

Judicial Opinions Report 2024



Study Assignment

[SDCL 2-9-1.1](#) requires the Legislative Research Council to prepare an annual report of state and federal court opinions that interpret South Dakota statutes and the intent of the Legislature. In the cases listed below, the issuing court:

- (1) Has found that the Legislature's intent behind a statute is unclear or may conflict with other statutes; or
- (2) Has indicated that the plain language of a statute may pose unintended consequences.

In accordance with [SDCL 2-9-1.1](#), the report may include recommendations for corrective action. [SDCL 2-9-4\(8\)](#) requires the Executive Board to review this report and make recommendations for further action, if any.

Summary of South Dakota Supreme Court Cases

[State v. Foshay, 2024 S.D. 12](#)

Summary: A criminal defendant with a developmental disability was adjudicated incompetent to stand trial. After a series of commitments to a state facility for competency restoration treatment, the defendant moved to dismiss his charges pursuant to [SDCL 23A-10A-14](#), requiring dismissal of a defendant's criminal charges when "there is no substantial probability that the defendant will become competent to proceed in the foreseeable future." The circuit court denied the defendant's motion and the defendant appealed. The South Dakota Supreme Court determined that the circuit court failed to comply with certain provisions of [chapter 23A-10A](#) and reversed and remanded the case for dismissal of the defendant's criminal charges.

In a dissenting opinion, Justice Kern highlighted a perceived gap in the statutory language of [SDCL 23A-10A-15](#). When a defendant is adjudicated incompetent to stand trial, the defendant is initially committed for treatment for a reasonable period of time not to exceed four months. See [SDCL 23A-10A-3](#). After this initial evaluation period, a hearing is held to determine whether there is a substantial probability that the defendant will become competent to proceed within the next year. 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 must review the defendant's condition, determine appropriate placement, and order the defendant to be placed in a restoration to competency program for a term consistent with [SDCL 23A-10A-15](#). [SDCL 23A-10A-15](#) states that "if the most serious charge against the defendant is a Class A, B, or C felony, the order must 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."

The dissent argues that [SDCL 23A-10A-15](#) only applies to Class A, B, and C felonies, "creating a statutory void into which defendants not accused of those types of offenses, and their commitment proceedings, disappear." Because the statute does not explicitly reference any other class of offenses, it is unclear how the period of commitment for lesser offenses should be addressed by the court.

In contrast, the majority argues that the statutory prohibition against detention periods exceeding the maximum penalty for the most serious charged offense is applicable to lesser offenses; Class A, B, and C felonies are only treated specifically in the text because each may be punished by life imprisonment, an indefinite commitment

that would run afoul of Fourteenth Amendment due process protections. See also [*Jackson v. Indiana*, 406 U.S. 715 \(1972\)](#) (holding that a criminal defendant cannot be committed for an indefinite period simply on account of his incompetency to stand trial).

Recommendation: The majority opinion, dissent, and *Jackson* can be read in harmony. By specifically stating that the detention period of Class A, B, and C offenses must be "a term of years," [SDCL 23A-10A-15](#) overcomes the indefinite commitment issue implicated in the statute's broader prohibition against a commitment term exceeding the maximum penalty allowable for the defendant's most serious charge. Under *Jackson*, a defendant committed solely on account of his incapacity "cannot be held for more than a reasonable period of time necessary to determine whether there is a substantial probability that he will attain capacity in the foreseeable future." For lesser offenses, it is unclear whether a commitment order that does not exceed the maximum penalty allowable for a lesser charge constitutes a reasonable period of time under *Jackson*. Given this clarity concern and potential constitutionality issues, it is recommended that [SDCL 23A-10A-15](#) be amended to address the apparent ambiguity regarding lesser offenses.

***Burkard v. Burkard*, 2024 S.D. 38**

Summary: Following a divorce proceeding, differing formulas for calculating child support were proposed by each parent. The child support referee rejected both parents' proposed formulas and created a hybrid formula to address the parents' unique child custody arrangement. The circuit court adopted the referee's formula and the mother appealed. In affirming the circuit court's decision, the South Dakota Supreme Court agreed with the parties that South Dakota's current statutory scheme does not expressly address a child custody situation where one party has sole custody of at least one child and both parties share joint custody of one or more additional children. However, the Court stated "our role . . . is not to create a specific child support formula to fill [this] statutory gap That is for the Legislature." Although the child support statutes do not address the factual scenario presented in the case, the Court held "the circuit court had discretion to equitably determine an amount of child support that reflects, as closely as possible, the overarching Legislative intent behind our statutory scheme."

Recommendation: In child support proceedings, referees and the circuit courts have discretion to determine a support obligation that best approximates what the Legislature would have intended in a given factual scenario. A statutory gap is not fatal to the ultimate resolution of a child support proceeding. An amendment to [chapter 25-7](#) to address a scenario in which one party has sole custody of at least one child and both parties share joint custody of one or more additional children may be appropriate, but is not imperative.

