, 22-24B-12.1, 22-24B-23, 22-42-7, subdivision 24-2-14(1), 32-34-5, section 2 of this Act, and any person ineligible for probation under § 23A-27-12, to a term of probation. If the offender is under the supervision of the Department of Corrections, the court shall order a fully suspended penitentiary sentence pursuant to § 23A-27-18.4. The sentencing court may impose a sentence other than probation or a fully suspended penitentiary sentence if the court finds aggravating circumstances exist that pose a significant risk to the public and require a departure from presumptive probation under this section. If a departure is made, the judge shall state on the record at the time of sentencing the aggravating circumstances and the same shall be stated in the dispositional order. Neither this section nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest.

History.

SL 2013, ch 101, § 53, eff. July 1, 2013; 2016, ch 137, § 4, eff. July 1, 2016; 2017, ch 95, § 1, eff. July 1, 2017; 2017, ch 98, § 4, eff. July 1, 2017.

22-6-11. Presumptive probation for offender convicted of Class 5 or 6 felony — Exceptions — Departure for aggravating circumstances.

The sentencing court shall sentence an offender convicted of a Class 5 or Class 6 felony, except those convicted under §§ 22-11A-2.1,

22-14-15, 22-18-1, 22-18-1.05, 22-18-26, 22-18-29, 22-19A-1, 22-19A-2, 22-19A-3, 22-19A-7, 22-19A-16, 22-22A-2, 22-22A-4, 22-24A-3, 22-22-24.3, subdivision 22-23-2(2), 22-24-1.2, 22-24B-2, 22-24B-12, 22-24B-12.1, 22-30A-46, 22-24B-23, 22-42-7, subdivision 24-2-14(1), 32-34-5, and any person ineligible for probation under § 23A-27-12, to a term of probation. If the offender is under the supervision of the Department of Corrections, the court shall order a fully suspended penitentiary sentence pursuant to § 23A-27-18.4. The sentencing court may impose a sentence other than probation or a fully suspended penitentiary sentence if the court finds aggravating circumstances exist that pose a significant risk to the public and require a departure from presumptive probation under this section. If a departure is made, the judge shall state on the record at the time of sentencing the aggravating circumstances and the same shall be stated in the dispositional order. Neither this section nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest.

History.

SL 2013, ch 101, § 53, eff. July 1, 2013; 2016, ch 137, § 4, eff. July 1, 2016; 2017, ch 95, § 1, eff. July 1, 2017; 2017, ch 98, § 4, eff. July 1, 2017.

CHAPTER 22-7

HABITUAL OFFENDERS

22-7-7. Conviction for one or two prior felonies — Enhancement of sentence.

If a defendant has been convicted of one or two prior felonies under the laws of this state or any other state or the United States, in addition to the principal felony, the sentence for the principal felony shall be enhanced by changing the class of the principal felony to the next class which is more severe, but in no circumstance may the enhancement exceed the sentence for a Class C felony. The determination of whether a prior offense is a felony for purposes of this chapter shall be determined by whether the prior offense was a felony under the laws of this state or under the laws of the United States at the time of conviction of such prior offense. For the purpose of this section, if the principal felony is not classified it shall be enhanced to the class which has an equal maximum imprisonment. For the purposes of this section, if the maximum imprisonment for the principal felony falls between two classifications, the principal felony shall be enhanced to the class which has the less severe maximum authorized imprisonment.

History.

SDC 1939, § 13.0611; SDCL, § 22-7-1; SL 1976, ch 158, § 7-2; 1977, ch 189, § 18; 2005, ch 120, § 383.

22-7-8. Conviction for three or more prior felonies — Crime of violence — Enhancement of sentence.

If a defendant has been convicted of three or more felonies in addition to the principal felony and one or more of the prior felony convictions was for a crime of violence as defined in subdivision 22-1-2 (9), the sentence for the principal felony shall be enhanced to the sentence for a Class C felony.

History.

SDC 1939, § 13.0611; SDCL, § 22-7-1; SL 1976, ch 158, § 7-3; 1977, ch 189, § 19; 1981, ch 13, § 4; 1984, ch 166, § 1; 2005, ch 120, § 384.

22-7-8.1. Conviction for three or more prior felonies — No crime of violence — Enhancement of sentence.

If a defendant has been convicted of three or more felonies in addition to the principal felony and none of the prior felony convictions was for a crime of violence as defined in subdivision § 22-1-2(9), the sentence for the principal felony shall be enhanced by two levels but in no circumstance may the enhancement exceed the sentence for a Class C felony. A defendant sentenced pursuant to this section is eligible for consideration for parole pursuant to § 24-15A-32 if the defendant receives a sentence of less than life in prison.

