



2023 South Dakota Legislature

House Bill 1174

SENATE HEALTH AND HUMAN SERVICES ENGROSSED

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: **Representative Mulder**

1 **An Act to provide for appropriate civil commitment of certain persons.**

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

3 **Section 1. That a NEW SECTION be added to title 27B:**

4 Any person with a felony sexual offense charge that has been dismissed pursuant
 5 to § 23A-10A-14, due to a developmental disability as defined in § 27B-1-18, is subject
 6 to civil commitment proceedings in accordance with this Act.

7 **Section 2. That a NEW SECTION be added to title 27B:**

8 The state's attorney prosecuting any felony sexual offense, which charge was
 9 dismissed pursuant to § 23A-10A-14 due to a developmental disability as defined in
 10 § 27B-1-18, may, within thirty days after the dismissal, file a petition for civil commitment
 11 of the person charged in the circuit court that dismissed the charge. The petition must
 12 allege the criteria for commitment, as set forth in section 8 of this Act, and must include
 13 facts supporting the allegations.

14 **Section 3. That a NEW SECTION be added to title 27B:**

15 Within ten days of the filing of a petition for civil commitment pursuant to this Act,
 16 the court shall appoint and order a licensed psychologist or psychiatrist to conduct a
 17 psychiatric or psychological evaluation of the person whose condition is the subject of the
 18 petition. The licensed psychologist or psychiatrist shall conduct the examination and
 19 prepare a report within fifteen days of receipt of the written notice from the court. The
 20 report must contain the information set forth in section 4 of this Act. The person has the
 21 right to obtain an additional examination paid for by the county in which the action is
 22 venued. Any report from an additional examination may be placed in evidence. The person
 23 must reimburse the county for the reasonable expense of the additional examination,

1 unless the person is indigent. The county may file a lien for the cost of the additional
2 examination and report upon the person's real and personal property.

3 **Section 4. That a NEW SECTION be added to title 27B:**

4 The court-ordered report required under section 3 of this Act must contain:

5 (1) Any report submitted to the court as part of a mental competency proceeding under
6 chapter 23A-10A;

7 (2) An evaluation of the person's mental, physical, and emotional status, and a review
8 of the person's social and educational history;

9 (3) Any other information the examiner believes to be relevant;

10 (4) Whether the person's developmental disability, having rendered the person
11 incompetent to proceed under chapter 23A-10A, makes it:

12 (a) Seriously difficult for the person to control their behavior;

13 (b) Likely that the person will commit other sexual offenses; and

14 (c) Necessary or advisable for the person to receive appropriate supports or
15 services, or the person needs and is likely to benefit from treatment; and

16 (5) Whether the person is a danger to themselves or others due to the developmental
17 disability that rendered the person incompetent to proceed under chapter 23A-
18 10A.

19 If any report submitted to the court indicates that the person has serious difficulty
20 controlling their behavior and is likely to commit other sexual offenses, the court must
21 hold a hearing to determine whether the person is to be involuntarily committed. If no
22 report submitted to the court indicates that the person has serious difficulty controlling
23 their behavior and is likely to commit other sexual offenses, the petition must be
24 dismissed.

25 **Section 5. That a NEW SECTION be added to title 27B:**

26 At a hearing ordered pursuant to section 4 of this Act, the person whose condition
27 is the subject of the hearing shall be represented by counsel and, if the person is financially
28 unable to obtain adequate representation, the court must appoint counsel for the person.

29 The person has the right to appear personally, to subpoena witnesses on the person's
30 behalf, to confront and cross-examine witnesses, and to present evidence. The person has
31 the right to testify but may not be compelled to testify. If the person chooses not to
32 appear, the person's attorney must state on the record that the person has been informed
33 of the hearing and of the right to appear and chooses not to exercise this right.

1 Documentation of the reasons for the person's decision is not required. If the person is
2 receiving treatment at the time of hearing, the person's provider must take all reasonable
3 precautions to ensure that, at the time of the hearing, the person is not so under the
4 influence of, or so affected by, drugs, medication, or other treatment or interventions, as
5 to be hampered in preparing for or participating in the hearing. The court may exclude
6 any person not necessary for the conduct of the proceedings from the hearings, except
7 any person requested to be present by the person who is the subject of the hearing.

