Committee: Senate Judiciary Tuesday, February 25, 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 THURSDAY, FEBRUARY 20TH

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

SB 138 : amend parole provisions regarding life sentences.

Presented by: Senator Arthur Rusch (Handout(s) 1)
Proponents: Michelle Thrannum, Institute for Justice, Tea, SD
Justin Bell, SD Association of Criminal Defense Lawyers
Opponents: Jason Ravnsborg, Attorney General of the State of South Dakota (Handout(s) 2)
Mike Leidholt, Department of Corrections
Paul Bachand, South Dakota State's Attorneys Association
Dick Tieszen, SD Sheriffs Association

MOTION: DEFER SB 138 TO THE 41ST LEGISLATIVE DAY

Moved by: Schoenbeck
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

MOTION: AMEND SB 164

164A

On page 1, line 12, of the Introduced bill, delete " or" and insert a comma
On page 1, line 12, of the Introduced bill, after "yellow" insert ", or blue"
On page 2, line 3, of the Introduced bill, after "of" delete ":
(1) A "
On page 2, line 4, of the Introduced bill, after "of:
(1) A " insert "a "
On page 2, line 5, of the Introduced bill, delete " or" and insert a comma
On page 2, line 5, of the Introduced bill, after "yellow" insert the comma
On page 2, line 6, of the Introduced bill, after "yellow " insert "or blue "
On page 2, line 6, of the Introduced bill, after "lights" delete ", and the accident does not cause bodily injury to a driver or passenger of that vehicle;

(2) A Class 6 felony if the accident causes bodily injury to a driver or passenger of a stopped emergency vehicle making use of its red visual signals or a stopped vehicle making use of amber or yellow warning lights; or
(3) A Class 3 felony if the accident causes the death of a driver or passenger of a stopped emergency vehicle making use of its red visual signals or a stopped vehicle making use of amber or yellow warning lights"

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

SB 164 : revise the penalties and provisions regarding approaching stopped vehicles.

Presented by: Senator John Wiik
Proponents: Cory Borg, Deuel County Sheriff, Clear Lake, SD
Staci Ackerman, SD Sheriffs Association
Jason Husby, Department of Public Safety
Maynard Konechne, South Dakota Emergency Medical Services Association

MOTION: DO PASS SB 164 AS AMENDED

Moved by: Schoenbeck
Second by: Blare
Action: Prevailed by Majority Members Elect (6-0-1-0)

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

Excused: Kennedy

MOTION: AMEND SB 172

172B

On the Introduced bill, delete everything after the enacting clause and insert:
"
Section 1. That a NEW SECTION be added:
23A-51-1. Civil forfeiture prohibited.
Notwithstanding any other law, there may be no civil forfeiture under South Dakota law. Any forfeiture proceeding shall be held following the trial of the related criminal offense.
Section 2. That a NEW SECTION be added:
23A-51-2. Forfeiture of property--State must establish by clear and convincing evidence.
Property may be forfeited if the state establishes by clear and convincing evidence that the property:
(1) Constitutes, or is derived from, proceeds of the underlying offense for which the person was convicted; or
(2) Was used in any manner or part, to commit, or facilitate the commission of the offense for which the person was convicted.
Nothing in this chapter prevents property from being forfeited by a plea agreement approved by the presiding court, except that a plea agreement may not prevent the claims of a person who has a security interest or is an owner under § 23A-51-6.
Section 3. That a NEW SECTION be added:

23A-51-3. Certain provisions proceeded against under this chapter.

Property forfeitable under §§ 22-24A-15 or 34-20B-70 shall be proceeded against under this chapter.

Section 4. That a NEW SECTION be added:

23A-51-4. Victim's rights not affected.

Nothing in this chapter may be construed to deprive a victim under S.D. Const., Art. VI, § 29 of the victim's right, upon request, to the prompt return of the victim's property when the property is no longer needed as evidence in the case.

Section 5. That a NEW SECTION be added:

23A-51-5. Property taken deemed in custody of attorney general.

Property taken or detained pursuant to this chapter is deemed to be in the custody of the attorney general, subject only to the orders and decrees of a court or official having jurisdiction over the property.

Section 6. That a NEW SECTION be added:

23A-51-6. Person with interest in property--Proof of ownership--Proof of owner knowledge or consent.

Any person, other than a defendant, asserting an interest in the property seized pursuant to this chapter, may petition the court at any time for the return of the person's property. To the extent that the person can establish by clear and convincing evidence that the person has an interest in the property seized, a thing of value is not subject to forfeiture under this chapter by reason of any act or omission, unless the state proves by clear and convincing evidence that the act was committed or the omission occurred with the owner's knowledge or consent. For property not subject to forfeiture, a court shall order the return of the property if the property is not reasonably required to be held for evidentiary reasons.