History.

SL 1984, ch 166, § 2; 2005, ch 120, § 385; 2006, ch 117, § 1.

22-7-9. Consideration of prior convictions — Time limit — Same transaction.

No prior conviction may be considered under either § 22-7-7 or 22-7-8 unless the defendant was, on such prior conviction, discharged from prison, jail, probation, or parole within fifteen years of the date of the commission of the principal offense. Moreover, only one prior conviction arising from the same transaction may be considered.

History.

SL 1976, ch 158, § 7-4; 1977, ch 189, § 20; 2005, ch 120, § 386.

22-7-10. Duty to report knowledge of previous conviction.

Whenever any jailer, warden, or prison, probation, parole, or law enforcement officer has knowledge that any person charged with a felony has been previously convicted within the meaning of this chapter, that person shall provide that information to the state's attorney.

History.

SDC 1939, § 13.0611 (3); SDCL, § 22-7-2; SL 1976, ch 158, § 7-8; 2005, ch 120, § 387.

22-7-11. Habitual criminal — Filing of separate information — Requirements.

Any allegation that a defendant is an habitual criminal shall be filed as a separate information at the time of, or before, arraignment. However, the court may, upon motion, permit the separate information to be filed after the arraignment, but no less than thirty days before the commencement of trial or entry of a plea of guilty or nolo contendere. The information shall state the times, places, and specific crimes alleged to be prior convictions and shall be signed by the prosecutor. An official court record under seal or a criminal history together with fingerprints certified by the public official having custody thereof is sufficient to be admitted in evidence, without further foundation, to prove the allegation that the defendant is an habitual criminal.

History.

SL 1959, ch 234; SDC Supp 1960, § 343009-1; SL 1961, ch 183; SDCL, § 23-32-9; SL 1976, ch 158, § 7-5; 2004, ch 147, § 1; 2005, ch 120, § 388.

22-7-12. Habitual criminal — Rights of defendant.

The defendant shall be apprised of the contents of the habitual offender information and shall receive a copy of it. The habitual offender information may not be divulged to the jury in any manner unless and until the defendant has been convicted of the principal offense.

The defendant shall also be informed of the right to a trial by jury on the issue of whether the defendant is the same person as alleged in the habitual criminal information.

History.

SL 1959, ch 234; SDC Supp 1960, § 34.3009-1; SL 1961, ch 183; SDCL, § 23-32-10; SL 1976, ch 158, § 7-6; 2005, ch 120, § 389.

CHAPTER 22-8 TERRORISM

22-8-12. Terrorism — Penalty.

Any person who commits a crime of violence, as defined by subdivision 22-1-2 (9), or an act dangerous to human life involving any use of chemical, biological, or radioactive material, or any explosive or destructive device, with the intent to do any of the following:

- (1) Intimidate or coerce a civilian population;
- (2) Influence the policy or conduct of any government or nation;
- (3) Affect the conduct of any government or nation by assassination or kidnapping; or
- (4) Substantially impair or interrupt public communications, public transportation, common carriers, public utilities, or other public services;

is guilty of an act of terrorism. A violation of this section is a Class C felony.

History.

SL 2002, ch 103, § 1; 2005, ch 120, § 188.

22-8-13. Terrorist threat — Felony.

Any person who threatens to commit a crime of violence, as defined by subdivision 22-1-2 (9), or an act dangerous to human life involving any use of chemical, biological, or radioactive material, or any explosive or destructive device, with the intent to:

- (1) Intimidate or coerce a civilian population;
- (2) Influence the policy or conduct of any government or nation;
- (3) Affect the conduct of any government or nation; or
- (4) Substantially impair or interrupt public communications, public transportation, common carriers, public utilities, or other public services;

is guilty of making a terrorist threat. A violation of this section is a Class 5 felony.

History.

SL 2005, ch 120, § 189.

CHAPTER 22-9 MISUSE OF FLAGS

22-9-1. Definitions — Penalty.

Any person who knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon any flag of the United States or flag of the State of South Dakota is guilty of a Class 1 misdemeanor.

The term “flag of the United States” as used in this section includes any flag, standard or colors, or any part thereof, made of any substance and of any size evidently purporting to be the

flag, standard or colors of the United States of America.

The term “flag of the State of South Dakota” as used in this section includes any flag, standard or colors, or any part thereof, made of any substance and of any size evidently purporting to be the flag, standard or colors of the flag of the State of South Dakota.

History.

SDC 1939, §§ 13.0805, 65.0601; SDCL, § 22-9-6; SL 1976, ch 158, § 9-1; 1985, ch 172; 1990, ch 159.

