

Committee: Senate Health and Human Services

Wednesday, March 01, 2023 7:45 AM

Roll Call

Present: Sen. Diedrich, Sen. Reed, Sen. Rohl, Sen. Bordeaux, Sen. Novstrup,  
Sen. Davis, and Sen. Tobin

OTHERS PRESENT: See Original Minutes

**The meeting was called to order by Senator Davis**

**MOTION: TO APPROVE THE MINUTES OF MONDAY, MARCH 27<sup>TH</sup>**

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

**HB 1059 : establish a community paramedic endorsement.**

Presented by: Representative Eric Emery

**MOTION: DO PASS HB 1059**

Moved by: Bordeaux  
Second by: Reed  
Action: Prevailed by Majority Members Elect (5-0-2-0)

Voting Yes: Diedrich, Reed, Bordeaux, Novstrup, and Davis

Excused: Rohl and Tobin

**HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1059 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.**

**HB 1167 : annually adjust the rate for community-based providers to one hundred percent of methodology.**

Presented by: Representative Chris Karr (Handout(s) 1)

Proponents: Representative Brian Mulder  
Mark B. Deak, South Dakota Health Care Association, Sioux Falls  
Daniel P. Cross, Community Support Providers of South Dakota, Spearfish  
Deb Fischer-Clemens, Avera Health, Sioux Falls  
Terrance Lee Dosch, South Dakota Council of Community Behavioral Health,  
Pierre  
Steve K. Watkins, LifeScape, Sioux Falls  
Mitchell Rave, Sanford Health, Sioux Falls  
Tim Rave, South Dakota Association of Healthcare Organizations, Sioux Falls  
Joe Herdina, Children's Home Society, Sioux Falls  
Thomas Elness, Alzheimer's Association - South Dakota Chapter, Sioux Falls  
Cole Uecker, Disability Rights South Dakota, Pierre  
Laura Wilson, Tieszen Memorial Home, Marion, SD  
Brad Saathoff, Black Hills Works, Rapid City, SD

Shirley Halverson, Self, Sturgis, SD  
 Mackenzie Yost, Self, Sioux Falls, SD  
 Keenan Knutelski, Self, Winner, SD  
 Brian Ardry, Self, Sioux Falls, SD  
 Hannah Haskew, self, Mobridge  
 Ionela, Geogescu, Self, Vermillion, SD  
 Jennifer Gray, Self, Aberdeen, SD  
 Liz Morrell, Self, Sheboygan, Wisconsin

Opponents: Steven Kohler, Bureau of Finance and Management

**MOTION: DEFER HB 1167 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Davis  
 Action: Died for lack of a second

**MOTION: DO PASS HB 1167**

Moved by: Novstrup  
 Second by: Reed  
 Action: Prevailed by Majority Members Elect (4-3-0-0)

Voting Yes: Diedrich, Rohl, Bordeaux, and Novstrup

Voting No: Reed, Davis, and Tobin

**HB 1174 : revise civil commitment procedures for offenders with developmental disabilities.**

Presented by: Representative Brian Mulder  
 Daniel P. Cross, Community Support Providers of South Dakota, Spearfish  
 Cole Uecker, Disability Rights South Dakota, Pierre

**MOTION: AMEND HB 1174**

1174D

On page 1, line 1, of the Introduced bill, delete "revise civil commitment procedures for offenders with developmental disabilities" and insert "provide for appropriate civil commitment of certain persons"

On the Introduced bill, delete everything after the enacting clause and insert:

"

**Section 1. That a NEW SECTION be added to title 27B:**

Any person with a felony sexual offense charge that has been dismissed pursuant to § 23A-10A-14, due to a developmental disability as defined in § 27B-1-18, is subject to civil commitment proceedings in accordance with this Act.

**Section 2. That a NEW SECTION be added to title 27B:**

The state's attorney prosecuting any felony sexual offense, which charge was dismissed pursuant to § 23A-10A-14 due to a developmental disability as defined in § 27B-1-18, may, within thirty days after the dismissal, file a petition for civil commitment of the person charged in the circuit court that dismissed the charge. The petition must allege the criteria for commitment, as set forth in section 8 of this Act, and must include facts supporting the allegations.

**Section 3. That a NEW SECTION be added to title 27B:**

Within ten days of the filing of a petition for civil commitment pursuant to this Act, the court shall appoint and order a licensed psychologist or psychiatrist to conduct a psychiatric or psychological evaluation of the person whose condition is the subject of the petition. The licensed psychologist or psychiatrist shall conduct the examination and prepare a report within fifteen days of receipt of the written notice from the court. The report must contain the information set forth in section 4 of this Act. The person has the right to obtain an additional examination paid for by the county in which the action is venued. Any report from an additional examination may be placed in evidence. The person must reimburse the county for the reasonable expense of the additional examination, unless the person is indigent. The county may file a lien for the cost of the additional examination and report upon the person's real and personal property.