Section 7. That a NEW SECTION be added:

23A-51-7. Notice of forfeiture proceeding.

If the state determines to proceed with forfeiture of property, the state shall provide notice to the defendant and defendant's counsel before the trial for the underlying criminal proceeding. The notice shall provide that the state is seeking forfeiture of the property as an additional sanction related to the criminal violation and shall include:

(1) A description of the property seized;

(2) The date and place of the seizure;

(3) A description of the property's use in the commission of a crime or derivation from the commission of a crime; and

(4) The name and address of the agency responsible for the seizure.

Section 8. That a NEW SECTION be added:

23A-51-8. Forfeiture following conviction--Reasonable expenses of law enforcement and state—Waiver of conviction requirement.

If the state has provided notice under § 23A-51-7 and the underlying prosecution resulted in a conviction, following the trial for the underlying criminal prosecution, the property may be forfeited in a court proceeding if the state establishes by clear and convincing evidence that the property is subject to forfeiture based on evidence received at the criminal trial or additional evidence offered after conviction.

In addition, the court shall determine the extent of reasonable expenses incurred by law enforcement and the state in investigating and prosecuting the underlying criminal case.

The court may waive the conviction requirement and grant permanent title to the state if the prosecuting authority files a motion no fewer than one hundred eighty

days after seizure and shows by clear and convincing evidence that, before conviction, the defendant:

(1) Died;

(2) Was deported by the United States government;

(3) Is granted immunity or reduced punishment in exchange for testifying or assisting a law enforcement investigation or prosecution;

(4) Fled the jurisdiction; or

(5) Abandoned the property.

Section 9. That a NEW SECTION be added:

23A-51-9. Sale and distribution of forfeited property.

If property is forfeited under this chapter, the attorney general shall sell any forfeited property that is not required to be destroyed by law and that is not harmful to the public, and distribute the proceeds in the following order:

(1) The payment of fines or costs ordered to be paid by the defendant;

(2) The payment of restitution to any victims of the underlying crime;

(3) The payment of reasonable expenses incurred by law enforcement and the state in investigating and prosecuting the underlying criminal case as determined by the court; and

(4) Any remaining balance shall be treated in the same manner as fines and distributed to the schools in the manner prescribed in S.D. Const., Art. VIII, § 3.

Section 10. That a NEW SECTION be added:

23A-51-10. Written report of property seized.

For any property seized under this chapter, the law enforcement officer or agent of the Division of Criminal Investigation making the seizure, or for any seizure by an officer or agent who is not an officer or agent of the state, the officer or agent shall provide a written report of the seizure to the attorney general on a form prescribed by the attorney general. The report under this section shall include:

(1) The date of the seizure;

(2) The nature of the property seized;

(3) A description of the property seized;

(4) The address or location where the seizure occurred and, if seized during a traffic stop on an interstate or state highway, the direction of the traffic flow: eastbound, westbound, southbound, or northbound;

(5) The reason or purpose of the seizure;

(6) The criminal offense alleged that led to the seizure;

(7) The disposition of the property seized;

(8) The estimated value of the property seized; and

(9) For property seized without court process, the cause of the seizure.

Section 11. That a NEW SECTION be added:

23A-51-11. Report to auditor general—Report published.

Before February first of each year, the attorney general shall provide a report to the auditor general that includes the nature and extent of all seizures under this chapter during the previous calendar year. The attorney general shall publish the report provided under this section on the attorney general's website.

Section 12. That a NEW SECTION be added:

23A-51-12. Relinquishing property seized to federal agency prohibited.

A local or state law enforcement agency may not refer, transfer, or otherwise relinquish possession of property seized under state law to a federal agency by way of adoption of the seized property or other means by the federal agency for the purpose of the property's forfeiture under the federal Controlled Substances Act, Public Law 91-513, or other federal law.

Section 13. That §§ 23A-49-1 through 23A-49-20 be REPEALED.

Section 14. That § 22-24A-15 be AMENDED:

22-24A-15. Property subject to forfeiture.

