

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

378B0663

## SENATE BILL NO. 185

Introduced by: Senators Solano, Soholt, and Steinhauer and Representatives Diedrich,  
Barthel, Duvall, Glanzer, and Johns

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding restoration to  
2 competency for criminal defendants.

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

4 Section 1. That § 23A-10A-4 be amended to read:

5 23A-10A-4. If, after the hearing, the court finds by a preponderance of the evidence that the  
6 defendant is presently suffering from a mental disease or developmental disability, or other  
7 conditions set forth in § 23A-10A-1, rendering ~~him~~ the defendant mentally incompetent to the  
8 extent that ~~he~~ the defendant is unable to understand the nature and consequences of the  
9 proceedings against ~~him~~ the defendant or to assist properly in his or her defense, the court shall  
10 order the defendant to be placed in a treatment program under the direction of an approved  
11 facility or commit the defendant to the custody of an approved facility having residential  
12 capability. The ~~facility shall have custody and treat the defendant~~ shall be treated for ~~such~~ a  
13 reasonable period of time, not to exceed four months, as is necessary to determine whether there  
14 is a substantial probability that in the foreseeable future ~~he~~ the defendant will attain the capacity  
15 to permit the trial to proceed. No commitment may be made to an approved facility ~~which that~~



1 is not owned by the state without first obtaining the consent of the administrator of the privately  
2 owned facility.

3 Section 2. That § 23A-10A-4.1 be amended to read:

4 23A-10A-4.1. If the director of the facility ~~in which~~ where the defendant is being treated  
5 pursuant to § 23A-10A-4 determines that the defendant has recovered to ~~such~~ an extent that ~~he~~  
6 ~~or she~~ the defendant is able to understand the nature and consequences of the proceedings  
7 against ~~him~~ the defendant and to assist properly in his or her defense, ~~he~~ the director shall  
8 promptly file a certificate to that effect with the clerk of the court that ordered the placement or  
9 commitment. The court shall send a copy of the certificate to the defendant's counsel and to the  
10 prosecuting attorney. The court shall hold a hearing, conducted ~~pursuant to~~ under the provisions  
11 of § 23A-46-3, to determine the competency of the defendant. If, after the hearing, the court  
12 finds by a preponderance of the evidence that the defendant has recovered to ~~such~~ an extent that  
13 ~~he~~ the defendant is capable of understanding the nature and consequences of the proceedings  
14 against ~~him~~ the defendant and to assist properly in his or her defense, the court shall order ~~his~~  
15 the defendant's immediate discharge from the facility ~~in which he~~ where the defendant is  
16 hospitalized, if applicable, and shall set the date for trial. Upon discharge, the defendant is  
17 subject to the provisions of chapter 23A-43. If, after the hearing, the court does not find by a  
18 preponderance of the evidence that the defendant has recovered to ~~such~~ an extent that ~~he~~ the  
19 defendant is capable of understanding the nature and consequences of the proceedings against  
20 ~~him~~ the defendant and to assist properly in his or her defense, the court shall order ~~him~~ the  
21 defendant to again be placed in an approved facility for a term consistent with this section and  
22 §§ 23A-10A-14 and 23A-10A-15.

23 Section 3. That § 23A-10A-14 be amended to read:

24 23A-10A-14. After four months of evaluation, pursuant to § 23A-10A-4, if the facility has

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

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

12 If the court finds there is no reasonable likelihood that the defendant will become competent  
13 to proceed within one year, ~~it the court~~ shall review the defendant's condition to determine  
14 appropriate placement and order the defendant to be placed in a treatment program under the  
15 direction of an approved facility or committed to an approved facility for a term consistent with  
16 § 23A-10A-15.

17 If the one year provided for in this section has run without a certificate of recovery being  
18 issued, the director of the approved facility shall notify the court that one year has expired since  
19 the order of detention, and the court shall order a hearing to review the defendant's condition  
20 to determine appropriate placement and order the defendant's placement in a treatment program  
21 under the direction of an approved facility or commitment to an approved facility for a term  
22 consistent with § 23A-10A-15.

23 Section 4. That § 23A-10A-15 be amended to read:

24 23A-10A-15. If the most serious charge against the defendant is a Class A or B felony, the

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

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

13 Section 5. That chapter 23A-10A be amended by adding a NEW SECTION to read:

14 The term, treatment program, as used in this chapter, means a program under the direction  
15 of an approved facility that is designed to restore the defendant to competency in an inpatient,  
16 outpatient, or jail-based setting.