



Legislative
Research
Council

MINUTES

Criminal Code Revision Commission

Special Meeting
2004 Interim
Wednesday, December 8, 2004

Room 412
State Capitol Building
Pierre, South Dakota

A special meeting of the interim Criminal Code Revision Commission was called to order by Senator Lee Schoenbeck, Chair, at 8:05 a.m. on Wednesday, December 8, 2004, in Room 412 of the State Capitol Building in Pierre, South Dakota.

A quorum was established with the following members answering roll call: Senator Lee Schoenbeck (Chair); Representatives Joni Cutler, Richard Engels, Thomas Hennies (Vice-Chair), Sean O'Brien, and Tim Rounds; Messrs. Jeff Larson, Charlie McGuigan, Dave Nelson, and Tim Tucker. Unable to attend the meeting was Senator Gil Koetzle, Representative Tim Rave, and Mr. Mike Butler. Senator Patricia de Hueck and Retired Chief Justice Robert A. Miller were present later in the meeting.

Staff members present included Reuben Bezpaletz, Chief Analyst for Research and Legal Services; Annie Mehlhaff, Principal Fiscal Analyst; Jacque Storm, Principal Legislative Attorney; Doug Decker, Code Counsel; and Kris Schneider, Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council. For the purpose of continuity, these minutes are not necessarily in chronological order.

Minutes

The minutes from the November 30 – December 1, 2004, meeting had not been finalized so there were no minutes to be approved at this time.

Chair Remarks

Chair Schoenbeck stated that this would be the last meeting of the commission before session. He envisions that after the bills have had bill hearings in Senate Judiciary, he would ask that any amendments be held and that the bills as amended be taken up the following week. During that week time period, he would like to have another meeting of the commission to get feedback from the commission on the proposed changes. He stated that there will be two bills, one for the Cutler drafts and one for the Hennies drafts.

Chair Schoenbeck and Commissioner Tucker reported on the legislative forum that was held on December 7 to inform the legislators on the work product of the commission. They stated it was generally well received; however, there were a few technical amendments.

Chair Schoenbeck distributed a draft on the sex offender registry – Zion-Benton Draft (**Document 1**) to the commission. He stated that the draft was currently being reviewed by the Attorney General's

office and would be discussed later in the meeting. He stated that the first draft directed that anyone could petition to have his name removed from the sex offender registry; however, not everyone would qualify. The Zion-Benton draft changed who is eligible to petition and also changed the petition process to the circuit court instead of the magistrate court.

Staff Remarks

Mr. Bezpaletz distributed drafts of Sully – Eluding and Todd – Solicitation (**Document 2**) to the commission. He stated that these were the drafts that had been emailed to the commission over the weekend. Also distributed were "Omega Amendments" which Mr. Bezpaletz stated were errors that he caught on the most recent drafts (**Document 3**).

Staff also distributed revised Cutler drafts (yellow) (**Document 4**, pages 1 – 254) and revised Hennies drafts (blue) (**Document 5**, pages 1 - 58) which had been posted on the Legislative Research Council's (LRC) Web site on December 3, 2004.

REVIEW OF PROPOSED DRAFTS

HOUSE BILL NO. 1 Draft

Commissioner Hennies asked the commission to revisit House Bill No. 1 Draft. On page 3, lines 8 – 13, section 6. He questioned whether section 6 needed to say "licensed certified counselor". Commissioner Tucker stated that the court is currently doing that now; the proposed House Bill 1A draft that failed would have required everyone charged with a first offense driving under the influence to obtain an evaluation.

COMMISSIONER LARSON MOVED, SECONDED BY COMMISSIONER ROUNDS,

On page 3, line 12 of the printed bill, overstrike "has an addiction to alcohol" and insert "is chemically dependent".

On page 3, line 12, delete "or any other substance".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

Staff distributed a handout entitled "Miller Amendments (Blue Packet)" (**Document 6**).

Miller Amendment A

COMMISSIONER HENNIES MOVED, SECONDED BY COMMISSIONER ENGELS,

On page 6, line 21, delete "or" and insert "nor may the court issue".

On page 6, line 22, delete "court ordered".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

HOUSE BILL NO. 4 Draft

COMMISSIONER O'BRIEN MOVED, SECONDED BY COMMISSIONER TUCKER,

On page 21, line 5, after "convicted," insert "the subject of a youth diversion program".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER ENGELS MOVED, SECONDED BY COMMISSIONER HENNIES, THAT ALCOHOL BE ADDED TO THE LIST INCLUDED IN § 22-42-15 AND BE INCLUDED IN THE RESTRICTIONS TO SECONDARY SCHOOL EXTRACURRICULAR ACTIVITIES. MOTION TO AMEND FAILED ON A VOICE VOTE.