Any person who is convicted of an offense under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive, and 22-23-2, 22-23-8, and 22-23-9, or under 18 U.S.C. §§ 1466A, 1470, 1591, 2251, 2251A, 2252, 2252A, 2252B, 2252C, 2260, 2421, 2422, and 2423, as of January 1, 2016, shall forfeit to the state, pursuant to chapter ~~23A-49~~ 23A-51, the person's interest in the following and no property right exists in them:

(1) Any photograph, film, videotape, book, digital media or visual depiction that has been manufactured, distributed, purchased, possessed, acquired, or received in violation of §§ 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;

(2) Any material, product, and equipment of any kind that is used or intended for use in manufacturing, processing, publishing, selling, possessing, or distributing any visual depiction proscribed by §§ 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;

(3) Any property that is used, or intended for use, as a container for property described in subdivisions (1) and (2) of this section, including any computers and digital media;

(4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or conceal, or that is used, or intended for use, to transport, or in any manner facilitate any activity proscribed under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;

(5) Any book, record, and research, including microfilm, tape, and data that is used, or intended for use, in violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;

(6) Any funds or other things of value used for the purposes of unlawfully carrying out any activity proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive, and 22-23-2, 22-23-8, and 22-23-9; and

(7) Any asset, interest, profit, income, and proceed acquired or derived from the unlawful activity proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive, and 22-23-2, 22-23-8, and 22-23-9.

Any property described in subdivision (1) of this section shall be deemed contraband and shall be summarily forfeited to the state. Property described in subdivisions (2), (3), (4), (5), (6), and (7) is subject to forfeiture under the terms of ~~§ 23A-49-14, and property described in subdivision (4) is subject to forfeiture under the terms of § 23A-49-15~~ chapter 23A-51.

Section 15. That § 34-20B-70 be AMENDED:

34-20B-70. Property subject to forfeiture.

The following are subject to forfeiture pursuant to chapter ~~23A-49~~ 23A-51 and no property right exists in them:

(1) All controlled drugs and substances and marijuana which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this chapter or chapter 22-42;

(2) All raw materials, products, and equipment of any kind which are used or intended for use, in manufacturing, compounding, processing, importing, or exporting any controlled drug or substance or marijuana in violation of the provisions of this chapter or chapter 22-42;

(3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);
(4) All conveyances including aircraft, vehicles, or vessels, which transport, possess, or conceal, or which are used, or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession, or concealment of marijuana in excess of one-half pound or any quantity of any other property described in subdivision (1) or (2), except as provided in §§ 34-20B-71 to 34-20B-73, inclusive. This subdivision includes those instances in which a conveyance transports, possesses or conceals marijuana or a controlled substance as described herein without the necessity of showing that the conveyance is specifically being used to transport, possess, or conceal or facilitate the transportation, possession, or concealment of marijuana or a controlled substance in aid of any other offense;
(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;
(6) Any funds or other things of value used for the purposes of unlawfully purchasing, attempting to purchase, distributing, or attempting to distribute any controlled drug or substance or marijuana;
(7) Any assets, interest, profits, income, and proceeds acquired or derived from the unlawful purchase, attempted purchase, distribution, or attempted distribution of any controlled drug or substance or marijuana.

Property described in subdivision (1) shall be deemed contraband and shall be summarily forfeited to the state, property described in subdivisions (2), (3), (4), (5), (6), and (7) is subject to forfeiture under the terms of ~~§ 23A-49-14, and property described in subdivision (4) is subject to forfeiture under the terms of § 23A-49-15~~ chapter 23A-51.

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

SB 172 : revise provisions regarding civil forfeiture.

Presented by: Senator Arthur Rusch (Handout(s) 3,4,5,6,7,8,9,10)
Proponents: Lee McGrath, self, Minneapolis, MN
Don Haggar, Americans for Prosperity
Sam Nelson, self, Canton, SD
Justin Bell, 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
Dick Tieszen, SD Sheriffs Association
Paul Bachand, South Dakota State's Attorneys Association

MOTION: DEFER SB 172 TO THE 41ST LEGISLATIVE DAY

Moved by: Blare
Action: Died for lack of a second

MOTION: DO PASS SB 172 AS AMENDED

Moved by: Kennedy
Second by: Rusch
Action: Prevailed by Majority Members Elect (5-2-0-0)

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

Voting No: Blare and Schoenbeck

MOTION: **TO TABLE SB 7**

Moved by: Kennedy
Second by: Rusch
Action: Prevailed by roll call vote (5-0-2-0)

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

Excused: Novstrup and Stalzer

SB 121 : revise parenting guidelines and repeal Supreme Court authority to promulgate guidelines.

Presented by: Representative Tom Pischke

MOTION: **TO TABLE SB 121**

Moved by: Schoenbeck
Second by: Kennedy
Action: Prevailed by roll call vote (6-0-1-0)

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

Excused: Novstrup

MOTION: **ADJOURN**

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

Rachael Person, Committee Secretary

/s/ LANCE RUSSELL
Lance Russell, Chair