8 **Section 6. That a NEW SECTION be added to title 27B:**

9 In proceedings under this Act, the sheriff is allowed the same fee as for like services
10 in other cases. Any witness is allowed the same fees as a witness in other cases.

11 **Section 7. That a NEW SECTION be added to title 27B:**

12 The sections of title 15 relating to civil practice and procedure in the circuit courts
13 shall apply to any hearing pursuant to this Act. If not otherwise submitted during the
14 hearing, the court may take judicial notice of any other case against the person whose
15 condition is the subject of the hearing, involving sexual offenses, and may order any
16 additional appropriate examination or investigation.

17 **Section 8. That a NEW SECTION be added to title 27B:**

18 At a hearing ordered pursuant to section 4 of this Act, the court shall determine
19 whether there is clear and convincing evidence that:

- 20 (1) The person committed one or more felony sexual offenses;
21 (2) The person's developmental disability, having rendered the person incompetent to
22 proceed under chapter 23A-10A, makes it:
23 (a) Seriously difficult for the person to control their behavior;
24 (b) Likely that the person will commit other sexual offenses; and
25 (c) Necessary or advisable for the person to receive appropriate supports or
26 services, or the person needs and is likely to benefit from treatment; and
27 (4) Whether the person is a danger to themselves or others due to the developmental
28 disability that rendered the person incompetent to proceed under chapter 23A-
29 10A.

30 If the court, through written findings of fact and conclusions of law, finds all the
31 above criteria are met, the court must issue an order involuntarily committing the person

1 to the Department of Human Services for appropriate placement. If the person refuses to
2 comply with this order, the court may direct law enforcement to take the person into
3 protective custody.

4 **Section 9. That a NEW SECTION be added to title 27B:**

5 The court shall review any commitment order entered pursuant to section 8 of this
6 Act and accompanying information at least annually to make a determination of the
7 continued need and supporting justification for commitment. Prior to the annual review,
8 but not less than thirty days prior to the anniversary date of the commitment order, the
9 facility providing services to the person shall report to the committing court regarding the
10 person's supports, services, or treatment and progress. If the facility is separate from the
11 Department of Human Services, the report must also be served on the department.
12 Following ten days' notice to the person, the person's attorney, the department, and the
13 facility providing services to the person if separate from the department, the court shall
14 hold a review hearing. The review hearing must include participation by the state's
15 attorney, the department, the facility providing services to the person if separate from the
16 department, and the person's attorney. The rights and procedures applicable during an
17 initial commitment hearing are applicable to a review hearing. A petition pursuant to
18 section 3 of this Act need not be filed. At the conclusion of the review hearing, the court
19 may issue an order of continued commitment or immediately discharge the person from
20 involuntary commitment if the conditions in section 8 of this Act justifying commitment
21 no longer exist.

22 **Section 10. That a NEW SECTION be added to title 27B:**

23 The person shall have the same rights and privileges during a review hearing as
24 established under section 5 of this Act.

25 **Section 11. That a NEW SECTION be added to title 27B:**

26 The director of the South Dakota Developmental Center, or the director of any
27 other developmental disability community service provider, as applicable, shall discharge
28 any involuntarily committed person if the director determines that the person no longer
29 meets the commitment criteria under section 8 of this Act. The director of the discharging
30 entity shall immediately notify the court who issued the commitment order and the state's
31 attorney who filed the commitment proceeding that the person no longer meets

1 commitment criteria and is being discharged. Nothing in this section precludes any person
2 or the person's legal representative from subsequently seeking admission to a program
3 on a voluntary basis.

4 **Section 12. That a NEW SECTION be added to title 27B:**

5 The provisions of § 27B-7-49 apply to commitments under this Act.

6 **Section 13. That a NEW SECTION be added to title 27B:**

7 Any other right, responsibility, or authority given to a person committed or the
8 Department of Human Services under this title is applicable to a person committed under
9 this Act.