

Committee: Senate Judiciary

Tuesday, February 13, 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, FEBRUARY 08TH

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

JOHN L. BROWN OF RAPID CITY, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES

Presented by: Greg Sattizahn, Unified Judicial System

MOTION: THAT THE SENATE ADVISE AND CONSENT TO THE APPOINTMENT OF JOHN L. BROWN OF RAPID CITY, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES

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

HANK PRIM , TO THE SOUTH DAKOTA INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

Presented by: Charles McGuigan, Attorney General

MOTION: THAT THE SENATE ADVISE AND CONSENT TO THE APPOINTMENT OF HANK PRIM, TO THE SOUTH DAKOTA INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

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

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

KRISTA HEEREN-GRABER , TO THE SOUTH DAKOTA INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

Presented by: Charles McGuigan, Attorney General

MOTION: THAT THE SENATE ADVISE AND CONSENT TO THE REAPPOINTMENT OF KRISTA HEEREN-GRABER, TO THE SOUTH DAKOTA INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

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 THE APPOINTMENT OF KRISTA HEEREN-GRABER, TO THE SOUTH DAKOTA INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

JAN STEELE OF CODINGTON COUNTY, WATERTOWN, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES

Presented by: Brittni Skipper, Department of Corrections

MOTION: THAT THE SENATE ADVISE AND CONSENT TO THE REAPPOINTMENT OF JAN STEELE OF CODINGTON COUNTY, WATERTOWN, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES

Moved by: Klumb
Second by: Wheeler
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 THE APPOINTMENT OF JAN STEELE OF CODINGTON COUNTY, WATERTOWN, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

PETER LIEBERMAN OF MINNEHAHA COUNTY, SIOUX FALLS, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES

Presented by: Brittni Skipper, Department of Corrections

MOTION: THAT THE SENATE ADVISE AND CONSENT TO THE REAPPOINTMENT OF PETER LIEBERMAN OF MINNEHAHA COUNTY, SIOUX FALLS, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES

Moved by: Mehlhaff
Second by: Wheeler
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 THE APPOINTMENT OF PETER LIEBERMAN OF MINNEHAHA COUNTY, SIOUX FALLS, SOUTH

DAKOTA, TO THE BOARD OF PARDONS AND PAROLES AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

SB 176 : establish criteria for determining certain shared parenting plan provisions.

Presented by: Senator Tom Pischke (Handout(s) 2,3)

Opponents: Alex Mayer, Department of Social Services (Handout(s) 1)
Steve Siegel, South Dakota Trial Lawyers Association, Pierre
Dianna Miller, South Dakota Network Against Family Violence, Sioux Falls

MOTION: DEFER SB 176 TO THE 41ST LEGISLATIVE DAY

Moved by: Wheeler

Second by: Stalzer

Action: Prevailed by Majority Members Elect (5-2-0-0)

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

Voting No: Hoffman and Rohl

SB 214 : address determinations regarding physical custody of a minor child.

Presented by: Senator Tom Pischke (Handout(s) 4,5,6)

Opponents: Dianna Miller, South Dakota Network Against Family Violence, Sioux Falls
Steve Siegel, South Dakota Trial Lawyers Association, Pierre

MOTION: AMEND SB 214

214A

On page 1, line 1, of the Introduced bill, delete "address determinations regarding " and insert "provide a rebuttable presumption in favor of joint "

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

"

Section 1. That § 25-4A-21 be AMENDED:

25-4A-21. ~~In any custody dispute between parents, upon application~~ Upon the petition of either parent, the court shall consider granting joint for the initial determination regarding physical custody of a minor child, there is a rebuttable presumption that equal or approximately equal time spent between the child and each parent is in the best interest of the minor child. This presumption may be rebutted by a preponderance of evidence showing that joint physical custody is not in the best interest of the child based on the factors set forth in § 25-4A-24.

