



October 11, 2017

Secretary Krebs  
Secretary of State  
500 E. Capitol Avenue  
Pierre, SD 57501

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S.D. SEC. OF STATE

Dear Secretary Krebs,

This office received an initiated measure to allow certain elections to be conducted through a vote by mail process. The initiated measure requires a prison or jail cost estimate statement because the measure creates two Class 2 misdemeanors and two Class 6 felonies.

Enclosed is a copy of the initiated measure, in final form, that was submitted to this office. In accordance with SDCL 2-1-19 I hereby submit the Legislative Research Council's prison or jail cost estimate with respect to this initiated measure. It is my understanding that the Attorney General's statement pursuant to 12-13-25.1 has been filed directly with you by the Office of the Attorney General.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Hancock". The signature is fluid and cursive, with a large initial "J" and "H".

Jason Hancock  
Director

jml/ajh  
Enclosures

CC: The Honorable Marty Jackley, Attorney General



# PRISON/JAIL POPULATION COST ESTIMATE STATEMENT

LEGISLATIVE RESEARCH COUNCIL

## INITIATED MEASURE

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### AN INITIATED MEASURE TO ALLOW CERTAIN ELECTIONS TO BE CONDUCTED THROUGH A VOTE-BY-MAIL PROCESS.

Section 22 of this initiated measure creates two Class 2 misdemeanors and two Class 6 felonies. Under this initiated measure any person who opens, examines, or makes a communication about a ballot before counting votes begins is guilty of a Class 2 misdemeanor. Additionally, any person who intentionally disposes of a ballot in a way not authorized by the initiated measure is guilty of a Class 2 misdemeanor. Any person who forges another voter's signature or unduly influences another voter is guilty of a Class 6 felony. Finally, any person who intentionally fails to deliver the ballot, intentionally fails to return identification and secrecy envelopes with the ballot, or tampers with the envelopes or ballot is guilty of a Class 6 felony.

To determine any potential impact of this initiated measure the Legislative Research Council looked at the following existing South Dakota statutes;

- 12-19-10. Preservation and delivery of ballot to precinct superintendent--Comparison of statement and application--Deposit in ballot box--Unopened ballots--Unauthorized examination as misdemeanor;
- 12-19-14. Unlawful disposition of ballot or ballot link as misdemeanor;
- 12-19-33. Failure to deliver or tampering with ballot as felony;
- 12-20-20. Sealing of ballot boxes after deposit of counted ballots--Violation as misdemeanor;
- 12-26-10. Threats or intimidation to prevent public assembly of electors as misdemeanor--Hindering attendance at meeting;
- 12-26-12. Persecution, threats, or intimidation to influence vote as misdemeanor--Obstruction of voter on way to polls; and
- 12-26-23. Tampering with ballots, ballot box, or poll list as felony.

In the last six years there have been zero convictions under any of the above South Dakota statutes. The Legislative Research Council also looked to Colorado, which uses a vote-by-mail process. Section 1-13-803 of Colorado Revised Statutes Annotated makes any person who knowingly violates the laws relating to vote-by-mail is subject to a fine of up to five thousand dollars, up to

eighteen months in the county jail, or both. In the last six years, Colorado has had no charges or convictions under section 1-13-803.

Oregon also uses a vote-by-mail process. Since 2001, there have been fifteen convictions in Oregon for violating laws relating to vote-by-mail, averaging approximately one conviction per year. Information is not available on what statutes were violated, however, these convictions generally involved the following:

1. Improper handling of the ballots;
2. Forging another voter's signature or use of undue influence to influence a voter to vote in a particular manner or to refrain from voting;
3. Intentionally disposing of a ballot in a way not authorized by law; or
4. Tampering with another voter's ballot, or intentionally failing to deliver/return the ballot on behalf of another voter.

The Legislative Research Council determined the average yearly rate of convictions per the number of registered voters in Oregon. When this rate is compared to the number of current registered voters in South Dakota, South Dakota could expect three convictions of vote-by-mail laws over a ten year period.

In South Dakota the average Class 2 misdemeanor serves 2 days in jail at a cost of \$105.40 per day. The average Class 6 felony serves 215 days in prison at a cost of \$43.86 per day.

Given the low rate of convictions for similar crimes in South Dakota and other states, the likely one-year prison and jail cost is zero. Over a ten year period, the maximum likely cost, based on Oregon data, would involve one Class 2 misdemeanor and two Class 6 felony convictions, for a 10-year prison cost of \$18,860, a 10-year jail cost of \$211, and a total cost of \$19,071.

Approved: \_\_\_\_\_

Director, Legislative Research Council

Date: 10/10/17