

Committee: Senate Judiciary

Tuesday, February 23, 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 Rusch

MOTION: TO APPROVE THE MINUTES OF THURSDAY, FEBRUARY 18TH

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

SB 126 : establish the crime of possession, manufacturing, or distribution of obscene dolls.

Proponents: Senator Jessica Castleberry

MOTION: AMEND SB 126

126B

On page 1, line 21, of the Introduced bill, after "any " insert "obscene "
On page 1, line 21, of the Introduced bill, after "doll, " insert "obscene anatomical "
On page 1, line 21, of the Introduced bill, after "or " insert "obscene anatomical "
On page 1, line 21, of the Introduced bill, delete "having features or resembling features of a minor "
and insert "that is intentionally designed to resemble a prepubescent child "
On page 1, line 22, of the Introduced bill, delete "that is intended for " and insert "to entice "
On page 1, line 23, of the Introduced bill, delete "intended for engagement " and insert "to engage "
On page 1, line 23, of the Introduced bill, after "acts" delete ", or intended for simulation of any such
act"
On page 3, line 32, of the Introduced bill, after "film," delete " child-like sex doll,"
On page 4, line 7, of the Introduced bill, after "material," delete " and child-like sex doll,"
On page 4, line 12, of the Introduced bill, delete "Felony" and insert "Misdemeanor or felony"
On page 4, line 11, of the Introduced bill, after "doll--Felony" delete "--Assessment"
On page 4, line 13, of the Introduced bill, delete "Class 4 felony " and insert "Class 1 misdemeanor "
On page 4, line 16, of the Introduced bill, delete "Class 3 " and insert "Class 6 "
On page 6, line 1, of the Introduced bill, delete "Possessing " and insert "Felony conviction of
purchasing or possessing "

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

MOTION: AMEND SB 126

126C

On the previously adopted amendment (126B), On page 1, line 23, after "for " insert " either "
On the previously adopted amendment (126B), On page 1, line 24, after "excitement" delete the
comma

Moved by: Wheeler

Second by: Diedrich
Action: Prevailed by voice vote

MOTION: DO PASS SB 126 AS AMENDED

Moved by: Wheeler
Second by: Duhamel
Action: Prevailed by Majority Members Elect (6-0-1-0)

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

Excused: Schoenbeck

SB 143 : revise the penalty for the ingestion of certain controlled substances.

Presented by: Senator Michael Rohl, Aberdeen
Proponents: Justin Bell, South Dakota Association of Criminal Defense Lawyers, Pierre, South Dakota (Handout(s) 2,3,4)
Emmett Reistroffer, Johnson Properties L.L.C., Sioux Falls
Steve Siegel, South Dakota Trial Lawyers Association, Pierre
Lisa Nolen, Americans for Prosperity, Arlington
Jett Jonelis, Advocacy Manager, American Civil Liberties Union
Opponents: Charles McGuigan, Chief Deputy, Office of the Attorney General
Paul Bachand, South Dakota State's Attorneys Association, Pierre, South Dakota
Alexis Tracy, Clay County State's Attorney

MOTION: DO PASS SB 143

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

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

Voting No: Duhamel and Schoenbeck

SB 173 : revise certain provisions related to competency hearings.

Proponents: Senator David Wheeler (Handout(s) 5)
Justin Bell, South Dakota Association of Criminal Defense Lawyers, Rapid City
Charles McGuigan, Chief Deputy, Office of the Attorney General
Brian Mulder, self, Sioux Falls
Tim Reyhart, self
Opponents: Paul Bachand, South Dakota State's Attorneys Association

MOTION: AMEND SB 173

173A

On page 2, line 14, of the Introduced bill, after "defendant." insert " If the director of the facility determines there is probable cause to believe that the defendant is a danger to self or others if the defendant is released, the director shall include the basis for that

determination in the report and may recommend that the prosecutor file a petition for civil commitment proceedings."

