

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE PROPOSED)
AMENDMENT OF SDCL 15-12-30 FILING OF)
AFFIDAVIT-NUMBER OF COPIES REQUIRED-)
CERTIFICATION BY CLERK OF COURTS;)
AMENDMENT OF SDCL 15-15-9 CONTENT OF)
RECORD;)
ADOPTION OF A NEW SECTION TO SDCL)
CH 15-15 RELATING TO TRANSCRIPTS;)
ADOPTION OF A NEW SECTION TO SDCL)
CH 15-15 RELATING TO TRANSCRIPTS;)
ADOPTION OF A NEW SECTION TO SDCL)
CH 15-15 RELATING TO TRANSCRIPTS;)
AMENDMENT OF SDCL 15-15A-8)
CONFIDENTIAL NUMBERS AND FINANCIAL)
DOCUMENTS EXCLUDED FROM PUBLIC)
ACCESS;)
AMENDMENT OF SDCL 15-15A-9 FILING)
CONFIDENTIAL NUMBER AND FINANCIAL)
DOCUMENTS IN THE COURT RECORD;)
AMENDMENT OF SDCL 16-12B-1.1 NUMBER)
OF MAGISTRATE JUDGES;)
AMENDMENT OF SDCL 16-16-6 EXAMINATION)
REQUIRED OF APPLICANTS TO PRACTICE)
LAW--EDUCATIONAL REQUIREMENTS;)
AMENDMENT OF SDCL 16-16-12.1)
ADMISSION WITHOUT EXAMINATION-)
ELIGIBILITY BY PRACTICE;)
AMENDMENT OF SDCL 16-16-12.2)
ADMISSION WITHOUT EXAMINATION-)
APPLICATION REQUIREMENTS;)
ADOPTION OF A NEW BOARD OF BAR)
EXAMINERS REGULATION TO BE DESIGNATED)
AS 7 RELATING TO LAW STUDENT)
REGISTRATION;)
RENUMBERING OF BOARD OF BAR EXAMINER)
REGULATIONS: 7 to 8 PLACES AND DATES)
OF EXAMINATIONS; 8 TO 9 APPEAL AND)
8.1 to 9.1 PROCEDURE;

NOTICE OF RULES HEARING

NO. 129

)
AMENDMENTS TO SDCL TITLE 19-EVIDENCE)
TO INCLUDE:)
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GENERAL PROVISIONS)
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AMENDMENT OF SDCL 19-16-27 (Rule 803)
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 CRITERIA FOR AWARDED EARNED)
 DISCHARGE CREDITS;)
 ADOPTION OF UNIFORM FORMS FOR THE)
 ELECTRONIC SEARCH WARRANT PROCESS TO)
 BE DESIGNATED IN THE APPENDIX TO SDCL)
 CH 23A-35;)
 ADOPTION OF A NEW RULE RELATING TO)
 ADOPTING A RISK ASSESSMENT INSTRUMENT)
 FOR STATEWIDE USE.)

Petitions for amendments, repeal of existing sections of the South Dakota Codified Laws, and adoptions of new rules having been filed with the Court, and the Court having determined that the proposed amendments, repeal and adoptions of a new rules should be noticed for hearing, now therefore,

NOTICE IS HEREBY GIVEN THAT ON January 13, 2015, at 10:00 A.M., C.S.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

1. **Amendment of SDCL 15-12-30. Filing of affidavit-Number of copies required-Certification by clerk of courts.** The affidavit for change of circuit judge or magistrate shall be filed in

triplicate with the clerk of the circuit court of the county in which the action is pending. Unless the presiding judge of the circuit court involved has otherwise provided by order or rule to the contrary, the clerk shall forthwith prepare and cause to be delivered to the presiding judge of his circuit a statement complying with subdivision 15-12-34(3) together with a certified copy of such affidavit. Such clerk shall also forthwith deliver a certified copy of such affidavit to the judge or magistrate referred to in said affidavit, ~~or if such judge or magistrate be not then in the county, by registered or certified mail~~

2. Amendment of SDCL 15-15-9. Content of record.

The record of any hearing, court trial or jury trial conducted by or on behalf of the Unified Judicial System shall consist of the transcript prepared by an official court reporter or court recorder or freelance reporter on contract with the Unified Judicial System, the exhibits offered in evidence and jury instructions. This rule shall not apply to child support referee hearings.

The reporter shall transcribe and certify such parts of the record of the proceedings as may be required by any rule or order of the court. Upon the request of any party to any proceeding which has been so recorded, who has agreed to pay any applicable fee for such transcription, the reporter shall file an electronic transcript with the clerk of court upon completion and transmit a paper or electronic copy to the requesting party. The court may request that an additional paper copy of the transcript be filed with the clerk of court.

3. Adoption of a New Section to SDCL Ch 15-15 Relating to Transcripts. The clerk of court shall file the transcript in the court record. The transcript shall be sealed for a period of ninety days from the date filed unless otherwise ordered by the court. During this time period, any copy of such transcript shall be obtained from the court reporter or transcriber at the rate provided by existing law.

Following the expiration of such period of time, unless otherwise sealed or declared confidential by court order or existing law, the filed transcript will be available for public inspection and copying through the clerk of courts office or through any other means of electronic court record access. Reproduction of the transcript may be provided on the same terms and conditions as any other document in the court record.

4. Adoption of a New Section to SDCL Ch 15-15 Relating to Transcripts. A request to prohibit public access to certain information in a transcript shall be governed by SDCL 15-15A-13. The

court may order that any transcript be filed under seal or may require the redaction of information contained in the transcript for good cause shown. In the event of redaction, an unredacted version shall also be filed with the court under seal. During the ninety day period, or for such period of time as may be extended by the court pursuant to section 2, the parties to the case shall review the transcript to identify any items contained therein that should not be accessible to the public pursuant to court order or existing law. If such information exists, the parties shall move for the court to have that information protected in the public record. It shall not be the responsibility of the reporter when preparing a transcript to redact information unless a request has been made in advance to redact specific information by the parties or the court.

5. Adoption of a New Section to SDCL Ch 15-15 Relating to Transcripts. In order to protect the confidentiality of private juror information the transcript of any voir dire proceeding shall not be made available to the public except through inspection at the courthouse unless otherwise ordered by the court.

6. Amendment of SDCL 15-15A-8. Confidential numbers and financial documents excluded from public access. The following information in a court record is not accessible to the public.

- (1) Social security numbers, employer or taxpayer identification numbers, and financial or medical account numbers of ~~a party or a party's child~~ an individual.
- (2) Financial documents such as income tax returns, W-2's and schedules, wage stubs, credit card statements, financial institution statements, ~~credit card account statements~~, check registers, and other financial information.
- (3) The name of any minor child alleged to be the victim of a crime in any adult criminal proceeding.

7. Amendment of SDCL 15-15A-9. Filing confidential number and financial documents in the court record.

(1) Social security numbers, employer or taxpayer identification numbers, and financial or medical account numbers of an individual ~~party or party's child~~, where required to be filed with the court shall be submitted on a separate Confidential Information Form, appended to these rules, and filed with the pleading or other document required to be filed. The Confidential Information Form is not accessible to the public.

(2) Financial documents named in subdivision 15-15A-8(2) that are required to be filed with the court shall be submitted as a confidential document and designated as such to the clerk upon filing. The Confidential Financial Documents Information Form

appended to these rules shall be attached to financial documents being filed with the court. The Confidential Financial Documents Information Form is not accessible to the public. The confidential financial documents will not be publicly accessible, even if admitted as a trial or hearing exhibit, unless the court permits access pursuant to §15-15A-10. The court may, on its own motion, protect financial documents that have been submitted without the Confidential Financial Documents Information Form.

(3) Names of any minor child alleged to be the victim of a crime in any adult criminal proceeding shall appear as initials only. The names shall be provided on a separate Confidential Information Form.

(34) Parties with cases filed prior to the effective date of this rule, or the court on its own, may, by motion, protect the privacy of confidential information as defined in §15-15A-8. Parties filing this motion will submit a completed Confidential Information Form or Confidential Financial Documents Information Form as appropriate.

8. Amendment of SDCL 16-12B-1.1. Number of magistrate judges. The number of magistrate judges in the judicial circuits established by § 16-5-1.2 is fixed as follows:

- (1) First Circuit: Two full-time magistrate judges;
- (2) Second Circuit: Four full-time magistrate judges;
- (3) Third Circuit: One full-time magistrate judge;
- (4) Fourth Circuit: One full-time and one part-time magistrate judge;
- (5) Fifth Circuit: One full-time magistrate judge; and
- (6) Sixth Circuit: One full-time magistrate judge; and
- (7) Seventh Circuit: ~~Three~~ Four full-time magistrate judges.

9. Amendment of SDCL 16-16-6. Examination required of applicants to practice law-Educational requirements. All applicants for admission, except those applying pursuant to § 16-16-7.6, 16-16-12.1, or §§ 16-16-12.3 and 16-16-12.4 shall be required to pass satisfactorily an examination conducted by the Board of Bar Examiners. An applicant for permission to take an examination, in addition to the general qualifications prescribed in § 16-16-2, must furnish satisfactory evidence that he graduated from a law school accredited by the American Bar Association with a J.D. or LL.B. degree or that he will so graduate prior to the examination, or that he has successfully completed all of the requirements for graduation prior to the examination.

An applicant for admission who is a graduate of a foreign law school, not accredited by the American Bar Association, may apply for permission to take the South Dakota bar examination upon good

cause shown if the graduate has passed the bar examination in another state and is a member in good standing of the bar of that state.

10. Amendment of SDCL 16-16-12.1. Admission without examination. Eligibility by practice. An applicant may be eligible for admission without examination if the applicant:

- (a) Meets the requirements of § 16-16-2;
- (b) Furnishes satisfactory evidence of graduation from a law school accredited by the American Bar Association, and;
- (c) Provides documentary evidence showing that for the last five (5) years immediately preceding the application for admission without examination, the applicant, as principal occupation, has been actively, continuously, and lawfully engaged in the practice of law, in a state or states that allow South Dakota attorneys substantially similar admission without examination, as:
 - (1) A sole practitioner;
 - (2) A member of a law firm, professional corporation or association;
 - (3) A judge in a court of record;
 - (4) An attorney for any local or state governmental entity;
 - (5) Inside counsel for a corporation, agency, association or trust department; and/or,
 - (6) An attorney with the federal government or a federal governmental agency including service as a member of the Judge Advocate General Department of one of the military branches of the United States.

