

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

374B0518

HOUSE BILL NO. 1118

Introduced by: Representatives Chicoine, Broderick, and Collier and Senator Albers

1 FOR AN ACT ENTITLED, An Act to revise the time period in which a preliminary hearing in
2 certain misdemeanor cases must be held.

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

4 Section 1. That § 23A-4-3 be amended to read as follows:

5 23A-4-3. If a charge against a defendant requires a preliminary hearing, ~~he~~ the defendant may
6 not be called on to plead. The committing magistrate shall inform the defendant of the complaint
7 against ~~him~~ the defendant and of any affidavit filed therewith, of ~~his~~ the defendant's right to retain
8 counsel, of ~~his~~ the defendant's right to request assignment of counsel if ~~he~~ the defendant is unable
9 to obtain counsel, and of the general circumstances under which ~~he~~ the defendant may secure
10 pretrial release. ~~He~~ The magistrate shall inform the defendant that ~~he~~ the defendant is not
11 required to make a statement and that any statement made by ~~him~~ the defendant may be used
12 against ~~him~~ the defendant. The committing magistrate shall also inform the defendant of ~~his~~ the
13 defendant's right to a preliminary hearing. ~~He~~ The magistrate shall allow the defendant reasonable
14 time and opportunity to consult counsel and shall admit the defendant to bail in the amount set
15 pursuant to § 23A-2-4 or chapter 23A-43, or as otherwise provided by law.

16 A defendant is entitled to a preliminary hearing, unless waived, ~~when~~ if charged with an

1 offense for which the maximum penalty exceeds a jail sentence of thirty days or a fine of two
2 hundred dollars or both such fine and imprisonment. If the defendant waives the preliminary
3 hearing, the committing magistrate shall forthwith hold ~~him~~ the defendant to answer in circuit
4 court if the offense charged is a felony. If the offense charged is a misdemeanor, and the circuit
5 in which the offense is charged has a magistrate court presided over by a magistrate judge, the
6 defendant shall be held to answer before the magistrate judge or the circuit court. If the
7 defendant does not waive the preliminary hearing, the committing magistrate shall schedule a
8 preliminary hearing. The hearing shall be held within a reasonable time, but in any event not later
9 than ~~ten~~ fourteen days following the initial appearance if the defendant is in custody, and not later
10 than forty-five days if ~~he~~ the defendant is not in custody. However, the preliminary hearing may
11 not be held if the defendant is indicted before the date set for the preliminary hearing. With the
12 consent of the defendant and with a showing of good cause, taking into account the public
13 interest and the proper disposition of criminal cases, time limits specified in this section may be
14 extended one or more times by the committing magistrate. In the absence of consent by the
15 defendant, time limits may be extended by the committing magistrate only upon a showing that
16 extraordinary circumstances exist and that delay is indispensable to the interests of justice.