Roll Call

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Russell

MOTION: TO APPROVE THE MINUTES OF TUESDAY, FEBRUARY 18TH

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

MOTION: AMEND SB 64

On page 1, line 1, of the Introduced bill, delete "prohibit " and insert "define mitigating circumstances from "
On page 1, line 1, after "punishment" delete " for any person suffering from a severe mental illness"
On the Introduced bill, delete everything after the enacting clause and insert:

Section 1. That § 23A-27A-3 be AMENDED:
Upon the conclusion of the evidence, the judge shall give the jury appropriate instructions.
After arguments of counsel, the jury shall retire to determine whether any mitigating or aggravating circumstances, as defined in § 23A-27A-1, exist.
The instructions as determined by the trial judge to be warranted by the evidence shall be given in his charge and in writing to the jury for its deliberation. Mitigating circumstances include:

(1) The defendant has no significant history of prior criminal conduct;
(2) The defendant was afflicted with a mental disability or mental illness;
(3) The defendant was under the influence of mental or emotional disturbance;
(4) The defendant’s inability to appreciate the criminality of their conduct or if the defendant’s ability to conform their conduct to the requirements of the law was substantially impaired;
(5) The defendant’s age at the time of the crime;
(6) The defendant acted under duress, though not such duress as to constitute a defense to prosecution, or acted under the domination of another person;
(7) The victim was a participant in the homicidal conduct or consented to the homicidal acts;
(8) Although the defendant was a principal in the offense which was committed by another, the defendant's participation was relatively minor, although not so minor as to constitute a defense to prosecution;
(9) The defendant could not reasonably have foreseen that his or her conduct in the course of the commission of the offense for which he or she was convicted would cause, or would create a grave risk of causing, death to another person;
(10) The emotional state of the defendant at the time the crime was committed;
(11) The extent of the defendant's cooperation with law enforcement officers or agencies and with the office of the prosecuting attorney;
(12) The influence of drugs or alcohol;
(13) The good faith, although mistaken, belief by the defendant that circumstances existed which constituted a moral justification for his or her conduct;
(14) The defendant is not a continuing threat to society; or
(15) Any other evidence which bears on the question of mitigation.

The existence of one or more mitigating factors shall be considered together with all the other facts and circumstances of the case, including aggravating circumstances, in determining whether to impose a death sentence. The existence of any mitigating factor may be sufficient reason not to impose a death sentence.

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

SB 64: prohibit capital punishment for any person suffering from a severe mental illness.

Presented by: Senator Arthur Rusch  
Proponents: Sister Kathleen Bierne, Presentation Sisters of Aberdeen  
Representative Timothy Johns  
Chris Motz, SD Catholic Conference  
Doug Abraham, SD Association of Criminal Defense Lawyers  
Steve Siegel, South Dakota Trial Lawyers Association, Sioux Falls, SD  
Opponents: Jason Ravnsborg, Attorney General of the State of South Dakota  
Paul Bachand, South Dakota State's Attorneys Association  

MOTION: DO PASS SB 64 AS AMENDED  

Moved by: Schoenbeck  
Second by: Kennedy  
Action: Failed by Majority Members Elect (3-4-0-0)  

Voting Yes: Schoenbeck, Kennedy, and Rusch  
Voting No: Blare, Novstrup, Stalzer, and Russell  

MOTION: AMEND SB 64

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

"  
Section 1. That § 23A-27A-3 be AMENDED:
23A-27A-3. Jury to determine existence of mitigating or aggravating circumstances--  
Instructions to jury.
Upon the conclusion of the evidence, the judge shall give the jury appropriate instructions.  
After arguments of counsel, the jury shall retire to determine whether any mitigating or aggravating circumstances, as defined in § 23A-27A-1, exist
and, if so, whether sufficient circumstances exist to mitigate against imposition of a death sentence. Mitigating circumstances include:

1. The defendant has no significant history of prior criminal conduct;
2. The defendant was afflicted with a mental disability or mental illness;
3. The defendant was under the influence of mental or emotional disturbance;
4. The defendant’s inability to appreciate the criminality of their conduct or if the defendant’s ability to conform their conduct to the requirements of the law was substantially impaired;
5. The defendant’s age at the time of the crime;
6. The defendant acted under duress, though not such duress as to constitute a defense to prosecution, or acted under the domination of another person;
7. The victim was a participant in the homicidal conduct or consented to the homicidal acts;
8. The defendant’s participation in the homicidal conduct was relatively minor; or
9. Any other evidence of a mitigating nature concerning the defendant’s character or record and the circumstances of the offense.

The existence of one or more mitigating factors shall be considered together with all the other facts and circumstances of the case, including aggravating circumstances, in determining whether to impose a death sentence. The instructions as determined by the trial judge to be warranted by the evidence shall be given in his the judge’s charge and in writing to the jury for its deliberation.

