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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 121

01/09/2023 Authored by Edelson, Moller and Fischer
The bill was read for the first time and referred to the Committee on Public Safety Finance and Policy

1.1 A bill for an act
1.2 relating to competency attainment; making certain technical changes; appropriating
1.3 money; amending Minnesota Statutes 2022, sections 611.41, subdivisions 2, 5, 6,
1.4 7, 8, 9, 10, 13, 14, 16, by adding a subdivision; 611.42, subdivisions 2, 3, 4; 611.43,
1.5 subdivisions 1, 2, 3; 611.44, subdivisions 1, 2; 611.45, subdivision 3; 611.46,
1.6 subdivisions 1, 2, 3, 4, 5, 6; 611.47; 611.48; 611.49; 611.51; 611.55; 611.56;
1.7 611.57; 611.58; 611.59; Laws 2022, chapter 99, article 3, section 1.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2022, section 611.41, subdivision 2, is amended to read:

1.10 Subd. 2. Alternative program. "Alternative program" means any mental health or
1.11 substance use disorder treatment or program that is not a certified competency restoration
1.12 attainment program but may assist a defendant in attaining competency.

1.13 Sec. 2. Minnesota Statutes 2022, section 611.41, is amended by adding a subdivision to
1.14 read:

1.15 Subd. 4a. Competency. "Competency" means the ability to understand criminal
1.16 proceedings, consult with counsel, and participate in the defense.

1.17 Sec. 3. Minnesota Statutes 2022, section 611.41, subdivision 5, is amended to read:

1.18 Subd. 5. Competency restoration attainment program. "Competency restoration
1.19 attainment program" means a structured program of clinical and educational services that
1.20 is certified and designed to identify and address barriers to a defendant's ability to understand
1.21 the criminal proceedings, consult with counsel, and participate in the defense.

2.1 Sec. 4. Minnesota Statutes 2022, section 611.41, subdivision 6, is amended to read:

2.2 Subd. 6. **Competency ~~restoration~~ attainment services.** "Competency ~~restoration~~
2.3 attainment services" means education ~~provided by certified individuals to~~ for defendants
2.4 found incompetent to proceed ~~provided by certified individuals using the approved curriculum~~
2.5 to address barriers to a defendant's ability to understand the criminal proceedings, consult
2.6 with counsel, and participate in the defense. Educational services must use the curriculum
2.7 ~~certified by the State Competency Restoration Board as the foundation for delivering~~
2.8 ~~competency restoration education.~~ Competency ~~restoration~~ attainment services does not
2.9 include housing assistance or programs, social services, or treatment that must be provided
2.10 by a licensed professional including mental health treatment, substance use disorder
2.11 treatment, or co-occurring disorders treatment.

2.12 Sec. 5. Minnesota Statutes 2022, section 611.41, subdivision 7, is amended to read:

2.13 Subd. 7. **Court examiner.** "Court examiner" means a person appointed to serve the
2.14 court; by examining a defendant whose competency is at issue and who is a physician or
2.15 licensed psychologist who has a doctoral degree in psychology.

2.16 Sec. 6. Minnesota Statutes 2022, section 611.41, subdivision 8, is amended to read:

2.17 Subd. 8. **Forensic navigator.** "Forensic navigator" means a person ~~who meets the~~
2.18 ~~certification and continuing education requirements under section 611.56, subdivision 2,~~
2.19 ~~paragraph (b), clause (3),~~ hired or contracted to facilitate competency examinations and a
2.20 defendant's participation in competency attainment services, supervise certain defendants
2.21 found to be incompetent, prepare bridge plans, and provides provide the other services under
2.22 section 611.55, subdivision 3.

2.23 Sec. 7. Minnesota Statutes 2022, section 611.41, subdivision 9, is amended to read:

2.24 Subd. 9. **Head of the program.** "Head of the program" means the head of the competency
2.25 ~~restoration~~ attainment program or the head of the facility or program where the defendant
2.26 is being served.

2.27 Sec. 8. Minnesota Statutes 2022, section 611.41, subdivision 10, is amended to read:

2.28 Subd. 10. **Jail-based program.** "Jail-based program" means a competency ~~restoration~~
2.29 attainment program that operates within a correctional facility licensed by the commissioner
2.30 of corrections under section 241.021 that meets the capacity standards governing jail facilities.
2.31 A jail-based program may not be granted a variance to exceed its operational capacity.

3.1 Sec. 9. Minnesota Statutes 2022, section 611.41, subdivision 13, is amended to read:

3.2 Subd. 13. **State-operated treatment program.** "State-operated treatment program"
 3.3 means any ~~state-operated program, including~~ community behavioral health ~~hospitals~~ hospital,
 3.4 crisis ~~centers~~ center, residential ~~facilities~~ facility, outpatient ~~services~~ service, ~~and~~ or other
 3.5 ~~community-based services developed and~~ program operated by the state and under the
 3.6 control of the commissioner of human services, for a person who has mental illness,
 3.7 developmental disability, or substance use disorder.

3.8 Sec. 10. Minnesota Statutes 2022, section 611.41, subdivision 14, is amended to read:

3.9 Subd. 14. **Suspend the criminal proceedings.** "Suspend the criminal proceedings"
 3.10 means ~~nothing can be heard or decided on~~ to cease all hearings and decisions regarding the
 3.11 merits of ~~the criminal charges except that~~ but not terminate the jurisdiction of the court
 3.12 ~~retains jurisdiction in all~~ or prevent hearings or decisions in any other matters, including
 3.13 but not limited to establishing or modifying bail, conditions of release, probation conditions,
 3.14 no contact orders, and appointment of counsel.

3.15 Sec. 11. Minnesota Statutes 2022, section 611.41, subdivision 16, is amended to read:

3.16 Subd. 16. **Treatment facility.** "Treatment facility" means a ~~non-state-operated~~ hospital,
 3.17 residential treatment provider, crisis residential withdrawal management center, or corporate
 3.18 foster care home that is not operated by the state and is qualified to provide care and treatment
 3.19 for persons who have mental illness, developmental disability, or substance use disorder.

3.20 Sec. 12. Minnesota Statutes 2022, section 611.42, subdivision 2, is amended to read:

3.21 Subd. 2. **Waiver of counsel in competency proceedings.** (a) A defendant must not be
 3.22 allowed to waive counsel if the defendant lacks ability to:

3.23 (1) knowingly, voluntarily, and intelligently waive the right to counsel;

3.24 (2) appreciate the consequences of proceeding without counsel;

3.25 (3) comprehend the nature of the charge;

3.26 (4) comprehend the nature of the proceedings;

3.27 (5) comprehend the possible punishment; or

3.28 (6) comprehend any other matters essential to understanding the case.

3.29 (b) The court must not proceed under this ~~law~~ section before a lawyer consults with the
 3.30 defendant and has an opportunity to be heard.

4.1 Sec. 13. Minnesota Statutes 2022, section 611.42, subdivision 3, is amended to read:

4.2 Subd. 3. **Competency motion.** (a) At any time, the prosecutor or defense counsel may
 4.3 make a motion challenging the defendant's competency, or the court on its initiative may
 4.4 raise the issue. The defendant's consent is not required to bring a competency motion. The
 4.5 motion shall be supported by specific facts but shall not include communications between
 4.6 the defendant and defense counsel if disclosure would violate attorney-client privilege. By
 4.7 bringing the motion, the defendant does not waive attorney-client privilege.

4.8 (b) If competency is at issue, the court shall appoint a forensic navigator to provide the
 4.9 ~~forensic navigator~~ services described in section 611.55 ~~for the defendant~~, including
 4.10 development of a specific bridge plan to identify appropriate housing and services if the
 4.11 defendant is released from custody or any charges are dismissed.

4.12 (c) In felony, gross misdemeanor, and targeted misdemeanor cases, if the court determines
 4.13 there is a reasonable basis to doubt the defendant's ~~competence~~ competency and there is
 4.14 probable cause for the charge, the court must suspend the criminal proceedings and order
 4.15 an examination of the defendant ~~under section 611.43~~.

4.16 (d) In misdemeanor cases, other than cases involving a targeted misdemeanor, if the
 4.17 court determines there is a reasonable basis to doubt the defendant's ~~competence~~ competency
 4.18 and there is probable cause for the charge, the court must suspend the criminal proceedings.
 4.19 The court may order an examination of the defendant under section 611.43 if the examination
 4.20 is in the public interest. For purposes of this paragraph, an examination is in the public
 4.21 interest when it is necessary to assess whether the defendant has a cognitive impairment or
 4.22 mental illness; determine whether a defendant has the ability to access housing, food, income,
 4.23 disability verification, medications, and treatment for medical conditions; or whether a
 4.24 defendant has the ability to otherwise address any basic needs. ~~The court shall order the~~
 4.25 ~~forensic navigator to complete a bridge plan as described in section 611.55, subdivision 4,~~
 4.26 ~~and submit it to the court. The court may dismiss the charge upon receipt of the bridge plan~~
 4.27 ~~without holding a hearing unless either party objects.~~

4.28 Sec. 14. Minnesota Statutes 2022, section 611.42, subdivision 4, is amended to read:

4.29 Subd. 4. **Dismissal, referrals for services, and collaboration.** (a) Except as provided
 4.30 in this subdivision, when the court determines there is a reasonable basis to doubt ~~the a~~
 4.31 defendant's ~~competence~~ competency and orders an examination of the defendant, a forensic
 4.32 navigator must complete a bridge plan with the defendant as described in section 611.55,
 4.33 subdivision 4, submit the bridge plan to the court, and provide a written copy to the defendant
 4.34 before the court or prosecutor dismisses any charges based on a belief or finding that the

5.1 defendant is incompetent. The court may dismiss a case where the most serious charge is
5.2 a misdemeanor, other than a targeted misdemeanor, without holding a hearing unless either
5.3 party objects.

