



2020 South Dakota Legislature
Senate Bill 46
ENROLLED

AN ACT

ENTITLED An Act to revise provisions related to the restoration to competency of criminal defendants.

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

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

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

If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or developmental disability, or other conditions set forth in § 23A-10A-1, rendering the defendant mentally incompetent to the extent that the defendant is unable to understand the nature and consequences of the proceedings against the defendant or to assist properly in the defense, the court shall order the defendant to be placed in a restoration to competency program under the direction of an approved facility, commit the defendant to the custody of an approved facility having residential capability, or order the defendant to be placed on outpatient status for restoration to competency if the court makes a written finding that the defendant is not considered to be a danger to the health and safety of others and is otherwise eligible for bond. A defendant placed on outpatient status is subject to the provisions of chapter 23A-43. The defendant shall be treated for a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future the defendant will attain the capacity to permit the trial to proceed. No commitment may be made to an approved facility that is not owned by the state without first obtaining the consent of the administrator of the privately owned facility.

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

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

If the director of the facility under which the defendant is being treated in accordance with § 23A-10A-4 determines that the defendant has recovered to an extent that the defendant is able to understand the nature and consequences of the proceedings against the defendant and to assist properly in the defense, the director shall promptly file a certificate to that effect with the clerk of the court that ordered the placement or commitment. The court shall send a copy of the certificate to the defendant's counsel and to the prosecuting attorney. The court shall hold a hearing, conducted under the provisions of § 23A-46-3, to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to an extent that the defendant is capable of understanding the nature and consequences of the proceedings against the defendant and to assist properly in the defense, the court shall order the defendant's immediate discharge from the facility where the defendant is hospitalized if applicable and shall set the date for trial. Upon discharge, the defendant is subject to the provisions of chapter 23A-43. If, after the hearing, the court does not find by a preponderance of the evidence that the defendant has recovered to an extent that the defendant is capable of understanding the nature and consequences of the proceedings against the defendant and to assist properly in the defense, the court shall order the defendant to be placed in a restoration to competency program under the direction of an approved facility, in an approved facility, or on outpatient status for restoration to competency if the court makes a written finding that the defendant is not considered to be a danger to the health and safety of others and is otherwise eligible for bond for a term consistent with this section and §§ 23A-10A-14 and 23A-10A-15.

Section 3. That a NEW SECTION be added:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I certify that the attached Act originated in the:

Received at this Executive Office this ____ day of _____,

Senate as Bill No. 46

2020 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby approved this _____ day of _____, A.D., 2020

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2020
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 46
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State