

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 13<sup>TH</sup>**

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 41<sup>ST</sup> 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 41<sup>ST</sup> 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

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/s/ JON HANSEN  
Jon Hansen, Chair