5.4 (b) If for any reason a forensic navigator has not been appointed, the court must make
5.5 every reasonable effort to coordinate with any resources available to the court and refer the
5.6 defendant for possible assessment and social services, including but not limited to services
5.7 for engagement under section 253B.041, before dismissing any charges based on a finding
5.8 that the defendant is incompetent.

5.9 (c) If working with the forensic navigator or coordinating a referral to services would
5.10 cause an unreasonable delay in the release of a defendant being held in custody, the court
5.11 may release the defendant. If a defendant has not been engaged for assessment and referral
5.12 before release, the court may coordinate with the forensic navigator or any resources available
5.13 to the court to engage the defendant for up to 90 days after release.

5.14 (d) Courts may partner and collaborate with county social services, community-based
5.15 programs, jails, and any other available resource ~~available to the court~~ to provide referrals
5.16 to services when a defendant's competency is at issue or a defendant has been found
5.17 incompetent to proceed.

5.18 (e) Counsel for the defendant may bring a motion to dismiss the proceedings in the
5.19 interest of justice at any stage of the proceedings.

5.20 Sec. 15. Minnesota Statutes 2022, section 611.43, subdivision 1, is amended to read:

5.21 Subdivision 1. **Competency examination.** (a) If the court orders an examination pursuant
5.22 to section 611.42, subdivision 3, the court shall appoint a court examiner to examine the
5.23 defendant and report to the court on the defendant's competency to proceed. A court examiner
5.24 may obtain from court administration and review the report of any prior or subsequent
5.25 examination under this section or under Minnesota Rules of Criminal Procedure, rule 20.

5.26 (b) If the defendant is not entitled to release, the court shall order the defendant to
5.27 participate in an examination where the defendant is being held, or the court may order that
5.28 the defendant be confined in a treatment facility, locked treatment facility, or a state-operated
5.29 treatment facility until the examination is completed.

5.30 (c) If the defendant is entitled to release, the court shall order the defendant to appear
5.31 for an examination. If the defendant fails to appear at an examination, the court may amend
5.32 the conditions of release and bail ~~pursuant to Minnesota Rules of Criminal Procedure, rule~~
5.33 ~~6.~~

6.1 (d) A competency examination ordered under Minnesota Rules of Criminal Procedure,
6.2 rule 20.04, shall proceed under ~~subdivision 2~~ this section.

6.3 Sec. 16. Minnesota Statutes 2022, section 611.43, subdivision 2, is amended to read:

6.4 Subd. 2. **Report of examination.** (a) The ~~court-appointed~~ court examiner's written report
6.5 shall be filed with the court and ~~served on~~ provided to the prosecutor and defense counsel
6.6 by the court. The report shall be filed no more than 30 days after the order for examination
6.7 of a defendant in custody unless extended by the court for good cause. If the defendant is
6.8 out of custody or confined in a ~~noncorrectional~~ state-operated treatment program or treatment
6.9 facility, the report shall be filed no more than 60 days after the order for examination, unless
6.10 extended by the court for good cause. The report shall not include opinions concerning the
6.11 defendant's mental condition at the time of the alleged offense or any statements made by
6.12 the defendant regarding the alleged criminal conduct, unless necessary to support the
6.13 examiner's opinion regarding competence or incompetence.

6.14 (b) The report shall include an evaluation of the defendant's mental health, cognition,
6.15 and the factual basis for opinions about:

6.16 (1) any diagnoses made, and the results of any testing conducted with the defendant;

6.17 (2) the defendant's competency to stand trial;

6.18 (3) the level of care and education required for the defendant to attain, be restored to,
6.19 or maintain competency;

6.20 (4) a recommendation of the least restrictive setting appropriate to meet the defendant's
6.21 needs for ~~restoration~~ attaining competency and immediate safety;

6.22 (5) the impact of any substance use disorder on the defendant, including the defendant's
6.23 competency, and any recommendations for treatment;

6.24 (6) the likelihood the defendant will attain competency in the reasonably foreseeable
6.25 future;

6.26 (7) whether the defendant poses a substantial likelihood of physical harm to self or
6.27 others; and

6.28 (8) if the court examiner's opinion is that the defendant is incompetent to proceed, ~~the~~
6.29 ~~report must include an opinion as to~~ whether the defendant possesses capacity to make
6.30 decisions regarding neuroleptic medication unless the examiner is unable to render an
6.31 opinion on capacity. If the examiner is unable to render an opinion on capacity, the report
6.32 must document the reasons why the examiner is unable to render that opinion.

7.1 (c) If the court examiner determines that the defendant presents an imminent risk of
7.2 serious danger to another, is imminently suicidal, or otherwise needs emergency intervention,
7.3 the examiner must promptly notify the court, prosecutor, defense counsel, and those
7.4 responsible for the care and custody of the defendant.

7.5 (d) If the defendant appears for the examination but does not participate, the court
7.6 examiner shall submit a report and, if sufficient information is available, may render an
7.7 opinion on competency and an opinion as to whether the unwillingness to participate resulted
7.8 from a mental illness, cognitive impairment, or other factors.

7.9 (e) If the court examiner determines the defendant would benefit from services for
7.10 engagement in mental health treatment under section 253B.041 or any other referral to
7.11 social services, the court examiner may recommend referral of the defendant to services
7.12 where available.

7.13 Sec. 17. Minnesota Statutes 2022, section 611.43, subdivision 3, is amended to read:

7.14 Subd. 3. **Additional examination.** If either the prosecutor or defense counsel intends
7.15 to retain an independent examiner, the party shall provide notice to the court and opposing
7.16 counsel no later than ten days after the date of receipt of the ~~court-appointed~~ court examiner's
7.17 report. If an independent examiner is retained, the independent examiner's report shall be
7.18 filed no more than 30 days after the date a party files notice of intent to retain an independent
7.19 examiner, unless extended by the court for good cause.

7.20 Sec. 18. Minnesota Statutes 2022, section 611.44, subdivision 1, is amended to read:

7.21 Subdivision 1. **Request for hearing.** (a) The prosecutor or defense counsel may request
7.22 a hearing on the ~~court-appointed~~ court examiner's competency report by filing a written
7.23 objection no later than ten days after the report is filed.

7.24 (b) A hearing shall be held as soon as possible but no longer than 30 days after the
7.25 request, unless extended by agreement of the prosecutor and defense counsel, or by the
7.26 court for good cause.

7.27 (c) If an independent court examiner is retained, the hearing may be continued up to 14
7.28 days after the date the independent court examiner's report is filed. The court may continue
7.29 the hearing for good cause.

8.1 Sec. 19. Minnesota Statutes 2022, section 611.44, subdivision 2, is amended to read:

8.2 Subd. 2. **Competency hearing.** (a) The court may admit all relevant and reliable evidence
8.3 at the competency hearing. The ~~court-appointed~~ court examiner is considered the court's
8.4 witness and may be called and questioned by the court, prosecutor, or defense counsel. The
8.5 report of the ~~court-appointed~~ court examiner shall be admitted into evidence without further
8.6 foundation.

8.7 (b) Defense counsel may testify, subject to the prosecutor's cross-examination, but shall
8.8 not violate attorney-client privilege. Testifying does not automatically disqualify defense
8.9 counsel from continuing to represent the defendant. The court may inquire of defense counsel
8.10 regarding the attorney-client relationship and the defendant's ability to communicate with
8.11 counsel. The court shall not require counsel to divulge communications protected by
8.12 attorney-client privilege, and the prosecutor shall not cross-examine defense counsel
8.13 concerning responses to the court's inquiry.

8.14 Sec. 20. Minnesota Statutes 2022, section 611.45, subdivision 3, is amended to read:

8.15 Subd. 3. **Dismissal of criminal charge.** (a) If the court finds the defendant incompetent,
8.16 and the charge is a misdemeanor other than a targeted misdemeanor, the charge must be
8.17 dismissed.

8.18 (b) In targeted misdemeanor and gross misdemeanor cases, the charges must be dismissed
8.19 30 days after the date of the finding of incompetence, unless the prosecutor, before the
8.20 expiration of the 30-day period, files a written notice of intent to prosecute when the
8.21 defendant ~~regains~~ attains competency. If a notice has been filed and the charge is a targeted
8.22 misdemeanor, charges must be dismissed within one year after the finding of incompetency.
8.23 If a notice has been filed and the charge is a gross misdemeanor, charges must be dismissed
8.24 within two years after the finding of incompetency.

8.25 (c) In felony cases, except as provided in paragraph (d), the charges must be dismissed
8.26 three years after the date of the finding of incompetency, unless the prosecutor, before the
8.27 expiration of the three-year period, files a written notice of intent to prosecute when the
8.28 defendant ~~regains~~ attains competency. If a notice has been filed, charges must be dismissed
8.29 within five years after the finding of incompetency or ten years if the maximum sentence
8.30 for the crime with which the defendant is charged is ten years or more.

