

Committee: Senate Judiciary

Thursday, February 20, 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, FEBRUARY 18<sup>TH</sup>**

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

**MOTION: AMEND SB 64**

64C

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:

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.  
~~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**

64B

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.

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

**MOTION: DEFER SB 64 TO THE 41<sup>ST</sup> 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 Ravensborg, Attorney General of the State of South Dakota  
Proponents: Paul Bachand, South Dakota State's Attorneys Association  
Staci Ackerman, SD Sheriffs Association  
Lori Martinec, 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**

6A

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**

6C

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 41<sup>ST</sup> 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 41<sup>ST</sup> 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**

169A

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

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/s/ LANCE RUSSELL  
Lance Russell, Chair