Committee: House Judiciary Wednesday, March 02, 2022 10:00 AM

Roll Call
Present: Rep. Aylward, Rep. Barthel, Rep. Cwach, Rep. Odenbach, Rep. Sue Peterson, Rep. Pischke, Rep. Pourier, Rep. Rehfeldt, Rep. Reimer, Rep. Soye, Rep. St. John, Rep. Stevens, and Rep. Hansen

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Representative Hansen

MOTION: TO APPROVE THE MINUTES OF MONDAY, FEBRUARY 28TH

Moved by: Pischke
Second by: Rehfeldt
Action: Prevailed by voice vote

SB 107 : provide for the remote witnessing of certain legal instruments.

Presented by: Representative Mike Stevens, District 18
Proponents: Andrew L. Fergel, State Bar of South Dakota, Pierre
Tom Simmons, self, Vermillion
Bobbie Thury, self, Sioux Falls
Erik Nelson, AARP, Sioux Falls
Jacob Parsons, South Dakota Association of Healthcare Organizations, Sioux Falls

MOTION: DO PASS SB 107

Moved by: Barthel
Second by: Rehfeldt
Action: Prevailed by Majority Members Elect (8-3-2-0)

Voting Yes: Aylward, Barthel, Cwach, Pischke, Pourier, Rehfeldt, St. John, and Hansen

Voting No: Odenbach, Sue Peterson, and Soye

Excused: Reimer and Stevens

SB 159 : exempt any person suffering from a severe mental illness from capital punishment.

Presented by: Senator Timothy Johns, District 31
Proponents: Steve Manlove, MD, self, Rapid City
Justin Bell, South Dakota Association of Criminal Defense Lawyers, Rapid City (Handout(s) 1)
Steve Siegel, South Dakota Trial Lawyers Association, Sioux Falls
Chris Motz, South Dakota Catholic Conference, Sioux Falls
Phyllis Arends, self, Sioux Falls
Opponents: Jason Ravnsborg, Attorney General, State of South Dakota
Dr. Thomas Schacht, South Dakota Attorney General, Johnson City, TN
Grant M. Flynn, South Dakota State's Attorneys Association, Pierre

MOTION: **AMEND SB 159**

159C

On page 1, line 19, of the Senate Engrossed bill, after "term" delete the comma
On page 1, line 19, of the Senate Engrossed bill, delete the comma and insert " only"
Moved by: Aylward
Second by: Pischke
Action: Prevailed by voice vote

MOTION: **DO PASS SB 159 AS AMENDED**

Moved by: Aylward
Second by: Pischke
Action: Prevailed by Majority Members Elect (8-3-2-0)

Voting Yes: Aylward, Barthel, Cwach, Pischke, Pourier, Rehfeldt, St. John, and Hansen

Voting No: Odenbach, Soye, and Stevens

Excused: Sue Peterson and Reimer

SB 120 : include intentionally manipulated images or recordings in the crime of invasion of privacy by recording.

Presented by: Senator Jessica Castleberry, District 35
Proponents: Dianna Miller, South Dakota Network Against Family Violence, Sioux Falls
Opponents: Terra Larson, SD Association of Criminal Defense Lawyers, Pierre

MOTION: **DO PASS SB 120**

Moved by: Sue Peterson
Second by: Rehfeldt
Action: Prevailed by Majority Members Elect (12-0-1-0)

Voting Yes: Aylward, Barthel, Cwach, Odenbach, Sue Peterson, Pischke, Pourier, Rehfeldt, Soye, St. John, Stevens, and Hansen

Excused: Reimer

SB 151 : revise the automatic removal of certain convictions from a background check record.