8.31 (d) The requirement that felony charges be dismissed under paragraph (c) does not apply
8.32 if:

9.1 (1) the court orders continuing supervision pursuant to section 611.49, ~~subdivision 3;~~
 9.2 or

9.3 (2) the defendant is charged with a violation of sections ~~609.185 (murder in the first~~
 9.4 ~~degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20~~
 9.5 ~~(manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.2112~~
 9.6 (criminal vehicular homicide); 609.2114, subdivision 1 (criminal vehicular operation, death
 9.7 to an unborn child); 609.2661 (murder of an unborn child in the first degree); 609.2662
 9.8 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in
 9.9 the third degree); 609.2664 (manslaughter of an unborn child in the first degree); or 609.2665
 9.10 (manslaughter of an unborn child in the second degree); or a crime of violence as defined
 9.11 in section 624.712, subdivision 5, except for a violation of chapter 152.

9.12 (e) Nothing in this subdivision requires dismissal of any charge if the court finds the
 9.13 defendant competent and enters an order directing that the criminal proceedings shall resume.

9.14 Sec. 21. Minnesota Statutes 2022, section 611.46, subdivision 1, is amended to read:

9.15 Subdivision 1. **Order to competency ~~restoration~~ attainment program.** (a) If the court
 9.16 finds the defendant incompetent and the charges have not been dismissed, the court shall
 9.17 order the defendant to participate in a ~~competency restoration~~ program to ~~restore~~ assist the
 9.18 ~~defendant's competence~~ defendant in attaining competency. The court may order participation
 9.19 in a competency ~~restoration~~ attainment program provided outside of a jail, a jail-based
 9.20 competency ~~restoration~~ attainment program, or an alternative program. The court must
 9.21 determine the least-restrictive program appropriate to meet the defendant's needs and public
 9.22 safety. In making this determination, the court must consult with the forensic navigator and
 9.23 consider any recommendations of the court examiner. The court shall not order a defendant
 9.24 to participate in a jail-based program or a state-operated treatment program if the highest
 9.25 criminal charge is a ~~misdemeanor~~ or targeted misdemeanor.

9.26 (b) If the court orders the defendant to a locked treatment facility or jail-based program,
 9.27 the court must calculate the defendant's custody credit and cannot order the defendant to a
 9.28 locked treatment facility or jail-based program for a period that would cause the defendant's
 9.29 custody credit to exceed the maximum sentence for the underlying charge.

9.30 ~~(b)~~ (c) The court may only order placement of the defendant to participate in competency
 9.31 ~~restoration~~ at an inpatient or residential treatment program ~~under this section~~ if the head of
 9.32 the treatment program determines that admission to the program is clinically appropriate
 9.33 and consents to the defendant's admission. The court may only order ~~the defendant to~~
 9.34 ~~participate~~ placement in competency restoration at a state-operated treatment facility ~~under~~

10.1 ~~this section~~ if the commissioner of human services or a designee determines that admission
 10.2 of the defendant is clinically appropriate and consents to the defendant's admission. The
 10.3 court may require a ~~certified~~ competency program that qualifies as a locked facility or a
 10.4 state-operated treatment program to notify the court in writing of the basis for refusing
 10.5 consent for admission of the defendant in order to ensure transparency and maintain an
 10.6 accurate record. The court may not require personal appearance of any representative of a
 10.7 ~~certified~~ competency program. The court shall send a written request for notification to the
 10.8 locked facility or state-operated treatment program and the locked facility or state-operated
 10.9 treatment program shall provide a written response to the court within ten days of receipt
 10.10 of the court's request.

10.11 ~~(e)~~ (d) If the defendant is confined in jail and has not received competency ~~restoration~~
 10.12 attainment services within 30 days of the finding of incompetency, the court shall review
 10.13 the case with input from the prosecutor and defense counsel and may:

10.14 (1) order the defendant to participate in an appropriate competency ~~restoration~~ attainment
 10.15 program that takes place outside of a jail;

10.16 (2) ~~conditionally~~ order a conditional release of the defendant, including with conditions
 10.17 that include but are not limited to conditions a requirement that the defendant participate
 10.18 in a competency ~~restoration~~ attainment program when one becomes available and accessible;

10.19 (3) make a determination as to whether the defendant is likely to attain competency in
 10.20 the reasonably foreseeable future and proceed under section 611.49; or

10.21 (4) upon a motion, dismiss the charges in the interest of justice.

10.22 ~~(d) Upon the order to a competency restoration program or alternative program, (e) The~~
 10.23 court may order any hospital, treatment facility, or correctional facility that has provided
 10.24 care or supervision to ~~the~~ a defendant in the previous two years to provide copies of the
 10.25 defendant's medical records to the competency ~~restoration~~ attainment program or alternative
 10.26 program in which the defendant was ordered to participate. This information shall be provided
 10.27 in a consistent and timely manner and pursuant to all applicable laws.

10.28 ~~(e)~~ (f) If at any time the defendant refuses to participate in a competency ~~restoration~~
 10.29 attainment program or an alternative program, the head of the program shall notify the court
 10.30 and any entity responsible for supervision of the defendant.

10.31 ~~(f)~~ (g) At any time, the head of the program may discharge the defendant from the
 10.32 program or facility. The head of the program must notify the court, prosecutor, defense
 10.33 counsel, and any entity responsible for the supervision of the defendant prior to any planned

11.1 discharge. Absent emergency circumstances, this notification shall be made five days prior
11.2 to the discharge if the defendant is not being discharged to jail or a correctional facility.

11.3 Upon the receipt of notification of discharge or upon the request of either party in response
11.4 to notification of discharge, the court may order that a defendant who is subject to bail or
11.5 unmet conditions of release be returned to jail upon being discharged from the program or
11.6 facility. If the court orders a defendant returned to jail, the court shall notify the parties and
11.7 head of the program at least one day before the defendant's planned discharge, except in
11.8 the event of an emergency discharge where one day notice is not possible. The court must
11.9 hold a review hearing within seven days of the defendant's return to jail. The forensic
11.10 navigator must be given notice of the hearing and be allowed to participate.

11.11 ~~(g)~~ (h) If the defendant is discharged from the program or facility under emergency
11.12 circumstances, notification of emergency discharge shall include a description of the
11.13 emergency circumstances and may include a request for emergency transportation. The
11.14 court shall make a determination on a request for emergency transportation within 24 hours.
11.15 Nothing in this section prohibits a law enforcement agency from transporting a defendant
11.16 pursuant to any other authority.

11.17 Sec. 22. Minnesota Statutes 2022, section 611.46, subdivision 2, is amended to read:

11.18 Subd. 2. **Supervision.** (a) Upon a finding of incompetency, if the defendant is entitled
11.19 to release, the court must determine whether the defendant requires pretrial supervision.
11.20 The court must weigh public safety risks against the defendant's interests in remaining free
11.21 from supervision while presumed innocent in the criminal proceedings. The court may use
11.22 a validated and equitable risk assessment tool to determine whether supervision is necessary.

11.23 (b) If the court determines that the defendant requires pretrial supervision, the court shall
11.24 direct the forensic navigator to conduct pretrial supervision and report violations to the
11.25 court. The forensic navigator shall be responsible for the supervision of the defendant until
11.26 ordered otherwise by the court.

11.27 (c) Upon application by the prosecutor, ~~the forensic navigator, other entity or its designee~~
11.28 assigned to supervise the defendant, or court services alleging that the defendant violated
11.29 a condition of release and is a risk to public safety, the court shall follow the procedures
11.30 under Rules of Criminal Procedure, rule 6. Any hearing on the alleged violation of release
11.31 conditions shall be held no more than 15 days after the date of issuance of a summons or
11.32 within 72 hours if the defendant is apprehended on a warrant.

11.33 (d) If the court finds a violation, the court may revise the conditions of release and bail
11.34 as appropriate pursuant to Minnesota Rules of Criminal Procedure, ~~including but not limited~~

12.1 ~~to consideration of~~ and must consider the defendant's need for ongoing access to a
 12.2 competency ~~restoration~~ attainment program or alternative program under this section.

12.3 (e) The court must review conditions of release and bail on request of any party and may
 12.4 amend the conditions of release or make any other reasonable order upon receipt of
 12.5 information that the pretrial detention of a defendant has interfered with the defendant
 12.6 attaining competency.

12.7 Sec. 23. Minnesota Statutes 2022, section 611.46, subdivision 3, is amended to read:

12.8 Subd. 3. **Certified Competency ~~restoration~~ attainment programs; procedure.** (a) If
 12.9 the court orders a defendant to participate in a competency ~~restoration~~ attainment program
 12.10 that takes place outside of a jail, or an alternative program that the court has determined is
 12.11 providing appropriate competency ~~restoration~~ attainment services to the defendant, the court
 12.12 shall specify whether the program is ~~a community-based treatment program~~ or provided in
 12.13 a locked treatment facility.

12.14 (b) If the court finds that the defendant continues to be incompetent at a review hearing
 12.15 held after the initial determination of competency, the court must hold a review hearing
 12.16 pursuant to section 611.49 and consider any changes to the defendant's conditions of release
 12.17 or competency ~~restoration~~ attainment programming to restore the defendant's competency
 12.18 in the least restrictive program appropriate.