COMMISSIONER HENNIES MOVED, SECONDED BY COMMISSIONER TUCKER, TO APPROVE HOUSE BILL NO. 4 AS AMENDED. MOTION PREVAILED ON A VOICE VOTE.

HOUSE BILL NO. 5 Draft

COMMISSIONER LARSON MOVED, SECONDED BY COMMISSIONER ROUNDS,
On page 23, line 11, delete "common nuisance" and insert "Class 2 misdemeanor".
MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER ROUNDS MOVED, SECONDED BY COMMISSIONER CUTLER,
On page 23, line 9, after "who" insert "knowingly".
MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER HENNIES MOVED, SECONDED BY COMMISSIONER TUCKER, TO APPROVE HOUSE BILL NO. 5 AS AMENDED. MOTION PREVAILED ON A VOICE VOTE.

HOUSE BILL NO. 6 Draft

Miller Amendment B

COMMISSIONER HENNIES MOVED, SECONDED BY COMMISSIONER TUCKER,
On page 29, line 16, after "order" insert ", upon proof of financial responsibility pursuant to § 32-35-43.1,".
MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER HENNIES MOVED, SECONDED BY COMMISSIONER TUCKER, TO APPROVE HOUSE BILL NO. 6 AS AMENDED. MOTION PREVAILED ON A VOICE VOTE.

HOUSE BILL NO. 7 Draft

COMMISSIONER ROUNDS MOVED, SECONDED BY COMMISSIONER TUCKER,
On page 39, line 19, after "minor" insert "for consideration".
MOTION TO AMEND PREVAILED ON A VOICE VOTE.

Following a question if the proper language was being used in reference to amount of drugs (grams vs. ounces), Chair Schoenbeck deferred any action on House Bill No. 7 until a sample of the quantities could be shown to the commission.

Later in the meeting **Mr. Kevin Thom**, Department of Criminal Investigation, showed the commission what different quantities of drugs looked like. In response to a question if there should be a graduated scale, Mr. Thom stated that it would make sense and that another variable is the purity when dealing with cocaine or meth. Mr. Thom stated that the purer the drugs are, the closer you are to the source of the supply.

COMMISSIONER LARSON MOVED, SECONDED BY COMMISSIONER ENGELS,

On page 39, line 7, delete "two" and insert "five".

On page 39, line 8, delete "two" and insert "five".

MOTION TO AMEND FAILED ON A VOICE VOTE.

COMMISSIONER McGUIGAN MOVED, SECONDED BY COMMISSIONER ROUNDS,

On page 36, line 10, remove the overstrikes from "However, a first conviction for distribution to a minor".

On page 36, lines 11 to 17, remove the overstrikes.

On page 36, line 18, remove the overstrikes from "mandatory time of incarceration required by this section.".

MOTION TO AMEND FAILED ON A VOICE VOTE.

COMMISSIONER McGUIGAN MOVED, SECONDED BY COMMISSIONER ROUNDS,

On page 37, line 15, remove the overstrikes from "However, a first".

On page 37, lines 16 to 19, remove the overstrikes.

On page 37, line 20, remove the overstrikes from "sentence may not be suspended.".

MOTION TO AMEND FAILED ON A VOICE VOTE.

COMMISSIONER McGUIGAN MOVED, SECONDED BY COMMISSIONER ROUNDS,

On page 40, line 24, remove the overstrikes from "The sentence imposed for a conviction under this section carries a".

On page 41, lines 1 to 9, remove the overstrikes.

MOTION TO AMEND FAILED ON A VOICE VOTE.

COMMISSIONER HENNIES MOVED, SECONDED BY COMMISSIONER TUCKER, TO APPROVE HOUSE BILL NO. 7 AS AMENDED. MOTION PREVAILED ON A VOICE VOTE.

HOUSE BILL NO. 8 Draft

COMMISSIONER HENNIES MOVED, SECONDED BY COMMISSIONER TUCKER, TO APPROVE HOUSE BILL NO. 8. MOTION PREVAILED ON A VOICE VOTE.

HOUSE BILL NO. 9 Draft

COMMISSIONER ROUNDS MOVED, SECONDED BY COMMISSIONER O'BRIEN,

On page 46, line 17, delete "two" and insert "one".