~~The court shall consider the factors set forth in § 25-4A-24, and shall make written findings of fact and conclusions of law regarding the best interests interest of the minor child, unless waived by both parties in accordance with § 25-4A-24, unless the parents have stipulated to the terms of an agreement resolving the petition.~~

Section 2. That § 25-4A-22 be AMENDED:

25-4A-22. The court shall determine the appropriate physical care, custody, and control of a minor child, in accordance with § 25-4A-21, following the consideration of

~~factors set forth in § 25-4-45.5. A finding by the court that a parent has a conviction or a history of committing domestic abuse or has an assault conviction as defined in § 25-4-45.5, creates a rebuttable presumption that joint physical custody is not in the best interests-interest of the child.~~

Section 3. That § 25-4A-23 be AMENDED:

25-4A-23. ~~Prior to ruling on a petition for joint physical custody-petition under § 25-4A-21, the court may require that the parties to parents participate in a home study or a custody evaluation. Prior to the court ruling on a joint physical custody petition, either parent may request mediation pursuant to § 25-4-56.~~

~~In any case where the court orders the parties to participate in a home study, custody evaluation, or custody mediation, the, or mediation in accordance with § 25-4-56. The court shall allocate the costs of the same any home study, custody evaluation, or mediation required under this section between the parties parents.~~

Section 4. That § 25-4A-24 be AMENDED:

25-4A-24. ~~In considering a contested request for~~ The presumption in favor of joint physical custody, in addition to the traditional factors for determining the best interests of a child, the court shall consider the following factors under § 25-4A-21 may be rebutted upon a presentation of evidence pertaining to:

- (1) Whether each parent is a suitable physical custodian for the child;
- (2) Whether each parent has an appropriate dwelling to support physical custody of the child;
- (3) Whether the psychological and emotional needs and the development of the child will suffer due to lack of active contact with, and attention from, both parents if joint physical custody is not granted;
- (4) Whether one parent has denied the child, without just cause, ~~the child~~ the opportunity for continuing contact with the other parent. Facts supporting an application of the presumption in § 25-4-45.5 constitute just cause;
- (5) Whether the parents can show mutual respect for and effectively communicate with each other regarding the child's needs. When considering this factor, the court shall include a determination of the degree to which the parents are in general agreement about their approach to daily child rearing matters;
- (6) The extent to which both parents actively care for the child;
- (7) Whether each parent can support the other parent's relationship with the child. When considering this factor, the court shall include a determination of conflict between the parents, as joint physical custody requires substantial and regular interaction between the parents on a myriad of issues;
- (8) Whether the joint physical custody arrangement is in accord with the child's wishes or whether the child has strong opposition to joint physical custody, taking into consideration the child's age, maturity, and reason for the objection;
- (9) Whether a parent has intentionally alienated or interfered with the other parent's relationship with the child;
- (10) Whether one or both parents are opposed to joint physical custody. A parent's opposition to joint physical custody is not determinative in itself, but only one factor for the court to consider;
- (11) The geographic proximity of the parents;
- (12) Whether the safety of the child, other children, or the other parent will be jeopardized by an award of joint physical custody;
- (13) Whether a parent allows another person custody or control of, or unsupervised access to, a child after knowing the person is required to

- register or is on the sex offender registry as a sex offender under chapter 22-24B;
- (14) Whether a parent has attempted to influence a custody determination by alleging, falsely or without good cause, that the child or the sibling of the child has been subjected to physical or sexual abuse or abuse and neglect, as set forth in § 25-4-45.8;
- (15) Whether a parent is physically and mentally capable of providing temporal, mental, and moral wellness for the child;
- (16) Whether a parent has the capacity and disposition to provide the child with protection, food, clothing, medical care, and other basic needs;
- (17) Whether a parent is willing and ~~capable~~ able to provide the child love, affection, guidance, and education in order to impart the family's religion or creed;
- (18) Whether a parent is committed to prepare the child for responsible adulthood, as well as to ensure that the child experiences a fulfilling childhood;
- (19) Whether a parent provides exemplary modeling so that the child witnesses firsthand what it means to be a good parent, a loving spouse, and a responsible citizen;
- (20) Whether a parent provides a stable and consistent home environment including the relationship and interaction of the child with the parents, stepparents, siblings, and extended families;
- (21) The extent of the child's adjustment in ~~regards~~ regard to home, school, and community;
- (22) Whether a break in attachment ~~with~~ to the parent ~~with~~ whom the child has formed a closer attachment would ~~cause detriment~~ be detrimental due to the break in continuity for the child; and
- (23) Whether a parent is guilty of misconduct that may have a harmful effect on the child.

Section 5. That § 25-4A-25 be REPEALED.