11. Amendment of SDCL 16-16-12.2. Admission without examination-Application requirements. The application for admission without examination shall be filed with the secretary of the board of bar examiners in such form as the board shall prescribe. The failure of an applicant to furnish information or answer truthfully interrogatories of the board pertinent to the application may result in denial of the application. The application shall be accompanied by:

- (a) the applicable fees;
- (b) the criminal background check required by § 16-16-2.6;
- (b) a certified copy of the application for admission to the bar in each jurisdiction in which the applicant has previously been admitted to practice law;
- (d) a certification of admission to practice by the admitting authority in each jurisdiction that the applicant identified in (c) as having admitted the applicant to the bar;

- (e) a certification from the proper authority in each jurisdiction where the applicant has been admitted stating that the applicant is in good standing;
- (f) a certification by the attorney disciplinary authority in each jurisdiction where the applicant has been admitted to the bar of the applicant's disciplinary history and indicating whether the applicant is the subject of a pending complaint or charge of misconduct;
- (g) a report of the National Conference of Bar Examiners as to the applicant's character; and
- (h) a copy of the rule in the state or states in which the applicant has been practicing law which allows South Dakota attorneys substantially similar admission without examination.

To the extent that the state or states that allow South Dakota attorneys substantially similar admission without examination ~~has~~ have additional requirements for South Dakota lawyers seeking admission without examination, the board of bar examiners may impose the same additional requirements for applicants seeking admission in South Dakota without examination.

**REGULATIONS OF THE
BOARD OF BAR EXAMINERS
STATE OF SOUTH DAKOTA**

12. Adoption of a new Board of Bar Examiners Regulation to be designated as:

(7) **Law Student Registration.** Applicants to law school and first-or second-year law students who intend to take the South Dakota bar examination following graduation may register with the Board of Bar Examiners on forms prescribed by the Board. The registration must be accompanied by the \$50 South Dakota registration fee as well as the fee required by the National Conference of Bar Examiners' law student registrant program for an initial character report. Registration under the rule is not deemed an application for permission to take the bar examination.

The Board of Bar Examiners shall review the registration and character report to identify character and fitness issues that may hinder or preclude later admission. The Board will report its findings to the registrant. The Board's findings are both preliminary and non-binding in nature. Additionally, the findings will not constitute permission to take the bar examination or a waiver of the consideration of facts or conduct that are either later discovered or occur after the Board's review under this rule.

~~(7)~~ **(8) Places and Dates of Examinations.** Unless different times and places are fixed by the Board of Bar Examiners, the examinations will be administered at the following times and places:

The MPT, MEE, Indian Law Question and MBE are given on the last Tuesday and Wednesday of February and the last Tuesday and Wednesday of July in Pierre, South Dakota. The MPT, MEE and Indian Law Question are given Tuesday; the MBE is given on Wednesday.

The MPRE is given in March, August and November.

Notice of the times and places shall be given each applicant at the time of granting permission to take such examinations.

~~(8)~~ **(9) Appeal.** The Secretary of the Board of Bar Examiners shall make an initial determination regarding whether any act taken by an applicant pursuant to these rules satisfies the requirement of the rules. In addition, whenever the rules provide for a waiver of any deadline or other exercise of discretion by the Board including acceptance of results from other states the Secretary of the Board of Bar Examiners shall make an initial determination which shall, within twenty days, become a final decision of the Board unless appealed as provided herein. Nothing in this rule shall prohibit the Board from sua sponte altering or reversing any initial decision of the Secretary of the Board of Bar Examiners or from directing the Secretary of the Board of Bar Examiners to transfer any case, issue or question directly to the Board without entering an initial decision without notice to the applicant; however, such action shall constitute final action by the Board for the purpose of review by the Supreme Court pursuant to S16-16-16. In addition, the Secretary of the Board of Bar Examiners or an applicant may submit an application or other issue directly to the Board of Bar Examiners for determination whenever an application, or acknowledgement by an applicant, discloses a facial violation of bar entry requirements. The procedures provided in Rule 9.1 will apply except that the Secretary of the Board of Bar Examiners shall make a recommendation to the Board of Bar Examiners regarding the issue submitted directly to the Board. Results of examinations administered by the Board are not determined by the Secretary and constitute final action by the Board.

~~(8.1)~~ **(9.1) Procedure.** Whenever an applicant is aggrieved by an initial decision of the Secretary of the Board of Bar Examiners the applicant shall request that the Secretary reduce the determination to writing if necessary and may, within twenty days of the date of mailing of Secretary's initial decision, appeal to the

Board of Bar Examiners. Any applicant seeking review of the Secretary's initial decision shall transmit to the Board a copy of the initial decision sought to be reviewed together with such argument, authorities and evidence in the form of sworn affidavits as the applicant deems necessary. The submission may not exceed sixty pages in length and shall consist of an original and nine copies of the submission. Upon receipt of a request for review the Secretary shall respond setting forth the reasons for taking the action under review. A copy of the Secretary's response shall be served upon the applicant and Board.

The Board of Bar Examiners in its sole discretion may seek additional evidence or explanation, including testimony under oath, from the applicant or the Secretary. In addition, the Board may request oral argument from the applicant. When the Board of Bar Examiners has satisfied itself that it is fully informed in the premises, it may adopt, modify and adopt as modified, or reverse the Secretary's initial decision. In the event the Board reverses the Secretary's initial decision it shall render a final decision which shall be communicated to the applicant in writing. The foregoing shall constitute final action by the Board of Bar Examiners for the purposes of review by the Supreme Court pursuant to SDCL 16-16-16.

**AMENDMENTS TO SDCL TITLE 19-EVIDENCE-TO INCLUDE:
CHAPTER 19-9 RULES OF EVIDENCE-GENERAL PROVISIONS**

13. Amendment of SDCL 19-9-1. ~~(Rule 101) Scope of application of chapters. Chapters 19-9 to 19-18, inclusive, govern proceedings in the courts of this state to the extent and with the exceptions stated in § 19-9-14.~~

SDCL 19-9-1 (Rule 101) Scope of Application of Chapters; Definitions.

(a) Scope. Chapters 19-9 to 19-18, inclusive, govern proceedings in the courts of this state to the extent and with the exceptions stated in section 19-9-14.

(b) Definitions. In these rules:

(1) "civil case" means a civil action or proceeding;

(2) "criminal case" includes a criminal proceeding;

(3) "public office" includes a public agency;

(4) "record" includes a memorandum, report, or data compilation;

(5) a "rule prescribed by the Supreme Court" means a rule adopted by the Supreme Court under statutory authority; and

(6) a reference to any kind of written material or any other medium includes electronically stored information.

14. Amendment of SDCL 19-9-2. (Rule 102) Purpose and construction of chapters. ~~Chapters 19-9 to 19-18, inclusive, shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.~~

SDCL 19-9-2 (Rule 102) Purpose and Construction of Chapters. Chapters 19-9 to 19-18, inclusive, should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

15. Amendment of SDCL 19-9-3. (Rule 103(a))
~~Requirements for error predicated on erroneous evidentiary ruling.~~
~~Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:~~

(1) ~~In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or~~

~~(2) In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.~~

~~Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.~~

SDCL 19-9-3 (Rule 103(a) and (b)) Rulings on Evidence.

(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

- (1) if the ruling admits evidence, a party, on the record:
- (A) timely objects or moves to strike; and
 - (B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules definitively on the record---either before or at trial ---a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

16. Amendment of SDCL 19-9-4. (Rule 103(b)) Record of offer and ruling on evidence. ~~The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.~~

SDCL 19-9-4 (Rule 103(c)) Court's Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and answer form.

~~17. Amendment of SDCL 19-9-5. (Rule 103(c)) Keeping inadmissible evidence from jury.~~ In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

SDCL 19-9-5 (Rule 103(d)) Preventing the jury from Hearing Inadmissible Evidence. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

~~18. Amendment of SDCL 19-9-6. (Rule 103(d)) Plain error not brought to court's attention.~~ Nothing in §§ 19-9-3 to 19-9-5, inclusive, precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

SDCL 19-9-6 (Rule 103(e)) Taking Notice of Plain Error. A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

~~19. Amendment of SDCL 19-9-7. (Rule 104(a)) Preliminary questions determined by court.~~ Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of § 19-9-8. In making its determination it is not bound by the rules of evidence except those with respect to privileges.

SDCL 19-9-7 (Rule 104(a)) In General. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

~~20. Amendment of SDCL 19-9-8. (Rule 104(b)) Admission of evidence conditional on establishing relevancy.~~ When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

SDCL 19-9-8 (Rule 104(b)) Relevance That Depends on a Fact. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the

fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

21. ~~Amendment of SDCL 19-9-9. (Rule 104(e)) Evidentiary hearings out of hearing of jury.~~ Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require or, when an accused is a witness, if he so requests.

SDCL 19-9-9 (Rule 104(c) Conducting a Hearing So That the Jury Cannot Hear it. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

- (1) the hearing involves the admissibility of a confession;
- (2) a defendant in a criminal case is a witness and so requests; or
- (3) justice so requires.

22. ~~Amendment of SDCL 19-9-10. 19-9-10. (Rule 104(d)) Effect of accused's testimony on preliminary matter.~~ The accused does not, by testifying upon a preliminary matter, subject himself to cross-examination as to other issues in the case.

SDCL 19-9-10 (Rule 104(d) Cross-Examining a Defendant in a Criminal Case. By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

23. ~~Amendment of SDCL 19-9-11. (Rule 104(e)) Evidence relating to weight or credibility.~~ Sections 19-9-7 to 19-9-10, inclusive, do not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

SDCL 19-9-11 (Rule 104(e)) Evidence relevant to Weight and Credibility. Sections 19-9-7 to 19-9-10, inclusive, do not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

24. ~~Amendment of SDCL 19-9-12. (Rule 105) Instructions on evidence admissible for limited purposes.~~ When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

SDCL 19-9-12 (Rule 105) Limiting Evidence That is Not Admissible Against Other Parties or for Other Purposes. If the court admits evidence that is admissible against a party or for a purpose - but not against another party or for another purpose - the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.