12.19 ~~(e) If the court orders the defendant to a locked treatment facility or jail-based program,~~
 12.20 ~~the court must calculate the defendant's custody credit and cannot order the defendant to a~~
 12.21 ~~locked treatment facility or jail-based program for a period that would cause the defendant's~~
 12.22 ~~custody credit to exceed the maximum sentence for the underlying charge.~~

12.23 Sec. 24. Minnesota Statutes 2022, section 611.46, subdivision 4, is amended to read:

12.24 Subd. 4. **Jail-based competency ~~restoration~~ attainment programs; procedure.** (a)
 12.25 A defendant is eligible to participate in a jail-based competency ~~restoration~~ attainment
 12.26 program when the underlying charge is a gross misdemeanor or felony and either:

12.27 (1) the defendant has been found incompetent, the defendant has not met the conditions
 12.28 of release ordered pursuant to rule 6.02 of Minnesota Rules of Criminal Procedure, including
 12.29 posting bail, and either a ~~court-appointed~~ court examiner has recommended jail-based
 12.30 competency ~~restoration~~ attainment as the least restrictive setting to meet the person's needs,
 12.31 or the court finds that after a reasonable effort by the forensic navigator, there has not been
 12.32 consent by another secure setting to the defendant's placement; or

13.1 (2) the defendant is in custody and is ordered to a ~~certified competency restoration~~
 13.2 attainment program that takes place outside of a jail, a jail-based competency ~~restoration~~
 13.3 attainment program is available within a reasonable distance to the county where the
 13.4 defendant is being held, and the court ordered a time-limited placement in a jail-based
 13.5 program until transfer to a ~~certified competency restoration~~ attainment program that takes
 13.6 place outside of a jail.

13.7 (b) A defendant may not be ordered to participate in a jail-based competency ~~restoration~~
 13.8 attainment program for more than 90 days without a review hearing. If after 90 days of the
 13.9 order to a jail-based program the defendant has not attained competency, the court must
 13.10 review the case with input from the prosecutor and defense counsel and may:

13.11 (1) order the defendant to participate in an appropriate ~~certified competency restoration~~
 13.12 attainment program that takes place outside of a locked facility; or

13.13 (2) determine whether, after a reasonable effort by the forensic navigator, there is consent
 13.14 to the defendant's placement by another locked facility. If court determines that a locked
 13.15 facility is the least restrictive program appropriate and no appropriate locked facility is
 13.16 available, it may order the defendant to the jail-based program for an additional 90 days.

13.17 (c) Nothing in this section prohibits the court from ordering the defendant transferred
 13.18 to a ~~certified competency restoration~~ attainment program that takes place outside of a jail
 13.19 if the court determines that transition is appropriate, or the defendant satisfies the conditions
 13.20 of release or bail. Before the defendant is ~~transitioned~~ transferred to a ~~certified competency~~
 13.21 ~~restoration~~ attainment program that takes place outside of a jail or an alternative program,
 13.22 the court shall notify the prosecutor and the defense counsel, and the provisions of subdivision
 13.23 2 shall apply.

13.24 ~~(d) The court may require a certified competency program that qualifies as a locked~~
 13.25 ~~facility to notify the court in writing of the basis for refusing consent of the defendant in~~
 13.26 ~~order to ensure transparency and maintain an accurate record. The court may not require~~
 13.27 ~~personal appearance of any representative of a certified competency program.~~

13.28 Sec. 25. Minnesota Statutes 2022, section 611.46, subdivision 5, is amended to read:

13.29 Subd. 5. **Alternative programs; procedure.** (a) A defendant is eligible to participate
 13.30 in an alternative program if the defendant has been found incompetent, the defendant is
 13.31 entitled to release, and a ~~certified competency restoration~~ attainment program outside of a
 13.32 jail is not available.

14.1 (b) As soon as the forensic navigator has reason to believe that no ~~certified~~ competency
14.2 ~~restoration~~ attainment program outside of a jail will be available within a reasonable time,
14.3 the forensic navigator shall determine if there are available alternative programs that are
14.4 likely to assist the defendant in attaining competency. ~~Upon notification by the forensic~~
14.5 ~~navigator,~~ The court may order the defendant to participate in an appropriate alternative
14.6 program identified by the forensic navigator and must notify the prosecutor and the defense
14.7 counsel of the order.

14.8 (c) If at any time while the defendant is participating in an alternative program, an
14.9 appropriate ~~certified~~ competency ~~restoration~~ attainment program that takes place outside
14.10 of a jail becomes available, the forensic navigator must notify the court. The court must
14.11 notify the prosecutor and the defense counsel and must order the defendant to participate
14.12 in an appropriate ~~certified~~ competency ~~restoration~~ attainment program, unless the court
14.13 determines that the defendant is receiving appropriate competency ~~restoration~~ attainment
14.14 services in the alternative program. If appropriate and in the public interest, the court may
14.15 order the defendant to participate in the ~~certified~~ competency ~~restoration~~ attainment program
14.16 and an alternative program.

14.17 (d) At any time, the head of the alternative program or the forensic navigator may notify
14.18 the court that the defendant is receiving appropriate competency ~~restoration~~ attainment
14.19 services in the alternative program, and recommend that remaining in the alternative program
14.20 is in the best interest of the defendant and the defendant's progress in attaining competency.
14.21 The court may order the defendant to continue programming in the alternative program and
14.22 proceed under subdivision 3.

14.23 (e) If after 90 days of the order to an alternative program the defendant has not attained
14.24 competency and the defendant is not participating in a ~~certified~~ competency ~~restoration~~
14.25 attainment program, the court must hold a review hearing pursuant to section 611.49.

14.26 Sec. 26. Minnesota Statutes 2022, section 611.46, subdivision 6, is amended to read:

14.27 Subd. 6. **Reporting to the court.** (a) The court examiner must provide an updated report
14.28 to the court at least once every six months, unless the court and the parties agree to a longer
14.29 period that is not more than 12 months, as to the defendant's competency and a description
14.30 of the efforts made to restore the defendant to competency.

14.31 (b) At any time, the head of the program may notify the court and recommend that a
14.32 court examiner provide an updated competency examination and report.

15.1 (c) The court shall ~~furnish~~ provide copies of the report to the prosecutor, defense counsel,
15.2 and the facility or program where the defendant is being served.

15.3 (d) The report may make recommendations for continued services to ensure continued
15.4 competency. If the defendant is found guilty, these recommendations may be considered
15.5 by the court in imposing a sentence, including any conditions of probation.

15.6 Sec. 27. Minnesota Statutes 2022, section 611.47, is amended to read:

15.7 **611.47 ADMINISTRATION OF MEDICATION.**

15.8 Subdivision 1. **Motion.** When a court finds that a defendant is incompetent or any time
15.9 thereafter, upon the motion of the prosecutor or treating medical provider, the court shall
15.10 hear and determine whether the defendant lacks capacity to make decisions regarding the
15.11 administration of neuroleptic medication and, if so, whether the conditions and factors weigh
15.12 in favor of authorizing involuntary administration of neuroleptic medication.

15.13 Subd. 2. ~~Certification report~~ **Reports.** (a) In making a determination under this section,
15.14 the court shall consider the report of the court examiner completed pursuant to section
15.15 611.43 and may request a certification report from the defendant's treating medical
15.16 practitioner.

15.17 ~~(a)~~ (b) If the defendant's treating medical practitioner is of the opinion that the defendant
15.18 lacks capacity to make decisions regarding neuroleptic medication, the treating medical
15.19 practitioner ~~shall~~ may certify in a report that the lack of capacity exists and which conditions
15.20 under subdivision 3 are applicable. ~~The~~ A certification report ~~shall~~ must contain an
15.21 assessment of the current mental status of the defendant and the opinion of the treating
15.22 medical practitioner ~~that~~ as to whether involuntary neuroleptic medication has become
15.23 medically necessary and appropriate under subdivision 3, paragraph (b), clause (1) or (2),
15.24 or in the ~~patient's~~ defendant's best medical interest under subdivision 3, paragraph (b), clause
15.25 (3). The certification report shall be filed with the court when a motion for a hearing is made
15.26 under this section.

15.27 ~~(b)~~ (c) A certification report made pursuant to this section shall include a description of
15.28 the neuroleptic medication proposed to be administered to the defendant, if any, and its
15.29 likely effects and side effects, including effects on the defendant's condition or behavior
15.30 that would affect the defendant's ability to understand the nature of the criminal proceedings
15.31 or to assist counsel in the conduct of a defense in a reasonable manner.

15.32 ~~(e)~~ (d) Any defendant subject to an order under subdivision 3 of this section or the state
15.33 may request review of that order.

16.1 ~~(d)~~ (e) In addition to the court examiner appointed to report to the court on the defendant's
 16.2 competency to proceed, the court may appoint a court examiner to examine the defendant
 16.3 and report to the court and parties as to whether the defendant lacks capacity to make
 16.4 decisions regarding the administration of neuroleptic medication. If the ~~patient~~ defendant
 16.5 refuses to participate in an examination, the court examiner may rely on the ~~patient's~~
 16.6 defendant's clinically relevant medical records in reaching an opinion.

