

Committee: Senate Judiciary

Thursday, February 18, 2021 8:00 AM

Roll Call

Present: Sen. Diedrich, Sen. Duhamel, Sen. Johns, Sen. Rusch, Sen. Schoenbeck, Sen. Wheeler, and Sen. Rohl

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Duhamel

MOTION: TO APPROVE THE MINUTES OF TUESDAY, FEBRUARY 16TH

Moved by: Rohl
Second by: Diedrich
Action: Prevailed by voice vote

SB 163 : revise the eligibility requirements for compassionate parole under certain circumstances.

Proponents: Red Dawn Foster, Senator
Justin Bell, South Dakota Association of Criminal Defense Lawyers, Rapid City
Ross B Garelick Bell, Oglala Sioux Tribe, Pine Ridge
Jett Jonelis, Advocacy Manager, American Civil Liberties Union
Opponents: Doug Clark, Deputy Secretary, Department of Corrections
Paul Bachand, South Dakota State's Attorneys Association

The gavel was passed to Chairman Rusch.

MOTION: AMEND SB 163

163A

On page 1, line 20, of the Introduced bill, after "inmates" insert " who are at an increased risk of illness due to an existing underlying medical condition as defined by the Centers for Disease Control and Prevention and"

Moved by: Schoenbeck
Second by: Johns
Action: Prevailed by voice vote

MOTION: DEFER SB 163 TO THE 41ST LEGISLATIVE DAY

Moved by: Schoenbeck
Second by: Diedrich
Action: Prevailed by Majority Members Elect (5-1-1-0)

Voting Yes: Diedrich, Johns, Schoenbeck, Wheeler, and Rohl

Voting No: Rusch

Excused: Duhamel

SB 164 : provide for a formal process criminal forfeiture.

Proponents: Senator Tim Johns
 Don Haggard, Americans For Prosperity, Arlington
 Lee Mcgrath, Institute for Justice, Minneapolis (Handout(s) 3)
 Justin Bell, South Dakota Association of Criminal Defense Lawyers, Rapid City
 (Handout(s) 1)
 Charles McGuigan, Deputy Director, Attorney General Office, Pierre, South
 Dakota
 Tonchi Weaver, South Dakota Citizens for Liberty, Rapid City

MOTION: AMEND SB 164

164B

On page 1, line 1, of the Introduced bill, delete "provide for a formal " and insert "modify the "

On page 1, line 1, delete "criminal " and insert "for civil "

On the Introduced bill, delete everything after the enacting clause and insert:

"

Section 1. That § 34-20B-70 be AMENDED.

34-20B-70. Property subject to forfeiture.

The following are subject to forfeiture pursuant to chapter 23A-49 and no property right exists in them:

- (1) All controlled drugs and substances and marijuana which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this chapter or chapter 22-42;
- (2) All raw materials, products, and equipment of any kind which are used or intended for use, in manufacturing, compounding, or processing, importing, or exporting any controlled drug or substance or marijuana in excess of one-half pound in violation of the provisions of this chapter or chapter 22-42;
- (3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);
- (4) All conveyances including aircraft, vehicles, or vessels, ~~which transport, possess, or conceal, or which are used, or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, unlawful distribution or possession, or concealment of~~ with the intent to distribute marijuana in excess of one-half pound or any quantity of any other property described in subdivision (1) or (2), ~~except as provided in §§ 34-20B-71 to 34-20B-73, inclusive. This subdivision includes those instances in which a conveyance transports, possesses or conceals marijuana or a controlled substance as described herein without the necessity of showing that the conveyance is specifically being used to transport, possess, or conceal or facilitate the transportation, possession, or concealment of marijuana or a controlled substance in aid of any other offense;~~
- (5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;
- (6) Any funds or other things of value used for the purposes of unlawfully purchasing, attempting to purchase, distributing, or attempting to distribute any controlled drug or substance ~~or marijuana in an amount intended for distribution and not for personal use, and marijuana in excess of one-half pound; or~~
- (7) Any assets, interest, profits, income, and proceeds acquired or derived from the unlawful purchase, attempted purchase, distribution, or attempted distribution of

any controlled drug or substance or marijuana in an amount intended for distribution and not for personal use, and marijuana in excess of one-half pound.

Property described in subdivision (1) shall be deemed contraband and shall be summarily forfeited to the state, property described in subdivisions (2), (3), (5), (6), and (7) is subject to forfeiture under the terms of § 23A-49-14, and property described in subdivision (4) is subject to forfeiture under the terms of § 23A-49-15.

"

Moved by: Wheeler
 Second by: Rohl
 Action: Prevailed by voice vote

MOTION: DO PASS SB 164 AS AMENDED

Moved by: Wheeler
 Second by: Rohl
 Action: Prevailed by Majority Members Elect (4-0-3-0)

Voting Yes: Johns, Rusch, Wheeler, and Rohl

Excused: Diedrich, Duhamel, and Schoenbeck

SB 193 : revise certain provisions regarding remote notarization.

