



## 2020 South Dakota Legislature

# Senate Bill 46

*Introduced by: The Committee on Health and Human Services at the request of the Department of Social Services*

1 **An Act to revise provisions related to the restoration of competency of criminal**  
 2 **defendants.**

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

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

5 **23A-10A-4. Commitment--Finding required--Duration.**

6 If, after the hearing, the court finds by a preponderance of the evidence that the  
 7 defendant is presently suffering from a mental disease or developmental disability, or  
 8 other conditions set forth in § 23A-10A-1, rendering ~~him~~ the defendant mentally  
 9 incompetent to the extent that ~~he~~ the defendant is unable to understand the nature and  
 10 consequences of the proceedings against ~~him~~ the defendant or to assist properly in ~~his~~  
 11 the defense, the court shall order the defendant to be placed in a treatment program  
 12 under the direction of an approved facility, commit the defendant to the custody of an  
 13 approved facility having residential capability, or order the defendant to be placed on  
 14 outpatient status for treatment if the defendant is not considered to be a danger to the  
 15 health and safety of others. A defendant placed on outpatient status is subject to the  
 16 provisions of chapter 23A-43. ~~The facility shall have custody and treat the defendant shall~~  
 17 be treated for such a reasonable period of time, not to exceed four months, as is necessary  
 18 to determine whether there is a substantial probability that in the foreseeable future ~~he~~  
 19 the defendant will attain the capacity to permit the trial to proceed. No commitment may  
 20 be made to an approved facility ~~which~~ that is not owned by the state without first obtaining  
 21 the consent of the administrator of the privately owned facility.

22 **Section 2.** That § 23A-10A-4.1 be AMENDED:

23 **23A-10A-4.1. Recovery of defendant--Notice--Hearing--Discharge--Bail.**

24 If the director of the facility ~~in~~ under which the defendant is being treated ~~pursuant~~  
 25 ~~to~~ in accordance with § 23A-10A-4 determines that the defendant has recovered to ~~such~~

1 an extent that ~~he~~ the defendant is able to understand the nature and consequences of the  
 2 proceedings against ~~him~~ the defendant and to assist properly in ~~his~~ the defense, ~~he~~ the  
 3 director shall promptly file a certificate to that effect with the clerk of the court that  
 4 ordered the placement or commitment. The court shall send a copy of the certificate to  
 5 the defendant's counsel and to the prosecuting attorney. The court shall hold a hearing,  
 6 conducted ~~pursuant to~~ under the provisions of § 23A-46-3, to determine the competency  
 7 of the defendant. If, after the hearing, the court finds by a preponderance of the evidence  
 8 that the defendant has recovered to ~~such~~ an extent that ~~he~~ the defendant is capable of  
 9 understanding the nature and consequences of the proceedings against ~~him~~ the defendant  
 10 and to assist properly in ~~his~~ the defense, the court shall order ~~his~~ the defendant's  
 11 immediate discharge from the facility ~~in which he~~ where the defendant is hospitalized if  
 12 applicable and shall set the date for trial. Upon discharge, the defendant is subject to the  
 13 provisions of chapter 23A-43. If, after the hearing, the court does not find by a  
 14 preponderance of the evidence that the defendant has recovered to ~~such~~ an extent that  
 15 ~~he~~ the defendant is capable of understanding the nature and consequences of the  
 16 proceedings against ~~him~~ the defendant and to assist properly in ~~his~~ the defense, the court  
 17 shall order ~~him to again~~ the defendant to be placed in a treatment program under the  
 18 direction of an approved facility, in an approved facility, or on outpatient status for  
 19 treatment if the defendant is not considered to be a danger to the health and safety of  
 20 others for a term consistent with this section and §§ 23A-10A-14 and 23A-10A-15.

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

22 **23A-10A-13.1. Treatment program defined.**

23 The term, treatment program, as used in this chapter, means a program under the  
 24 direction of an approved facility which is designed to restore the defendant to competency  
 25 in an inpatient, outpatient, or jail-based setting. The term includes a county jail upon the  
 26 concurrence of the county sheriff to provide treatment in the jail under the direction of an  
 27 approved facility.

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

29 **23A-10A-14. Facility's report--Length of commitment determined--Review**  
 30 **after one year.**

31 After four months of evaluation, pursuant to § 23A-10A-4, if the facility has not  
 32 certified that the defendant is competent to proceed, pursuant to § 23A-10A-4.1, the  
 33 director of the approved facility shall issue a report to the circuit court evaluating whether

1 there is a substantial probability that within the next year the defendant will become  
2 competent to proceed. After receipt of that report by the circuit court, the court shall set  
3 a time for hearing to determine whether ~~or not~~ the defendant is reasonably likely to  
4 become competent to proceed within the next year.

5 If the court finds there is a reasonable likelihood that the defendant will become  
6 competent to proceed within the next year, ~~it the court~~ shall order the defendant to be  
7 placed in a treatment program under the direction of an approved facility, committed to  
8 an approved facility, or placed on outpatient status for treatment if the defendant is not  
9 considered to be a danger to the health and safety of others for an additional specified  
10 period of time, not to exceed one year, or until the director of the facility issues a certificate  
11 of recovery pursuant to § 23A-10A-4.1.

12 If the court finds there is no reasonable likelihood that the defendant will become  
13 competent to proceed within one year, ~~it the court~~ shall review the defendant's condition  
14 to determine appropriate placement and order the defendant to be placed in a treatment  
15 program under the direction of an approved facility, committed to an approved facility, or  
16 to be placed on outpatient status for treatment if the defendant is not considered to be a  
17 danger to the health and safety of others for a term consistent with § 23A-10A-15.

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

26 **Section 5.** That § 23A-10A-15 be AMENDED:

27 **23A-10A-15. Length of detention for Class A or B felony.**

28 If the most serious charge against the defendant is a Class A or B felony, the order  
29 ~~of detention~~ shall be for any period of time ~~deemed reasonable by the court~~ determines  
30 reasonable or until the charges have been dismissed by the prosecution. The order ~~for~~  
31 ~~detention~~ may not exceed the maximum penalty allowable for the most serious charge  
32 facing the defendant. Upon expiration of the order of detention, or after the expiration of  
33 the longest time the defendant could have been sentenced, whichever is longest, the  
34 criminal charges against the defendant shall be dismissed. If the prosecutor believes ~~that~~

1 there is probable cause to believe that the defendant is a danger to himself, self or to  
2 others at the time of ~~such~~ dismissal, ~~he~~ the prosecutor may file a petition ~~pursuant to~~ in  
3 accordance with chapter 27A-10 or 27A-11A or ~~Title title~~ 27B, for further treatment.

4 Every twelve months thereafter, the director of the approved facility shall notify the  
5 court if the defendant is still in a treatment program under the direction of an approved  
6 facility, in the approved facility, or on outpatient status for treatment pursuant to this  
7 chapter, and the circuit court shall hold a hearing to review any order of detention to  
8 determine if the defendant has become competent to proceed.

9 **Section 6.** That § 23A-10A-16 be AMENDED:

10 **23A-10A-16. Time in approved facility credited to term of imprisonment.**

11 Time spent by a defendant in a treatment program, an approved facility ~~as a result~~  
12 ~~of an evaluation, treatment, or detention, or on outpatient status for treatment~~ pursuant  
13 to this chapter, shall be credited to the term of imprisonment, if any, for which the  
14 defendant is sentenced in the criminal case which was suspended ~~pursuant to~~ under  
15 § 23A-10A-5.