**Section 4. That a NEW SECTION be added to title 27B:**

The court-ordered report required under section 3 of this Act must contain:

- (1) Any report submitted to the court as part of a mental competency proceeding under chapter 23A-10A;
- (2) An evaluation of the person's mental, physical, and emotional status, and a review of the person's social and educational history;
- (3) Any other information the examiner believes to be relevant;
- (4) Whether the person's developmental disability, having rendered the person incompetent to proceed under chapter 23A-10A, makes it:
  - (a) Seriously difficult for the person to control their behavior;
  - (b) Likely that the person will commit other sexual offenses; and
  - (c) Necessary or advisable for the person to receive appropriate supports or services, or the person needs and is likely to benefit from treatment; and
- (5) Whether the person is a danger to themselves or others due to the developmental disability that rendered the person incompetent to proceed under chapter 23A-10A.

If any report submitted to the court indicates that the person has serious difficulty controlling their behavior and is likely to commit other sexual offenses, the court must hold a hearing to determine whether the person is to be involuntarily committed. If no report submitted to the court indicates that the person has serious difficulty controlling their behavior and is likely to commit other sexual offenses, the petition must be dismissed.

**Section 5. That a NEW SECTION be added to title 27B:**

At a hearing ordered pursuant to section 4 of this Act, the person whose condition is the subject of the hearing shall be represented by counsel and, if the person is financially unable to obtain adequate representation, the court must appoint counsel for the person. The person has the right to appear personally, to subpoena witnesses on the person's behalf, to confront and cross-examine witnesses, and to present evidence. The person has the right to testify but may not be compelled to testify. If the person chooses not to appear, the person's attorney must state on the record that the person has been informed of the hearing and of the right to appear and chooses not to exercise this right. Documentation of the reasons for the person's decision is not required. If the person is receiving treatment at the time of hearing, the person's provider must take all reasonable precautions to ensure that, at the time of the hearing, the person is not so under the influence of, or so affected by, drugs, medication, or other treatment or interventions, as to be hampered in preparing for or participating in the hearing. The court may exclude any person not necessary for the conduct of the proceedings from the hearings,

except any person requested to be present by the person who is the subject of the hearing.

**Section 6. That a NEW SECTION be added to title 27B:**

In proceedings under this Act, the sheriff is allowed the same fee as for like services in other cases. Any witness is allowed the same fees as a witness in other cases.

**Section 7. That a NEW SECTION be added to title 27B:**

The sections of title 15 relating to civil practice and procedure in the circuit courts shall apply to any hearing pursuant to this Act. If not otherwise submitted during the hearing, the court may take judicial notice of any other case against the person whose condition is the subject of the hearing, involving sexual offenses, and may order any additional appropriate examination or investigation.

**Section 8. That a NEW SECTION be added to title 27B:**

At a hearing ordered pursuant to section 4 of this Act, the court shall determine whether there is clear and convincing evidence that:

- (1) The person committed one or more felony sexual offenses;
- (2) The person's developmental disability, having rendered the person incompetent to proceed under chapter 23A-10A, makes it:
  - (a) Seriously difficult for the person to control their behavior;
  - (b) Likely that the person will commit other sexual offenses; and
  - (c) Necessary or advisable for the person to receive appropriate supports or services, or the person needs and is likely to benefit from treatment; and
- (4) Whether the person is a danger to themselves or others due to the developmental disability that rendered the person incompetent to proceed under chapter 23A-10A.

If the court, through written findings of fact and conclusions of law, finds all the above criteria are met, the court must issue an order involuntarily committing the person to the Department of Human Services for appropriate placement. If the person refuses to comply with this order, the court may direct law enforcement to take the person into protective custody.

**Section 9. That a NEW SECTION be added to title 27B:**

The court shall review any commitment order entered pursuant to section 8 of this Act and accompanying information at least annually to make a determination of the continued need and supporting justification for commitment. Prior to the annual review, but not less than thirty days prior to the anniversary date of the commitment order, the facility providing services to the person shall report to the committing court regarding the person's supports, services, or treatment and progress. If the facility is separate from the Department of Human Services, the report must also be served on the department. Following ten days' notice to the person, the person's attorney, the department, and the facility providing services to the person if separate from the department, the court shall hold a review hearing. The review hearing must include participation by the state's attorney, the department, the facility providing services to the person if separate from the department, and the person's attorney. The rights and procedures applicable during an initial commitment hearing are applicable to a review hearing. A petition pursuant to section 3 of this Act need not be filed. At the conclusion of the review hearing, the court may issue an order of continued commitment or immediately discharge the person from involuntary commitment if the conditions in section 8 of this Act justifying commitment no longer exist.

**Section 10. That a NEW SECTION be added to title 27B:**

The person shall have the same rights and privileges during a review hearing as established under section 5 of this Act.

