



## 2025 South Dakota Legislature

# House Bill 1060

Introduced by: **Representative Mulder**

1 **An Act to revise a provision related to civil commitment following a determination**  
 2 **of mental incompetency.**

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

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

5 **23A-10A-14.** After four months of evaluation, pursuant to § 23A-10A-4, if the  
 6 facility has not certified that the defendant is competent to proceed, pursuant to § 23A-  
 7 10A-4.1, the director of the approved facility ~~shall~~ must issue a report to the circuit court  
 8 evaluating whether there is a substantial probability that the defendant will become  
 9 competent to proceed and whether there is a substantial probability that it will occur within  
 10 the next year. After receipt of that report by the circuit court, the court shall set a time  
 11 for hearing to determine whether there is a substantial probability that the defendant will  
 12 become competent to proceed and whether there is a substantial probability that it will  
 13 occur within the next year.

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

21 If the court finds there is no substantial probability that the defendant will become  
 22 competent to proceed within one year but there is a substantial probability that the  
 23 defendant will become competent in the foreseeable future, the court ~~shall~~ must review  
 24 the defendant's condition to determine appropriate placement and order the defendant to  
 25 be placed in a restoration to competency program under the direction of an approved  
 26 facility, committed to an approved facility, or to be placed on outpatient status for

1 restoration to competency if the defendant is not considered to be a danger to the health  
2 and safety of others, for a term consistent with § 23A-10A-15.

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

11 ~~If~~ Except as otherwise provided in chapter 27B-10, if the court finds that there is  
12 no substantial probability that the defendant will become competent to proceed in the  
13 foreseeable future, the court ~~shall~~ must dismiss the criminal charges against the  
14 defendant. ~~If the director of the facility determines there is probable cause to believe that~~  
15 ~~the defendant is a danger to self or others if the defendant is released, the director shall~~  
16 ~~include the basis for that determination in the report and may recommend that~~ After  
17 dismissal, if any of the charges were a felony, the prosecutor must file a petition for civil  
18 commitment proceedings.