Presented by: Representative Jess Olson, District 34
Proponents: Senator Michael Rohl, District 1 (Handout(s) 2)
Terra Larson, SD Association of Criminal Defense Lawyers, Pierre
Ned Horsted, Cannabis Industry Association of SD, Sioux Falls
Joanna Lawler, self, Rapid City
Steve Siegel, South Dakota Trial Lawyers Association, Sioux Falls
Lisa Nolen, Americans For Prosperity, Sioux Falls
Martha Rossiter, Self, Rapid City
Opponents: Grant M. Flynn, South Dakota State's Attorneys Association, Pierre

Bridget Coppersmith, Department of Corrections
Senator Helene Duhamel, District 32

MOTION: **DO PASS SB 151**

Moved by: Pischke
Second by: Aylward
Action: Prevailed by Majority Members Elect (10-3-0-0)

Voting Yes: Aylward, Cwach, Odenbach, Sue Peterson, Pischke, Pourier, Rehfeldt, Reimer, Soye, and St. John

Voting No: Barthel, Stevens, and Hansen

SB 81 : **revise the definition of sexual contact.**

Others: Roxanne Hammond, self

MOTION: **AMEND SB 81**

81B

On page 1, line 10, of the Introduced bill, after "or" insert " upper"
Moved by: Barthel
Second by: Rehfeldt
Action: Failed by voice vote

MOTION: **AMEND SB 81**

81A

On page 1, line 1, of the Introduced bill, after "contact" insert " for purposes of sexual contact with a child under eighteen by a person in a position of authority"
On page 1, line 3, of the Introduced bill, after "Dakota:" delete "Section 1. That § 22-22-7. 1 be AMENDED:"
On page 1, line 4, of the Introduced bill, after "AMENDED:" delete "22-22-7. 1. As used in this chapter, the term, sexual contact, means any touching with the intent to arouse or gratify the sexual desire of either party, not amounting to rape, whether or not through clothing or other covering, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party. :
(1) Breasts of a female; or
(2) Genitalia, anus, buttocks, or inner thighs of any person.
Practitioners of the healing arts lawfully practicing within the scope of their practice, which determination shall be is conclusive as against the state and shall must be made by the court prior to trial, are not included within the provisions of this section. In any pretrial proceeding under this section, the prosecution has the burden of establishing probable cause."
On page 1, after line 15, of the Introduced bill, insert: "
Section 1. That § 22-22-7.8 be AMENDED:
22-22-7.8. A person is guilty of a Class 6 felony if the person:
(1) (a) Is at least eighteen years of age; and
(b) Is at least five years older than the victim;
(2) Is in a position of authority, as defined in this section; and

(3) Knowingly engages in sexual contact, or touches the buttocks or inner thighs with the intent to arouse or gratify the sexual desire of either party, with another who is:
(a) Less than eighteen years of age; and
(b) Not the person's spouse.

For purposes of this section, a person is in a position of authority if the person, at the time of the sexual contact, or within the one-hundred-twenty-day period immediately preceding the sexual contact, interacts, no matter how briefly, with the victim as a coach, child care provider, disability services provider, guardian ad litem, health care provider, law enforcement officer, mental health counselor, probation officer, religious leader, school administrator, social worker, teacher, therapist, or youth leader.

Notwithstanding § 23A-42-2, a charge pursuant to this section may be brought at any time before the victim reaches the age of twenty-five or within seven years from the commission of the crime, whichever is longer."

Moved by: Soye
Second by: Reimer
Action: Prevailed by roll call vote (7-6-0-0)

Voting Yes: Aylward, Odenbach, Sue Peterson, Reimer, Soye, St. John, and Hansen

Voting No: Barthel, Cwach, Pischke, Pourier, Rehfeldt, and Stevens

MOTION: DO PASS SB 81 AS AMENDED

Moved by: Sue Peterson
Second by: Soye
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION: AMEND THE PENDING AMENDMENT

81C

On the previously adopted amendment (81A), On page 1, line 22, after "or" insert " upper"

Moved by: Pischke
Second by: Barthel
Action: Prevailed by voice vote

MOTION: DO PASS SB 81 AS AMENDED

Moved by: Barthel
Second by: Sue Peterson
Action: Prevailed by Majority Members Elect (12-1-0-0)

Voting Yes: Aylward, Barthel, Odenbach, Sue Peterson, Pischke, Pourier, Rehfeldt, Reimer, Soye, St. John, Stevens, and Hansen

Voting No: Cwach

MOTION: **ADJOURN**

Moved by: Stevens
Second by: Pischke
Action: Prevailed by voice vote

Gail Tennant, Committee Secretary

/s/ JON HANSEN
Jon Hansen, Chair