

2020 South Dakota Legislature  
**Senate Bill 46**

**AMENDMENT 46A FOR THE INTRODUCED BILL**

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 restoration~~  
12 to competency program under the direction of an approved facility, commit the defendant  
13 to the custody of an approved facility having residential capability, or order the defendant  
14 to be placed on outpatient status for ~~treatment restoration to competency~~ if the defendant  
15 is not considered to be a danger to the health and safety of others. A defendant placed on  
16 outpatient status is subject to the provisions of chapter 23A-43. The ~~facility shall have~~  
17 eustody and treat the defendant shall be treated for such a reasonable period of time, not  
18 to exceed four months, as is necessary to determine whether there is a substantial  
19 probability that in the foreseeable future ~~he~~ the defendant will attain the capacity to permit  
20 the trial to proceed. No commitment may be made to an approved facility ~~which that~~  
21 not owned by the state without first obtaining the consent of the administrator of the  
22 privately owned facility.

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

1           **23A-10A-4.1. Recovery of defendant--Notice--Hearing--Discharge--Bail.**

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

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

26           **23A-10A-13.1. Treatment Restoration to competency program defined.**

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

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

1           **23A-10A-14. Facility's report--Length of commitment determined--Review**  
2 **after one year.**

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

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

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

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

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

1           **23A-10A-15. Length of detention for Class A or B felony.**

2           If the most serious charge against the defendant is a Class A or B felony, the order  
3 ~~of detention~~ shall be for any period of time ~~deemed reasonable by the court~~ determines is  
4 reasonable or until the charges have been dismissed by the prosecution. The order ~~for~~  
5 ~~detention~~ may not exceed the maximum penalty allowable for the most serious charge  
6 facing the defendant. Upon expiration of the order of detention, or after the expiration of  
7 the longest time the defendant could have been sentenced, whichever is longest, the  
8 criminal charges against the defendant shall be dismissed. If the prosecutor believes ~~that~~  
9 there is probable cause to believe that the defendant is a danger to ~~himself~~ self or to  
10 others at the time of ~~such~~ dismissal, ~~he~~ the prosecutor may file a petition ~~pursuant to~~ in  
11 accordance with chapter 27A-10 or 27A-11A or ~~Title~~ title 27B, for further ~~treatment~~  
12 restoration to competency.

13           Every twelve months thereafter, the director of the approved facility shall notify the  
14 court if the defendant is still in a treatment restoration to competency program under the  
15 direction of an approved facility, in the approved facility, or on outpatient status for  
16 treatment restoration to competency pursuant to this chapter, and the circuit court shall  
17 hold a hearing to review any order of detention to determine if the defendant has become  
18 competent to proceed.

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

20           **23A-10A-16. Time in approved facility credited to term of imprisonment.**

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