On page 2, after line 31, of the Introduced bill, insert "

Section 3. That a NEW SECTION be added:

23A-42-6. No limitation during time of mental incompetence.

No time during which the defendant is determined to be mentally incompetent to proceed pursuant to chapter 23A-10A is part of any limitation pursuant to this chapter.

"

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

MOTION: DO PASS SB 173 AS AMENDED

Moved by: Wheeler
Second by: Rohl
Action: Prevailed by Majority Members Elect (6-1-0-0)

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

Voting No: Schoenbeck

MOTION: TO TABLE SB 190

Moved by: Rohl
Second by: Johns
Action: Prevailed by Majority Members Elect (6-0-1-0)

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

Excused: Schoenbeck

SB 189 : revise and establish certain provisions related to drug crimes and enforcement and create a penalty therefor.

Proponents: Senator Michael Rohl, Aberdeen (Handout(s) 1)
Emmett Reistroffer, Johnson Properties L.L.C., Sioux Falls
Justin Bell, South Dakota Association of Criminal Defense Lawyers, Rapid City
Opponents: Paul Bachand, South Dakota State's Attorneys Association
Jason Husby, Department of Public Safety
Charles McGuigan, Chief Deputy, Office of the Attorney General

MOTION: AMEND SB 189

189C

On page 5, line 31, of the Introduced bill, after "felony" delete " more than one ounce but"

On page 7, line 6, of the Introduced bill, delete "a minor" and insert " any person under age twenty-one"

On page 7, line 7, of the Introduced bill, delete "a minor" and insert " any person under the age of twenty-one years"

On page 7, line 8, of the Introduced bill, delete " a minor" and insert " any person under the age of twenty-one years"

- On page 7, line 8, of the Introduced bill, delete "a minor" and insert " any person under the age of twenty-one years"
- On page 7, line 9, of the Introduced bill, delete "a minor" and insert " any person under the age of twenty-one years"
- On page 7, line 10, of the Introduced bill, delete "a minor" and insert " any person under the age of twenty-one years"
- On page 7, line 11, of the Introduced bill, delete "a minor" and insert " any person under the age of twenty-one years"
- On page 7, line 12, of the Introduced bill, delete "a minor" and insert " any person under the age of twenty-one years"
- On page 7, line 12, of the Introduced bill, delete "a minor" and insert " any person under the age of twenty-one years"
- On page 7, line 14, of the Introduced bill, delete "a minor " and insert " any person under the age of twenty-one years "
- On page 7, line 15, of the Introduced bill, after "34-20G." delete "Section 9. That a NEW SECTION be added:"
- On page 7, line 16, of the Introduced bill, after "added: " delete "Possession of certain number of marijuana plants prohibited--Degrees according to number."
- On page 7, line 18, of the Introduced bill, after "number." delete "It is a Class 6 felony to possess four to twelve marijuana plants. It is a Class 4 felony to possess more than twelve marijuana plants. This section does not apply to any person licensed or registered with the state to possess marijuana plants who acts in compliance with the authorizing law. This section does not apply to any person possessing marijuana plants complying with the provisions of chapter 34-20G."
- On page 7, after line 22, of the Introduced bill, insert "
Section 9. That a NEW SECTION be added:
 22-42-7.3. Possession, attempted possession, and ingestion of marijuana or marijuana concentrate by person under twenty-one years prohibited--Violation as misdemeanor.
It is a Class 2 misdemeanor for any person under the age of twenty-one years to:
 (1) Possess or attempt to possess one ounce or less of marijuana; or
 (2) Ingest marijuana, marijuana concentrate, or any derivative of marijuana for purposes of becoming intoxicated, notwithstanding §§ 22-42-5.1 and 22-42-15.
It is a Class 1 misdemeanor for any person under the age of twenty-one years to possess or attempt to possess eight grams or less of marijuana concentrate.
This section does not apply to any person under the age of twenty-one years who possesses, attempts to possess, or ingests marijuana, marijuana concentrate, or any derivative of marijuana complying with the provisions of chapter 34-20G.
 "
- On page 8, line 7, of the Introduced bill, after "distribute, " delete "more than eight grams but"
- On page 8, line 22, of the Introduced bill, delete "a minor" and insert " any person under age twenty-one"
- On page 8, line 23, of the Introduced bill, delete " a minor" and insert " any person under the age of twenty-one years"
- On page 8, line 24, of the Introduced bill, delete " a minor" and insert " any person under the age of twenty-one years"
- On page 8, line 25, of the Introduced bill, delete " a minor" and insert " any person under the age of twenty-one years"
- On page 8, line 25, of the Introduced bill, delete " a minor" and insert " any person under the age of twenty-one years"
- On page 8, line 26, of the Introduced bill, delete " a minor" and insert " any person under the age of twenty-one years"
- On page 8, line 27, of the Introduced bill, delete " a minor" and insert " any person under the age of twenty-one years"