***Jucht v. Schulz*, 2024 S.D. 46**

Summary: A farmer brought a civil action against his neighbor for the neighbor's application of a pesticide that allegedly drifted onto the farmer's property and damaged the farmer's crops. [SDCL 38-21-46](#) states that any person claiming damages from the use of a pesticide shall notify the pesticide applicator of the alleged damage within thirty days after the damages were observed or should have been observed, or before the time that twenty-five percent of the damaged crop has been harvested or destroyed, whichever is earlier. [SDCL 38-21-47](#) states that upon notifying the applicator, as required by [SDCL 38-21-46](#), the person seeking reimbursement shall permit the applicator to enter the person's property for the purpose of observing and examining the alleged damage. If the person fails to allow entry, the person is barred from asserting a claim against the applicator. At no time did the neighbor enter or request to enter the farmer's property to inspect the damaged crop, and at no time did the farmer deny the neighbor's entry onto the property. However, the neighbor argued that because the farmer failed to provide the notice required under [SDCL 38-21-46](#), the farmer was barred from asserting his claim. The circuit court dismissed the case for failure to state a claim and the farmer appealed.

In interpreting the statutory notice and entry requirements, the South Dakota Supreme Court determined that failure to provide notice pursuant to [SDCL 38-21-46](#) does not bar the claimant from bringing a claim. Instead, a claimant is only barred from seeking recovery under [SDCL 38-21-47](#) when the claimant fails to allow entry to the pesticide applicator to observe and inspect the alleged damage. The purpose of the notice requirement is to enable the applicator to gain timely access to the property to inspect the alleged damage. When read in conjunction with the entry requirement under [SDCL 38-21-47](#), the Court stated, "it is apparent that the Legislature intended to preserve the pesticide applicator's right to inspect the alleged damage shortly after the damage is observed and to bar a claimant from asserting a claim if that claimant thwarts the applicator's right to inspect the damage in a timely fashion. A pesticide applicator cannot attempt to exercise its statutory right to inspect the damage *and* thereby be barred entry by the claimant *unless* the applicator knows of the claimant's alleged damage. Although the statutes do not mandate dismissal of a claim solely based on lack of notice, it is conceivable that a lack of timely notice to the pesticide applicator could impair the applicator's right to inspect the damage in a timely fashion."

Recommendation: No action is needed unless the Executive Board determines that failure to provide notice pursuant to [SDCL 38-21-46](#) should be an outright bar to a claim for damages resulting from pesticide application.

Summary of U.S. District Court - District of South Dakota Cases

[Rodriguez v. Vaniperen, D. South Dakota, Western Division, June 4, 2024](#)

Summary: Following a motorist's death, the administrator of the motorist's estate brought an action against the other motorist, asserting survival and wrongful death claims and seeking punitive damages. In South Dakota, two related but distinct causes of action exist for situations in which an individual dies. "[A] wrongful death cause of action is brought in the name of the decedent's personal representative and seeks compensation for the decedent's next of kin for their pecuniary injury, rather than for an injury to the decedent himself. In contrast, a survival action is the decedent's own personal cause of action, which does not abate at the decedent's death, but is brought by a representative seeking damages the decedent could have obtained for injuries had he survived." A survival claim under [SDCL 15-4-1](#) allows a plaintiff to recover punitive damages. On appeal, the U.S. District Court for the District of South Dakota addressed whether punitive damages are available in a wrongful death claim.

The Court examined multiple provisions in its decision. [SDCL 21-1-4](#) states that punitive damages are unavailable unless expressly provided by statute. [SDCL 21-3-2](#) states that "[i]n any action for the breach of an obligation not arising from contract . . . the jury, in addition to the actual damage, may give damages for the sake of example, and by way of punishing the defendant." [SDCL 21-5-1](#) states that a person who wrongfully causes the death of another shall be liable to an action for damages. [SDCL 21-5-7](#) states that "in every action for wrongful death, the jury may give such damages as they may think proportionate to the pecuniary injury resulting from such death to the persons respectively for whose benefit such action shall be brought."

In analyzing these statutes, the Court determined that a wrongful death action constitutes an action for the breach of an obligation not arising from contract, and nothing in [SDCL 21-5-7](#) states that pecuniary damages are the exclusive remedy available for wrongful death claims. Instead, the statute is best understood as a limit on pecuniary damages rather than exhaustive list of available damages. Based on this analysis, the Court concluded that punitive damages are authorized for wrongful death claims brought under [SDCL 21-5-1](#).

Recommendation: No action is needed unless the Executive Board determines that the recovery of punitive damages in a wrongful death action should be prohibited, thereby necessitating an amendment to [SDCL 21-5-1](#).

The Legislative Research Council provides nonpartisan legislative services to the South Dakota Legislature, including research, legal, fiscal, and information technology services. This report is intended to provide background information on the subject. For more information, please contact Melanie Dumdei, Assistant Chief for Legal.