~~If both parents agree to joint physical custody of a child, the court is not required to consider the factors set forth in § 25-4A-24.~~

Section 6. That § 25-4A-26 be REPEALED.

~~Nothing in §§ 25-4A-21 to 25-4A-27, inclusive, creates a presumption of joint physical custody. The court shall determine the appropriate physical care, custody, and control of a minor child based on a determination of the best interests of the child."~~

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

MOTION: DEFER SB 214 TO THE 41ST LEGISLATIVE DAY

Moved by: Mehlhaff
 Second by: Stalzer
 Action: Failed by Majority Members Elect (3-4-0-0)

Voting Yes: Mehlhaff, Stalzer, and Duhamel

Voting No: Hoffman, Klumb, Rohl, and Wheeler

MOTION: DO PASS SB 214 AS AMENDED

Moved by: Hoffman

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

Voting Yes: Hoffman, Klumb, Rohl, and Wheeler

Voting No: Mehlhaff, Stalzer, and Duhamel

SB 95 : exempt one motor vehicle of a debtor from being taken by legal process.

Presented by: Senator Liz Larson (Handout(s) 7)
Proponents: Jenna Riedel, Self, Sioux Falls
Opponents: Drew Duncan, South Dakota Collectors Association, Brookings
Brett Koenecke, South Dakota Bankers Association, Pierre
William M. Van Camp, South Dakota Retailers Association, Pierre

MOTION: DO PASS SB 95

Moved by: Klumb
Second by: Rohl
Action: Failed by Majority Members Elect (2-5-0-0)

Voting Yes: Klumb and Rohl

Voting No: Hoffman, Mehlhaff, Wheeler, Stalzer, and Duhamel

MOTION: DEFER SB 95 TO THE 41ST LEGISLATIVE DAY

Moved by: Wheeler
Second by: Stalzer
Action: Prevailed by Majority Members Elect (5-2-0-0)

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

Voting No: Klumb and Rohl

SB 146 : revise and repeal provisions related to threatening elected officers and to provide a penalty therefor.

Presented by: Senator Tim Reed
Proponents: David Reiss, South Dakota Municipal League, Fort Pierre
Douglas R. Wermedal, Associated School Boards of South Dakota, Pierre
Craig Matson, South Dakota Association of County Commissioners, Pierre
Grace Beck, South Dakota State's Attorneys Association, Sioux Falls
Greg Sattizahn, Unified Judicial System
Dianna Miller, Large School Group (Aberdeen), Aberdeen

MOTION: AMEND SB 146

146C

On page 1, line 5, of the Introduced bill, after "any" delete " verbal,"
On page 1, line 6, of the Introduced bill, after "written" delete the comma

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

(1) Any" insert " current or former"

On page 1, line 12, of the Introduced bill, after "11-14;

(3) Any" insert " current or former"

On page 1, line 13, of the Introduced bill, after "Legislature;

(4) Any" insert " current or former"

On page 1, line 14, of the Introduced bill, after "office;

(5) Any" insert " current or former"

On page 1, line 17, of the Introduced bill, after "§" delete " 22-11-4 or"

On page 1, line 17, of the Introduced bill, after "22-18-1.1" delete the comma

On page 1, line 18, of the Introduced bill, after "superseded" delete the comma

On page 1, line 18, of the Introduced bill, after "§" delete " 22-11-4 or"

Moved by: Klumb

Second by: Rohl

Action: Prevailed by voice vote

MOTION: DO PASS SB 146 AS AMENDED

Moved by: Klumb

Second by: Wheeler

Action: Prevailed by Majority Members Elect (5-2-0-0)

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

Voting No: Hoffman and Mehlhaff

MOTION: TO INVOKE RULE 7-1.5. CONSIDERATION OF MATTERS NOT POSTED.

Moved by: Wheeler

Second by: Klumb

Action: Prevailed by voice vote

SB 25 : revise provisions regarding possessing, manufacturing, or distributing child pornography.

MOTION: TO TABLE SB 25

Moved by: Wheeler

Second by: Klumb

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

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

MOTION: ADJOURN

Moved by: Klumb

Second by: Rohl

Action: Prevailed by voice vote

Doug Mortenson, Committee Secretary

/s/ HELENE DUHAMEL

Helene Duhamel, Chair