~~25. Amendment of SDCL 19-9-13. (Rule 106) Requiring introduction of full or related writing or statement. When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.~~

SDCL 19-9-13 (Rule 106) Remainder of or Related Writings or Recorded Statements. If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part - or any other writing or recorded statement - that in fairness ought to be considered at the same time.

~~26. Amendment of SDCL 19-19-14. (Rule 1101) Chapters applicable to all proceedings--Exceptions. Except as otherwise provided in this section, chapters 19-9 to 19-18, inclusive, apply to all actions and proceedings in the courts of this state. Those chapters other than those with respect to privileges do not apply in the following situations:~~

~~(1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under § 19-9-7.~~

~~(2) Small claims court proceedings.~~

~~(3) Proceedings for extradition or rendition.~~

~~(4) Sentencing, or granting or revoking probation.~~

~~(5) Issuance of warrants for arrest, criminal summonses, and search warrants.~~

~~(6) Proceedings with respect to release on bail or otherwise.~~

~~(7) Disposition hearings in juvenile court.~~

~~(8) Contempt proceedings in which the court may act summarily.~~

SDCL 19-9-14 (Rule 1101) Chapters Applicable to All Proceedings - Exceptions. Except as otherwise provided in this section, chapters 19-9 to 19-18, inclusive, apply to all actions and proceedings in the courts of this state. Those chapters other than those with respect to privileges do not apply in the following situations:

(1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under § 19-9-7.

(2) Small claims court proceedings.

(3) Proceedings for extradition or rendition.

(4) Sentencing, or granting or revoking probation.

(5) Issuance of warrants for arrest, criminal summonses, and search warrants.

(6) Proceedings with respect to release on bail or otherwise.

(7) Disposition hearings in juvenile court.

(8) Contempt proceedings in which the court may act summarily.

~~27. Amendment of SDCL 19-9-15. (Rule 1102) Citation of chapters. Chapters 19-9 to 19-18, inclusive, shall be known and may be cited as the South Dakota Rules of Evidence.~~

SDCL 19-9-15 (Rule 1102) Citation of Chapters. Chapters 19-9 to 19-18, inclusive, shall be known and may be cited as the South Dakota Rules of Evidence.

CHAPTER 19-10 JUDICIAL NOTICE

~~28. Amendment of SDCL 19-10-1. (Rule 201(a)) Scope of chapter. This chapter governs only judicial notice of adjudicative facts.~~

SDCL 19-10-1 (Rule 201(a)) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

~~29. Amendment of SDCL 19-10-2. (Rule 201(b)) Kinds of facts judicially noticed. A judicially noticed fact must be one not subject to reasonable dispute in that it is either:~~

~~(1) Generally known within the territorial jurisdiction of the trial court; or~~

~~(2) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.~~

SDCL 19-10-2 (Rule 201(b)) Kinds of Facts That May be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

~~30. Amendment of SDCL 19-10-3. (Rule 201(c)) Discretionary notice with or without request. A court may take judicial notice, whether requested or not.~~

SDCL 19-10-3 (Rule 201(c)) Taking Notice.

The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

~~31. Repeal of SDCL 19-10-4. (Rule 201(d)) Mandatory notice on request by party. A court shall take judicial notice if requested by a party and supplied with the necessary information.~~

~~32. Amendment of SDCL 19-10-5. (Rule 201(e)) Hearing of party on propriety of notice. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior~~

~~notification, the request may be made after judicial notice has been taken.~~

SDCL 19-10-5 (Rule 201(d)) Opportunity to Be Heard.

On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

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33. Amendment of SDCL 19-10-6. (Rule 201(f)) **Time of taking notice.** Judicial notice may be taken at any stage of the proceeding.~~

SDCL 19-10-6 (Rule 201(e)) Timing. The court may take judicial notice at any stage of the proceeding.

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34. Amendment of SDCL 19-10-7. (Rule 201(g)) **Instruction to jury on fact judicially noticed.** The court shall instruct the jury to accept as conclusive any fact judicially noticed.~~

SDCL 19-10-7 (Rule 201(f)) Instructing the Jury.
In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

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CHAPTER 19-12 - RELEVANCY

~~35. Amendment of SDCL 19-12-1. (Rule 401) **Definition of relevancy.** "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.~~

SDCL 19-12-1 (Rule 401) Test for Relevant Evidence.
Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

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36. Amendment of SDCL 19-12-3. (Rule 403) **Exclusion of relevant evidence if prejudicial, misleading, or cumulative.** Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.~~

SDCL 19-12-3 (Rule 403) Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons. The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair

prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

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37. Amendment of SDCL 19-12-4. (Rule 404(a)) Character evidence generally inadmissible--Exceptions. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Evidence of the character of a witness, as provided in §§ 19-14-8 to 19-14-16, inclusive.

SDCL 19-12-4 (Rule 404(a)) Character Evidence; Crimes or Other Acts.

(a) Character Evidence.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(B) subject to the limitations in § 19-12-15, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it; and

(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under §§19-14-8 to 19-14-16, inclusive.

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38. Amendment of SDCL 19-12-5. (Rule 404(b)) Evidence of other acts generally inadmissible--Exceptions. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

SDCL 19-12-5 (Rule 404(b)) Character Evidence; Crimes or Other Acts.

(b) Crimes, Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses; Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must:

(A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(B) do so before trial - or during trial if the court, for good cause, excuses lack of pretrial notice.

39. Amendment of SDCL 19-12-6. (Rule 405(a)) Proof of character by reputation or opinion--Cross-examination. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

SDCL 19-12-6 (Rule 405(a)) Methods of Proving Character.

(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

40. Amendment of SDCL 19-12-7. (Rule 405(b)) Proof of character by specific conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

SDCL 19-12-7 (Rule 405(b)) Methods of Proving Character.

(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

41. Amendment of SDCL 19-12-8. (Rule 406) Evidence of habit or routine practice. Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove

~~that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.~~

SDCL 19-12-8 (Rule 406) Habit; Routine Practice. Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

42. Amendment of SDCL 19-12-9. (Rule 407) Evidence of remedial measures after event generally inadmissible--Exception. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

SDCL 19-12-9 (Rule 407) Subsequent Remedial Measures. When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or - if disputed - proving ownership, control, or the feasibility of precautionary measures.

43. Amendment of SDCL 19-12-10. (Rule 408) Compromise offers and settlement negotiations--Limited purposes of admissibility. Evidence of:

- ~~(1) Furnishing or offering or promising to furnish; or~~
 - ~~(2) Accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.~~
- ~~Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This section does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This section also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay or proving an effort to obstruct a criminal investigation or prosecution.~~

SDCL 19-12-10 (Rule 408) Compromise Offers and Negotiations.

(a) Prohibited Uses. Evidence of the following is not admissible - on behalf of any party - either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering - or accepting, promising to accept, or offering to accept - a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim - except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

~~44. Amendment of SDCL 19-12-11. (Rule 409) Offers to pay medical costs. Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.~~

SDCL 19-12-11 (Rule 409) Offers to Pay Medical and Similar Expenses. Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

~~45. Amendment of SDCL 19-12-12. (Rule 410) Pleas in criminal cases--Offers to plead--Statements with pleas or offers to plead. Except as otherwise provided in this section, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.~~

SDCL 19-12-12 (Rule 410) Pleas, Plea Discussions, and Related Statements.

(a) Prohibited Uses. In a civil or criminal case, evidence of

the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) a guilty plea that was later withdrawn;
- (2) a nolo contendere plea;
- (3) a statement made during a proceeding on either of those pleas under §§ 23A-7-2 to 23A-7-15, inclusive; or
- (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) Exceptions. The court may admit a statement described in §19-12-12 in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

~~46. Amendment of SDCL 19-12-13. (Rule 411) Evidence of liability insurance generally inadmissible--Exceptions. Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This section does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.~~

SDCL 19-12-13 (Rule 411) Liability Insurance. Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness' bias or prejudice or proving agency, ownership, or control.

~~47. Amendment of SDCL 19-12-15. (Rule 412) Sex offense cases--Relevance of alleged victim's past sexual behavior or alleged sexual predisposition. (a) Evidence generally inadmissible. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):~~

~~(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.~~

~~(2) Evidence offered to prove any alleged victim's sexual predisposition.~~

~~(b) Exceptions.~~

~~(1) In a criminal case, the following evidence is admissible, if otherwise admissible under these rules:~~

~~(A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury or other physical evidence;~~

~~(B) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual~~

~~misconduct offered by the accused to prove consent or by the prosecution; and~~

~~(C) evidence the exclusion of which would violate the constitutional rights of the defendant.~~

~~(2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.~~

~~(c) Procedure to determine admissibility.~~

~~(1) A party intending to offer evidence under subdivision (b) must:~~

~~(A) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and~~

~~(B) serve the motion on all parties.~~

~~(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.~~

SDCL 19-12-15 (Rule 412) Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition.

(a) Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

(1) evidence offered to prove that a victim engaged in other sexual behavior; or

(2) evidence offered to prove a victim's sexual predisposition.

(b) Exceptions.

(1) Criminal Cases. The court may admit the following evidence in a criminal case:

(A) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

(B) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and

(C) evidence whose exclusion would violate the defendant's constitutional rights.

(2) Civil Cases. In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the

danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy.

(c) Procedure to Determine Admissibility.

(1) Motion. If a party intends to offer evidence under §19-12-15, the party must:

(A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(B) do so at least 14 days before trial unless the court, for good cause, sets a different time;

(C) serve the motion on all parties; and

(D) notify the victim or, when appropriate, the victim's guardian or representative.

(2) Hearing. Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.

(d) Definition of "Victim." In this rule, "victim" includes an alleged victim.

CHAPTER 19-14 - WITNESSES

48. Amendment of SDCL 19-14-1. (Rule 601) ~~General rule of competency.~~ Every person is competent to be a witness except as otherwise provided in chapters 19-9 to 19-19, inclusive.

SDCL 19-14-1 (Rule 601) Competency to Testify in General. Every person is competent to be a witness unless otherwise provided in chapters 19-9 to 19-18, inclusive.

49. Amendment of SDCL 19-14-2. (Rule 602) ~~Personal knowledge required for testimony--Exception for expert opinion.~~ A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness himself. This section is subject to the provisions of § 19-15-3, relating to opinion testimony by expert witnesses.

