



2020 South Dakota Legislature

Senate Bill 46

SENATE JUDICIARY ENGROSSED

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 to 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 restoration to
 12 competency program under the direction of an approved facility, commit the defendant to
 13 the custody of an approved facility having residential capability, or order the defendant to
 14 be placed on outpatient status for restoration to competency if the court makes a written
 15 finding that the defendant is not considered to be a danger to the health and safety of
 16 others and is otherwise eligible for bond. A defendant placed on outpatient status is
 17 subject to the provisions of chapter 23A-43. ~~The facility shall have custody and treat the~~
 18 ~~defendant shall be treated~~ for such a reasonable period of time, not to exceed four months,
 19 as is necessary to determine whether there is a substantial probability that in the
 20 foreseeable future ~~he~~ the defendant will attain the capacity to permit the trial to proceed.
 21 No commitment may be made to an approved facility ~~which~~ that is not owned by the state
 22 without first obtaining the consent of the administrator of the 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 restoration to competency
21 program under the direction of an approved facility, in an approved facility, or on
22 outpatient status for restoration to competency if the court makes a written finding that
23 the defendant is not considered to be a danger to the health and safety of others and is
24 otherwise eligible for bond for a term consistent with this section and §§ 23A-10A-14 and
25 23A-10A-15.

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

27 **23A-10A-13.1. Restoration to competency program defined.**

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

33 **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 restoration to competency program under the direction of an approved facility,
13 committed to an approved facility, or placed on outpatient status for restoration to
14 competency if the defendant is not considered to be a danger to the health and safety of
15 others for an additional specified period of time, not to exceed one year, or until the
16 director of the facility issues a certificate of recovery pursuant to § 23A-10A-4.1.

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

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

32 **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 restoration to competency program under the direction
15 of an approved facility or in the approved facility pursuant to this chapter, and the circuit
16 court shall hold a hearing to review any order of detention to determine if the defendant
17 has become competent to proceed.

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

19 **23A-10A-16. Time in approved facility credited to term of imprisonment.**

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