16.7 ~~(e)~~ (f) The defendant is entitled to a second court examiner under this section, if requested
 16.8 by the defendant.

16.9 Subd. 3. **Determination.** (a) The court shall ~~consider opinions in the reports prepared~~
 16.10 ~~under subdivision 2 as applicable to the issue of~~ first determine whether the defendant lacks
 16.11 capacity to make decisions regarding the administration of neuroleptic medication ~~and shall~~
 16.12 ~~proceed under paragraph (b).~~ In making this determination, the court:

16.13 (1) must apply a rebuttable presumption that a defendant has the capacity to make
 16.14 decisions regarding administration of neuroleptic medication;

16.15 (2) must find that a defendant has the capacity to make decisions regarding the
 16.16 administration of neuroleptic medication if the defendant:

16.17 (i) has an awareness of the nature of the defendant's situation and the possible
 16.18 consequences of refusing treatment with neuroleptic medications;

16.19 (ii) has an understanding of treatment with neuroleptic medications and the risks, benefits,
 16.20 and alternatives; and

16.21 (iii) communicates verbally or nonverbally a clear choice regarding treatment with
 16.22 neuroleptic medications that is a reasoned one not based on a symptom of the defendant's
 16.23 mental illness, even though it may not be in the defendant's best interests; and

16.24 (3) must not conclude that a defendant's decision is unreasonable based solely on a
 16.25 disagreement with the medical practitioner's recommendation.

16.26 (b) If the court determines that the defendant lacks capacity to make decisions regarding
 16.27 the administration of neuroleptic medication, the court shall hear and determine whether
 16.28 any of the following is true:

16.29 ~~(1) the defendant lacks capacity to make decisions regarding neuroleptic medication, as~~
 16.30 ~~defined in section 253B.092, subdivision 5~~, the defendant's mental illness requires medical
 16.31 treatment with neuroleptic medication, and, if the defendant's mental illness is not treated
 16.32 with neuroleptic medication, it is probable that serious harm to the physical or mental health
 16.33 of the ~~patient~~ defendant will result. Probability of serious harm to the physical or mental

17.1 health of the defendant requires evidence that the defendant is presently suffering adverse
 17.2 effects to the defendant's physical or mental health, or the defendant has previously suffered
 17.3 these effects as a result of a mental illness and the defendant's condition is substantially
 17.4 deteriorating or likely to deteriorate without administration of neuroleptic medication. The
 17.5 fact that a defendant has a diagnosis of a mental illness does not alone establish probability
 17.6 of serious harm to the physical or mental health of the defendant;

17.7 ~~(2) the defendant lacks capacity to make decisions regarding neuroleptic medication, as~~
 17.8 ~~defined in section 253B.092, subdivision 5,~~ neuroleptic medication is medically necessary,
 17.9 and the defendant is a danger to others, in that the defendant has inflicted, attempted to
 17.10 inflict, or made a serious threat of inflicting substantial bodily harm on another while in
 17.11 custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of
 17.12 inflicting substantial bodily harm on another that resulted in being taken into custody, and
 17.13 the defendant presents, as a result of mental illness or cognitive impairment, a demonstrated
 17.14 danger of inflicting substantial bodily harm on others. Demonstrated danger may be based
 17.15 on an assessment of the defendant's present mental condition, including a consideration of
 17.16 past behavior of the defendant and other relevant information; or

17.17 ~~(3) the defendant lacks capacity to make decisions regarding neuroleptic medication, as~~
 17.18 ~~defined in section 253B.092, subdivision 5, and~~ the defendant does not meet the criteria
 17.19 under clause (1) or (2), but the state has shown by clear and convincing evidence that:

17.20 (i) the state has charged the defendant with a serious crime against the person or property;

17.21 (ii) involuntary administration of neuroleptic medication is substantially likely to render
 17.22 the defendant competent to stand trial;

17.23 (iii) the medication is unlikely to have side effects that interfere with the defendant's
 17.24 ability to understand the nature of the criminal proceedings or to assist counsel in the conduct
 17.25 of a defense in a reasonable manner;

17.26 (iv) less intrusive treatments are unlikely to have substantially the same results and
 17.27 involuntary medication is necessary; and

17.28 (v) neuroleptic medication is in the ~~patient's~~ defendant's best medical interest in light of
 17.29 the ~~patient's~~ defendant's medical condition.

17.30 ~~(c) In ruling on a petition under this section, the court shall also take into consideration~~
 17.31 ~~any evidence on~~ If the conditions described in paragraph (b), clause (1), (2), or (3), exist,
 17.32 the court shall determine whether the following factors weigh in favor of authorizing the
 17.33 involuntary administration of neuroleptic medication:

18.1 (1) what the ~~patient~~ defendant would choose to do in the situation if the ~~patient~~ defendant
 18.2 had capacity, including evidence such as a durable power of attorney for health care under
 18.3 chapter 145C;

18.4 (2) the defendant's family, community, moral, religious, and social values;

18.5 (3) the medical risks, benefits, and alternatives to the proposed treatment;

18.6 (4) past efficacy and any extenuating circumstances of past use of neuroleptic
 18.7 medications; and

18.8 (5) any other relevant factors.

18.9 ~~(d) In determining whether the defendant possesses capacity to consent to neuroleptic~~
 18.10 ~~medications, the court:~~

18.11 ~~(1) must apply a rebuttable presumption that a defendant has the capacity to make~~
 18.12 ~~decisions regarding administration of neuroleptic medication;~~

18.13 ~~(2) must find that a defendant has the capacity to make decisions regarding the~~
 18.14 ~~administration of neuroleptic medication if the defendant:~~

18.15 ~~(i) has an awareness of the nature of the defendant's situation and the possible~~
 18.16 ~~consequences of refusing treatment with neuroleptic medications;~~

18.17 ~~(ii) has an understanding of treatment with neuroleptic medications and the risks, benefits,~~
 18.18 ~~and alternatives; and~~

18.19 ~~(iii) communicates verbally or nonverbally a clear choice regarding treatment with~~
 18.20 ~~neuroleptic medications that is a reasoned one not based on a symptom of the defendant's~~
 18.21 ~~mental illness, even though it may not be in the defendant's best interests; and~~

18.22 ~~(3) must not conclude that a defendant's decision is unreasonable based solely on a~~
 18.23 ~~disagreement with the medical practitioner's recommendation.~~

18.24 ~~(e)~~ (d) If consideration of the evidence presented on the factors in paragraph (c) weighs
 18.25 weigh in favor of authorizing involuntary administration of neuroleptic medication, ~~and the~~
 18.26 ~~court finds any of the conditions described in paragraph (b) to be true~~, the court shall issue
 18.27 an order authorizing involuntary administration of neuroleptic medication to the defendant
 18.28 when and as prescribed by the defendant's medical practitioner, including administration
 18.29 by a treatment facility or correctional facility. The court order shall specify which medications
 18.30 are authorized and may limit the maximum dosage of neuroleptic medication that may be
 18.31 administered. The order shall be valid for no more than one year. An order may be renewed
 18.32 by filing another petition under this section and following the process in this section. The

19.1 order shall terminate no later than the closure of the criminal case in which it is issued. The
 19.2 ~~court shall not order involuntary administration of neuroleptic medication under paragraph~~
 19.3 ~~(b), clause (3), unless the court has first found that the defendant does not meet the criteria~~
 19.4 ~~for involuntary administration of neuroleptic medication under paragraph (b), clause (1),~~
 19.5 ~~and does not meet the criteria under paragraph (b), clause (2).~~

19.6 (f) A copy of the order must be given to the defendant, the defendant's attorney, the
 19.7 county attorney, and the treatment facility or correctional facility where the defendant is
 19.8 being served. The treatment facility, correctional facility, or treating medical practitioner
 19.9 may not begin administration of the neuroleptic medication until it notifies the ~~patient~~
 19.10 defendant of the court's order authorizing the treatment.

19.11 Subd. 4. **Emergency administration.** A treating medical practitioner may administer
 19.12 neuroleptic medication to a defendant who does not have capacity to make a decision
 19.13 regarding administration of the medication if the defendant is in an emergency situation.
 19.14 Medication may be administered for so long as the emergency continues to exist, up to 14
 19.15 days, if the treating medical practitioner determines that the medication is necessary to
 19.16 prevent serious, immediate physical harm to the ~~patient~~ defendant or to others. If a request
 19.17 for authorization to administer medication is made to the court within the 14 days, the
 19.18 treating medical practitioner may continue the medication through the date of the first court
 19.19 hearing, if the emergency continues to exist. The treating medical practitioner shall document
 19.20 the emergency in the defendant's medical record in specific behavioral terms.

19.21 Subd. 5. **Administration without judicial review.** Neuroleptic medications may be
 19.22 administered without judicial review under this subdivision if:

19.23 (1) the defendant has been prescribed neuroleptic medication prior to admission to a
 19.24 facility or program, but lacks the present capacity to consent to the administration of that
 19.25 neuroleptic medication; continued administration of the medication is in the ~~patient's~~
 19.26 defendant's best interest; and the defendant does not refuse administration of the medication.
 19.27 In this situation, the previously prescribed neuroleptic medication may be continued for up
 19.28 to 14 days while the treating medical practitioner is requesting a court order authorizing
 19.29 administering neuroleptic medication or an amendment to a current court order authorizing
 19.30 administration of neuroleptic medication. If the treating medical practitioner requests a court
 19.31 order under this section within 14 days, the treating medical practitioner may continue
 19.32 administering the medication to the ~~patient~~ defendant through the hearing date or until the
 19.33 court otherwise issues an order; or

20.1 (2) the defendant does not have the present capacity to consent to the administration of
 20.2 neuroleptic medication, but prepared a health care power of attorney or a health care directive
 20.3 under chapter 145C requesting treatment or authorizing an agent or proxy to request
 20.4 treatment, and the agent or proxy has requested the treatment.