On page 46, line 19, delete "two" and insert "one".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER LARSON MOVED, SECONDED BY COMMISSIONER HENNIES,

On page 47, line 17, overstrike "whatever".

On page 47, line 17, after "intent" insert "to".

On page 47, line 17, after "wholly" overstrike "to".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

Staff distributed a handout entitled "TUCKER AMENDMENT" (**Document 7**).

Tucker Amendment

COMMISSIONER TUCKER MOVED, SECONDED BY COMMISSIONER HENNIES,

On page 48, line 4, remove the overstrikes from "~~pursuant to this~~".

On page 48, delete line 5, and insert "chapter or is a foreign domestic violence protection order pursuant to § 25-10-12.1,".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER ROUNDS MOVED, SECONDED BY COMMISSIONER LARSON,

On page 50, line 10, delete "two" and insert "one".

On page 50, line 11, delete "two" and insert "one".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER LARSON MOVED, SECONDED BY COMMISSIONER ROUNDS,

On page 50, line 9, delete "five" and insert "four".

On page 50, line 10, delete "five" and insert "four".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER ROUNDS MOVED, SECONDED BY COMMISSIONER LARSON,

On page 50, line 21, overstrike "five" and insert "four".

On page 50, line 23, delete "five" and insert "four".

On page 50, line 24, delete "two" and insert "one".

On page 51, line 1, delete "two" and insert "one".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER TUCKER MOVED, SECONDED BY COMMISSIONER ENGELS,

On page 53, line 18, overstrike "five" and insert "four".

On page 53, line 19, overstrike "five" and insert "four".

On page 53, line 20, delete "two" and insert "one".

On page 53, line 21, delete "two" and insert "one".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER ENGELS MOVED, SECONDED BY COMMISSIONER ROUNDS,

On page 54, line 7, overstrike "five" and insert "four".

On page 54, line 8, delete "five" and insert "four".

On page 54, line 9, delete "two" and insert "one".

On page 54, line 10, delete "two" and insert "one".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

Mr. Bezpaletz referred the commission to the SULLY Draft – Eluding, which was distributed earlier in the meeting.

SULLY Draft

COMMISSIONER HENNIES MOVED, SECONDED BY COMMISSIONER NELSON,

On page 2, line 20, delete "third".

On page 2, line 21, delete "third".

On page 2, line 23, delete "third".

On page 2, line 24, delete "third".

COMMISSIONER LARSON MOVED A SUBSTITUTE MOTION, SECONDED BY COMMISSIONER CUTLER,

On page 2, line 23, delete "third".

On page 2, line 24, delete "third".

On page 3, line 1, delete "parties" and insert "party".

SUBSTITUTE MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER DE HUECK MOVED, SECONDED BY COMMISSIONER ENGELS,

On page 2, line 24, delete "to any third".

On page 3, line 1, delete "party".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER TUCKER MOVED, SECONDED BY COMMISSIONER ROUNDS,

On page 1, line 13, after "order" insert ", upon proof of financial responsibility pursuant to § 32-35-43.1,".

On page 2, line 13, after "order" insert ", upon proof of financial responsibility pursuant to § 32-35-43.1,".

On page 3, line 11, after "order" insert "upon proof of financial responsibility pursuant to § 32-35-43.1,".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER ROUNDS MOVED, SECONDED BY COMMISSIONER HENNIES, THAT SULLY AS AMENDED BE INSERTED INTO HOUSE BILL NO. 9 IN PLACE OF SECTION 13,

On page 48, delete lines 22 to 24, inclusive, and insert:

" Section 13. That § 32-33-18 be amended to read as follows:

32-33-18. Any driver of a motor vehicle who intentionally fails or refuses to bring a vehicle to a stop, ~~or who otherwise flees or attempts to elude a pursuing law enforcement vehicle,~~ when given visual or audible signal to bring the vehicle to a stop, is guilty of ~~eluding failure to stop at the signal of a law enforcement officer.~~ The signal given by the law enforcement officer may be by hand, voice, emergency light, or siren. The officer giving the signal shall be in uniform, prominently displaying a badge of office, and the vehicle shall be appropriately marked showing it to be an official law enforcement vehicle.