- On page 8, line 28, of the Introduced bill, delete " a minor" and insert " any person under the age of twenty-one years"
- On page 8, line 29, of the Introduced bill, delete " a minor" and insert " any person under the age of twenty-one years"
- On page 8, line 30, of the Introduced bill, delete "a minor" and insert " any person under the age of twenty-one years"
- On page 10, line 7, of the Introduced bill, after "session." delete "Section 16. That a NEW SECTION be added:"
- On page 10, line 8, of the Introduced bill, after "added:" delete "Presumption arising from chemical analysis of bodily fluids--Delta-9 tetrahydrocannabinol."
- On page 10, line 10, of the Introduced bill, after "tetrahydrocannabinol." delete "In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle while under the influence of marijuana, a violation of § 22-16-41, or a violation of § 22-18-36, the amount of delta-9 tetrahydrocannabinol in the defendant's blood at the time of the alleged offense as shown by chemical analysis of the defendant's blood gives rise to the following presumptions:
- (1) If there was at that time less than 15 nanograms of delta-9 tetrahydrocannabinol per milliliter in whole blood, it is presumed that the defendant was not under the influence of delta-9-tetrahydrocannabinol; or
 - (2) If there was at that time 15 nanograms or more of delta-9 tetrahydrocannabinol per milliliter in whole blood, such fact does not give rise to any presumption that the defendant was or was not under the influence of delta-9 tetrahydrocannabinol, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant."
- On page 10, line 23, of the Introduced bill, after "defendant." delete "Section 17. That § 32-23-8 be AMENDED."
- On page 10, line 24, of the Introduced bill, after "AMENDED." delete "32-23-8. "
- On page 10, line 24, of the Introduced bill, after "32-23-8. " delete "Other evidence on being under the influence of alcoholic beverage."
- On page 10, line 25, of the Introduced bill, after "beverage." delete "The provisions of § §§ 32-23-7 and 32-23-7. 1 may not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of an alcoholic beverage or delta-9 tetrahydrocannabinol."
- On page 10, line 29, of the Introduced bill, after "tetrahydrocannabinol." delete "Section 18. That a NEW SECTION be added:"
- On page 11, line 1, of the Introduced bill, after "added:" delete "Saliva tests at temporary roadblocks prohibited under certain circumstances."
- On page 11, line 3, of the Introduced bill, after "circumstances." delete "No law enforcement officer may request that a person occupying a motor vehicle stopped at the temporary roadblock submit to a test designed to detect the presence of drugs in the person's saliva unless specific and articulable facts taken together with rational inferences from those facts reasonably warrant the request."

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

MOTION: DO PASS SB 189 AS AMENDED

Moved by: Rohl
Second by: Wheeler
Action: Prevailed by Majority Members Elect (5-1-1-0)

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

Voting No: Duhamel

Excused: Schoenbeck

MOTION: ADJOURN

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

Courtney Merchant, Committee Secretary

/s/ ARTHUR RUSCH
Arthur Rusch, Chair