SDCL 19-14-2 (Rule 602) Need for Personal Knowledge - Exception for Expert Opinion. A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under § 19-15-3.

50. Amendment of SDCL 19-14-3. ~~(Rule 603) Oath or affirmation of witness.~~ Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

SDCL 19-14-3 (Rule 603) Oath or Affirmation to Testify Truthfully. Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

19-14-3.1. Form for oath of witness. The following oath may be used to satisfy the requirements of § 19-14-3:

You do solemnly swear that the evidence you shall give relative to the matter in difference now in hearing between _____, plaintiff, and _____, defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God.

19-14-3.2. Form for affirmation of witness. The following affirmation may be used to satisfy the requirements of § 19-14-3:

You do solemnly affirm that the evidence you shall give relative to the matter in difference now in hearing between _____, plaintiff, and _____, defendant, shall be the truth, the whole truth, and nothing but the truth under the pains and penalties of perjury.

19-14-4.1. Form for oath of interpreter. The following oath, as appropriate to the circumstances, may be used for an interpreter:

I, _____, do solemnly swear (or affirm) that I will justly, truly and impartially interpret, to the best of my skill and judgment, and will make a true interpretation to any party or witness, the oath or affirmation administered in all matters; the questions which may be asked and the answers that shall be given to such questions and all statements relative to any [court proceedings, probation activities, or any other proceeding] under consideration in which I am employed to interpret, so help me God (under the pains and penalties of perjury).

51. Amendment of SDCL 19-14-5. ~~(Rule 605) Presiding judge disqualified as witness.~~ The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

SDCL 19-14-5 (Rule 605) Judge's Competency as a Witness.
The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

52. Amendment of SDCL 19-14-6. ~~(Rule 606(a)) Juror disqualified as witness--Objection.~~ A member of the jury may not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

SDCL 19-14-6 (Rule 606(a)) Juror's Competency as a Witness at the Trial. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

53. Amendment of SDCL 19-14-7. (Rule 606(b)) Juror's testimony prohibited as to deliberative process--Exception for improper influence--Affidavits and statements. Except as otherwise provided by statute, upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

SDCL 19-14-7 (Rule 606(b)) Juror's Testimony during an Inquiry in to the Validity of a Verdict or Indictment.

(1) Prohibited Testimony or Other Evidence. During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) Exceptions. A juror may testify about whether:

(A) extraneous prejudicial information was improperly brought to the jury's attention;

(B) an outside influence was improperly brought to bear on any juror; or

(c) a mistake was made in entering the verdict on the verdict form.

54. Amendment of SDCL 19-14-8. (Rule 607) Attacking credibility of witness. The credibility of a witness may be attacked by any party, including the party calling him.

SDCL 19-14-8 (Rule 607) Who May Impeach a Witness.

Any party, including the party that called the witness, may attack the witness's credibility.

55. Amendment of SDCL 19-14-9. (Rule 608(a)) Opinion or reputation on character of witness. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

~~(1) The evidence may refer only to character for truthfulness or untruthfulness; and~~

~~(2) Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.~~

SDCL 19-14-9 (Rule 608(a)) A Witness's Character for Truthfulness or Untruthfulness -- Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

56. Amendment of SDCL 19-14-10. (Rule 608(b)) Specific conduct bearing on credibility of witness. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in §§ 19-14-12 to 19-14-16, inclusive, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness:

~~(1) Concerning his character for truthfulness or untruthfulness; or~~

~~(2) Concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.~~

SDCL 19-14-10 (Rule 608(b)) A Witness's Character for Truthfulness or Untruthfulness -- Specific Instances of Conduct. Except for a criminal conviction under §§ 19-14-12 to 19-14-16, inclusive, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) the witness; or

(2) another witness whose character the witness being cross-examined has testified about.

57. Amendment of SDCL 19-14-11. (Rule 608(c)) Privilege against self-incrimination not waived by testimony on credibility. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

SDCL 19-14-11 (Rule 608(c)) Privilege Against Self-Incrimination not Waived by Testimony on Credibility. By testifying on another matter, a witness does not waive any privilege against

self-incrimination for testimony that relates only to the witness's character for truthfulness.

58. Amendment of SDCL 19-14-13. (~~Rule 609(b)~~) ~~Old convictions bearing on credibility of witness--Advance notice to opponent.~~ Evidence of a conviction under § 19-14-12 is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advanced written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

SDCL 19-14-13 (Rule 609(b)) Impeachment by Evidence of a Criminal Conviction -- Limit on Using the Evidence After 10 Years. This section applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

- (1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
- (2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

59. Amendment of SDCL 19-14-14. (~~Rule 609(e)~~) ~~Conviction of crime inadmissible if pardoned, annulled or witness rehabilitated.~~ Evidence of a conviction is not admissible under § 19-14-12 if:

- (1) ~~The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year; or~~
- (2) ~~The conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.~~

SDCL 19-14-14 (Rule 609(c)) Impeachment by Evidence of a Criminal Conviction -- Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under § 19-14-12 or § 19-14-13 if:

- (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or
- (2) the conviction has been the subject of a pardon,

annulment, or other equivalent procedure based on a finding of innocence.

60. Amendment of SDCL 19-14-15. (Rule 609(d)) ~~Juvenile adjudications inadmissible--Exception in criminal cases.~~ Evidence of juvenile adjudications is generally not admissible under § 19-14-12. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

SDCL 19-14-15 (Rule 609(d)) Impeachment by Evidence of a Criminal Conviction -- Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under § 19-14-12 only if:

- (1) it is offered in a criminal case;
- (2) the adjudication was of a witness other than the defendant;
- (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and
- (4) admitting the evidence is necessary to fairly determine guilt or innocence.

61. Amendment of SDCL 19-14-16. (Rule 609(e)) ~~Effect of pending appeal from conviction.~~ The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

SDCL 19-14-16 (Rule 609(e)) Impeachment by Evidence of a Criminal Conviction -- Pendency of an Appeal. A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

62. Amendment of SDCL 19-14-17. (Rule 610) ~~Religious belief inadmissible on credibility.~~ Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced.

SDCL 19-14-17 (Rule 610) Religious Beliefs or Opinions. Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

63. Amendment of SDCL 19-14-18. (Rule 611(a)) ~~Judicial control of interrogation of witnesses--Purposes.~~ The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

- (1) Make the interrogation and presentation effective for the ascertainment of the truth;
- (2) Avoid needless consumption of time; and

~~(3) Protect witnesses from harassment or undue embarrassment.~~

SDCL 19-14-18 (Rule 611(a)) Mode and Order of Examining Witnesses and Presenting Evidence -- Control by the Court; Purposes.
The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

- (1) make those procedures effective for determining the truth;
- (2) avoid wasting time; and
- (3) protect witnesses from harassment or undue embarrassment.

~~**64. Amendment of SDCL 19-14-19. (Rule 611(b)) Scope of cross-examination.**~~ ~~Cross examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.~~

SDCL 19-14-19 (Rule 611(b)) Mode and Order of Examining Witnesses and Presenting Evidence -- Scope of Cross-Examination.
Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination.

~~**65. Amendment of SDCL 19-14-20. (Rule 611(c)) Leading questions.**~~ ~~Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.~~

SDCL 19-14-20 (Rule 611(c)) Mode and Order of Examining Witnesses and Presenting Evidence -- Leading Questions. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- (1) on cross-examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

~~**66. Amendment of SDCL 19-14-21. (Rule 612(a)) Production of memoranda used during testimony.**~~ ~~If, while testifying, a witness uses a writing or object to refresh his memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.~~

SDCL 19-14-21 (Rule 612(a)) Writing Used to Refresh a Witness. SDCL 19-14-21 and 19-14-22, inclusive, gives an adverse party certain options when a witness uses a writing to refresh memory:

- (1) while testifying; or

(2) before testifying, if the court decides that justice requires the party to have those options.

~~67. Amendment of SDCL 19-14-22. (Rule 612(b)) Production of memoranda used before testimony to refresh recollection. If, before testifying, a witness uses a writing or object to refresh his memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the writing or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.~~

SDCL 19-14-22 (Rule 612(b)) Writing Used to Refresh a Witness -- Adverse Party's Options; Deleting Unrelated Matter. An adverse party entitled to have the writing produced at the hearing under § 19-14-21 is entitled to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

~~68. Amendment of SDCL 19-14-23. (Rule 612(c)) Inspection and cross-examination on memoranda--Excision of unrelated matters--Protective order when memorandum not produced.~~ A party entitled to have a writing or object produced under § 19-14-21 or 19-14-22 is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing or object contains matters not related to the subject matter of the testimony, the court shall examine the writing or object in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing or object is not produced, made available for inspection, or delivered pursuant to order under §§ 19-14-21 to 19-14-23, inclusive, the court shall make any order justice requires, but in criminal cases if the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

SDCL 19-14-23 (Rule 612(c)) Writing Used to Refresh a Witness -- Failure to Produce or Deliver the Writing. If a writing is not produced or is not delivered as ordered under §§ 19-14-21 or 19-14-22, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike

the witness's testimony or - if justice so requires - declare a mistrial.

69. Amendment of SDCL 19-14-24. (~~Rule 613(a)~~) ~~Examination on prior statement by witness.~~ In examining a witness concerning a prior statement made by him, whether written or not, the statement need not be shown nor its contents disclosed to him at that time, but on request the same shall be shown or disclosed to opposing counsel.

SDCL 19-14-24 (Rule 613(a)) Witness's Prior Statement - Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

70. Amendment of SDCL 19-14-25. (~~Rule 613(b)~~) ~~Extrinsic evidence of prior inconsistent statement by witness.~~ Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This section does not apply to admissions of a party-opponent as defined in § 19-16-3.

SDCL 19-14-25 (Rule 613(b)) Witness's Prior Statement - Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This statute does not apply to an opposing party's statement under § 19-16-3.

71. Amendment of SDCL 19-14-26. (~~Rule 614(a)~~) ~~Witness called by court--Cross-examination.~~ The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

SDCL 19-14-26 (Rule 614(a)) Court's Calling or Examining a Witness -- Calling. The court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

72. Amendment of SDCL 19-14-27. (~~Rule 614(b)~~) ~~Interrogation of witnesses by court.~~ The court may interrogate witnesses, whether called by itself or by a party. This power shall be used sparingly and only when the interests of justice require.

