

Committee: House Judiciary

Monday, February 06, 2023 10:00 AM

Roll Call

Present: Rep. Fitzgerald, Rep. Kull, Rep. Massie, Rep. Odenbach, Rep. Pourier, Rep. Reimer, Rep. Reisch, Rep. Soye, Rep. St. John, Rep. Teunissen, Rep. Tordsen, 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 FRIDAY, FEBRUARY 03RD

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

HB 1156 : enact the Uniform Electronic Recordation of Custodial Interrogations Act.

Presented by: Representative Tamara St. John
Proponents: Justin Bell, The Innocence Project, New York, NY
Sara Jones, Great North Innocence Project, Minneapolis, MN
Michael Smathers, Albuquerque Police Department, Albuquerque, NM
Jane Sternecky, Uniform Law Commission, Chicago, IL (Handout(s) 1)
James Trainum, Detective (Ret.), DC Metropolitan Police Department
Terra Larson, South Dakota Association of Criminal Defense Lawyers, Pierre
Opponents: Grant M. Flynn, South Dakota State's Attorneys Association, Pierre
Jenna R Severyn, South Dakota Police Chiefs Association, Fort Pierre
Staci Ackerman, South Dakota Sheriffs' Association, Eureka

MOTION: AMEND HB 1156

1156A

- On page 2, line 4, of the Introduced bill, after "interrogation" insert " at a place of detention"
On page 2, line 6, of the Introduced bill, after "entirety" insert ", by audio means at a minimum,"
On page 2, line 7, of the Introduced bill, after "felony." delete " A custodial interrogation at a jail, police station, sheriff's station, holding cell, or custodial or detention facility must be recorded by audio and video means. A custodial interrogation at any other place of detention must be recorded by audio means at a minimum."
On page 2, line 11, of the Introduced bill, delete "(b) If a law enforcement officer conducts a custodial interrogation to which subdivision (a) applies without electronically recording it in its entirety, the officer shall prepare a written report explaining the reason for not complying with this section and summarizing the custodial interrogation process and the individual's statements.
(c) A law enforcement officer shall prepare the report required by subdivision (b) as soon as practicable after completing the interrogation.
(d) As soon as practicable, a law enforcement officer conducting a custodial interrogation outside a place of detention shall prepare a written report explaining the decision to interrogate outside a place of detention and summarizing the custodial interrogation process and the individual's statements made outside a place of detention.
(e)" and insert "(b)"

On page 3, line 2, of the Introduced bill, after "circumstances." delete " The law enforcement officer conducting the interrogation shall record electronically an explanation of the exigent circumstances before conducting the interrogation, if feasible, or as soon as practicable after the interrogation is completed."

On page 3, line 28, of the Introduced bill, after "23A:" delete "(a) "

On page 4, line 1, of the Introduced bill, after "feasible." delete "(b) If both audio and video recording of a custodial interrogation are required by section 3 of this Act, recording may be by audio alone if a technical problem in the video recording equipment prevents video recording, despite reasonable maintenance of the equipment, and timely repair or replacement is not feasible."

(c) If both audio and video recording of a custodial interrogation are required by section 3 of this Act, recording may be by video alone if a technical problem in the audio recording equipment prevents audio recording, despite reasonable maintenance of the equipment, and timely repair or replacement is not feasible."

On page 4, line 20, of the Introduced bill, delete "shall " and insert "may "

On page 4, line 27, of the Introduced bill, after "jury." delete "Section 12. That a NEW SECTION be added to title 23A:

"

On page 4, line 28, of the Introduced bill, after "23A:" delete "Each law enforcement agency in this state shall establish and enforce procedures to ensure that the electronic recording of all or part of a custodial interrogation is identified, accessible, and preserved throughout the length of any resulting sentence, including any period of probation or parole extending through final discharge."

On page 5, line 3, of the Introduced bill, after "discharge." delete "Section 13. That a NEW SECTION be added to title 23A:

"

On page 5, line 4, of the Introduced bill, after "23A:" delete "(a) Each law enforcement agency that is a governmental entity of this state shall adopt and enforce policies and procedures to implement this chapter through rules promulgated in accordance with chapter 1-26.

(b) The policies and procedures adopted under subdivision (a) of this section must address the following topics:

(1) How an electronic recording of a custodial interrogation must be made;

(2) The collection and review of electronic recordings, or the absence thereof, by supervisors in each law enforcement agency;

(3) The assignment of supervisory responsibilities and a chain of command to promote internal accountability;

(4) A process for explaining non-compliance with procedures and imposing administrative sanctions for a failure to comply that is not justified;

(5) A supervisory system expressly imposing on individuals in specific positions a duty to ensure adequate staffing, education, training, and material resources to implement this chapter; and

(6) A process for preserving the chain of custody of an electronic recording.

(c) The policies and procedures adopted under subsection (b)(1) for a video recording must contain standards for the angle, focus, and field of vision of a recording device that reasonably promotes accurate recording of a custodial interrogation at a place of detention and reliable assessment of its accuracy and completeness."

