

Committee: House Judiciary

Wednesday, February 15, 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 MONDAY, FEBRUARY 13TH

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

HB 1160 : limit probation for offenders with four or more felony convictions.

MOTION: DO PASS HB 1160

Moved by: Stevens
Second by: Odenbach
Action: Prevailed by Majority Members Elect (13-0-0-0)

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

HB 1170 : establish mandatory sentences for certain driving while under the influence violations.

MOTION: DO PASS HB 1170

Moved by: Odenbach
Second by: Soye
Action: Prevailed by Majority Members Elect (8-5-0-0)

Voting Yes: Fitzgerald, Odenbach, Reimer, Soye, St. John, Teunissen, Tordsen, and Hansen

Voting No: Kull, Massie, Pourier, Reisch, and Stevens

SB 98 : identify the means of conducting a criminal background check for the renewal of a gold card or an enhanced permit to carry a concealed pistol.

Presented by: Representative Brandei Schaeffbauer
Proponents: Representative Kevin D. Jensen
Brian Gosch, National Rifle Association, Fairfax, VA

MOTION: DO PASS SB 98

Moved by: Stevens

Second by: Kull
Action: Prevailed by Majority Members Elect (12-1-0-0)

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

Voting No: Pourier

HB 1220 : provide that a female subjected to an unlawful abortion may not be held criminally liable.

Presented by: Representative Rebecca Reimer
Proponents: Senator Jessica Castleberry
Rachel Oglesby, Governor's Office
Dale Allen Bartscher, South Dakota Right to Life, Rapid City (Handout(s) 1)
Charles McGuigan, Attorney General
Lisa Gennaro, Concerned Women For America, Alexandria, VA
Michael G. Pauley, South Dakota Catholic Conference, Rapid City

MOTION: AMEND HB 1220

1220A

On page 1, line 1, of the Introduced bill, delete " subjected to" and insert " who undergoes"
On page 1, line 5, of the Introduced bill, delete " is subjected to" and insert " undergoes"

Moved by: Pourier
Second by: Tordsen
Action: Prevailed by voice vote

MOTION: DO PASS HB 1220 AS AMENDED

Moved by: Fitzgerald
Second by: Pourier
Action: Prevailed by Majority Members Elect (13-0-0-0)

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

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1220 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

HB 1131 : prevent the imposition or enforcement of extreme risk protection orders and to provide a penalty therefor.

Presented by: Representative Aaron Aylward
Proponents: Jordan D. Mason, State Freedom Caucus Network, Washington, DC
Colton Moorhead, self, Rapid City
Iain Graeme, Gun Owners of America, Springfield, VA
Anthony Mirzayants, Young Americans for Liberty, Austin
Liam Slavin, self, Rapid City
Annaliese Wollman, self, Custer
Opponents: Jason Ketterling, Department of Public Safety

Richard Tieszen, South Dakota Sheriffs' Association, Eureka
 Dean Krogman, State Medical Association SD, Sioux Falls
 Grant M. Flynn, South Dakota State's Attorneys Association, Pierre
 Julie Parker, self, Sioux Falls

MOTION: DEFER HB 1131 TO THE 41ST LEGISLATIVE DAY

Moved by: Stevens
 Second by: Reisch
 Action: Was not acted on.

MOTION: SUBSTITUTE MOTION: DO PASS HB 1131

Moved by: Odenbach
 Second by: Soye
 Action: Failed by Majority Members Elect (3-9-1-0)

Voting Yes: Odenbach, Soye, and Hansen

Voting No: Fitzgerald, Kull, Massie, Pourier, Reisch, St. John, Teunissen, Tordsen, and Stevens

Excused: Reimer

Revert to previous motion

MOTION: DEFER HB 1131 TO THE 41ST LEGISLATIVE DAY

Moved by: Stevens
 Second by: Reisch
 Action: Prevailed by Majority Members Elect (9-3-1-0)

Voting Yes: Fitzgerald, Kull, Massie, Pourier, Reisch, St. John, Teunissen, Tordsen, and Stevens

Voting No: Odenbach, Soye, and Hansen

Excused: Reimer

HB 1231 : revise certain provisions related to the sealing of adoption records.

Presented by: Representative Mellissa Heermann (Handout(s) 2, 3, 4)
 Proponents: Representative Marty Overweg
 Gretchen Weible, self, Elkton
 Gregory Luce, Adoptee Rights Law Center, Minneapolis, MN
 Others: Greg Sattizahn, Unified Judicial System

MOTION: DO PASS HB 1231

Moved by: Fitzgerald
 Second by: Pourier
 Action: Prevailed by Majority Members Elect (12-0-1-0)

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

Excused: Reimer

HB 1240 : amend provisions addressing guardianships and conservatorships.