SDCL 19-14-27 (Rule 614(b)) Court's Calling or Examining a Witness -- Examining. The court may examine a witness regardless of who calls the witness.

~~73. Amendment of SDCL 19-14-28. (Rule 614(c)) **Objections to calling or interrogation of witness by court.** Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.~~

SDCL 19-14-28 (Rule 614(c)) Court's Calling or Examining a Witness -- Objections. A party may object to the court's calling or examining a witness either at that time or at the next opportunity when the jury is not present.

~~74. Amendment of SDCL 19-14-29 (Rule 615) **Exclusion of witnesses from courtroom.** At the request of a party, witnesses testifying at the trial, hearing, or deposition shall be excluded so that they cannot hear the testimony of other witnesses, and the court may make such an order of its own motion. This section does not authorize exclusion of:~~

- ~~(1) A party who is a natural person;~~
- ~~(2) An officer or employee of a party which is not a natural person designated as its representative by its attorney;~~
- ~~(3) A person whose presence is shown by a party to be essential to the presentation of his cause; or~~
- ~~(4) A victim of a crime and his parent or guardian following the victim's testimony.~~

SDCL 19-14-29 (Rule 615) Excluding Witnesses. At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:

- (a) a party who is a natural person;
- (b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney;
- (c) a person whose presence a party shows to be essential to presenting the party's claim or defense;
- (d) a person authorized by statute to be present; or
- (e) a victim of a crime and his parent or guardian following the victim's testimony.

CHAPTER 19-15 - OPINIONS AND EXPERT TESTIMONY

~~75. Amendment of SDCL 19-15-1. (Rule 701) **Opinion testimony by lay witnesses.** If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are:~~

- ~~(a) Rationally based on the perception of the witness,~~
- ~~(b) Helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and~~

~~(c) Not based on scientific, technical or other specialized knowledge within the scope of § 19-15-2.~~

SDCL 19-15-1 (Rule 701) Opinion testimony by lay witnesses.

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of § 19-15-2.

76. Amendment of SDCL 19-15-2. (Rule 702) Testimony by experts. ~~If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if:~~

- ~~(1) The testimony is based upon sufficient facts or data,~~
- ~~(2) The testimony is the product of reliable principles and methods, and~~
- ~~(3) The witness has applied the principles and methods reliably to the facts of the case.~~

SDCL 19-15-2 (Rule 702) Testimony by expert. A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

77. Amendment of SDCL 19-15-3. (Rule 703) Bases of opinion testimony by experts. ~~The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.~~

SDCL 19-15-3 (Rule 703) Bases of opinion testimony by experts. An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

~~78. Amendment of SDCL 19-15-4. (Rule 704) **Opinion on Ultimate Issue.** Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.~~

SDCL 19-15-4 (Rule 704) Opinion on ultimate issue. An opinion is not objectionable just because it embraces an ultimate issue.

~~79. Amendment of SDCL 19-15-5. (Rule 705) **Disclosure of facts or data underlying expert opinion.** The expert may testify in terms of opinion or inference and give reasons therefore without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.~~

SDCL 19-15-5 (Rule 705) Disclosure of facts or data underlying expert opinion. Unless the court orders otherwise, an expert may state an opinion--and give the reasons for it--without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

CHAPTER 19-16 - HEARSAY

~~80. Amendment of SDCL 19-16-1. (Rule 801(a) to (c)) **Definition of terms.** The following definitions apply under this chapter:~~

- ~~(1) A "statement" is:
 - ~~(a) An oral or written assertion; or~~
 - ~~(b) Nonverbal conduct of a person, if it is intended by him as an assertion.~~~~
- ~~(2) A "declarant" is a person who makes a statement.~~
- ~~(3) "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.~~

SDCL 19-16-1 (Rule 801(a) to (c)) Definitions that Apply to This Article; Exclusions from Hearsay. The following definitions apply under this article:

(a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) Declarant. "Declarant" means the person who made the statement.

(c) Hearsay. "Hearsay" means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

81. Amendment of SDCL 19-16-2. ~~(Rule 801(d)(1)) Statement not hearsay if declarant testifies.~~ A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

~~(1) Inconsistent with his testimony and was given under oath and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition; or~~

~~(2) Consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive; or~~

~~(3) One of identification of a person made after perceiving him.~~

SDCL 19-16-2 (Rule 801(d)(1)) Definitions that Apply to This Article; Exclusions from Hearsay.

(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

(1) A Declarant-Witness's Prior Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) is inconsistent with the declarant's testimony and is offered

(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or

(C) identifies a person as someone the declarant perceived earlier.

82. Amendment of SDCL 19-16-3. ~~(Rule 801(d)(2)) Statement offered against declarant not hearsay.~~ A statement is not hearsay if it is offered against a party and is:

~~(1) His own statement, in either his individual or a representative capacity; or~~

~~(2) A statement of which he has manifested his adoption or belief in its truth; or~~

~~(3) A statement by a person authorized by him to make a statement concerning the subject; or~~

~~(4) A statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship; or~~

~~(5) A statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.~~

SDCL 19-16-3 (Rule 801(d) (2)) Definitions that Apply to This Article; Exclusions from Hearsay.

(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

(2) An Opposing Party's Statement. The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

83. Amendment of SDCL 19-16-4. (Rule 802) Hearsay not admissible except as provided. ~~Hearsay not admissible except as provided. Hearsay is not admissible except as provided by law or by chapters 19-9 to 19-18, inclusive, or by other rules prescribed by the Supreme Court.~~

SDCL 19-16-4 (Rule 802) The Rule Against Hearsay. ~~Hearsay is not admissible unless any of the following provide otherwise: SDCL Chapters 19-9 through 19-18; these rules or other rules prescribed by the Supreme Court.~~

84. Amendment of SDCL 19-16-5. (Rule 803(1)) ~~**Contemporaneous statement on event or condition admissible.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, is not excluded by § 19-16-4, even though the declarant is available as a witness.~~

SDCL 19-16-5 (Rule 803(1)) Contemporaneous Statement on Event or Condition Admissible. The statements described in §§ 19-16-5 to 19-16-27, inclusive, are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness: Present Sense Impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

~~85. Amendment of SDCL 19-16-6. (Rule 803(2)) Excited utterance admissible.~~ A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition, is not excluded by § 19-16-4, even though the declarant is available as a witness.

SDCL 19-16-6 (Rule 803(2)) Excited Utterance Admissible. Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

~~86. Amendment of SDCL 19-16-7. (Rule 803(3)) Statement as to declarant's physical or mental condition--When admissible.~~ A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, and bodily health, is not excluded by § 19-16-4, even though the declarant is available as a witness, but a statement of memory or belief to prove the fact remembered or believed is excluded unless it relates to the execution, revocation, identification, or terms of declarant's will.

SDCL 19-16-7 (Rule (803(3)) Statement as to Declarant's Physical or Mental Condition - When Admissible. Then-Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

~~87. Amendment of SDCL 19-16-8. (Rule 803(4)) Statements given to aid diagnosis or treatment.~~ Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensation, or the inception or general character of the cause or external source thereof are not excluded by § 19-16-4 in so far as reasonably pertinent to diagnosis or treatment, even though the declarant is available as a witness.

SDCL 19-16-8 (Rule 803(4)) Statement Given to Aid Diagnosis or Treatment. Statement Made for Medical Diagnosis or Treatment. A statement that:

(A) is made for - and is reasonably pertinent to - medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

88. Amendment of SDCL 19-16-9. (Rule 803(5)) ~~Recorded recollection of past event.~~ A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly, is not excluded by § 19-16-4. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

SDCL 19-16-9. (Rule 803(5)) Recorded Recollection of Past Event. Recorded Recollection. A record that:

- (A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
- (B) was made or adopted by the witness when the matter was fresh in the witness's memory; and
- (C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

89. Amendment of SDCL 19-16-10. 19-16-10. (Rule 803(6)) ~~Business records admissible.~~ A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, is not excluded by § 19-16-4, even though the declarant is available as a witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this section includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

SDCL 19-16-10. (Rule 803(6)) Business Records Admissible. Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:

- (A) the record was made at or near the time by - or from information transmitted by - someone with knowledge;
- (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
- (C) making the record was a regular practice of that activity;
- (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification

that complies with a rule or a statute permitting certification;
and
(E) the opponent does not show that the source of information or
the method or circumstances of preparation indicate a lack of
trustworthiness.

90. Amendment of SDCL 19-16-11. (Rule 803(7)) ~~Absence of business record admissible.~~ Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of § 19-16-10, to prove the nonoccurrence or nonexistence of the matter, is not excluded by § 19-16-4, even though the declarant is available as a witness, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

SDCL 19-16-11 (Rule 803(7)) Absence of Business Record Admissible. Evidence that a matter is not included in a record as described in SDCL 19-16-10 if:

- (a) the evidence is admitted to prove that the matter did not occur or exist;
- (b) a record was regularly kept for a matter of that kind; and
- (c) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.

91. Amendment of SDCL 19-16-12. (Rule 803(8)) ~~Public records and reports admissible.~~ Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth:

- ~~(1) The activities of the office or agency; or~~
- ~~(2) Matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel; or~~
- ~~(3) In civil actions and proceedings and against the state in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, are not excluded by § 19-16-4, even though the declarant is available as a witness, unless the sources of information or other circumstances indicate lack of trustworthiness.~~

SDCL 19-16-12 (Rule 803(8)) Public Records and Reports Admissible. Public Records. A record or statement of a public office if:

- (A) it sets out:
 - (i) the office's activities;
 - (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

~~92. Amendment of SDCL 19-16-13. (Rule 803(9)) Public vital records admissible. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, are not excluded by § 19-16-4, even though the declarant is available as a witness, if the report thereof was made to a public office pursuant to requirements of law.~~

SDCL 19-16-13 (Rule 803(9)) Public Vital Records

Admissible. Public Records of Vital Statistics. A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

~~93. Amendment of SDCL 19-16-14. (Rule 803(10)) Absence of public record admissible. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with § 19-17-5, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry, is not excluded by § 19-16-4, even though the declarant is available as a witness.~~

SDCL 19-16-14 (Rule 803(10)) Absence of Public Record

Admissible. Testimony -- or a certification under §19-17-5 -- that a diligent search failed to disclose a public record or statement if:

- (A) the testimony or certification is admitted to prove that
(i) the record or statement does not exist; or
(ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and

(B) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the defendant does not object in writing within 7 days of receiving the notice - unless the court sets a different time for the notice or the objection.