On page 5, line 27, of the Introduced bill, delete " under section 13 of this Act to ensure compliance with" and insert " by"

Moved by: St. John

Second by: Soye

Action: Prevailed by voice vote

MOTION: DO PASS HB 1156 AS AMENDED

Moved by: Pourier

Second by: Odenbach

Action: Failed by Majority Members Elect (6-6-1-0)

Voting Yes: Odenbach, Pourier, Soye, St. John, Tordsen, and Hansen

Voting No: Fitzgerald, Kull, Massie, Reisch, Teunissen, and Stevens

Excused: Reimer

MOTION: DO PASS HB 1156 AS AMENDED

Moved by: Pourier

Second by: Tordsen

Action: Failed by Majority Members Elect (6-7-0-0)

Voting Yes: Odenbach, Pourier, Soye, St. John, Tordsen, and Hansen

Voting No: Fitzgerald, Kull, Massie, Reimer, Reisch, Teunissen, and Stevens

MOTION: DEFER HB 1156 TO THE 41ST LEGISLATIVE DAY

Moved by: Tordsen

Second by: Reimer

Action: Prevailed by Majority Members Elect (7-6-0-0)

Voting Yes: Fitzgerald, Kull, Massie, Reimer, Reisch, Teunissen, and Stevens

Voting No: Odenbach, Pourier, Soye, St. John, Tordsen, and Hansen

HB 1194 : revise the interest rate on garnishments.

Presented by: Representative Mary J. Fitzgerald

Proponents: James W. Olson, self, Deadwood

Louie LaLonde, self, Deadwood

Opponents: Drew Duncan, South Dakota Collectors Association, Brookings

MOTION: DEFER HB 1194 TO THE 41ST LEGISLATIVE DAY

Moved by: Stevens

Second by: Reisch

Action: Prevailed by Majority Members Elect (9-4-0-0)

Voting Yes: Kull, Massie, Odenbach, Reimer, Reisch, Soye, Tordsen, Stevens, and Hansen

Voting No: Fitzgerald, Pourier, St. John, and Teunissen

HB 1222 : limit the liability of permit and certificate-issuing entities and certified use of force instructors.

Presented by: Representative Kevin D. Jensen

Proponents: Dayle Hammock, self, Spearfish (Handout(s) 2)

Representative Rocky Blare

MOTION: AMEND HB 1222

1222A

On page 1, line 12, of the Introduced bill, after "shall" insert ", at least once every six months,"

On page 1, line 12, of the Introduced bill, delete "at least one" and insert " a"

On page 1, line 12, of the Introduced bill, after "course " insert "that is "

On page 1, line 13, of the Introduced bill, delete "per year, " and insert "and "

On page 1, line 14, of the Introduced bill, remove the overstrikes from " -"

On page 1, line 16, of the Introduced bill, delete "establish the" and insert ":

(1) Establish"

On page 1, line 16, of the Introduced bill, after "for " insert "instructors seeking "

On page 1, line 16, of the Introduced bill, delete "a " and insert "an initial "

On page 1, line 16, of the Introduced bill, delete " and to establish" and insert ":

(2) Establish course standards for instructors seeking the renewal of a certificate;

(3) Establish"

On page 1, line 18, of the Introduced bill, after "course" insert "; and

(4) Provide for implementation of the course"

Moved by: Odenbach

Second by: Soye

Action: Prevailed by voice vote

MOTION: DO PASS HB 1222 AS AMENDED

Moved by: Stevens

Second by: St. John

Action: Prevailed by Majority Members Elect (11-2-0-0)

Voting Yes: Kull, Massie, Odenbach, Reimer, Reisch, Soye, St. John, Teunissen, Tordsen, Stevens, and Hansen

Voting No: Fitzgerald and Pourier

HB 1229 : identify child placement preferences.

Presented by: Representative Peri Pourier (Handout(s) 3)

Proponents: Lloyd Guy, Rosebud Sioux Tribe

Tatewin Means, Thunder Valley Community Development Corp., Porcupine

Alicia Mousseau, Oglala Sioux Tribe, Pine Ridge

Myrna Thompson, Sisseton-Wahpeton Oyate, Sisseton (Handout(s) 4)

Ross B. Garelick Bell, Yankton Sioux Tribe, Wagner

Kellen Returns From Scout Great Plains Tribal Chairman's Association, Rapid City

Jessica Morson, Flandreau Santee Sioux Tribe, Flandreau

Opponents: Jeremy Lippert, Department of Social Services

MOTION: DO PASS HB 1229

Moved by: Pourier

Second by: St. John

Action: Failed by Majority Members Elect (5-8-0-0)

Voting Yes: Pourier, St. John, Teunissen, Tordsen, and Stevens

Voting No: Fitzgerald, Kull, Massie, Odenbach, Reimer, Reisch, Soye, and Hansen

MOTION: DEFER HB 1229 TO THE 41ST LEGISLATIVE DAY

Moved by: Reimer

Second by: Kull

Action: Prevailed by Majority Members Elect (10-3-0-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Reimer, Reisch, Soye, Teunissen, Tordsen, and Hansen

Voting No: Pourier, St. John, and Stevens

MOTION: ADJOURN

Moved by: Stevens

Second by: Soye

Action: Prevailed by voice vote

Janelle Toman, Committee Secretary

/s/ JON HANSEN
Jon Hansen, Chair