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

MOTION: DEFER SB 64 TO THE 41ST LEGISLATIVE DAY

Moved by: Schoenbeck
Second by: Stalzer
Action: Prevailed by Majority Members Elect (4-3-0-0)

Voting Yes: Blare, Novstrup, Stalzer, and Russell
Voting No: Schoenbeck, Kennedy, and Rusch

SB 6: revise certain conditions under which presumptive probation may be applied.

Presented by: Jason Ravnsborg, Attorney General of the State of South Dakota
Proponents: Paul Bachand, South Dakota State's Attorneys Association
Staci Ackerman, SD Sheriffs Association
Lori Martinez, SD Police Chiefs Association
Dr. Tamara Grove, SD Family Policy Council, Sioux Falls, SD
Opponents: Doug Abraham, SD Association of Criminal Defense Lawyers (Handout(s) 1,2)
Lisa Nolen, Americans for Prosperity
Steve Siegel, South Dakota Trial Lawyers Association, Sioux Falls, SD
Dan Nelson, American Civil Liberties Union
MOTION: AMEND SB 6

On page 1, line 18, of the Introduced bill, delete "For the purposes of this section, it is also an aggravating circumstance if the court determines the person failed to cooperate with law enforcement in an ongoing investigation." and insert "The sentencing court may also consider the defendant's conduct evincing a failure to cooperate as an aggravating circumstance to support a departure from presumptive probation in all drug or substance abuse matters as defined by § 34-20B-3."

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

MOTION: AMEND THE PENDING AMENDMENT

On the previously adopted amendment (6A), On page 1, line 21, after "cooperate" insert "with law enforcement"

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

MOTION: DO PASS SB 6 AS AMENDED

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

Voting Yes: Blare, Novstrup, Schoenbeck, Stalzer, and Russell
Voting No: Kennedy and Rusch

SB 114: require an incentive program to provide diversion opportunities for certain substance abuse offenses.

Presented by: Senator Craig Kennedy
Proponents: Jon Sommervold, self, Sioux Falls, SD
            Justin Bell, SD Association of Criminal Defense Lawyers
            Lisa Nolen, Americans for Prosperity
Opponents: Hallie Getz, Bureau of Finance and Management
           Paul Bachand, South Dakota State's Attorneys Association

MOTION: DO PASS SB 114

Moved by: Rusch
Second by: Kennedy
Action: Was not acted on.
MOTION: SUBSTITUTE MOTION: DEFER SB 114 TO THE 41ST LEGISLATIVE DAY

Moved by: Schoenbeck
Second by: Russell
Action: Prevailed by Majority Members Elect (4-3-0-0)

Voting Yes: Novstrup, Schoenbeck, Stalzer, and Russell
Voting No: Blare, Kennedy, and Rusch

SB 115: revise the penalty for the ingestion of certain controlled substances.

Presented by: Senator Craig Kennedy (Handout(s) 3)
Proponents: Justin Bell, SD Association of Criminal Defense Lawyers (Handout(s) 4,5)
Jon Sommervold, self, Sioux Falls, SD
Dan Nelson, American Civil Liberties Union
Lisa Nolen, Americans for Prosperity
Steve Siegel, South Dakota Trial Lawyers Association, Sioux Falls, SD
Opponents: Jason Ravnsborg, Attorney General of the State of South Dakota
Paul Bachand, South Dakota State's Attorneys Association
Dick Tieszen, SD Sheriffs Association

MOTION: DEFER SB 115 TO THE 41ST LEGISLATIVE DAY

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

Voting Yes: Blare, Novstrup, Schoenbeck, Stalzer, and Russell
Voting No: Kennedy and Rusch

SB 169: authorize the possession of a concealed pistol by employees in county courthouses.

Presented by: Senator Lance Russell
Proponents: Paul Nabholz, Fall River County, Hot Springs, SD (Handout(s) 6)
John Bey, Fall River County, Hot Springs, SD
Lyle Jensen, Fall River County, Hot Springs, SD
Opponents: Roger Tellinghuisen, South Dakota Association of County Officials

MOTION: AMEND SB 169

On page 2, line 10, of the Introduced bill, after "county" insert "or the state"
Moved by: Kennedy
Second by: Blare
Action: Prevailed by voice vote
MOTION: DO PASS SB 169 AS AMENDED

Moved by: Russell
Second by: Novstrup
Action: Prevailed by Majority Members Elect (4-1-2-0)

Voting Yes: Blare, Novstrup, Stalzer, and Russell
Voting No: Kennedy

Excused: Schoenbeck and Rusch

MOTION: ADJOURN

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

Rachael Person, Committee Secretary

/s/ LANCE RUSSELL
Lance Russell, Chair