~~94. Amendment of SDCL 19-16-15. (Rule 803(11)) Family records of religious organizations admissible. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization, are not excluded by § 19-16-4, even though the declarant is available as a witness.~~

SDCL 19-16-15 (Rule 803(11)) Family Records of Religious Organizations Admissible. Records of Religious Organizations Concerning Personal or Family History. A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

95. Amendment of SDCL 19-16-16. (Rule 803(12)) Records of ceremonies performed by public official or clergyman. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter, are not excluded by § 19-16-4, even though the declarant is available as a witness.

SDCL 19-16-16 (Rule (803(12)) Records of Ceremonies Performed by Public Official or Clergy Admissible. Certificates of Marriage, Baptism, and Similar Ceremonies. A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

96. Amendment of SDCL 19-16-17. (Rule 803(13)) Personal history maintained by families admissible. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like, are not excluded by § 19-16-4, even though the declarant is available as a witness.

SDCL 19-16-17 (Rule 803(13)) Personal Histories Maintained by Families Admissible. Family Records. A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

97. Amendment of SDCL 19-16-18. (Rule 803(14)) Recorded documents affecting property. The record of a document purporting to establish or affect an interest in property is not excluded by § 19-16-4 as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an

~~applicable statute authorizes the recording of documents of that kind in that office, even though the declarant is available as a witness.~~

SDCL 19-16-18 (Rule 803(14)) Recorded Documents Affecting Property Admissible. Records of Documents That Affect an Interest in Property. The record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

98. ~~Amendment of SDCL 19-16-19. (Rule 803(15)) Statements in documents affecting property.~~ A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, is not excluded by § 19-16-4, even though the declarant is available as a witness, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

SDCL 19-16-19 (Rule 803(15)) Statements in Documents Affecting Property Admissible. Statements in Documents That Affect an Interest in Property. A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose - unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

99. ~~Amendment of SDCL 19-16-20. (Rule 803(16)) Statements in ancient documents admissible.~~ Statements in a document in existence twenty years or more the authenticity of which is established are not excluded by § 19-16-4, even though the declarant is available as a witness.

SDCL 19-16-20 (Rule 803(16)) Statements in Ancient Documents Admissible. Statements in Ancient Documents. A statement in a document that is at least 20 years old and whose authenticity is established.

100. ~~Amendment of SDCL 19-16-21. (Rule 803(17)) Market reports and directories admissible.~~ Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations, are not excluded by § 19-16-4, even though the declarant is available as a witness.

SDCL 19-16-21 (Rule 803(17)) Market Reports and Directories Admissible. Market Reports and Similar Commercial Publications.

Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

101. ~~Amendment of SDCL 19-16-22. (Rule 803(18)) **Learned papers relied on by expert admissible.**~~ To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice are not excluded by § 19-16-4, even though the declarant is available as a witness. If admitted, the statements may be read into evidence but may not be received as exhibits.

SDCL 19-16-22 (Rule 803(18)) **Learned Papers Relied on by Expert Admissible.** Statements in Learned Treatises, Periodicals, or Pamphlets. A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

102. ~~Amendment of SDCL 19-16-23. (Rule 803(19)) **Reputation as to personal history or family relationship admissible.**~~ Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history, is not excluded by § 19-16-4, even though the declarant is available as a witness.

SDCL 19-16-23 (Rule 803(19)) **Reputation as to Personal History or Family Relationship Admissible.** Reputation Concerning Personal or Family History. A reputation among a person's family by blood, adoption, or marriage - or among a person's associates or in the community concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

103. ~~Amendment of SDCL 19-16-24. (Rule 803(20)) **Reputation as to boundaries, custom, or history admissible.**~~ Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events

~~of general history important to the community or state or nation in which located, are not excluded by § 19-16-4, even though the declarant is available as a witness.~~

SDCL 19-16-24 (Rule 803(20)) Reputation as to Custom, Boundaries, or History Admissible. Reputation Concerning Boundaries or General History. A reputation in a community - arising before the controversy - concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

~~104. Amendment of SDCL 19-16-25. (Rule 803(21)) Reputation as to character admissible.~~ Reputation of a person's character among his associates or in the community is not excluded by § 19-16-4, even though the declarant is available as a witness.

SDCL 19-16-25 (Rule 803(21)) Reputation as to Character Admissible. Reputation Concerning Character. A reputation among a person's associates or in the community concerning the person's character.

~~105. Amendment of SDCL 19-16-26. (Rule 803(22)) Evidence of conviction of crime admissible--Pendency of appeal.~~ Evidence of a final judgment, entered after a trial or upon a plea of guilty, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, is not excluded by § 19-16-4 when offered to prove any fact essential to sustain the judgment, even though the declarant is available as a witness; but when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused are excluded. The pendency of an appeal or postconviction proceeding may be shown but does not affect admissibility.

SDCL 19-16-26 (Rule 803(22)) Evidence of Conviction of Crime Admissible - Pendency of Appeal. Judgment of a Previous Conviction. Evidence of a final judgment of conviction if:

- (A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
- (B) the conviction was for a crime punishable by death or by imprisonment for more than a year;
- (C) the evidence is admitted to prove any fact essential to the judgment; and
- (D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

~~106. Amendment of SDCL 19-16-27. (Rule 803(23)) Judgments establishing history or boundaries.~~ Judgments are not excluded by § 19-16-4 as proof of matters of personal, family, or general history,

~~or boundaries, essential to the judgment, if the same would be provable by evidence of reputation, even though the declarant is available as a witness.~~

SDCL 19-16-27 (Rule 803(23)) Judgments Establishing History or Boundaries. Judgments Involving Personal, Family, or General History, or a Boundary. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

107. Amendment of SDCL 19-16-29. (Rule 804(a))
Conditions making declarant unavailable as witness. "Unavailability as a witness" includes situations in which the declarant:

~~(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or~~

~~(2) Persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or~~

~~(3) Testifies to a lack of memory of the subject matter of his statement; or~~

~~(4) Is unable to be present or to testify at the hearing because of death or then-existing physical or mental illness or infirmity; or~~

~~(5) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under § 19-16-31, 19-16-32, or 19-16-33, his attendance or testimony) by process or other reasonable means.~~

~~A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.~~

SDCL 19-16-29 (Rule 804(a)) Hearsay Exceptions; Declarant Unavailable.

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under

§§ 19-16-30; or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under §§ 19-16-31, 19-16-32, or 19-16-33.

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

108. Amendment of SDCL 19-16-30. ~~(Rule 804(b)(1)) Former testimony admissible if witness unavailable.~~ ~~Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, is not excluded by § 19-16-4 if the declarant is unavailable as a witness and if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.~~

SDCL 19-16-30 (Rule 804(b)(1)) Former Testimony Admissible if Declarant Unavailable.

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

Former Testimony. Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had - or, in a civil case, whose predecessor in interest had - an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

109. Amendment of SDCL 19-16-31. ~~(Rule 804(b)(2)) Dying declaration admissible if declarant unavailable--Rule applicable in criminal cases.~~ ~~In a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death, is not excluded by § 19-16-4 if the declarant is unavailable as a witness. In criminal actions or proceedings the provisions of § 23A-22-12 shall apply.~~

SDCL 19-16-31 (Rule 804(b)(2)) Dying Declaration Admissible if Declarant Unavailable. Statement Under the Belief of Imminent Death. In a prosecution for homicide or in a civil case, a statement

that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

110. Amendment of SDCL 19-16-32. ~~(Rule 804(b)(3))~~

~~**Admission against interest admissible if declarant unavailable-- Corroboration required in criminal cases.** A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true, is not excluded by § 19-16-4 if the declarant is unavailable as a witness. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.~~

SDCL 19-16-32 (Rule 804(b)(3)) Statement Against Interest Admissible if Declarant Unavailable. Statement Against Interest.

A statement that:

- (A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and
- (B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

111. Amendment of SDCL 19-16-33. ~~(Rule 804(b)(4))~~

~~**Statements as to personal or family history admissible if declarant unavailable.** The following are not excluded by § 19-16-4 if the declarant is unavailable as a witness:~~

- ~~(1) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or~~
- ~~(2) A statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.~~

SDCL 19-16-33 (Rule 804(b)(4)) Statement as to Personal or Family History Admissible if Declarant Unavailable. Statement of Personal or Family History. A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or
(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

112. Amendment of SDCL 19-16-36. (Rule 805) Hearsay within hearsay—When admissible. Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in ~~§§ 19-16-5 to 19-16-35, inclusive.~~

SDCL 19-16-36 (Rule 805) Hearsay Within Hearsay. Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

113. Amendment of SDCL 19-16-37. (Rule 806) Evidence of credibility of hearsay declarant. ~~When a hearsay statement, or a statement defined in subdivision § 19-16-3(3), (4), or (5), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.~~

SDCL 19-16-37 (Rule 806) Attacking and Supporting the Declarant. When a hearsay statement - or a statement described in Rule §§19-16-5 through 19-16-35, 19-16-38, or 19-16-39 - has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

114. Amendment of SDCL 19-16-40. ~~19-16-40. (Rule 807) Residual exception.~~ A statement not specifically covered by §§ 19-16-5 to 19-16-8, inclusive, or §§ 19-16-9 to 19-16-34, inclusive, but having equivalent circumstantial guarantees of trustworthiness, is not excluded by § 19-16-4, if the court determines that:

- ~~(A) The statement is offered as evidence of a material fact;~~
- ~~(B) The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and~~
- ~~(C) The general purposes of chapters 19-9 to 19-18, inclusive, and the interests of justice will best be served by admission of the statement into evidence.~~

~~However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.~~

SDCL 19-16-40 (Rule 807) Residual Exception.

(a) In General. Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in §§ 19-16-5 through 19-16-34.

- (1) the statement has equivalent circumstantial guarantees of trustworthiness;
- (2) it is offered as evidence of a material fact;
- (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts, and
- (4) admitting it will best serve the purposes of these rules and the interests of justice.

