

Committee: Senate Judiciary

Tuesday, January 23, 2024 7:45 AM

Roll Call

Present: Sen. Hoffman, Sen. Klumb, Sen. Mehlhaff, Sen. Rohl, Sen. Wheeler,
Sen. Stalzer, and Sen. Duhamel

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Duhamel

MOTION: TO APPROVE THE MINUTES OF THURSDAY, JANUARY 18TH

Moved by: Klumb
Second by: Wheeler
Action: Prevailed by voice vote

MOTION: DEFER SB 77

ROBERT PERRY OF PENNINGTON COUNTY, RAPID CITY, SOUTH DAKOTA, TO THE SECRETARY OF THE DEPARTMENT OF PUBLIC SAFETY

Presented by: Ryan Brunner, Governor's Office

MOTION: THAT THE SENATE ADVISE AND CONSENT TO THE APPOINTMENT OF ROBERT PERRY OF PENNINGTON COUNTY, RAPID CITY, SOUTH DAKOTA, TO THE SECRETARY OF THE DEPARTMENT OF PUBLIC SAFETY

Moved by: Wheeler
Second by: Klumb
Action: Prevailed by Majority Members Elect (6-1-0-0)

Voting Yes: Hoffman, Klumb, Rohl, Wheeler, Stalzer, and Duhamel

Voting No: Mehlhaff

SB 9 : further limit applications for clemency for violent crime offenders sentenced to life imprisonment.

Presented by: Senator Erin Tobin (Handout(s) 1)
Proponents: Karol Kriffen, self, Wagner
Rebecca Brindle, self, Aurora, CO
Kristian Ross, self, Sterling, CO
Marty Jackley, Attorney General, Pierre
Shand Ross, self, Sterling, CO
Dan Nelson, self, Brookings
Opponents: Denny Davis, Self, Vermillion
Myron Rau, self, Sioux Falls

MOTION: AMEND SB 9

On page 1, after line 10, of the Introduced bill, insert: "

Section 2. That § 24-15-10 be AMENDED:

24-15-10. If an inmate's application for parole is denied, the inmate may not again present an application before the board for a period of eight months. A continuance of an application for parole is not a denial. An application for clemency may not be heard for one year after the date of the judgment. If an application for clemency is denied, an inmate may not again present an application for clemency for a period of one year. If an application for clemency is denied for an inmate convicted of a crime of violence, as defined in subdivision § 22-1-2(9), and sentenced to life imprisonment, the inmate may not again present an application for clemency for a period of four years."

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

MOTION: DO PASS SB 9 AS AMENDED

Moved by: Klumb
Second by: Hoffman
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION: AMEND SB 9

9B

On the previously adopted amendment (9A), On page 1, line 10, after "of" insert " one to"
On the previously adopted amendment (9A), On page 1, line 10, after "years" insert ", as determined by the board. The board must establish in the record the date when the inmate will again be eligible to present an application for clemency at the time of denial"

On the previously adopted amendment (9A), On page 1, line 19, after "of" insert " one to"
On the previously adopted amendment (9A), On page 1, line 19, after "years" insert ", as determined by the board. The board must establish in the record the date when the inmate will again be eligible to present an application for clemency at the time of denial"

Moved by: Wheeler
Second by: Mehlhaff
Action: Prevailed by roll call vote (5-2-0-0)

Voting Yes: Mehlhaff, Rohl, Wheeler, Stalzer, and Duhamel

Voting No: Hoffman and Klumb

MOTION: DO PASS SB 9 AS AMENDED

Moved by: Wheeler
Second by: Stalzer
Action: Prevailed by Majority Members Elect (7-0-0-0)

Voting Yes: Hoffman, Klumb, Mehlhaff, Rohl, Wheeler, Stalzer, and Duhamel

SB 79 : revise provisions related to the possession, distribution, and manufacture of child pornography.

Presented by: Senator David Wheeler
Proponents: Representative Fred Deutsch

Marty Jackley, Attorney General, Pierre
 Matthew McCaulley, SD States Attorneys Assn, Harrisburg
 Dan Nelson, self, Brookings
 Lisa Gennaro, Concerned Women for America, Alexandria
 Jenna R. Severyn, South Dakota Police Chiefs Association, FORT PIERRE
 Dianna Miller, South Dakota Network Against Family Violence, Sioux Falls
 Opponents: Terra Larson, South Dakota Association of Criminal Defense Lawyers, Rapid
 City

MOTION: AMEND SB 79

79A

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

Section 1. That § 22-24A-2 be AMENDED:

22-24A-2. Terms used in §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, mean:

- (1) "Adult," any person eighteen years of age or older;
- (2) "Child pornography," any image or visual depiction of a minor engaged in prohibited sexual acts;
- (3) "Child" or "minor," any person under the age of eighteen years;
- (3A) "Child-like sex doll," any obscene anatomical doll, obscene anatomical mannequin, or obscene anatomical robot that is intentionally designed to resemble a prepubescent child and either to entice sexual excitement or to engage in prohibited sexual acts;
- (4) "Computer," any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, including wireless communication devices such as cellular phones. The term also includes any on-line service, internet service, or internet bulletin board;
- (5) ~~Deleted by SL 2005, ch 120, § 408~~ "Computer-generated child pornography," any visual depiction of:
 - (a) An actual minor that has been created, adapted, or modified to depict that minor engaged in a prohibited sexual act;
 - (b) An actual adult that has been created, adapted, or modified to depict that adult as a minor engaged in a prohibited sexual act; or
 - (c) An individual indistinguishable from an actual minor created by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs to create a visual depiction;
- (6) "Digital media," any electronic storage device, including a floppy disk or other magnetic storage device or any compact disc that has memory and the capacity to store audio, video, or written materials;
- (7) "Harmful to minors," any reproduction, imitation, characterization, description, visual depiction, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement if it:
 - (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;
 - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - (c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

This term does not include a mother's breast-feeding of her baby;

- (8) "Indistinguishable," when used with respect to a visual depiction, means virtually indistinguishable, in that the visual depiction is such that an ordinary person viewing the visual depiction would conclude that the visual depiction is of an actual minor engaged in a prohibited sexual act;
- (9) "Masochism," sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death;
- (9)(10) "Nudity," the showing or the simulated showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state for the purpose of creating sexual excitement. This term does not include a mother's breast-feeding of her baby irrespective of whether or not the nipple is covered during or incidental to feeding;
- (10)(11) "Obscene," the status of material which:
- (a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- (b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and
- (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.
- This term does not include a mother's breast-feeding of her baby;
- (11)(12) "Person," includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations;
- (12)(13) "Sadism," sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death;
- (13)(14) "Sadomasochistic abuse," flagellation or torture by or upon a minor, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself;
- (14)(15) "Sexual battery," oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. This term does not include an act done for a bona fide medical purpose;
- (15)(16) "Sexual bestiality," any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other;
- (16)(17) "Prohibited sexual act," actual or simulated sexual intercourse, sadism, masochism, sexual bestiality, incest, masturbation, or sadomasochistic abuse; actual or simulated exhibition of the genitals, the pubic or rectal area, or the bare feminine breasts, in a lewd or lascivious manner; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; defecation or urination for the purpose of creating sexual excitement in the viewer; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. The term includes encouraging, aiding, abetting or enticing any person to commit any such acts as provided in this subdivision. The term does not include a mother's breast-feeding of her baby;

- ~~(17)~~(18) "Sexual excitement," the condition of the human male or female genitals if in a state of sexual stimulation or arousal;
- ~~(18)~~(19) "Sexually oriented material," any book, article, magazine, publication, visual depiction or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered;
- ~~(19)~~(20) "Simulated," the explicit depiction of conduct described in subdivision (16) of this section that creates the appearance of such conduct and that exhibits any uncovered portion of the breasts, genitals, or anus;
- ~~(20)~~(21) "Visual depiction," any developed and undeveloped film, photograph, slide and videotape, and any photocopy, drawing, printed or written material, and any data stored on computer disk, digital media, or by electronic means that are capable of conversion into a visual image."
- On page 1, line 6, of the Introduced bill, delete " any" and insert ":
- (1) Any"
- On page 1, line 7, of the Introduced bill, after "act" insert "; or
- (2) Any computer-generated child pornography"
- On page 1, line 8, of the Introduced bill, after "section" insert " for a first offense"
- On page 1, line 9, of the Introduced bill, after "year." insert " A conviction under this section for a second or subsequent offense must be punished by a mandatory sentence in a state correctional facility of at least five years."
- On page 1, line 12, of the Introduced bill, delete " any" and insert a colon
- On page 1, line 12, of the Introduced bill, after "any " insert "
- (1) Any "
- On page 1, line 13, of the Introduced bill, after "act" insert "; or
- (2) Any computer-generated child pornography"
- On page 1, line 14, of the Introduced bill, after "section" insert " for a first offense"
- On page 1, line 15, of the Introduced bill, after "years." insert " A conviction under this section for a second or subsequent offense must be punished by a mandatory sentence in a state correctional facility of at least ten years."
- On page 1, line 17, of the Introduced bill, delete " section 1" and insert " section 2"
- On page 1, line 20, of the Introduced bill, delete " any" and insert ":
- (1) Any"
- On page 1, line 21, of the Introduced bill, after "act" insert "; or
- (2) Any computer-generated child pornography"
- On page 1, line 22, of the Introduced bill, after "section" insert " for a first offense"
- On page 1, line 23, of the Introduced bill, after "years." insert " A conviction under this section for a second or subsequent offense must be punished by a mandatory sentence in a state correctional facility of at least twenty years."
- On page 2, line 2, of the Introduced bill, delete " section 1" and insert " section 2"
- On page 2, line 4, of the Introduced bill, delete "An adult is guilty of sexting with a minor if the adult knowingly possesses any visual depiction of a minor, aged sixteen or older, who is involved in a romantic relationship with the adult, engaging in a prohibited sexual act, or in a simulation of a prohibited sexual act, that was voluntarily created by the minor and voluntarily transmitted to the adult by the minor. A violation of this section is a Class 1 misdemeanor.
- It is not a violation of section 1 or section 3 of this Act if an adult knowingly possesses a visual depiction of a minor aged sixteen or older, who is involved in a romantic relationship with the adult, engaging in a prohibited sexual act, or in a simulation of a prohibited sexual act, that was voluntarily created by the minor and voluntarily transmitted to the adult by the minor, unless the adult distributed the visual depiction to another person. " and insert "Any conviction for, or plea of guilty to, an offense in another state that, if committed in this state, would be a violation of sections 2 to 4, inclusive,

of this Act, must be used to determine if the violation being charged is a second or subsequent offense."

