



Legislative
Research
Council

MINUTES

Sex Offender Registry Study

Fourth and Final Meeting
2009 Interim
Monday, October 19, 2009

Room 413
State Capitol Building
Pierre, South Dakota

The fourth and final meeting of the interim Sex Offender Registry Study Committee was called to order by Senator Gene Abdallah, Chair, at 9:06 a.m. (CDT), on Monday, October 19, 2009, in Room 413 of the State Capitol, in Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Gene Abdallah (Chair) and Sandy Jerstad; Representatives Richard Engels, Peggy Gibson, Brian Gosch (Vice Chair), and Jacqueline Sly. Representative Roger Solum was excused.

Staff members present included Reuben Bezpaletz, Chief Analyst for Research and Legal Services; Jacquelyn Storm, Principal Legislative Attorney; and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was web cast live. The archived web cast is available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

Minutes

Representative Engels moved, seconded by Representative Gosch, to approve the minutes of the September 21, 2009, meeting. Motion prevailed on a voice vote.

Staff Report

Mr. Reuben Bezpaletz distributed and reviewed the following draft legislation that had been previously e-mailed to the committee:

- 1) Draft 139 – An Act to provide prosecutorial discretion in charging, as misdemeanors, certain felony offenses pertaining to the sex offender registry (**Document 1**);
- 2) Draft 140 – An Act to limit misdemeanor eligibility for registry on the sex offender registry (**Document 2**);
- 3) Draft 141 – An Act to reduce the grace period for certain sex offender registry registrations (**Document 3**);
- 4) Draft 142 – An Act to establish the application of certain statutes relating to the sex offender registry with regard to out-of-state offenders residing in the state of South Dakota (**Document 4**);

- 5) Draft 143 – An Act to revise the criteria for removal from the sex offender registry **(Document 5)**;
- 6) Draft 144 – An Act to provide for the removal of certain juveniles adjudicated of committing certain sex crimes in South Dakota from the sex offender registry **(Document 6)**;
- 7) Draft 145 – An Act to revise certain provisions regarding the eligibility to petition for removal from the sex offender registry **(Document 7)**;
- 8) Draft 146 – An Act to provide for a tiered sex offender registry and to establish certain criteria for eligibility to petition for removal **(Document 8)**; and
- 9) Interim Committee Resolution to the Office of the Attorney General **(Document 9)**.

Mr. Bezpaletz also distributed information pertaining to Draft #144 entitled "How Registration and Community Notification Laws Apply to Juvenile Offenders" and "How do Registration Laws Apply to Juvenile Offenders in Different States?" **(Documents 10 and 11)**.

Public Testimony on Draft Legislation

Mr. Marty Jackley, Attorney General, and **Mr. John Strohman**, Assistant Attorney General, provided input on the proposed legislation.

Senator Jerstad shared written comments of her conversation with Dr. Mike Miner, a PhD psychologist from the University of Minnesota, whose specialty is sexual behavior **(Document 12)**.

Mr. Ryan Kolbeck, Sioux Falls, a Minnehaha Public Defender and President of the South Dakota Association of Criminal Defense Lawyers, speaking on his own behalf, provided the committee with his input on the proposed draft legislation. With regards to Draft #144, Mr. Kolbeck distributed a copy of SDCL 26-11-4 which dealt with transfer hearings for minors **(Document 13)**.

Representative Sly, on behalf of **Ms. Tacy Chrispen**, Spearfish, stated that if it is consensual sex, both parties should have to do community service; it is unfair that only one party be punished. Ms. Chrispen would also like the definition of "loitering" more clearly defined.

Representative Sly also presented written testimony from **Ms. Eileen Thomas**, Belle Fourche, regarding the proposed draft legislation **(Document 14)**.

Representative Gibson shared comments from a conversation she had with **Circuit Court Judge Jon Erickson** regarding the sex registry.

Representative Gibson provided written comments from **Mr. Perry Danforth**, a retired court services officer **(Document 15)**.

Representative Gibson also provided written comments from staff at **Our Home, Inc.** which is an Adolescent Sexual Adjustment Program in Huron (**Document 16**).

Ms. Cheri Scharffenberg, Sioux Falls, a Minnehaha Public Defender, representing herself, provided testimony regarding the definition of "loitering".

Committee Discussion/Action on Draft Legislation

In response to Chairman Abdallah's question if there was a consensus to form a three tier system, the committee voted unanimously by a voice vote to support a three tier system.

With regard to changing the 5 day registration requirement to 3 business days to comply with the Adam Walsh Act (AWA), the committee was split. Senators Abdallah and Jerstad were opposed to the change and Representatives Engels, Gibson, Gosch, and Sly were in favor of making the change.

Representative Engels requested that the Attorney General's office e-mail the committee a copy of their preliminary list of the items needed to move South Dakota towards substantial compliance with the AWA.

Draft 141 – An Act to reduce the grace period for certain sex offender registry registrations.

Representative Gibson moved, seconded by Representative Engels, to amend Draft 141 by inserting "business" following "three" where appropriate in the draft, include a definition of a business day, and approve Draft 141 as amended. Motion prevailed on a roll call vote with 6 ayes, 1 excused. Members voting aye: Abdallah, Engels, Gibson, Gosch, Jerstad, and Sly. Member excused: Solum.