(b) Notice. The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

CHAPTER 19-17 - AUTHENTICATION AND IDENTIFICATION

115. Amendment of SDCL 19-17-1. ~~(Rule 901) Authenticating or identifying evidence generally.~~ The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this section:

~~(1) Testimony of a witness with knowledge that a matter is what it is claimed to be.~~

~~(2) Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.~~

~~(3) Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.~~

~~(4) Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.~~

~~(5) Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.~~

~~(6) Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if:~~

~~(a) In the case of a person, circumstances, including self-identification, show the person answering to be the one called; or~~

~~(b) In the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.~~

~~(7) Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.~~

~~(8) Evidence that a document or data compilation, in any form,~~

~~(a) Is in such condition as to create no suspicion concerning its authenticity;~~

~~(b) Was in a place where it, if authentic, would likely be; and~~

~~(c) Has been in existence twenty years or more at the time it is offered.~~

~~(9) Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.~~

~~(10) Any method of authentication or identification provided by a statute or by other rules prescribed by the Supreme Court pursuant to statutory authority.~~

SDCL 19-17-1 (Rule 901) Authenticating or Identifying

Evidence.

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) Examples. The following are examples only - not a complete list - of evidence that satisfies the requirement:

(1) Testimony of a Witness with Knowledge. Testimony that an item is what it is claimed to be.

(2) Nonexpert Opinion About Handwriting. A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) Comparison by an Expert Witness or the Trier of Fact. A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) Opinion About a Voice. An opinion identifying a person's voice - whether heard firsthand or through mechanical or electronic transmission or recording - based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) Evidence About a Telephone Conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) Evidence About Public Records. Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) Evidence About Ancient Documents or Data compilations. For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) Evidence About a Process or System. Evidence describing a process or system and showing that it produces an accurate result.

(10) Methods Provided by a Statute or Rule. Any method of authentication or identification allowed by a state statute or a rule prescribed by the Supreme Court.

116. Amendment of SDCL 19-17-2. (Rule 902(1)) ~~Self-authenticating public documents under seal.~~ Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to a document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth,

~~territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.~~

SDCL 19-17-2 (Rule 902(1)) Evidence that is Self-authenticating - Public Documents Under Seal. The following items of evidence are self-authenticating. They require no extrinsic evidence of authenticity in order to be admitted. Domestic Public Documents That Are Sealed and Signed. A document that bears:

- (A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and
- (B) a signature purporting to be an execution or attestation.

~~117. Amendment of SDCL 19-17-3. (Rule 902(2)) Self-authenticating public documents not under seal.~~ ~~Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to a document purporting to bear the signature in his official capacity of an officer or employee of any entity included in § 19-17-2, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.~~

SDCL 19-17-3 (Rule 902(2)) Evidence that is Self-authenticating - Public Documents Not Under Seal. Domestic Public Documents That Are Not Sealed but Are Signed and Certified. A document that bears no seal if:

- (A) it bears the signature of an officer or employee of an entity named in § 19-17-2(A); and
- (B) another public officer who has a seal and official duties within that same entity certifies under seal - or its equivalent - that the signer has the official capacity and that the signature is genuine.

~~118. Amendment of SDCL 19-17-4. (Rule 902(3)) Self-authenticating foreign public documents.~~ ~~Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to a document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:~~

- ~~(1) Of the executing or attesting person; or~~

~~(2) Of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.~~

SDCL 19-17-4 (Rule 902(3)) Evidence that is Self-authenticating - Foreign Public Documents. Foreign Public Documents. A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester - or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

~~119. Amendment of SDCL 19-17-5. (Rule 902(4)) **Certified copies of public records.** Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to a copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with 19-17-2, 19-17-3, or 19-17-4 or complying with any law of the United States or state thereof.~~

SDCL 19-17-5 (Rule 902(4)) Evidence that is Self-authenticating - Certified Copies of Public Records. Certified Copies of Public Records. A copy of an official record - or a copy of a

document that was recorded or filed in a public office as authorized by law - if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with §§19-17-2 to 19-17-4, inclusive, or complying with any law of the United States or state thereof.

~~120. Amendment of SDCL 19-17-6. (Rule 902(5)) **Publications issued by public authority.** Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to books, pamphlets, or other publications purporting to be issued by public authority.~~

SDCL 19-17-6 (Rule 902(5)) Evidence that is Self-authenticating - Publications Issued by Public Authority.
Official Publications. A book, pamphlet, or other publication purporting to be issued by a public authority.

~~121. Amendment of SDCL 19-17-7. (Rule 902(6)) **Self-authenticating periodicals.** Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to printed materials purporting to be newspapers or periodicals.~~

SDCL 19-17-7 (Rule 902(6)) Evidence that is Self-authenticating - Periodicals.
Newspapers and Periodicals. Printed material purporting to be a newspaper or periodical.

~~122. Amendment of SDCL 19-17-8. (Rule 902(7)) **Self-authenticating trade inscriptions.** Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.~~

SDCL 19-17-8 (Rule 902(7)) Evidence that is Self-authenticating - Trade Inscriptions.
Trade Inscriptions and the Like. An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

~~123. Amendment of SDCL 19-17-9. (Rule 902(8)) **Notarized or acknowledged documents.** Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.~~

SDCL 19-17-9 (Rule 902(8)) Evidence that is Self-authenticating - Notarized or Acknowledged Documents.

Acknowledged Documents. A document accompanied by a certificate of acknowledgement that is lawfully executed by a notary public or another officer who is authorized to take acknowledgements.

~~124. Amendment of SDCL 19-17-10. (Rule 902(9)) Self-authenticating commercial documents. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.~~

SDCL 19-17-10 (Rule 902(9)) Evidence that is Self-authenticating - Commercial Documents. Commercial Paper and Related Documents. Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

~~125. Amendment of SDCL 19-17-11. (Rule 902(10)) Matters presumed authentic by statute. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to any signature, document, or other matter declared by any law of the United States or of this state, to be presumptively or prima facie genuine or authentic.~~

SDCL 19-17-11 (Rule 902(10)) Evidence that is Self-authenticating - Matters Presumed Authentic by Statute. Presumptions Under a Statute. A signature, document, or anything else that a statute of this state declares to be presumptively or prima facie genuine or authentic.

~~126. Amendment of SDCL 19-17-12. (Rule 903) Authentication of document governed by law governing validity. The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.~~

SDCL 19-17-12 (Rule 903) Subscribing Witnesses. A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

CHAPTER 19-18 - CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

~~127. Amendment of SDCL 19-18-1. (Rule 1001) Definition of terms. Terms used in this chapter mean:~~

~~(1) "Duplicate," a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original;~~

~~(2) "Original," a writing or recording or any counterpart of the writing or recording intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original";~~

~~(3) "Photographs," still photographs, X ray films, video tapes, and motion pictures;~~

~~(4) "TDD," or "TTY," any auxiliary aids or services consisting of assistive listening or transcription systems which allow the reception or transmission of aurally delivered communication and materials for the benefit of individuals with hearing, speech, or physical impairments; and~~

~~(5) "Writings" and "recordings," letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.~~

SDCL 19-18-1 (Rule 1001) Definitions That Apply to This Chapter.

(a) A "writing" consists of letters, words, numbers, or their equivalent set down in any form.

(b) A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A "photograph" means a photographic image or its equivalent stored in any form.

(d) An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout - or other output readable by sight - if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.

(e) A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

(f) "TDD," or "TTY," any auxiliary aids or services consisting of assistive listening or transcription systems which allow the reception or transmission of aurally delivered communication and materials for the benefit of individuals with hearing, speech, or physical impairments.

128. Amendment of SDCL 19-18-2. (Rule 1002) Original required to prove contents unless otherwise provided. ~~To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in chapters 19-9 to 19-18, inclusive, or by rules adopted by the Supreme Court of this state or by statute.~~

SDCL 19-18-2 (Rule 1002) Requirement of the Original.

An original writing, recording, or photograph is required in order to prove its content unless Chapter 19-9 to 19-18, inclusive, or rules adopted by the Supreme Court of this state, or a state statute provides otherwise.

~~129. Amendment of SDCL 19-18-3. (Rule 1003) Duplicate admissible as original--Exceptions.~~ A duplicate is admissible to the same extent as an original unless:

- ~~(1) A genuine question is raised as to the authenticity of the original; or~~
- ~~(2) In the circumstances it would be unfair to admit the duplicate in lieu of the original.~~

SDCL 19-18-3 (Rule 1003) Admissibility of Duplicates.

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

~~130. Amendment of SDCL 19-18-4. (Rule 1004) Original not required if unavailable or used on collateral matter.~~ The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

- ~~(1) All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or~~
- ~~(2) No original can be obtained by any available judicial process or procedure; or~~
- ~~(3) At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing and he does not produce the original at the hearing; or~~
- ~~(4) The writing, recording, or photograph is not closely related to a controlling issue.~~

SDCL 19-18-4 (Rule 1004) Admissibility of Other Evidence of Content. An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

- (a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;
 - (b) an original cannot be obtained by any available judicial process;
 - (c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
 - (d) the writing, recording, or photograph is not closely related to a controlling issue.
-

131. Amendment of SDCL 19-18-5. ~~(Rule 1005) Certified copy of official record--Other evidence.~~ The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with § 19-17-5 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

SDCL 19-18-5 (Rule 1005) Copies of Public Records to Prove Content. The proponent may use a copy to prove the content of an official record - or of a document that was recorded or filed in a public office as authorized by law - if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with §19-17-5 or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

132. Amendment of SDCL 19-18-6. ~~(Rule 1006) Summaries of voluminous documents--Availability of originals for inspection.~~ The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

SDCL 19-18-6 (Rule 1006) Summaries to Prove Content. The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

133. Amendment of SDCL 19-18-7. ~~(Rule 1007) Testimony or admission of party against whom documents offered.~~ Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.

SDCL 19-18-7 (Rule 1007) Testimony or Statement of a Third Party to Prove Content. The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

134. Amendment of SDCL 19-18-8. (~~Rule 1008~~) ~~Preliminary questions of admissibility determined by court--Questions for jury.~~
~~When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of §§ 19-9-7 to 19-9-11, inclusive. However, when an issue is raised:~~

- ~~(1) Whether the asserted writing ever existed; or~~
- ~~(2) Whether another writing, recording, or photograph produced at the trial is the original; or~~
- ~~(3) Whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.~~

SDCL 19-18-8 (Rule 1008) Functions of the Court and Jury.