~~Eluding Failure to stop at the signal of a law enforcement officer is a Class 4~~ Class 2 misdemeanor. In addition, the court shall may order that the defendant's driver's license be revoked for up to one year, but may issue an order, upon proof of financial responsibility pursuant to § 32-35-43.1, allowing the defendant to operate a motor vehicle for purposes of the defendant's employment, attendance at school, or counseling programs. ~~Any person who is found guilty of eluding is subject to the additional enhanced penalties if the course of eluding results in:~~

- ~~(1) Death or great bodily injury to another person, a Class 4 felony; and~~
- ~~(2) Substantial bodily injury to another person or property damage in excess of five hundred dollars to property belonging to a person other than the person eluding, a Class 6 felony.~~

~~For any subsequent violation, the court shall order that the defendant's driver's license be revoked for five years.~~

Section 14. That chapter 32-33 be amended by adding thereto a NEW SECTION to read as follows:

Any driver of a motor vehicle who, after failing or refusing to bring a vehicle to a stop pursuant to § 32-33-18, flees from the law enforcement officer or attempts to elude the pursuit of the law enforcement officer is guilty of eluding. Eluding is a Class 1 misdemeanor. In addition, the court may order that the defendant's driver's license be revoked for up to one year, but may issue an order, upon proof of financial responsibility pursuant to § 32-35-43.1, allowing the defendant to operate a motor vehicle for purposes of the defendant's employment, attendance at school, or counseling programs.

Section 15. That chapter 32-33 be amended by adding thereto a NEW SECTION to read as follows:

Any driver of a motor vehicle who flees from a law enforcement officer or attempts to elude the pursuit of a law enforcement officer is guilty of aggravated eluding if, at any time during the flight or pursuit, the driver operates the motor vehicle in a manner that constitutes an inherent risk of death or serious bodily injury to any third person. Any of the following constitutes an inherent risk of death or

serious bodily injury to a third person, while fleeing from a law enforcement officer or attempting to elude the pursuit of a law enforcement officer:

- (1) Death or serious bodily injury to any person; or
- (2) Property damage in the aggregate of two thousand or more dollars; or
- (3) Exceeding, at any time during the flight or pursuit, any posted speed limit by twenty or more miles per hour; or
- (4) Exceeding, at any time during the flight or pursuit, any posted speed limit through a school zone or a construction zone by ten or more miles per hour; or
- (5) Failure to surrender to authority within ten minutes of the initiation of the flight or attempted elusion; or
- (6) Failure to surrender to authority prior to traveling five miles in the course of the flight or attempted elusion.

Aggravated eluding is a Class 5 felony. In addition, the court may order that the defendant's driver's license be revoked for up to one year, but may issue an order, upon proof of financial responsibility pursuant to § 32-35-43.1, allowing the defendant to operate a motor vehicle for purposes of the defendant's employment, attendance at school, or counseling programs. For any subsequent aggravated eluding violation, the court shall order that the defendant's driver's license be revoked for five years."

On page 49, delete lines 1 to 15, inclusive.

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER HENNIES MOVED, SECONDED BY COMMISSIONER TUCKER, TO APPROVE HOUSE BILL NO. 9 AS AMENDED. MOTION PREVAILED ON A VOICE VOTE.

HOUSE BILLS NO. 10 AND 11 Drafts

COMMISSIONER LARSON MOVED, SECONDED BY COMMISSIONER HENNIES, TO APPROVE HOUSE BILLS NO. 10 AND 11.

COMMISSIONER HENNIES MOVED A SUBSTITUTE MOTION, SECONDED BY COMMISSIONER CUTLER, THAT HOUSE BILL NO. 10 BE AMENDED AS FOLLOWS:

On page 55, delete line 3, and insert:

"

Section 1. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as follows:

No person may ride a horse or any other animal while under the influence of an".

On page 55, line 7, delete "2" and insert "1".

AND THAT HOUSE BILL NO. 11 BE AMENDED AS FOLLOWS:

On page 57, delete line 3, and insert:

"

Section 1. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as follows:

No person may ride a bicycle or any other nonmotorized vehicle while under the".

On page 57, line 6, delete "Class 2" and insert "Class 1".

On page 57, after line 7, insert:

"

Section 2. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of this chapter, the term, vehicle, as defined in subdivision 31-14-1(37) does not include bicycles, any other nonmotorized vehicles, and ridden animals."

SUBSTITUTE MOTION TO AMEND HOUSE BILLS NO. 10 AND 11 PREVAILED ON VOICE VOTE.

COMMISSIONER HENNIES MOVED, SECONDED BY COMMISSIONER TUCKER, TO APPROVE HOUSE BILLS NO. 10 AND 11 AS AMENDED. MOTION PREVAILED ON A VOICE VOTE.

FAULK Draft

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER HENNIES,

On page 97 of the printed bill, delete lines 11 to 14, inclusive, and insert:

" Section 2. That § 22-19A-2 be repealed.