20.5 Subd. 6. **Defendants with capacity to make informed decision.** If the court finds that
 20.6 the defendant has the capacity to decide whether to take neuroleptic medication, a facility
 20.7 or program may not administer medication without the ~~patient's~~ defendant's informed written
 20.8 consent or without the declaration of an emergency, or until further review by the court.

20.9 Subd. 7. **Procedure when patient defendant refuses medication.** If physical force is
 20.10 required to administer the neuroleptic medication, the facility or program may only use
 20.11 injectable medications. If physical force is needed to administer the medication, medication
 20.12 may only be administered in a setting where the ~~person's~~ defendant's condition can be
 20.13 reassessed and medical personnel qualified to administer medication are available, including
 20.14 in the community or a correctional facility. The facility or program may not use a nasogastric
 20.15 tube to administer neuroleptic medication involuntarily.

20.16 Sec. 28. Minnesota Statutes 2022, section 611.48, is amended to read:

20.17 **611.48 REVIEW HEARINGS.**

20.18 The prosecutor or defense counsel may apply to the court for a hearing to review the
 20.19 defendant's competency ~~restoration~~ attainment programming. All parties are entitled to
 20.20 notice before the hearing. The hearing shall be held no later than 30 days after the date of
 20.21 the request, unless extended upon agreement of the prosecutor and defense counsel or by
 20.22 the court for good cause.

20.23 Sec. 29. Minnesota Statutes 2022, section 611.49, is amended to read:

20.24 **611.49 LIKELIHOOD TO ATTAIN COMPETENCY.**

20.25 Subdivision 1. **Applicability.** (a) The court may hold a hearing on its own initiative or
 20.26 upon request of either party to determine whether the defendant is likely to attain competency
 20.27 in the foreseeable future when the most recent court examiner's report states that the defendant
 20.28 is unlikely to attain competency in the foreseeable future, and either:

20.29 (1) the defendant has not ~~been restored to competence~~ attained competency after
 20.30 participating and cooperating with court-ordered competency ~~restoration~~ attainment
 20.31 programming for at least one year; or

21.1 (2) the defendant has not received timely competency ~~restoration~~ attainment services
21.2 under section 611.46 after one year.

21.3 (b) The court cannot find a defendant unlikely to attain competency based upon a
21.4 defendant's refusal to cooperate with or remain at a ~~certified~~ competency program or
21.5 cooperate with an examination.

21.6 (c) The parties are entitled to 30 days of notice prior to the hearing and, unless the parties
21.7 agree to a longer time period, the court must determine within 30 days after the hearing
21.8 whether there is a substantial probability that the defendant will attain competency within
21.9 the foreseeable future.

21.10 (d) A party attempting to demonstrate that there is a substantial probability that the
21.11 defendant will attain competency within the foreseeable future must prove that probability
21.12 by a preponderance of the evidence.

21.13 Subd. 2. **Procedure.** (a) If the court finds that there is a substantial probability that the
21.14 defendant will attain competency within the reasonably foreseeable future, the court shall
21.15 find the defendant incompetent and proceed under section 611.46.

21.16 (b) If the court finds that there is not a substantial probability the defendant will attain
21.17 competency within the reasonably foreseeable future, the court may not order the defendant
21.18 to participate in or continue to participate in a competency ~~restoration~~ attainment program
21.19 in a locked treatment facility. The court must release the defendant from any custody holds
21.20 pertaining to the underlying criminal case and require the forensic navigator to develop a
21.21 bridge plan.

21.22 (c) If the court finds that there is not a substantial probability the defendant will attain
21.23 competency within the foreseeable future, the court may issue an order to the designated
21.24 agency in the county of financial responsibility or the county where the defendant is present
21.25 to conduct a prepetition screening pursuant to section 253B.07.

21.26 ~~(d) If a hearing is held under this subdivision and the criteria pursuant to subdivision 1,~~
21.27 ~~paragraphs (a) and (b) are satisfied, a party attempting to demonstrate that there is a~~
21.28 ~~substantial probability that the defendant will attain competency within the foreseeable~~
21.29 ~~future must prove by a preponderance of the evidence.~~

21.30 ~~(e)~~ (d) If the court finds that there is not a substantial probability that the defendant will
21.31 attain competency within the foreseeable future, the court must dismiss the case unless:

21.32 (1) the person is charged with a violation of section ~~609.185 (murder in the first degree);~~
21.33 ~~609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20~~

22.1 ~~(manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.2112~~
 22.2 (criminal vehicular homicide); 609.2114, subdivision 1 (criminal vehicular operation, death
 22.3 to an unborn child); 609.2661 (murder of an unborn child in the first degree); 609.2662
 22.4 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in
 22.5 the third degree); 609.2664 (manslaughter of an unborn child in the first degree); or 609.2665
 22.6 (manslaughter of an unborn child in the second degree); or a crime of violence as defined
 22.7 in section 624.712, subdivision 5, except for a violation of chapter 152; or

22.8 (2) there is a showing of a danger to public safety if the matter is dismissed.

22.9 ~~(f)~~ (e) If the court does not dismiss the charges, the court must order continued supervision
 22.10 under subdivision 3.

22.11 Subd. 3. **Continued supervision.** (a) If the court orders the continued supervision of a
 22.12 defendant, any party may request a hearing on the issue of continued supervision by filing
 22.13 a notice no more than ten days after the order for continued supervision.

22.14 (b) When continued supervision is ordered, the court must identify the supervisory
 22.15 agency responsible for the supervision of the defendant, ~~including but not limited to directing~~
 22.16 and may identify a forensic navigator as the responsible entity.

22.17 (c) Notwithstanding the reporting requirements of section 611.46, subdivision 6, the
 22.18 court examiner must provide an updated report to the court one year after the initial order
 22.19 for continued supervision as to the defendant's competency and a description of the efforts
 22.20 made to ~~restore~~ assist the defendant ~~to~~ in attaining competency. The court shall hold a review
 22.21 hearing within 30 days of receipt of the report.

22.22 (d) If continued supervision is ordered at the review hearing under paragraph (c), the
 22.23 court must set a date for a review hearing no later than two years after the most recent order
 22.24 for continuing supervision. The court must order review of the defendant's status, including
 22.25 an updated competency examination and report by the court examiner. The court examiner
 22.26 must submit the updated report to the court. At the review hearing, the court must determine
 22.27 if the defendant has attained competency, whether there is a substantial probability that the
 22.28 defendant will attain competency within the foreseeable future, and whether the absence of
 22.29 continuing supervision of the defendant is a danger to public safety. Notwithstanding
 22.30 subdivision 2, paragraph ~~(e)~~ (d), the court may hear any motions to dismiss pursuant to the
 22.31 interest of justice at the review hearing.

22.32 (e) Continued supervision of a defendant in cases where the most serious charge is a
 22.33 targeted misdemeanor or gross misdemeanor is subject to the limitations established in
 22.34 section 611.45, subdivision 3, paragraph (b).

23.1 ~~(e)~~ (f) The court may not order continued supervision of a defendant charged with a
 23.2 felony for more than ten years unless the defendant is charged with a violation of section
 23.3 ~~609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder~~
 23.4 ~~in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in~~
 23.5 ~~the second degree); 609.2112 (criminal vehicular homicide); 609.2114, subdivision 1~~
 23.6 (criminal vehicular operation, death to an unborn child); 609.2661 (murder of an unborn
 23.7 child in the first degree); 609.2662 (murder of an unborn child in the second degree);
 23.8 609.2663 (murder of an unborn child in the third degree); 609.2664 (manslaughter of an
 23.9 unborn child in the first degree); or 609.2665 (manslaughter of an unborn child in the second
 23.10 degree); or a crime of violence as defined in section 624.712, subdivision 5, except for a
 23.11 violation of chapter 152.

23.12 ~~(f)~~ (g) At any time, the head of the program may discharge the defendant from the
 23.13 program or facility. The head of the program must notify the court, prosecutor, defense
 23.14 counsel, forensic navigator, and any entity responsible for the supervision of the defendant
 23.15 prior to any planned discharge. Absent emergency circumstances, this notification shall be
 23.16 made five days prior to the discharge. If the defendant is discharged from the program or
 23.17 facility under emergency circumstances, notification of emergency discharge shall include
 23.18 a description of the emergency circumstances and may include a request for emergency
 23.19 transportation. The court shall make a determination on a request for emergency
 23.20 transportation within 24 hours. Nothing in this section prohibits a law enforcement agency
 23.21 from transporting a defendant pursuant to any other authority.

23.22 ~~(g)~~ (h) The court may provide, partner, or contract for pretrial supervision services or
 23.23 continued supervision if the defendant is found incompetent and unlikely to attain competency
 23.24 in the foreseeable future.