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under §19-18-4 to 19-8-5, inclusive. But in a jury trial, the jury determines - in accordance with §19-9-8 - any issue about whether:

- (a) an asserted writing, recording, or photograph ever existed;
- (b) another one produced at the trial or hearing is the original; or
- (c) other evidence of content accurately reflects the content.

135. AMENDMENT OF SDCL 23A-48-19(1). Criteria for awarding earned discharge credits. A probationer shall be awarded earned discharge credits while on supervised probation as follows:

- (1) For each full calendar month of compliance with the terms of supervised probation an earned discharge credit of 30 days shall be awarded to a probationer. Each earned discharge credit shall reduce the term of supervised probation by 30 days. No earned discharge credit may be awarded for a partial month or the last full month of supervised probation. No earned discharge credit may be awarded for any month, or portion of a month, during which the probationer is incarcerated. ~~as part of a sentence or sanction.~~
- (2) A probationer shall not receive an earned discharge credit for any month(s) during which a probation violation is pending before the court. If the court does not sustain the probation violation, the court may enter a written order awarding earned discharge credits to the probationer for the months the probation violation was pending before the court. Absent such an order the probationer shall not be entitled to any earned discharge credit for such period of time.
- (3) Earned discharge credits shall not be awarded to a probationer for any month(s) in which a probationer is absconded. Additionally, a probationer shall not be awarded earned discharge credit for any month in which the probationer was sanctioned for

conduct that disqualifies the probationer from receiving earned discharge credits as provided by the graduated response grid.

(4) A South Dakota probationer placed on supervised probation who is supervised in another state under the Interstate Compact for Adult Offender Supervision is eligible for earned discharge credits pursuant to §§ 23A-48-15 to 23A-48-22 inclusive.

(5) Earned discharge credits shall be applied to the probation term within fifteen days after the end of the month in which any credit was earned. A probationer who is eligible for earned discharge credits shall be notified of their probation discharge date on a semi-annual basis.

136. Adoption of Uniform Forms for the Electronic Search Warrant Process to be designated in the Appendix to SDCL Ch. 23A-35 as follows:

AFFIDAVIT FOR SEARCH WARRANT

COUNTY OF _____, STATE OF SOUTH DAKOTA

STATE OF SOUTH DAKOTA)
COUNTY OF _____)
STATE OF SOUTH DAKOTA)
)
Plaintiff,)
)
v.)
)
_____)
Name/DOB)
)
(In the Matter of)

The undersigned, being duly sworn upon oath respectfully requests a Search Warrant to be issued for the following property:

(PLACE INITIALS IN APPROPRIATE BLANK)

- _____ Property that constitutes evidence of the commission of a criminal offense;
- _____ Contraband, the fruits of crime, or things otherwise criminally possessed;
- _____ Property designed or intended for use in, or which is or has been used as the means of, committing a criminal offense.

THAT THE AFFIANT has probable cause to believe that there is now in the blood or bodily fluids of

_____, DOB _____

Located at: _____ or any other location while in police custody, in the City

of _____, County of _____, State of South Dakota, the following substances to wit: intoxicating liquor, any other type of alcoholic beverage, drugs, vapor releasing substance or any combination.

As set forth in this affidavit, I _____, your affiant, am a law enforcement officer in the State of South Dakota, employed by _____. I have been a law enforcement officer for _____ years and have the following training and experience:

_____ to include specialized training in _____

The facts in support of the issuance of a Search Warrant are as follows:

On _____ at _____ hours, I made contact with _____ for _____, near the location of _____, _____ County. During this stop certain indicators, based on my experience and training, led me to believe that the driver was under the influence of _____.

These indicators included: (list indicators in narrative below):

Based on my experience and training, that there was sufficient probable cause to place the driver under arrest for Driving under the Influence of Drugs or Alcohol. I believe that the property, substances, and/or behavior that I have described in this affidavit are evidence of driving or being in actual physical control of a vehicle while under the influence of an intoxicating liquor and/or drugs.

At this time _____ is currently being detained at:

_____ (insert name of facility and complete physical address).

Other _____

Due to my training and experience, I know that intoxicants are continually dissipating from the body.

The undersigned respectfully requests that the Search Warrant be issued to permit a search at the following premises for the above described property:

- The person of _____, DOB _____, who is currently located at _____ (address), _____ (city), _____ County, South Dakota.

This Warrant may is requested to be executed in accordance with my initials placed below:

_____ At any time day or night because reasonable cause has been shown to authorize a night-time execution pursuant to SDCL 23A-35-4.

_____ Only during the DAYTIME. Night is that period from 8:00 p.m. to 8:00 a.m. local time.

_____ The Warrant may be issued without notice of execution required by SDCL 23A-35-8 in that probable cause exists to demonstrate that if notice were given prior to execution (that the property sought may be easily and quickly destroyed or disposed of), (that danger to life or limb of the officer or another may result).

At this time I am respectfully request a search warrant to collect a sample of the defendant's blood and/or urine, so that this evidence can be analyzed.

I SWEAR THE CONTENTS OF THE AFFIDAVIT ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Affiant: _____

Subscribed and sworn to me this _____ day of _____, 20____, at _____ hours.

Judge: _____
(Magistrate/Circuit)

CR # _____

SEARCH WARRANT ISSUED UPON
(SDCL 23A-35-4)

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
)	MAGISTRATE DIVISION
COUNTY OF _____)	_____ JUDICIAL CIRCUIT
)	
STATE OF SOUTH DAKOTA,)	
Plaintiff)	SEARCH WARRANT ISSUED
)	
v.)	
)	
_____)	
Name/DOB)	
)	

(In the Matter of **Violation of State Law**)

TO ANY LAW ENFORCEMENT OFFICER IN THE COUNTY OF _____:

Upon sworn affidavit provided and having established that there is probable cause to believe that the property described herein may be found at the locations set forth herein and the property is:

- (PLACE INITIALS IN APPROPRIATE BLANK)
- _____ Property that constitutes evidence of the commission of a criminal offense;
 - _____ Contraband, the fruits of crime, or things otherwise criminally possessed;
 - _____ Property designed or intended for use in, or which is or has been used as the means of, committing a criminal offense.

YOU ARE THEREFORE commanded to search:

- The person of _____, DOB _____, who is currently located at _____ (address), _____ (city), _____ County, South Dakota.

for the following property

- The blood or urine of _____, DOB _____

This Warrant may be executed in accordance with my initials placed below: (YOU MUST INITIAL AT LEAST ONE BLANK)

_____ You may serve this Warrant at any time of day or night because reasonable cause has been shown to authorize a night-time execution pursuant to SDCL 23A-35-4.

_____ You may serve this Warrant only during the daytime. Night is that period from 8:00pm to 8:00am local time.

_____ You may execute this Warrant without notice of execution required by SDCL 23A-35-8 in that probable cause exists to demonstrate to me that if notice were given prior to execution (that the property sought may be easily and quickly destroyed or disposed of), (that danger to life or limb of the officer or another may result).

The grounds for the search warrant exist in the sworn communication set forth in the electronic affidavit submitted.

Dated this _____ day of _____, 20____, _____ a.m./p.m., at _____, South Dakota.

(Magistrate)(Circuit Judge)

137. Adoption of a New Rule Relating to Adopting a Risk Assessment Instrument for Statewide Use as follows:

- (a) Generally, juveniles should only be held in secure detention when less restrictive placement alternatives are not appropriate. The standardized South Dakota JDAI Risk Assessment Instrument (RAI) is an objective tool used to assess a variety of risk factors relative to the likelihood that a juvenile will appear in court or re-offend on a delinquent act prior to his/her court appearance. The RAI is based upon best practice standards that have been tested and implemented in other JDAI jurisdictions across the nation. The overall risk score is a guide in making the initial decision whether to detain in secure detention, utilize an alternative to secure detention, or release with or without conditions pending hearing.
- (b) As per the authority designated in SDCL 26-7A-1(20), the presiding judge in each circuit shall appoint juvenile detention staff or juvenile reception and intake center staff to serve as intake officers.
- (c) The State Court Administrator's Office shall provide statewide training on use of the RAI. After the completion of RAI training, all appointed Intake Officers shall complete the RAI on all detention intakes to distinguish between juveniles who are likely to abscond or commit new crimes and those who are not.
- (d) The State Court Administrator's Office shall compile the following data to be collected by any court appointed intake

officer: The number of juveniles detained and released shall be reported along with each juvenile's gender, race, ethnicity, age and offense as well as all assessment information including staff decision, overrides and program information.

Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and ten copies thereof filed with the Clerk of the Supreme Court no later than January 2, 2015.

Subsequent to the hearing, the Court may reject or adopt the proposed rules or any rules germane to the subject thereof.

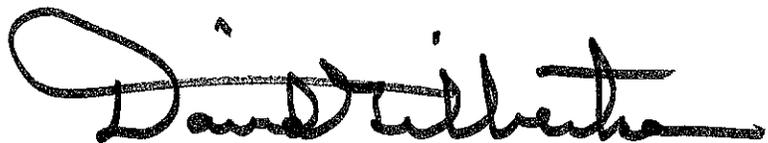
Notice of this hearing shall be made to the members of the State Bar by publication of this notice in the December 2014 and January 2015 State Bar Newsletters.

The proposed amendments, repeals and adoption of a new rule set out above may be found in their entirety at [http://ujs.sd.gov/Supreme Court/ruleshearing.aspx](http://ujs.sd.gov/Supreme_Court/ruleshearing.aspx) or <http://www.sdbar.org/members/sct/110.htm>.

Written copies are available from the Clerk of the Supreme Court upon request.

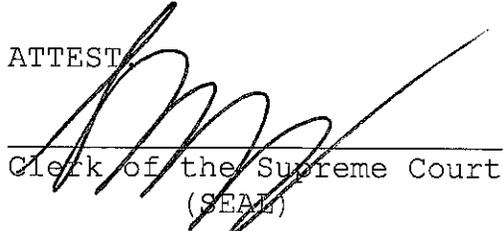
DATED at Pierre, South Dakota this 26th day of November, 2014.

BY THE COURT:



David Gilbertson, Chief Justice

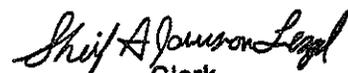
ATTEST



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

NOV 26 2014



Shif A. Johnson
Clerk