Proponents: Senator David Wheeler
 Eric Hanson, self, Sioux Falls
 Rachel Oglesby, Governor's Office
 Roger Tellinghuisen, South Dakota Association of County Officials, Pierre
 Opponents: Jay Kruse, Credit Union Association of the Dakotas, Bismarck

MOTION: AMEND SB 193

193C

On page 2, line 1, of the Introduced bill, delete "identify " and insert "identity "

On page 2, line 8, of the Introduced bill, after "represents" delete ", or is employed by the firm or business that represents,"

On page 2, line 15, of the Introduced bill, after "communicate" insert " in real-time"

Moved by: Wheeler
 Second by: Johns
 Action: Prevailed by voice vote

MOTION: DO PASS SB 193 AS AMENDED

Moved by: Johns
 Second by: Rohl
 Action: Prevailed by Majority Members Elect (5-0-2-0)

Voting Yes: Duhamel, Johns, Rusch, Wheeler, and Rohl

Excused: Diedrich and Schoenbeck

SB 166 : revise provisions regarding hate crimes.

Proponents: Red Dawn Foster, Senator (Handout(s) 2)

MOTION: AMEND SB 166

166B

On the previously adopted amendment (166A), On page 1, line 18, after "felony." delete "Section 2. That a NEW SECTION be added:"

On the previously adopted amendment (166A), On page 1, line 19, after "added:" delete "23-6-4. 1 "

On the previously adopted amendment (166A), On page 1, line 19, after "23-6-4.1 " delete "Bias-motivated crime reporting requirements."

On the previously adopted amendment (166A), On page 1, line 20, after "requirements." delete "All law enforcement agencies of the state and political subdivisions thereof shall record suspected bias-motivated crimes, including the basis or bases upon which the suspected bias-motivated crime occurred. In a manner prescribed by the director, all law enforcement agencies in the state shall report suspected bias-motivated crime data on a quarterly basis to the bureau. The director shall ensure that bias-motivated crime data from all law enforcement agencies within the state is submitted annually to the Federal Bureau of Investigation for inclusion in the hate crime statistics report. The director shall issue a detailed annual report on statewide bias-motivated crimes, including data on prosecutions under § 22-19B-1. A violation of this section is a Class 2 misdemeanor.

For purposes of this section, bias-motivated crime means a criminal act committed against a person or a person's property in whole or in part because of actual or perceived race, color, ethnicity, religion, ancestry, national origin, disability, sex, sexual orientation, gender identity, or identification as a Native American Two-Spirit, or which is committed for the purpose of restraining that person from exercising the person's rights under the Constitution or laws of this state or of the United States in whole or in part because of actual or perceived race, color, ethnicity, religion, ancestry, national origin, disability, sex, sexual orientation, gender identity, or identification as a Native American Two-Spirit."

On the previously adopted amendment (166A), On page 2, line 12, after "Two-Spirit." delete "Section 3. That a NEW SECTION be added:"

On the previously adopted amendment (166A), On page 2, line 13, after "added:" delete "23-3-39. 9. "

On the previously adopted amendment (166A), On page 2, line 13, after "23-3-39.9. " delete "Bias"

On the previously adopted amendment (166A), On page 2, line 13, after "Bias" delete "-motivated crime training requirements."

On the previously adopted amendment (166A), On page 2, line 14, after "requirements." delete "The initial training of a law enforcement officer shall include training on the proper identification, investigation, documentation, and reporting of bias-motivated crimes as defined in § 23-6-4. 1. This training shall include instruction on all relevant state and federal bias-motivated crime laws, including mandatory reporting of bias-motivated crimes under § 23-6-4. 1. After initial training, each law enforcement officer shall receive annual training on bias-motivated crime. "

Moved by: Rohl

Second by: Wheeler

Action: Prevailed by voice vote

MOTION: DO PASS SB 166 AS AMENDED

Moved by: Rohl

Second by: Wheeler

Action: Prevailed by Majority Members Elect (5-0-2-0)

Voting Yes: Duhamel, Johns, Rusch, Wheeler, and Rohl

Excused: Diedrich and Schoenbeck

SB 148 : establish the crime of torture of a human trafficking victim and provide a penalty therefor.

MOTION: DO PASS SB 148 AS AMENDED

Moved by: Wheeler

Second by: Rohl

Action: Prevailed by Majority Members Elect (5-0-2-0)

Voting Yes: Duhamel, Johns, Rusch, Wheeler, and Rohl

Excused: Diedrich and Schoenbeck

MOTION: ADJOURN

Moved by: Johns

Second by: Rohl

Action: Prevailed by voice vote

Courtney Merchant, Committee Secretary

/s/ HELENE DUHAMEL
Helene Duhamel, Vice-Chair