23.25 Sec. 30. Minnesota Statutes 2022, section 611.51, is amended to read:

23.26 **611.51 CREDIT FOR CONFINEMENT.**

23.27 If the defendant is convicted, any time spent confined in a ~~secured~~ secure setting while
 23.28 being assessed ~~and restored to~~ or receiving competency attainment services must be credited
 23.29 as time served.

23.30 Sec. 31. Minnesota Statutes 2022, section 611.55, is amended to read:

23.31 **611.55 FORENSIC NAVIGATOR SERVICES.**

23.32 Subdivision 1. **Definition.** As used in this section, "board" means the State Competency
 23.33 ~~Restoration~~ Attainment Board established in section 611.56.

24.1 Subd. 2. **Availability of forensic navigator services.** The board must provide or contract
 24.2 for enough forensic navigator services to meet the needs of adult defendants in each judicial
 24.3 district who are found incompetent to proceed.

24.4 Subd. 3. **Duties.** (a) Forensic navigators shall assist and supervise defendants when
 24.5 appointed to do so by a court. Forensic navigators shall be impartial in all legal matters
 24.6 relating to the criminal case. Nothing shall be construed to permit the forensic navigator to
 24.7 provide legal counsel as a representative of the court, prosecutor, or defense counsel. ~~Forensic~~
 24.8 ~~navigators shall be required to report compliance and noncompliance with pretrial supervision~~
 24.9 ~~and any orders of the court.~~

24.10 (b) Forensic navigators shall provide services to assist defendants with mental illnesses
 24.11 and cognitive impairments. Services may include, but are not limited to:

24.12 (1) developing bridge plans;

24.13 (2) assisting defendants in participating in court-ordered examinations and hearings;

24.14 (3) coordinating timely placement in court-ordered competency ~~restoration~~ attainment
 24.15 programs;

24.16 (4) providing competency ~~restoration~~ attainment education;

24.17 (5) reporting to the court on the progress of defendants found incompetent to stand trial;

24.18 (6) providing coordinating services to help defendants access ~~needed~~ mental health
 24.19 services, medical care, stable housing and housing assistance, financial assistance, social
 24.20 services, transportation, precharge and pretrial diversion, and other necessary services
 24.21 provided by other programs and community service providers;

24.22 (7) communicating with and offering supportive resources to defendants and family
 24.23 members of defendants; and

24.24 (8) providing consultation and education to court officials on emerging issues and
 24.25 innovations in serving defendants with mental illnesses in the court system.

24.26 (c) When ordered to supervise a defendant, a forensic navigator shall report to the court
 24.27 on a defendant's compliance or noncompliance with conditions of pretrial supervision and
 24.28 any order of the court.

24.29 ~~(e)~~ (d) If a defendant's charges are dismissed, the appointed forensic navigator may
 24.30 continue assertive outreach with the individual for up to 90 days to assist in attaining stability
 24.31 in the community.

25.1 Subd. 4. **Bridge plans.** (a) ~~The Forensic navigator~~ navigators must prepare bridge plans
 25.2 to assist with a stable transition back into the community. A forensic navigator must prepare
 25.3 a bridge plan with the defendant and submit ~~them~~ the bridge plan to the court. Bridge plans
 25.4 must be submitted before the time the court makes a competency finding pursuant to section
 25.5 611.45. ~~The~~ A bridge plan must include:

25.6 (1) a confirmed housing address the defendant will use upon release, including but not
 25.7 limited to emergency shelters;

25.8 (2) if possible, the dates, times, locations, and contact information for any appointments
 25.9 made to further coordinate support and assistance for the defendant in the community,
 25.10 including but not limited to mental health and substance use disorder treatment, or a list of
 25.11 referrals to services; and

25.12 (3) any other referrals, resources, or recommendations the forensic navigator or court
 25.13 deems necessary.

25.14 (b) Bridge plans and any supporting records or other data submitted with those plans
 25.15 are not accessible to the public.

25.16 Sec. 32. Minnesota Statutes 2022, section 611.56, is amended to read:

25.17 **611.56 STATE COMPETENCY ~~RESTORATION~~ ATTAINMENT BOARD.**

25.18 Subdivision 1. **Establishment; membership.** (a) The State Competency ~~Restoration~~
 25.19 Attainment Board is established in the judicial branch. The board is not subject to the
 25.20 administrative control of the judiciary. The board shall consist of seven members, including:

25.21 (1) three members appointed by the supreme court, at least one of whom must be a
 25.22 defense attorney, one a county attorney, and one public member; and

25.23 (2) four members appointed by the governor, at least one of whom must be a mental
 25.24 health professional with experience in competency ~~restoration~~ attainment.

25.25 (b) The appointing authorities may not appoint an active judge to be a member of the
 25.26 board, but may appoint a retired judge.

25.27 (c) All members must demonstrate an interest in maintaining a high quality, independent
 25.28 forensic navigator program and a thorough process for certification of competency ~~restoration~~
 25.29 attainment programs. Members shall be familiar with the Minnesota Rules of Criminal
 25.30 Procedure, particularly rule 20; chapter 253B; and sections 611.40 to 611.59. Following
 25.31 the initial terms of appointment, at least one member appointed by the supreme court must
 25.32 have previous experience working as a forensic navigator. At least three members of the

26.1 board shall live outside the First, Second, Fourth, and Tenth Judicial Districts. The terms,
26.2 compensation, and removal of members shall be as provided in section 15.0575. The members
26.3 shall elect the chair from among the membership for a term of two years.

26.4 Subd. 2. **Duties and responsibilities.** (a) The board shall create and administer a
26.5 statewide, independent competency ~~restoration~~ attainment system that certifies competency
26.6 ~~restoration~~ attainment programs and uses forensic navigators to promote prevention and
26.7 diversion of people with mental illnesses and cognitive impairments from entering the legal
26.8 system, support defendants with mental illness and cognitive impairments, support defendants
26.9 in the competency process, and assist courts and partners in coordinating competency
26.10 ~~restoration~~ attainment services.

26.11 (b) The board shall:

26.12 (1) approve and recommend to the legislature a budget for the board and the forensic
26.13 navigator program;

26.14 (2) establish procedures for distribution of funding under this section to the forensic
26.15 navigator program;

26.16 (3) establish forensic navigator standards, administrative policies, procedures, and rules
26.17 consistent with statute, rules of court, and laws that affect a forensic navigator's work;

26.18 (4) establish certification requirements for competency ~~restoration~~ attainment programs;
26.19 and

26.20 (5) carry out the programs under sections 611.57, 611.58, and 611.59.

26.21 (c) The board may:

26.22 (1) adopt standards, policies, or procedures necessary to ensure quality assistance for
26.23 defendants found incompetent to stand trial and charged with a felony, gross misdemeanor,
26.24 or targeted misdemeanor, or for defendants found incompetent to stand trial who have
26.25 recurring incidents;

26.26 (2) establish district forensic navigator offices as provided in subdivision 4; and

26.27 (3) propose statutory changes to the legislature and rule changes to the supreme court
26.28 that would facilitate the effective operation of the forensic navigator program.

26.29 Subd. 3. **Administrator.** The board shall appoint a program administrator who serves
26.30 at the pleasure of the board. The program administrator shall attend all meetings of the board
26.31 and the Certification Advisory Committee, but may not vote, and shall:

27.1 (1) carry out all administrative functions necessary for the efficient and effective operation
 27.2 of the board and the program, including but not limited to hiring, supervising, and disciplining
 27.3 program staff and forensic navigators;

27.4 (2) implement, as necessary, resolutions, standards, rules, regulations, and policies of
 27.5 the board;

27.6 (3) keep the board fully advised as to its financial condition, and prepare and submit to
 27.7 the board the annual program and budget and other financial information as requested by
 27.8 the board;

27.9 (4) recommend to the board the adoption of rules and regulations necessary for the
 27.10 efficient operation of the board and the program; and

27.11 (5) perform other duties prescribed by the board.

27.12 Subd. 4. **District offices.** The board may establish district forensic navigator offices in
 27.13 counties, judicial districts, or other areas where the number of defendants receiving
 27.14 competency ~~restoration~~ attainment services requires more than one full-time forensic
 27.15 navigator and establishment of an office is fiscally responsible and in the best interest of
 27.16 defendants found to be incompetent.

27.17 Subd. 5. **Administration.** The board may contract with the Office of State Court
 27.18 Administrator for administrative support services for the fiscal years following fiscal year
 27.19 2022.

27.20 Subd. 6. **Fees and costs; civil actions on contested case.** Sections 15.039 and 15.471
 27.21 to 15.474 apply to the State Competency ~~Restoration~~ Attainment Board.

27.22 Subd. 7. **Access to records.** Access to records of the board is subject to the Rules of
 27.23 Public Access for Records of the Judicial Branch. The board may propose amendments for
 27.24 supreme court consideration.

27.25 Sec. 33. Minnesota Statutes 2022, section 611.57, is amended to read:

27.26 **611.57 CERTIFICATION ADVISORY COMMITTEE.**

27.27 Subdivision 1. **Establishment.** The Certification Advisory Committee is established to
 27.28 provide the State Competency ~~Restoration~~ Attainment Board with advice and expertise
 27.29 related to the certification of competency ~~restoration~~ attainment programs, including
 27.30 jail-based programs.

