AN ACT

ENTITLED, An Act to revise and correct certain provisions related to the criminal code revision of 2005.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 22-7-8.1 be amended to read as follows:

22-7-8.1. If a defendant has been convicted of three or more felonies in addition to the principal felony and none of the prior felony convictions was for a crime of violence as defined in subdivision § 22-1-2(9), the sentence for the principal felony shall be enhanced by two levels but in no circumstance may the enhancement exceed the sentence for a Class C felony. A defendant sentenced pursuant to this section is eligible for consideration for parole pursuant to § 24-15A-32 if the defendant receives a sentence of less than life in prison.

Section 2. That § 24-15A-32 be amended to read as follows:

24-15A-32. Each inmate sentenced to a penitentiary term, except those under a sentence of life or death, or an indeterminate sentence which is not yet set to a term of years by the board, shall have an initial parole date set by the department. This date shall be calculated by applying the percentage indicated in the following grid to the full term of the inmate's sentence pursuant to § 22-6-1. The following crimes or an attempt to commit, or a conspiracy to commit, any of the following crimes shall be considered a violent crime for purposes of setting an initial parole date: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree or burglary in the second degree if committed before July 1, 2006, arson, kidnapping, felony sexual contact as defined in §§ 22-22-7 and 22-22-19.1, child abuse, felony sexual contact as defined in § 22-22-7.2, felony stalking as defined in §§ 22-19A-2 and 22-19A-3, photographing a child in an obscene act, felony assault as defined in § 22-18-26, felony simple assault as defined in § 22-18-1, commission of a felony while armed as defined in §§ 22-14-12 and 22-14-13.1, discharging a firearm at an occupied

structure or motor vehicle as defined in § 22-14-20, discharging a firearm from a moving vehicle as defined in § 22-14-21, and criminal pedophilia as defined in § 22-22-30.1:

	Felony Convictions		
Felony Class	First	Second	Third
Nonviolent			
Class 6	.25	.30	.40
Class 5	.25	.35	.40
Class 4	.25	.35	.40
Class 3	.30	.40	.50
Class 2	.30	.40	.50
Class 1	.35	.40	.50
Class C	.35	.40	.50
Violent			
Class 6	.35	.45	.55
Class 5	.40	.50	.60
Class 4	.40	.50	.65
Class 3	.50	.60	.70
Class 2	.50	.65	.75
Class 1	.50	.65	.75
Class C	.50	.65	.75
Class B	1.0	1.0	1.0
Class A	1.0	1.0	1.0

Each inmate shall serve at least sixty days prior to parole release. Inmates with life sentences are not eligible for parole. An initial parole date through the application of this grid may be applied to a life sentence only after the sentence is commuted to a term of years. A Class A or B felony commuted to a number of years shall be applied to the Class C violent column of the grid

Section 3. That § 22-30A-35 be amended to read as follows:

22-30A-35. The service of a notice of dishonor in accordance with §§ 22-30A-32 and 22-30A-34 is not an element of the crime of theft by insufficient funds check or theft by no account check, nor is it an element of proof thereof or a defense to any prosecution therefor.

If the notice required by §§ 22-30A-32 and 22-30A-34 is returned undelivered, or if it appears to the state's attorney that there is reasonable cause to believe that the writer of the check intends to remove himself or herself from the jurisdiction of the court, the state's attorney may elect to prosecute without such notice. However, if the insufficient funds check or no account check is paid by the drawer to the holder, along with the costs and expenses provided for in § 57A-3-421, within the thirty days after the notice is mailed or delivered to the drawer, the check may not be prosecuted.

Section 4. That § 22-6-5.1 be amended to read as follows:

22-6-5.1. A court may sentence any person convicted of a crime committed while that person was a prisoner as defined by § 22-11A-1, to a term of not more than twice the maximum term allowed by the statute for the commission of the same crime by a person not so confined. However, the provisions of this section do not apply if, for the same offense, the prisoner is subject to an enhanced penalty as an habitual offender.

Section 5. That § 26-11-3.1 be amended to read as follows:

26-11-3.1. Any delinquent child sixteen years of age or older against whom Class A, Class B, Class C, Class 1, or Class 2 felony charges have been filed shall be tried in circuit court as an adult. However, the child may request a transfer hearing which shall be conducted pursuant to § 26-11-4 to determine if it is in the best interest of the public that the child be tried in circuit court as an adult. In such a transfer hearing, there is a rebuttable presumption that it is in the best interest of the public that any child, sixteen years of age or older, who is charged with a Class A, Class B, Class C, Class 1, or Class 2 felony, shall be tried as an adult.

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I certify that the attached Act originated in the

SENATE as Bill No. 28

_____
Secretary of the Senate

_____
President of the Senate

Attest:

_____
Secretary of the Senate

_____
Speaker of the House

Attest:

_____
Chief Clerk

Senate Bill No. 28
File No. ____
Chapter No. _____

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State