~~22-19A-2. Any person who violates § 22-19A-1 when there is a temporary restraining order, or an injunction, or a protection order, in effect prohibiting the behavior described in § 22-19A-1 against the same party, is guilty of a Class 6 felony."~~

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER DE HUECK,

On page 101, delete lines 7 and 8, and insert:

"

Section 16. The code counsel shall create a new chapter, numbered 22-19C, and entitled, Enforcement of Protection Orders, and shall transfer §§ 22-19A-8 to 22-19A-15, inclusive, and §§ 25-10-1 to 25-10-12.5, inclusive, to chapter 22-19C and shall renumber the sections accordingly and adjust all appropriate cross references."

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER ROUNDS,

On page 98, lines 18 to 23, repeal section 7.

MOTION TO AMEND FAILED ON A VOICE VOTE.

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER HENNIES,

On page 97, line 16, overstrike "seven" and insert "five".

On page 98, line 1, overstrike ", 22-19A-2,".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

Following a brief discussion on whether this draft should have its own section in the Code, Chair Schoenbeck decided to hold the draft at this time.

SANBORN Draft

COMMISSIONER LARSON MOVED, SECONDED BY COMMISSIONER CUTLER, TO APPROVE SANBORN. MOTION PREVAILED ON A VOICE VOTE.

MINNEHAHA Draft

COMMISSIONER McGUIGAN MOVED, SECONDED BY COMMISSIONER LARSON,

On page 205, remove the overstrikes from lines 11 to 15, inclusive.

MOTION PREVAILED ON A VOICE VOTE.

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER MILLER, TO APPROVE MINNEHAHA AS AMENDED. MOTION PREVAILED ON A VOICE VOTE.

TODD Draft

Chair Schoenbeck read Alabama's solicitation provisions that Commissioner McGuigan had provided to him (**Document 8**).

COMMISSIONER LARSON MOVED, SECONDED BY COMMISSIONER ENGELS,

On page 1, line 4, delete "encourages, urges,".

On page 1, line 4, delete "importunes,".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER LARSON MOVED, SECONDED BY COMMISSIONER HENNIES,

On page 1, delete lines 13 to 15, inclusive, and insert:

"

(6) Class 6 felony if the offense solicited is a Class 5 felony; or

(7) Class 1 misdemeanor if the offense solicited is a Class 6 felony."

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER LARSON MOVED, SECONDED BY COMMISSIONER DE HUECK,

On page 2, after line 2, insert:

"

Section 3. No person may be convicted of criminal solicitation upon the uncorroborated testimony of the person allegedly solicited, and there must be proof of circumstances corroborating both the solicitation and the defendant's intent.

Section 4. No person may be convicted of criminal solicitation if, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, the defendant:

- (1) Notified the person solicited of his or her renunciation; and
- (2) Gave timely and adequate warning to the law enforcement authorities or otherwise made a substantial effort to prevent the commission of the criminal conduct solicited.

The burden of injecting this issue is on the defendant, but this does not shift the burden of proof."

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER MILLER, TO APPROVE TODD AS AMENDED. MOTION PREVAILED ON A VOICE VOTE.

Chair Schoenbeck stated that the draft on protection orders was not ready. Commissioner Cutler stated she would work on it and introduce it as a separate bill.

Chair Schoenbeck stated that the restraining order topic would not be ready for any action today.

ADDITIONAL AMENDMENTS TO DRAFTS

OMEGA A (Beadle Draft)

COMMISSIONER LARSON MOVED, SECONDED BY COMMISSIONER ROUNDS,

On page 10, line 16 of the printed bill, delete "incestuous statutory rape. Incestuous statutory rape" and insert "aggravated incest. Aggravated incest".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

OMEGA B (Brown Draft)

COMMISSIONER ROUNDS MOVED, SECONDED BY COMMISSIONER CUTLER,

On page 33, line 11, overstrike "Class 1 misdemeanor" and insert "Class 6 felony".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

OMEGA C (Buffalo Draft)

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER HENNIES,

On page 37, delete lines 8 to 12, inclusive.

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

OMEGA D (Campbell Draft)

COMMISSIONER ENGELS MOVED, SECONDED BY COMMISSIONER LARSON,

On page 45, delete lines 13 and 14.

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

Chair Schoenbeck distributed a handout that referred to proposed changes in the homicide statutes regarding the death of an unborn child (**Document 9**). After a brief discussion, it was the consensus of the commission that no action be taken since there had been no public comment allowed.