27.31 Subd. 2. **Membership.** (a) The Certification Advisory Committee consists of the
 27.32 following members:

28.1 (1) a mental health professional, as defined in section 245I.02, subdivision 27, with
28.2 community behavioral health experience, appointed by the governor;

28.3 (2) a board-certified forensic psychiatrist with experience in competency evaluations,
28.4 providing competency ~~restoration~~ attainment services, or both, appointed by the governor;

28.5 (3) a board-certified forensic psychologist with experience in competency evaluations,
28.6 providing competency ~~restoration~~ attainment services, or both, appointed by the governor;

28.7 (4) the president of the Minnesota Corrections Association or a designee;

28.8 (5) the direct care and treatment deputy commissioner or a designee;

28.9 (6) the president of the Minnesota Association of County Social Service Administrators
28.10 or a designee;

28.11 (7) the president of the Minnesota Association of Community Mental Health Providers
28.12 or a designee;

28.13 (8) the president of the Minnesota Sheriffs' Association or a designee; and

28.14 (9) the executive director of the National Alliance on Mental Illness Minnesota or a
28.15 designee.

28.16 (b) Members of the advisory committee serve without compensation and at the pleasure
28.17 of the appointing authority. Vacancies shall be filled by the appointing authority consistent
28.18 with the qualifications of the vacating member required by this subdivision.

28.19 Subd. 3. **Meetings.** At its first meeting, the advisory committee shall elect a chair and
28.20 may elect a vice-chair. The advisory committee shall meet at least monthly or upon the call
28.21 the chair. The advisory committee shall meet sufficiently enough to accomplish the tasks
28.22 identified in this section.

28.23 Subd. 4. **Duties.** The Certification Advisory Committee shall consult with the Department
28.24 of Human Services, the Department of Health, and the Department of Corrections; make
28.25 recommendations to the State Competency ~~Restoration~~ Attainment Board regarding
28.26 competency ~~restoration~~ attainment curriculum, certification requirements for competency
28.27 ~~restoration~~ attainment programs including jail-based programs, and certification of individuals
28.28 to provide competency ~~restoration~~ attainment services; and provide information and
28.29 recommendations on other issues relevant to competency ~~restoration~~ attainment as requested
28.30 by the board.

29.1 Sec. 34. Minnesota Statutes 2022, section 611.58, is amended to read:

29.2 **611.58 COMPETENCY ~~RESTORATION~~ ATTAINMENT CURRICULUM AND**
 29.3 **CERTIFICATION.**

29.4 Subdivision 1. **Curriculum.** (a) By January 1, 2023, the board must recommend a
 29.5 competency ~~restoration~~ attainment curriculum to educate and assist defendants found
 29.6 incompetent in attaining the ability to:

29.7 (1) rationally consult with counsel;

29.8 (2) understand the proceedings; and

29.9 (3) participate in the defense.

29.10 (b) The curriculum must be flexible enough to be delivered in community and correctional
 29.11 settings by individuals with various levels of education and qualifications, including but
 29.12 not limited to professionals in criminal justice, health care, mental health care, and social
 29.13 services. The board must review and update the curriculum as needed.

29.14 Subd. 2. **Certification and distribution.** By January 1, 2023, the board must develop
 29.15 a process for certifying individuals to deliver the competency ~~restoration~~ attainment
 29.16 curriculum and make the curriculum available to every ~~certified~~ competency ~~restoration~~
 29.17 attainment program and forensic navigator in the state. Each competency ~~restoration~~
 29.18 attainment program in the state must use the competency ~~restoration~~ attainment curriculum
 29.19 under this section as the foundation for delivering competency ~~restoration~~ attainment
 29.20 education and must not substantially alter the content.

29.21 Sec. 35. Minnesota Statutes 2022, section 611.59, is amended to read:

29.22 **611.59 COMPETENCY ~~RESTORATION~~ ATTAINMENT PROGRAMS.**

29.23 Subdivision 1. **Availability and certification.** The board must provide or contract for
 29.24 enough competency ~~restoration~~ attainment services to meet the needs of adult defendants
 29.25 in each judicial district who are found incompetent to proceed and do not have access to
 29.26 competency ~~restoration~~ attainment services as a part of any other programming in which
 29.27 they are ordered to participate. The board, in consultation with the Certification Advisory
 29.28 Committee, shall develop procedures to certify that the standards in this section are met,
 29.29 including procedures for regular recertification of competency ~~restoration~~ attainment
 29.30 programs. The board shall maintain a list of programs it has certified ~~competency restoration~~
 29.31 ~~programs~~ on the board's website to be updated and shall update the list of competency
 29.32 attainment programs at least once every year.

30.1 Subd. 2. **Competency ~~restoration~~ attainment provider standards.** Except for jail-based
30.2 programs, a competency ~~restoration~~ attainment provider must:

30.3 (1) be able to provide the appropriate mental health or substance use disorder treatment
30.4 ordered by the court, including but not limited to treatment in inpatient, residential, and
30.5 home-based settings;

30.6 (2) ensure that competency ~~restoration~~ attainment education certified by the board is
30.7 provided to defendants and that regular assessments of defendants' progress in attaining
30.8 competency are documented;

30.9 (3) designate a head of the program knowledgeable in the processes and requirements
30.10 of the competency to stand trial procedures; and

30.11 (4) develop staff procedures or designate a person responsible to ensure timely
30.12 communication with the court system.

30.13 Subd. 3. **Jail-based competency ~~restoration~~ attainment standards.** Jail-based
30.14 competency ~~restoration~~ attainment programs must be housed in correctional facilities licensed
30.15 by the Department of Corrections under section 241.021 and must:

30.16 (1) have a designated program director who meets minimum qualification standards set
30.17 by the board, including understanding the requirements of competency to stand trial
30.18 procedures;

30.19 (2) provide minimum mental health services including:

30.20 (i) having multidisciplinary staff sufficient to monitor defendants and provide timely
30.21 assessments, treatment, and referrals as needed, including at least one medical professional
30.22 licensed to prescribe psychiatric medication;

30.23 (ii) prescribing, dispensing, and administering any medication deemed clinically
30.24 appropriate by qualified medical professionals; and

30.25 (iii) having policies and procedures for the administration of involuntary medication;

30.26 (3) ensure that competency ~~restoration~~ attainment education certified by the board is
30.27 provided to defendants and regular assessments of defendants' progress in attaining
30.28 competency to stand trial are documented;

30.29 (4) develop staff procedures or designate a person responsible to ensure timely
30.30 communication with the court system; and

30.31 (5) designate a space in the correctional facility for the program.

31.1 Subd. 4. **Program evaluations.** (a) The board shall collect the following data:

31.2 (1) the total number of competency examinations ordered in each judicial district
31.3 separated by county;

31.4 (2) the age, race, and number of unique defendants and for whom at least one competency
31.5 examination was ordered in each judicial district separated by county;

31.6 (3) the age, race, and number of unique defendants found incompetent at least once in
31.7 each judicial district separated by county; and

31.8 (4) all available data on the level of charge and adjudication of cases with a defendant
31.9 found incompetent and whether a forensic navigator was assigned to the case.

31.10 (b) By February 15 of each year, the board must report to the legislative committees and
31.11 divisions with jurisdiction over human services, public safety, and the judiciary on the data
31.12 collected under this subdivision and may include recommendations for statutory or funding
31.13 changes related to competency ~~restoration~~ attainment.

31.14 Sec. 36. Laws 2022, chapter 99, article 3, section 1, is amended to read:

31.15 Section 1. **APPROPRIATION BASE ESTABLISHED; COMPETENCY**
31.16 **~~RESTORATION~~ ATTAINMENT.**

31.17 Subdivision 1. **Department of Corrections.** The general fund appropriation base for
31.18 the commissioner of corrections is \$202,000 in fiscal year 2024 and \$202,000 in fiscal year
31.19 2025 for correctional facilities inspectors.

31.20 Subd. 2. **District courts.** The general fund appropriation base for the district courts is
31.21 \$5,042,000 in fiscal year 2024 and \$5,042,000 in fiscal year 2025 for costs associated with
31.22 additional competency examination costs.

31.23 Subd. 3. **State Competency ~~Restoration~~ Attainment Board.** The general fund
31.24 appropriation base for the State Competency ~~Restoration~~ Attainment Board is \$11,350,000
31.25 in fiscal year 2024 and \$10,900,000 in fiscal year 2025 for staffing and other costs needed
31.26 to establish and perform the duties of the State Competency ~~Restoration~~ Attainment Board,
31.27 including providing educational services necessary to ~~restore defendants to~~ assist defendants
31.28 in attaining competency, or contracting or partnering with other organizations to provide
31.29 those services.

32.1 Sec. 37. **COMPETENCY ATTAINMENT BOARD; ESTABLISHMENT;**
32.2 **APPROPRIATION.**

32.3 \$..... in fiscal year 2023 is appropriated from the general fund to the State Competency
32.4 Attainment Board to establish the board, hire an administrator and any other necessary staff,
32.5 establish appropriate standards and requirements for a forensic navigator program, and
32.6 establish certifications requirements and procedures for competency attainment curriculum
32.7 and programs.

32.8 Sec. 38. **EFFECTIVE DATE.**

32.9 Sections 1 to 37 are effective the day following final enactment.