On page 2, line 17, of the Introduced bill, delete " sections 1 to 3" and insert " sections 2 to 4"

On page 2, line 21, of the Introduced bill, delete " sections 1 to 3" and insert " sections 2 to 4"

On page 2, line 23, of the Introduced bill, delete " sections 1 to 3" and insert " sections 2 to 4"

On page 2, line 24, of the Introduced bill, after "charged" insert " and no other person appears in the visual depiction"

On page 2, line 26, of the Introduced bill, delete " sections 1 to 3" and insert " sections 2 to 4"

On page 2, line 27, of the Introduced bill, delete " which" and insert

On page 2, line 27, of the Introduced bill, after "which" insert "that"

On page 2, line 28, of the Introduced bill, delete " sections 1 to 3" and insert " sections 2 to 4"

On page 3, line 1, of the Introduced bill, delete " must" and insert " shall"

On page 3, line 26, of the Introduced bill, delete " sections 1 to 3" and insert " sections 2 to 4"

On page 3, line 31, of the Introduced bill, delete " sections 1 to 3" and insert " sections 2 to 4"

On page 4, line 14, of the Introduced bill, delete " sections 1 to 3" and insert " sections 2 to 4"

On page 5, after line 14, of the Introduced bill, insert: "

Section 14. That § 26-10-33 be AMENDED:

26-10-33. No minor, as defined in subdivision 26-7A-1(21), may intentionally create, produce, distribute, present, transmit, post, exchange, disseminate, or possess, through any computer or digital media, any photograph or digitized image or any visual depiction of a minor in any condition of nudity, as defined in ~~subdivision 22-24A-2(9)~~ subdivision 22-24A-2(10), or involved in any prohibited sexual act, as defined in ~~subdivision 22-24A-2(16)~~ subdivision 22-24A-2(17). Any violation of this section constitutes the offense of juvenile sexting, which is a Class 1 misdemeanor."

Moved by: Klumb

Second by: Rohl

Action: Prevailed by voice vote

MOTION: DO PASS SB 79 AS AMENDED

Moved by: Klumb

Second by: Mehlhaff

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

Voting Yes: Hoffman, Klumb, Mehlhaff, Rohl, Wheeler, Stalzer, and Duhamel

SB 89 : reduce the notice requirement period to terminate a tenancy at will.

Presented by: Senator Michael Rohl (Handout(s) 2)

Proponents: Doug Abraham, South Dakota Retailers Association, Pierre

Opponents: Melissa McCauley, Dakota Rural Action, Brookings

Kristie Regas, self, Sioux Falls

Jill Swanson, self, Sioux Falls

Karissa Loewan, self, Rapid City

Lavonne Roach, self, Rapid City

MOTION: AMEND SB 89

89C

On page 1, line 4, of the Introduced bill, after "will" insert " for a residential property"

On page 1, after line 17, of the Introduced bill, insert: "

Section 2. That a NEW SECTION be added to chapter 43-8:

A tenancy or other estate at will for a commercial property, however created, may be terminated by the landlord giving notice to the tenant in the manner prescribed by § 43-8-9 to remove from the premises within a period, specified in the notice, of not less than one month."

Moved by: Stalzer
Second by: Klumb
Action: Prevailed by voice vote

MOTION: DO PASS SB 89 AS AMENDED

Moved by: Hoffman
Second by: Mehlhaff
Action: Prevailed by Majority Members Elect (7-0-0-0)

Voting Yes: Hoffman, Klumb, Mehlhaff, Rohl, Wheeler, Stalzer, and Duhamel

HB 1035 : extend the period of renewal for an enhanced permit to carry a concealed pistol.

Presented by: Representative Kevin Jensen
Proponents: Senator Jim Stalzer

MOTION: DO PASS HB 1035

Moved by: Hoffman
Second by: Klumb
Action: Prevailed by Majority Members Elect (7-0-0-0)

Voting Yes: Hoffman, Klumb, Mehlhaff, Rohl, Wheeler, Stalzer, and Duhamel

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1035 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

MOTION: DEFER SB 36 TO THE 41ST LEGISLATIVE DAY

Moved by: Wheeler
Second by: Rohl
Action: Prevailed by Majority Members Elect (4-3-0-0)

Voting Yes: Klumb, Rohl, Wheeler, and Duhamel

Voting No: Hoffman, Mehlhaff, and Stalzer

MOTION: ADJOURN

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

Jean Denton, Committee Secretary

/s/ HELENE DUHAMEL
Helene Duhamel, Chair