Draft 140 – An Act to limit misdemeanor eligibility for registry on the sex offender registry.

Representative Gosch moved, seconded by Representative Gibson, to amend Draft 140 by removing all of the proposed changes to the current statute with the exception of page 2, line 4, subsection (11) and to adopt as amended. Motion prevailed on a roll call vote with 6 ayes, 1 excused. Members voting aye: Abdallah, Engels, Gibson, Gosch, Jerstad, and Sly. Member excused: Solum.

Draft 139 – An Act to provide prosecutorial discretion in charging, as misdemeanors, certain felony offenses pertaining to the sex offender registry.

Representative Engels moved, seconded by Senator Abdallah, to not adopt Draft 139. Motion prevailed on a roll call vote with 4 ayes, 2 nays, 1 excused. Members voting aye: Abdallah, Engels, Gibson, and Sly. Members voting nay: Gosch and Jerstad. Member excused: Solum.

Tier System

It was the consensus of the committee to have staff draft legislation with regards to placing specific offenses in the 3 tier system. In cases where the state law is stronger than the federal law, state law will be used.

Draft 142 – An Act to establish the application of certain statutes relating to the sex offender registry with regard to out-of-state offenders residing in the state of South Dakota.

Representative Engels moved, seconded by Representative Sly, that sections 1 and 2 of Draft 142 be split into two separate bills.

Representative Gosch moved a substitute motion, seconded by Senator Abdallah, to approve Draft 142 as written. Substitute motion prevailed on a roll call vote with 6 ayes, 1 excused. Members voting aye: Abdallah, Engels, Gibson, Gosch, Jerstad, and Sly. Member excused: Solum.

New Draft

Senator Jerstad moved, seconded by Representative Sly, for staff to draft a new bill that would make exceptions to the community safety zones for halfway houses and shelters located within the zones. Motion prevailed on a roll call vote with 6 ayes, 1 excused. Members voting aye: Abdallah, Engels, Gibson, Gosch, Jerstad, and Sly. Member excused: Solum.

Draft 143 – An Act to revise the criteria for removal from the sex offender registry.

Representative Engels moved, seconded by Representative Gibson, to approve Draft 143. Motion prevailed on a roll call vote with 6 ayes, 1 excused. Members voting aye: Abdallah, Engels, Gibson, Gosch, Jerstad, and Sly. Member excused: Solum.

Draft 144 – An Act to provide for the removal of certain juveniles adjudicated of committing certain sex crimes in South Dakota from the sex offender registry.

Senator Abdallah moved, seconded by Representative Gibson, to not adopt Draft 144. Motion prevailed on a roll call vote with 5 ayes, 1 nay, 1 excused. Members voting aye: Abdallah, Engels, Gibson, Gosch, and Sly. Member voting nay: Jerstad. Member excused: Solum.

Draft 145 – An Act to revise certain provisions regarding the eligibility to petition for removal from the sex offender registry.

Senator Abdallah moved, seconded by Senator Jerstad, to not adopt Draft 145. Motion prevailed on a roll call vote with 6 ayes, 1 excused. Members voting aye: Abdallah, Engels, Gibson, Gosch, Jerstad, and Sly. Member excused: Solum.

New Draft

Representative Gosch moved, seconded by Representative Gibson, for staff to draft a new bill that would bring South Dakota into compliance with AWA – SDCL 22-22-1 (2) as a registerable offense, change the age to 14, and include a section for removal after 10 years. Motion prevailed on a roll call vote with 6 ayes, 1 excused. Members voting aye: Abdallah, Engels, Gibson, Gosch, Jerstad, and Sly. Member excused: Solum.

Draft 146 – An Act to provide for a tiered sex offender registry and to establish certain criteria for eligibility to petition for removal.

Representative Engels moved, seconded by Representative Gibson, to remove section 3 and approve sections 1 and 2 of Draft 146, and integrate the necessary parts of Draft 145 and the AWA list to establish a list based on our registerable offenses. Motion prevailed on a roll call vote with 6 ayes, 1 excused. Members voting aye: Abdallah, Engels, Gibson, Gosch, Jerstad, and Sly. Member excused: Solum.

Interim Committee Resolution to the Office of the Attorney General.

Representative Gibson moved, seconded by Representative Gosch, to approve the Committee Resolution to the Office of the Attorney General. Motion prevailed on a roll call vote with 6 ayes, 1 excused. Members voting aye: Abdallah, Engels, Gibson, Gosch, Jerstad, and Sly. Member excused: Solum.

New Draft

Representative Engels moved, seconded by Representative Gibson, that SDCL 22-24B-1 (15) be amended to add conspiracy and solicitation to the list of registerable offenses to be in compliance with the AWA. Motion prevailed on a roll call vote with 6 ayes, 1 excused. Members voting aye: Abdallah, Engels, Gibson, Gosch, Jerstad, and Sly. Member excused: Solum.

Adjournment

Senator Jerstad moved, seconded by Representative Gibson, that the meeting be adjourned. Motion prevailed on a voice vote.

The meeting was adjourned at 4:20 p.m.



All Legislative Research Council committee minutes and agendas are available at the South Dakota Legislature's Homepage: <http://legis.state.sd.us>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.aspx>).