

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

466L0298

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1106 - 01/28/2005

Introduced by: Representatives Boomgarden, Cutler, Deadrick, Jerke, Michels, and Schafer
and Senators Olson (Ed), Abdallah, Broderick, Kooistra, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise the duties of certain licensed mental health
2 professionals with regard to certain insanity and guilty-but-mentally-ill proceedings.

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

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

5 23A-10-4. In an appropriate case a court shall, upon motion of a prosecuting attorney, order
6 the defendant to submit to a ~~psychiatric~~ mental health examination by a psychiatrist or licensed
7 psychologist, designated for this purpose by the prosecuting attorney in an order of the court.
8 The court may also appoint medical experts and require that the defendant submit ~~himself~~ for
9 to examination by such court-appointed medical experts. No statement made by an accused in
10 the course of any examination provided for by this section, whether the examination was with
11 or without the consent of the accused, ~~shall~~ may be admitted in evidence against ~~him~~ the
12 defendant on the issue of guilt in any criminal proceeding except for the purpose of impeaching
13 the defendant.

14 Section 2. That § 23A-10-7 be amended to read as follows:

15 23A-10-7. Subject to court approval, the defendant may be examined at an approved



1 community health center by a psychiatrist or licensed psychologist, of ~~his~~ the defendant's own
2 choosing at ~~his~~ the defendant's own expense or, if indigent, at county expense. Examination of
3 the defendant shall be on the issue of ~~his~~ the defendant's insanity when the offense occurred.
4 Notice of the independent examination shall be given to the prosecuting attorney at least five
5 days before the examination date. A psychiatrist or licensed psychologist, who examines an
6 indigent defendant may receive a reasonable fee.

7 Section 3. That § 23A-7-16 be amended to read as follows:

8 23A-7-16. In addition to the requirements of §§ 23A-7-4 and 23A-7-5, if a defendant
9 charged with a felony pleads guilty but mentally ill, the court may not accept the plea until the
10 defendant has been examined by a licensed psychiatrist or licensed psychologist, and the court
11 has examined the ~~psychiatric~~ mental health reports. The court shall hold a hearing on the
12 defendant's mental condition; and if there is a factual basis on which the court can conclude that
13 the defendant was mentally ill at the time of the offense, the plea shall be accepted.

14 Section 4. That § 23A-27-40 be amended to read as follows:

15 23A-27-40. If a defendant is found "guilty but mentally ill" and is placed on probation, the
16 sentencing court, upon recommendation of a licensed psychiatrist or licensed psychologist, shall
17 make treatment a condition of probation. Reports as specified by the sentencing court shall be
18 filed with the court service department and the sentencing court. The defendant's failure to
19 continue treatment, except by agreement with the treating agency and the sentencing court, is
20 basis for commencing a probation revocation hearing and grounds for probation revocation.