

Committee: Senate Judiciary

Thursday, January 30, 2020 8:00 AM

Roll Call

Present: Sen. Blare, Sen. Novstrup, Sen. Schoenbeck, Sen. Stalzer, Sen. Kennedy, Sen. Rusch, and Sen. Russell

OTHERS PRESENT: See Original Minutes

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

**MOTION: TO APPROVE THE MINUTES OF TUESDAY, JANUARY 28<sup>TH</sup>**

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

**SB 71 : revise the offenses for which an order for interception of communications may be granted.**

Presented by: Senator Helene Duhamel (Handout(s) 4)  
Proponents: Sgt Jeromey Smith, Pennington County Sheriff's Office  
Richard Tieszen, SD Sheriffs Association  
Paul Bachand, States Attorney Association  
Lori Martinec, SD Police Chiefs Association

**MOTION: DO PASS SB 71**

Moved by: Rusch  
Second by: Schoenbeck  
Action: Prevailed by roll call vote (7-0-0-0)

Voting Yes: Blare, Novstrup, Schoenbeck, Stalzer, Kennedy, Rusch, and Russell

**SB 73 : exempt certain persons from the requirement to publish name changes.**

Presented by: Senator Jeff Monroe  
Proponents: Jason Ravnsborg, Attorney General of the State of South Dakota

**MOTION: AMEND SB 73**

73B

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

**Section 1.** That a NEW SECTION be added:

21-37-5.2. Notice and open court requirements--Exception--Name change of victims--  
Sealed records.

The court may grant an order changing the name of a person without publication of notice or a hearing in open court if all of the following conditions are met:

(1) It appears from the pleadings that the petitioner has been a resident of the county in which the petition is filed for at least six months;

- (2) The petitioner is a victim of human trafficking, domestic abuse, or child abuse;
- (3) That sufficient basis exists to grant an exception to §§ 21-23-4 and 21-37-5;
- (4) That the pleadings disclose if the petitioner has a protection order or restraining order; and
- (5) It appears to the court that the name change is in the petitioner's best interests.

If good cause exists, the court may order all records regarding the petition and order be sealed. The records shall only be opened by a court order based upon showing good cause or at the petitioner's request.

"  
 Moved by: Schoenbeck  
 Second by: Kennedy  
 Action: Prevailed by voice vote

**MOTION: AMEND SB 73**

73C

On the previously adopted amendment (73B), On page 1, line 11, delete "§§ 21-23-4 " and insert "§§ 21-37-4 "

On the previously adopted amendment (73B), On page 1, line 13, after "order; " delete "and"  
 On the previously adopted amendment (73B), On page 1, line 14, after "interests" insert "; and  
 (6) The court finds that the name change is not done for the purposes of fraud"

Moved by: Rusch  
 Second by: Kennedy  
 Action: Prevailed by voice vote

**MOTION: DO PASS SB 73 AS AMENDED**

Moved by: Rusch  
 Second by: Kennedy  
 Action: Prevailed by roll call vote (7-0-0-0)

Voting Yes: Blare, Novstrup, Schoenbeck, Stalzer, Kennedy, Rusch, and Russell

**HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED SB 73 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.**

**SB 47 : revise certain provisions regarding sex offender registration statutes.**

Presented by: Jason Ravensborg, Attorney General of the State of South Dakota  
 Opponents: Doug Abraham, SD Association of Criminal Defense Lawyers

**MOTION: AMEND SB 47**

47A

On page 3, line 15, of the Introduced bill, after the end of the last paragraph insert "

**Section 3.** That § 22-24B-19 be AMENDED:

22-24B-19. Criteria for removal from registry as Tier I offender.

To be eligible for removal from the registry as a Tier I offender, the petitioner shall show, by clear and convincing evidence, that all of the following criteria have been met:

- (1) At least five years have elapsed since the date the petitioner first registered pursuant to this chapter;
- (2) The crime requiring registration was for:
  - (a) Statutory rape under subdivision 22-22-1(5), or an attempt to commit statutory rape under subdivision 22-22-1(5), but only if the petitioner was twenty-one years of age or younger at the time the offense was committed or attempted;
  - (b) A juvenile adjudication for a sex crime as defined in subdivision 22-24B-1(1);
  - (c) Sexual contact under § 22-22-7 if the victim was between the ages of thirteen and sixteen and the petitioner was at least three years older than the victim, but only if the petitioner was twenty-one years of age or younger at the time the offense was committed; ~~or~~
  - (d) Felony use or dissemination of visual recording or photographic device without consent under § 22-21-4; or
  - (e) An out-of-state, federal or court martial offense that is comparable to the elements of the crimes listed in (a), (b), or (c);
- (3) The circumstances surrounding the crime requiring registration did not involve a child under the age of thirteen;
- (4) The petitioner is not a recidivist sex offender;
- (5) The petitioner has substantially complied in good faith with the registration and re-registration requirements imposed under chapter 22-24B; and
- (6) Petitioner demonstrates to the satisfaction of the court that he or she does not pose a risk or danger to the community.

For purposes of this section, any period of time during which the petitioner was incarcerated or during which the petitioner was confined in a mental health facility does not count toward the five-year calculation, regardless of whether such incarceration or confinement was for the sex offense requiring registration or for some other offense.

"On page 3, line 17, after the end of the last paragraph insert "

**Section 4.** That § 22-21-4 be AMENDED:

22-21-4. Use or dissemination of visual recording or photographic device--Violation as misdemeanor or felony.

No person may use or disseminate in any form any visual recording or photographic device to photograph or visually record any other person without clothing or under or through the clothing, or with another person depicted in a sexual manner, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to self-gratify, to harass, or embarrass and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy. A violation of this section is a Class 1 misdemeanor. However, a violation of this section is a Class 6 felony if the victim is seventeen years of age or younger and the perpetrator is at least twenty-one years ~~old~~ of age at the time the photograph or recording is made.

"

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

**MOTION: DO PASS SB 47 AS AMENDED**

Moved by: Schoenbeck  
 Second by: Blare

Action: Prevailed by roll call vote (5-2-0-0)

Voting Yes: Blare, Schoenbeck, Stalzer, Rusch, and Russell

Voting No: Novstrup and Kennedy

**MOTION: ADJOURN**

Moved by: Rusch

Second by: Kennedy

Action: Prevailed by voice vote

Jean Denton, Committee Secretary

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/s/ LANCE RUSSELL  
Lance Russell, Chair