



2024 South Dakota Legislature

House Bill 1110

Introduced by: **Representative Kull**

1 **An Act to eliminate the right to a preliminary hearing when an offender is charged**
 2 **with a nonviolent felony and when the offender is out of custody.**

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

4 **Section 1. That § 23A-4-3 be AMENDED:**

5 **23A-4-3.** If a charge against a defendant requires a preliminary hearing, the
 6 defendant may not be called on to plead. The committing magistrate shall inform the
 7 defendant of the complaint against the defendant and of any affidavit filed therewith, of
 8 the defendant's right to retain counsel and to request assignment of counsel if the
 9 defendant is unable to obtain counsel, and of the general circumstances under which the
 10 defendant may secure pretrial release. The committing magistrate shall inform the
 11 defendant that the defendant is not required to make a statement and that any statement
 12 made by the defendant may be used against the defendant. The committing magistrate
 13 shall also inform the defendant of the defendant's right to a preliminary hearing, if
 14 applicable. The committing magistrate shall allow the defendant reasonable time and
 15 opportunity to consult counsel and shall admit the defendant to bail in the amount set
 16 pursuant to ~~§ 23A-2-4~~ or chapter 23A-43, or as otherwise provided by law. If the offense
 17 charged is a Class 1 misdemeanor, and the circuit in which the offense is charged has a
 18 magistrate court presided over by a magistrate judge, the defendant ~~shall~~ must be held
 19 to answer before the magistrate judge or the circuit court.

20 No defendant is entitled to a preliminary hearing unless charged with ~~an offense~~
 21 ~~punishable as a Class A, Class B, Class C, Class 1, Class 2, or Class 3 felony.~~ If a defendant
 22 is charged with a Class 4, Class 5, or Class 6 felony, the defendant is entitled to a
 23 preliminary hearing if:

- 24 (1) The offense requires a mandatory minimum term of incarceration;
 25 (2) The offense is a crime of violence as defined in subdivision 22-1-2(9);
 26 (3) The offense is a sexual offense under chapter 22-22 or 22-24; or

1 (4) The defendant is in custody for the offense for which the preliminary hearing is
2 ordered. By motion of either party, the court must vacate the preliminary hearing
3 upon a showing that the defendant has been released from custody prior to the
4 preliminary hearing.

5 If the offense charged is a felony and the defendant waives the preliminary hearing,
6 the committing magistrate ~~shall forthwith~~ must hold the defendant to answer in circuit
7 court ~~if the offense charged is a felony~~. If the defendant does not waive the preliminary
8 hearing, the committing magistrate shall schedule a preliminary hearing. The hearing ~~shall~~
9 must be held within a reasonable time, ~~but in any event~~ not later than fifteen days
10 following the initial appearance if the defendant is in custody, and not later than forty-five
11 days if the defendant is not in custody. ~~However, the~~ The preliminary hearing may not be
12 held if the defendant is indicted before the date set for the preliminary hearing. With the
13 consent of the defendant and with a showing of good cause, taking into account the public
14 interest and the proper disposition of criminal cases, time limits specified in this section
15 may be extended one or more times by the committing magistrate. In the absence of
16 consent by the defendant, time limits may be extended by the committing magistrate only
17 upon a showing that extraordinary circumstances exist and that delay is indispensable to
18 the interests of justice.

19 **Section 2. That § 23A-6-3 be AMENDED:**

20 **23A-6-3.** An information may be filed without a preliminary hearing against a
21 fugitive from justice. ~~No other information may be filed against any person for any felony~~
22 ~~until that person has had a preliminary hearing, unless that person waived his or her right~~
23 ~~to a preliminary hearing. All informations shall~~ or any offender charged with a Class 4,
24 Class 5, or Class 6 felony who is not entitled to a preliminary hearing under § 23A-4-3.
25 An information must be filed with the court having jurisdiction of the offense by the
26 prosecuting attorney prior to arraignment.