



2021 South Dakota Legislature  
**Senate Bill 173**  
**ENROLLED**

AN ACT

**ENTITLED An Act to revise certain provisions related to competency hearings.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

**Section 1.** That § 23A-10A-14 be AMENDED.

**23A-10A-14. Facility's report--Length of commitment determined--Review after one year--Dismissal on court finding.**

After four months of evaluation, pursuant to § 23A-10A-4, if the facility has not certified that the defendant is competent to proceed, pursuant to § 23A-10A-4.1, the director of the approved facility shall issue a report to the circuit court evaluating whether there is a substantial probability that the defendant will become competent to proceed and whether there is a substantial probability that it will occur within the next year. After receipt of that report by the circuit court, the court shall set a time for hearing to determine whether there is a substantial probability that the defendant will become competent to proceed and whether there is a substantial probability that it will occur within the next year.

If the court finds there is a substantial probability that the defendant will become competent to proceed within the next year, the court shall order the defendant to be placed in a restoration to competency program under the direction of an approved facility, committed to an approved facility, or placed on outpatient status for restoration to competency if the defendant is not considered to be a danger to the health and safety of others for an additional specified period of time, not to exceed one year, or until the director of the facility issues a certificate of recovery pursuant to § 23A-10A-4.1.

If the court finds there is no substantial probability that the defendant will become competent to proceed within one year but there is a substantial probability that the defendant will become competent in the foreseeable future, the court shall review the defendant's condition to determine appropriate placement and order the defendant to be placed in a restoration to competency program under the direction of an approved facility,

committed to an approved facility, or to be placed on outpatient status for restoration to competency if the defendant is not considered to be a danger to the health and safety of others for a term consistent with § 23A-10A-15.

If the one year provided for in this section has run without a certificate of recovery being issued, the director of the approved facility shall notify the court that one year has expired since the order of detention, and the court shall order a hearing to review the defendant's condition to determine appropriate placement and order the defendant's placement in a restoration to competency program under the direction of an approved facility, commitment to an approved facility, or placement on outpatient status for restoration to competency if the defendant is not considered to be a danger to the health and safety of others for a term consistent with § 23A-10A-15.

If the court finds that there is no substantial probability that the defendant will become competent to proceed in the foreseeable future, the court shall dismiss the criminal charges against the defendant. If the director of the facility determines there is probable cause to believe that the defendant is a danger to self or others if the defendant is released, the director shall include the basis for that determination in the report and may recommend that the prosecutor file a petition for civil commitment proceedings.

**Section 2.** That § 23A-10A-15 be AMENDED.

**23A-10A-15. Length of detention for Class A, B, or C felony.**

If the most serious charge against the defendant is a Class A, B, or C felony, the order shall be for a term of years the court determines is reasonable or until the charges have been dismissed by the prosecution. The order may not exceed the maximum penalty allowable for the most serious charge facing the defendant. Upon expiration of the order of detention, the criminal charges against the defendant shall be dismissed. If the prosecutor believes there is probable cause to believe that the defendant is a danger to self or to others at the time of dismissal, the prosecutor may file a petition in accordance with chapter 27A-10 or 27A-11A or title 27B, for further restoration to competency.

Every twelve months thereafter, the director of the approved facility shall notify the court if the defendant is still in a restoration to competency program under the direction of an approved facility or in the approved facility pursuant to this chapter, and the circuit court shall hold a hearing to review any order of detention to determine if the defendant has become competent to proceed.

**Section 3.** That a NEW SECTION be added:

**23A-42-6. No limitation during time of mental incompetence.**

No time during which the defendant is determined to be mentally incompetent to proceed pursuant to chapter 23A-10A is part of any limitation pursuant to this chapter.

An Act to revise certain provisions related to competency hearings.

\_\_\_\_\_  
I certify that the attached Act originated in  
the:  
Senate as Bill No. 173

\_\_\_\_\_  
Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_,  
2021 at \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of the Senate

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_  
President of the Senate

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 2021

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
Speaker of the House

Attest:

Filed \_\_\_\_\_, 2021  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Secretary of State

Senate Bill No. 173  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State