



2023 South Dakota Legislature

Senate Bill 72

Introduced by: **Senator Wheeler**

1 **An Act to revise provisions related to the discharge of a defendant restored to**
 2 **competency.**

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

4 **Section 1. That § 23A-10A-4.1 be AMENDED:**

5 **23A-10A-4.1.** If the director of the facility under which the defendant is being
 6 treated- in accordance with § 23A-10A-4 determines that the defendant has recovered to
 7 an extent that the defendant is able to understand the nature and consequences of the
 8 proceedings against the defendant and to assist properly in the defense, the director shall
 9 promptly file a certificate to that effect with the clerk of the court that ordered the
 10 placement or commitment, and the defendant shall be discharged from the facility where
 11 the defendant is hospitalized, if applicable. Upon discharge, the defendant is subject to
 12 the provisions of chapter 23A-43.

13 The court shall send a copy of the certificate to the defendant's counsel and to the
 14 prosecuting attorney. The court shall hold a hearing, conducted under the provisions of
 15 § 23A-46-3, to determine the competency of the defendant. If, after the hearing, the court
 16 finds by a preponderance of the evidence that the defendant has recovered to an extent
 17 that the defendant is capable of understanding the nature and consequences of the
 18 proceedings against the defendant and to assist properly in the defense, the court ~~shall~~
 19 ~~order the defendant's immediate discharge from the facility where the defendant is~~
 20 ~~hospitalized if applicable and shall set the date for trial. Upon discharge, the defendant is~~
 21 ~~subject to the provisions of chapter 23A-43.~~ If, after the hearing, the court does not find
 22 by a preponderance of the evidence that the defendant has recovered to an extent that
 23 the defendant is capable of understanding the nature and consequences of the
 24 proceedings against the defendant and to assist properly in the defense, the court shall
 25 order the defendant to be placed in a restoration to competency program under the
 26 direction of an approved facility, in an approved facility, or on outpatient status for

1 restoration to competency if the court makes a written finding that the defendant is not
2 considered to be a danger to the health and safety of others and is otherwise eligible for
3 bond for a term consistent with this section and §§ 23A-10A-14 and 23A-10A-15.