Presented by: Representative Greg Jamison

Opponents: Elizabeth Overmoe, State Bar of South Dakota, Pierre

MOTION: AMEND HB 1240

1240A

On page 1, line 8, of the Introduced bill, after "the " delete "protected "

On page 1, line 8, of the Introduced bill, after "person" insert " alleged to be in need of protection"

On page 1, line 8, of the Introduced bill, delete "may" and insert "must"

On page 1, line 10, of the Introduced bill, after "person." insert " If a person designated under a validly executed power of attorney by the person alleged to be in need of protection is not appointed as the guardian or conservator, the court must issue written findings of facts and conclusions of law as to why the designated person was not appointed."

On page 1, after line 19, of the Introduced bill, insert: "

Section 2. That § 29A-5-309 be AMENDED:

29A-5-309. The court shall appoint an attorney for the person alleged to need protection, either upon the filing of the petition or at any time thereafter, if requested by the person alleged to need protection, if the person expresses a desire to contest the petition, or if the court determines that an appointment is otherwise needed to protect the person's interests. In appointing an attorney, the court shall consider any known preferences of the person alleged to need protection.

If the person alleged to need protection is not or will not be represented by an attorney, the court shall either appoint a court representative to make an investigation and recommendation concerning the relief requested in the petition, or shall order the person alleged to need protection to attend the hearing on the petition.

If the basis of the petition is that the person alleged to need protection is an absentee, the court shall appoint an attorney if the court determines that an appointment is needed to protect the person's interests, but the court need not appoint a court representative or order attendance at the hearing.

A person alleged to need protection who is contesting a petition may have an evaluation done by a physician, psychologist, or psychiatrist of the person's choice, which must be included in the file and considered by the court."

On page 3, line 1, of the Introduced bill, after "vocational" insert the comma

On page 3, line 6, of the Introduced bill, after "behalf;

(5)" insert "A statement indicating whether or not the protected person has made any statements or indications to the guardian, or any other person who has informed the guardian, that the protected person does not want the guardianship to continue, or that the protected person wants a different guardian to be appointed;

(6) "

On page 3, line 8, of the Introduced bill, delete "(6)" and insert "(7)"

On page 3, line 10, of the Introduced bill, delete "(7)" and insert "(8)"

On page 3, line 12, of the Introduced bill, delete "(8)" and insert "(9)"

On page 3, line 14, of the Introduced bill, delete "(9)" and insert "(10)"

On page 3, line 22, of the Introduced bill, after "appointments." insert "

If the report indicates that the protected person wants to have the guardianship ended, or wants to have another person to serve as the guardian, the court must determine if a hearing is necessary, based on the totality of the circumstances, including whether or not a hearing has previously been held on the same issue."

On page 5, line 1, of the Introduced bill, after "period;

(5)" insert "A statement indicating whether or not the protected person has made any statements or indications to the conservator, or any other person who has informed the conservator, that the protected person does not want the conservatorship to continue, or that the protected person wants a different conservator to be appointed.

(6) "

On page 5, line 3, of the Introduced bill, delete "(6)" and insert "(7)"

On page 5, line 5, of the Introduced bill, delete "(7)" and insert "(8)"

On page 5, line 7, of the Introduced bill, delete "(8)" and insert "(9)"

On page 5, line 10, of the Introduced bill, delete "(9)" and insert "(10)"

On page 5, line 23, of the Introduced bill, after "account." insert "

If the report indicates that the protected person wants to have conservatorship ended, or wants to have another person serve as the conservator, the court must determine if a hearing is necessary, based on the totality of the circumstances, including whether or not a hearing has previously been held on the same issue."

On page 5, line 25, of the Introduced bill, delete "An" and insert "The court must grant an"

On page 5, line 25, of the Introduced bill, after "party " delete "must have "

On page 5, line 25, of the Introduced bill, after "to " insert "some or all of a protected person's "

On page 5, line 25, of the Introduced bill, after "records " delete "of the protected person. The court must grant access "

On page 5, line 26, of the Introduced bill, after "if" insert ", on the motion of the interested party,"

Moved by: Reisch

Second by: Tordsen

Action: Prevailed by voice vote

MOTION: DO PASS HB 1240 AS AMENDED

Moved by: Odenbach

Second by: St. John

Action: Prevailed by Majority Members Elect (10-1-2-0)

Voting Yes: Fitzgerald, Kull, Massie, Odenbach, Pourier, Reisch, Soye, St. John, Teunissen, and Hansen

Voting No: Stevens

Excused: Reimer and Tordsen

MOTION: ADJOURN

Moved by: Reisch

Second by: Kull

Action: Prevailed by voice vote

Janelle Toman, Committee Secretary

/s/ JON HANSEN
Jon Hansen, Chair