



2021 South Dakota Legislature

Senate Bill 173

SENATE JUDICIARY ENGROSSED

Introduced by: **Senator Wheeler**

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

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

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

4 **23A-10A-14. Facility's report--Length of commitment determined--Review**
 5 **after one year--Dismissal on court finding.**

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

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

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

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

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

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

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

19 **23A-10A-15. Length of detention for Class A, B, or C felony.**

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

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

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

2 **23A-42-6. No limitation during time of mental incompetence.**

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