SEX OFFENDER REGISTRY Draft (Document 10)

Ms. Pat Archer, Assistant Attorney General, and **Mr. Decker** reviewed the proposed draft.

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER MILLER,

On page 1, line 14, after "registry." insert "Any person petitioning the court under this section for an order terminating the person's obligation to register is not entitled to court appointed counsel nor publicly funded witnesses."

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER MILLER,

On page 3, line 21, after "denied." insert "If the petition is denied, the petitioner may not file a subsequent petition for at least two years from the date the previous petition was denied."

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER LARSON,

On page 4, delete lines 1 and 2.

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER O'BRIEN MOVED, SECONDED BY COMMISSIONER MILLER,

On page 3, line 7, delete "not guilty by reason of insanity" and insert "guilty but mentally ill".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER MILLER, TO REPLACE PERKINS WITH THE LAST DRAFT (Document 10) OF THE SEX OFFENDER REGISTRY.

MOTION PREVAILED ON A VOICE VOTE.

COMMISSIONER O'BRIEN MOVED, SECONDED BY COMMISSIONER MILLER,

On page 2, line 5, after "A" insert "certified".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER TUCKER MOVED, SECONDED BY COMMISSIONER CUTLER,

On page 3, line 6, after "conviction" insert "or adjudication".

On page 3, line 10, after "state" insert ", federal jurisdiction, or courts martial".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER NELSON MOVED, SECONDED BY COMMISSIONER ENGELS,

On page 1, line 13, after "registered" insert ", the office of the prosecutor in the jurisdiction where the offense occurred,".

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER McGUIGAN MOVED, SECONDED BY COMMISSIONER CUTLER,

On page 5, after line 24, insert

" Section 9. That § 23A-28C-1 be amended by adding thereto a NEW SUBDIVISION to read as follows:

(15) To be notified of a petition by the sex offender for removal from the sex offender registry

and to provide written input with respect to the removal request."

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER MILLER, TO APPROVE PERKINS AS AMENDED. MOTION PREVAILED ON A VOICE VOTE.

DEUEL Draft

COMMISSIONER HENNIES MOVED, SECONDED BY COMMISSIONER CUTLER,

On page 78, after line 18, insert:

"

Section 2. That § 23A-42-1 be amended to read as follows:

23A-42-1. There is no limitation on the time within which a prosecution for Class A, Class B, or ~~Class 4~~ Class C felony must be commenced."

MOTION TO AMEND PREVAILED ON A VOICE VOTE.

Cutler Legislation

COMMISSIONER CUTLER MOVED, SECONDED BY COMMISSIONER MILLER, TO INTRODUCE THE CUTLER SUBCOMMITTEE DRAFTS, AS AMENDED, AS ONE BILL IN THE 2005 LEGISLATIVE SESSION. MOTION PREVAILED ON A ROLL CALL VOTE WITH 11 AYES, 0 NAYS, 4 EXCUSED. MEMBERS VOTING AYE: CUTLER, ENGELS, HENNIES, LARSON, McGUIGAN, MILLER, NELSON, O'BRIEN, ROUNDS, SCHOENBECK, AND TUCKER. MEMBERS EXCUSED: BUTLER, DE HUECK, KOETZLE, AND RAVE.

Hennies Legislation

COMMISSIONER HENNIES MOVED, SECONDED BY COMMISSIONER TUCKER, TO INTRODUCE THE HENNIES SUBCOMMITTEE DRAFTS, AS AMENDED, AS ONE BILL IN THE 2005 LEGISLATIVE SESSION. MOTION PREVAILED ON A ROLL CALL VOTE WITH 11 AYES, 0 NAYS, 4 EXCUSED. MEMBERS VOTING AYE: CUTLER, ENGELS, HENNIES, LARSON, McGUIGAN, MILLER, NELSON, O'BRIEN, ROUNDS, SCHOENBECK, AND TUCKER. MEMBERS EXCUSED: BUTLER, DE HUECK, KOETZLE, AND RAVE.

Remarks

Mr. Bezpaletz stated that he will cross reference the drafts. Once the drafts are engrossed, they will be posted on LRC's Web site. All of the sections that were not amended will be stripped out of the bills. He plans to leave the bills in the order that they are now and will provide an index.

Chair Schoenbeck expressed his appreciation to everyone for all of their time and efforts they had put into this venture.

Adjournment

There being no further business, Chair Schoenbeck adjourned the meeting at 2:50 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.cfm>).