**Section 11. That a NEW SECTION be added to title 27B:**

The director of the South Dakota Developmental Center, or the director of any other developmental disability community service provider, as applicable, shall discharge any involuntarily committed person if the director determines that the person no longer meets the commitment criteria under section 8 of this Act. The director of the discharging entity shall immediately notify the court who issued the commitment order and the state’s attorney who filed the commitment proceeding that the person no longer meets commitment criteria and is being discharged. Nothing in this section precludes any person or the person’s legal representative from subsequently seeking admission to a program on a voluntary basis.

**Section 12. That a NEW SECTION be added to title 27B:**

The provisions of § 27B-7-49 apply to commitments under this Act.

**Section 13. That a NEW SECTION be added to title 27B:**

Any other right, responsibility, or authority given to a person committed or the Department of Human Services under this title is applicable to a person committed under this Act."

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

**MOTION: DO PASS HB 1174 AS AMENDED**

Moved by: Reed  
Second by: Davis  
Action: Prevailed by Majority Members Elect (7-0-0-0)

Voting Yes: Diedrich, Reed, Rohl, Bordeaux, Novstrup, Davis, and Tobin

**HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1174 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.**

**HB 1220 : provide that a female who undergoes an unlawful abortion may not be held criminally liable.**

Presented by: Senator Jessica Castleberry  
Proponents: Mark Miller, Governor's Office  
Dale Allen Bartscher, South Dakota Right to Life, Rapid City (Handout(s) 2)  
Charles McGuigan, Attorney General  
Michael G. Pauley, South Dakota Catholic Conference, Rapid City  
Michael Boyle, self, Parkston  
Debbie Pease, Family Heritage Alliance Action, Rapid City

**MOTION: DO PASS HB 1220**

Moved by: Novstrup  
Second by: Reed  
Action: Prevailed by Majority Members Elect (7-0-0-0)

Voting Yes: Diedrich, Reed, Rohl, Bordeaux, Novstrup, Davis, and Tobin

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

**HB 1226 : regulate industrial hemp-derived delta-8 and delta-10 tetrahydrocannabinol products, and other hemp-derived psychoactive compounds, and to declare an emergency.**

Presented by: Senator Sydney Davis

Proponents: Katie Sieverding, South Dakota Industrial Hemp Association, Pierre  
Doug Abraham, South Dakota Retailers Association, Pierre

Opponents: Lynne Valenti, Department of Health (Handout(s) 3,4,5)

**MOTION: AMEND HB 1226**

1226D

On page 1, line 1, of the House State Affairs Engrossed bill, delete "regulate industrial hemp-derived delta-8 and delta-10 tetrahydrocannabinol products, and other hemp-derived psychoactive compounds, and to declare an emergency" and insert "prohibit isomerization of"

On page 1, line 3, after "emergency " insert " cannabinoids, and the sale of synthetic tetrahydrocannabinol"

On the House State Affairs Engrossed bill, delete everything after the enacting clause and insert:  
"

**Section 1. That chapter 34-20B be amended with a NEW SECTION:**

No person or entity may:

(1) Engage in the isomerization of cannabinoids to create isomers of tetrahydrocannabinol; and

(2) Knowingly manufacture, distribute, or dispense a product intended for human consumption containing hemp-derived synthetic cannabinoids or the synthetic equivalents of tetrahydrocannabinols contained in a plant of the genus cannabis or cannabis sativa L., or in the resinous extractives of the plant, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, including delta-8, and delta-10 tetrahydrocannabinol, THC-O acetate, hexahydrocannabinol, and any compounds of these structures regardless of atomic positions.

A violation of this section is a Class 1 misdemeanor."

Moved by: Diedrich

Second by: Novstrup

Action: Failed by voice vote

**MOTION: DO PASS HB 1226**

Moved by: Davis

Second by: Bordeaux

Action: Prevailed by Majority Members Elect (5-1-1-0)

Voting Yes: Diedrich, Reed, Bordeaux, Davis, and Tobin

Voting No: Novstrup

Excused: Rohl

**HB 1053 : prohibit the issuance of a written certification to a pregnant woman or breastfeeding mother for purposes of medical cannabis use.**

Presented by: Representative Fred Deutsch (Handout(s) 6)

**MOTION: DO PASS HB 1053**

Moved by: Diedrich

Second by: Reed

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

Voting Yes: Diedrich, Reed, Bordeaux, Novstrup, Davis, and Tobin

Excused: Rohl

**HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1053 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.**

**HB 1129 : modify and establish provisions related to medical cannabis.**

**MOTION: TO TABLE HB 1129**

Moved by: Davis

Second by: Bordeaux

Action: Prevailed by Majority Members Elect (5-1-1-0)

Voting Yes: Diedrich, Reed, Bordeaux, Davis, and Tobin

Voting No: Novstrup

Excused: Rohl

**MOTION: ADJOURN**

Moved by: Novstrup

Second by: Diedrich

Action: Prevailed by voice vote

Mary Kirk, Committee Secretary

---

/s/ ERIN TOBIN  
Erin Tobin, Chair