CHAPTER 22-10 RIOT AND UNLAWFUL ASSEMBLY

22-10-1. Riot — Violation as felony.

As used in this chapter, any intentional use of force or violence by three or more persons, acting together and without authority of law, to cause any injury to any person or any damage to property is riot. A violation of this section is a Class 4 felony.

History.

SDC 1939, § 13.1402; SL 1976, ch 158, § 10-1; 2005, ch 120, § 345; 2020, ch 78, § 1, eff. July 1, 2020.

22-10-5. Aggravated riot — Penalty.

Any person who carries a dangerous weapon while participating in a riot is guilty of aggravated riot. Aggravated riot is a Class 3 felony.

History.

SDC 1939, § 13.1404 (3); SL 1976, ch 158, § 10-2.

22-10-5.1. No offense of attempted riot or attempted aggravated riot.

There is no offense of attempted riot or attempted aggravated riot.

History.

SL 2005, ch 120, § 346.

22-10-9. Unlawful assembly — Penalty.

Any person who assembles with two or more persons for the purpose of engaging in conduct constituting riot or aggravated riot or who, being present at an assembly that either has or develops such a purpose, remains there, with intent to advance that purpose, is guilty of unlawful assembly. Unlawful assembly is a Class 1 misdemeanor.

History.

SDC 1939, § 13.1402; SL 1976, ch 158, § 10-5; 2005, ch 120, § 349.

22-10-11. Disobedience of public safety order — Penalty.

Any person who, during a riot or unlawful assembly, intentionally disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot, is guilty of a Class 1 misdemeanor. A public safety order is any order, the purpose of which is to prevent or control disorder or promote the safety of persons or property, issued by a law enforcement officer or a member of the fire or military forces concerned with the riot or unlawful assembly.

History.

SDC 1939, § 13.1407; SL 1976, ch 158, § 10-6; 2005, ch 120, § 350.

22-10-17. Incitement to riot — Violation as felony.

Any person who, with the intent to cause a riot, commits an act or engages in conduct that urges three or more people, acting together and without authority of law, to use force or violence to cause any injury to any person or any damage to property, under circumstances in which the force or violence is imminent and the urging is likely to incite or produce the use of force or violence, incites riot. For the purposes of this chapter, urging includes instigating, inciting, or directing, but does not include the oral or written advocacy of ideas or expression of belief that does not urge the commission of an act or conduct of imminent force or violence. This section may not be construed to prevent the peaceable assembly of persons for lawful purposes of protest or petition. A violation of this section is a Class 5 felony.

History.

SL 2020, ch 78, § 4, eff. July 1, 2020.

CHAPTER 22-10A

STREET GANGS

22-10A-1. Street gang — Definitions.

Terms used in §§ 22-10A-1 to 22-10A-3, inclusive, mean:

(1) “Street gang,” any formal or informal ongoing organization, association, or group of three or more persons who have a common name or common identifying signs, colors, or symbols and have members or associates who, individually or collectively,

engage in or have engaged in a pattern of street gang activity;

(2) “Street gang member,” any person who engages in a pattern of street gang activity and who meets two or more of the following criteria:

(a) Admits to gang membership;

(b) Is identified as a gang member by a documented reliable informant;

(c) Resides in or frequents a particular gang’s area and adopts its style of dress, its use of hand signs or its tattoos and associates with known gang members;

(d) Is identified as a gang member by an informant of previously untested reliability if such identification is corroborated by independent information;

(e) Has been arrested more than once in the company of identified gang members for offenses which are consistent with usual gang activity;

(f) Is identified as a gang member by physical evidence, such as photographs or other documentation; or

(g) Has been stopped in the company of known gang members four or more times; and

(3) “Pattern of street gang activity,” the commission, attempted commission, or solicitation by any member or members of a street gang of two or more felony or violent misdemeanor offenses on separate occasions within a three-year period for the purpose of furthering gang activity.

History.

SL 1992, ch 159, § 1; SDCL 22-10-14; SL 2005, ch 120, §§ 352, 355.

22-10A-2. Street gang activity — Reclassification of penalty for crime of violence.

The penalty for conviction of any offense shall be reclassified to the next highest classification in the penalty schedule if the commission of such offense is part of a pattern of street gang activity.

History.

SL 1992, ch 159, § 2; SDCL 22-10-15; SL 2005, ch 120, §§ 353, 355.

22-10A-3. Information alleging street gang membership — Requirements.

An allegation that a defendant is a street gang member shall be filed as a separate information at the time of, or before, arraignment. The separate information shall state those criteria, as set forth in subdivision 22-10A-1 (2),