

HF9064 - 0 - Competency to Stand Trial

Chief Author: **Heather Edelson**
 Committee: **Judiciary Finance and Civil Law**
 Date Completed: **5/3/2022 8:30:40 PM**
 Lead Agency: **Supreme Court**
 Other Agencies:
 Corrections Dept Governors Office
 Human Services Dept Public Defense Board

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept						
General Fund	-	-	-	202	202	
Governors Office						
General Fund	-	-	-	-	-	-
Supreme Court						
General Fund	-	-	-	16,392	15,942	
State Total						
General Fund	-	-	-	16,594	16,144	
Total	-	-	-	16,594	16,144	
Biennial Total						32,738

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept					
General Fund	-	-	-	2	2
Governors Office					
General Fund	-	-	-	-	-
Supreme Court					
General Fund	-	-	-	138	138
Total	-	-	-	140	140

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 5/3/2022 8:30:40 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept						
General Fund		-	-	-	202	202
Governors Office						
General Fund		-	-	-	-	-
Supreme Court						
General Fund		-	-	-	16,392	15,942
Total		-	-	-	16,594	16,144
Biennial Total				-		32,738
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Corrections Dept						
General Fund		-	-	-	202	202
Governors Office						
General Fund		-	-	-	-	-
Expenditures		-	-	1	-	-
Absorbed Costs		-	-	(1)	-	-
Supreme Court						
General Fund		-	-	-	16,392	15,942
Total		-	-	-	16,594	16,144
Biennial Total				-		32,738
2 - Revenues, Transfers In*						
Corrections Dept						
General Fund		-	-	-	-	-
Governors Office						
General Fund		-	-	-	-	-
Supreme Court						
General Fund		-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-

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State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	16,392	15,942	
Total	-	-	-	16,392	15,942	
Biennial Total						32,334

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	138	138
Total	-	-	-	138	138

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 5/3/2022 7:58:38 PM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

State Cost (Savings) Calculation Details

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*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
General Fund	-	-	-	16,392	15,942	
Total	-	-	-	16,392	15,942	
Biennial Total			-		32,334	
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	-	-	16,392	15,942	
Total	-	-	-	16,392	15,942	
Biennial Total			-		32,334	
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	
Total	-	-	-	-	-	
Biennial Total			-		-	

Bill Description

HF9064 adds new sections in Minn. Stat. ch. 611 to codify the law and process governing competency proceedings for criminal defendants, currently governed by Rule 20 of the Minnesota Rules of Criminal Procedure. The bill modifies the current Rule 20 process; the significant changes to the process are outlined below.

In Article 1, at section 3, codified as section 611.42, subdivision 3, the bill requires that whenever competency is at issue, the court must appoint a forensic navigator to provide forensic navigator services for the defendant including development of a specific plan to identify appropriate housing and services if the defendant is released from custody or any charges are dismissed. In felony, gross misdemeanor, and targeted misdemeanor cases if there is a reasonable basis to doubt the defendant's competence the court must order a competency examination. For all other misdemeanor cases the court may order an examination if in the public interest; the court must order the forensic navigator to complete a bridge plan and may dismiss upon receipt of the plan without a hearing unless either party objects.

Subdivision 4 provides that when an examination has been ordered, a forensic examiner must complete a bridge plan and submit it to the court and the defendant before the court or prosecutor dismisses any charges based on a belief or finding that the defendant is incompetent. If for any reason a forensic navigator is not appointed, the court must make every reasonable effort to coordinate with any resources available to the court and refer the defendant for possible assessment and social services, including but not limited to services for engagement under section 253B.041 before dismissing any charges based on finding that the defendant is incompetent. If working with the forensic navigator or coordinating a referral to services would cause an unreasonable delay in the release of a defendant in custody, the court may release the defendant and coordinate with the forensic navigator or any resources available to the court to engage the defendant for up to 90 days after release. Courts may partner and collaborate with county social services, community-based programs, jails, and any other resource available to the court to provide referrals to services when a defendant's competency is at issue, or a defendant has been found incompetent to proceed.

Section 4, codified at section 611.43, governs the competency examination, requiring that the examination report must be filed no more than 30 days after the order for examination if the defendant is in custody, and within 60 days if the defendant is out of custody, unless the time is extended by the court for good cause. Section 5 (section 611.44) governs contested hearing procedures.

At section 6 (section 611.45) governing competence findings, the court is required to make a competency determination no more than 14 days after the submission of the examiner's report, or if there is a contested hearing, no more than 30 days after the date of the hearing. The court is required to enter a written order if the court finds the defendant incompetent. If the court finds the defendant incompetent and the charge is a misdemeanor other than a targeted misdemeanor the charge must be dismissed. In targeted and gross misdemeanor cases the charges must be dismissed 30 days after the finding of incompetence unless the prosecutor files written notice of intent to prosecute. If a notice is filed, targeted

misdemeanors must be dismissed within one year after the finding of incompetency, and gross misdemeanors must be dismissed within 2 years of the finding of incompetency. In felony cases if a notice of intent is filed within 3 years the charges must be dismissed within 5 years after the finding of incompetency or 10 years if the maximum sentence for the charged crime is 10 years or more, unless the court orders continuing supervision under section 611.49, subdivision 3 or the offense is one of the listed offenses.

Section 7 (section 611.46) at subdivision 1 provides that if the court finds a defendant incompetent and the charges have not been dismissed (targeted misdemeanor, gross misdemeanor, and felony offenses), the court must order a defendant to participate in the least restrictive competency restoration program appropriate to meet the defendant's needs and public safety. In making this determination, the court must consult with the forensic navigator and consider any recommendations of the court-appointed examiner. The court shall not order a defendant to participate in a jail-based or state-operated treatment program if the highest charge is a misdemeanor or targeted misdemeanor. The court may only order the defendant to participate in competency restoration at an inpatient or residential program if the head of the program determines that admission is clinically appropriate and consents to the defendant's admission. If a defendant in jail has not received competency restoration services within 30 days of the finding of incompetency the court shall order the defendant to participate in an out-of-custody program, conditionally release the defendant, find the defendant unlikely to attain competency and proceed under section 611.49, or dismiss the case.

If the defendant refuses to participate in a program or the head of the program discharges the defendant, the head of the program shall notify the court and any entity responsible for defendant's supervision. The court may order a defendant subject to bail or unmet conditions of release to be returned to jail and must hold a review hearing within 7 days; the forensic navigator must be given notice of the hearing and be allowed to participate.

Section 611.46 at subdivision 2 provides that upon a finding of incompetency, if after weighing the public safety risks against a defendant's interest in remaining free from supervision while presumed innocent the court determines that the defendant requires pretrial supervision, the court shall direct the forensic navigator to conduct pretrial supervision and report violations to the court. The court is required to hear within certain timelines any allegations the defendant violated a condition of release, and may revise the conditions of release as appropriate.

Under subdivision 3, if the court orders defendant to participate in a non-jail program the court must specify whether it is community-based or in a locked treatment facility. If the court finds the defendant is incompetent at a review hearing held after the initial determination of competency the court must hold a review hearing and consider any changes to the conditions of release or programming to restore defendant's competency in the least restricting program appropriate. If the court orders defendant to a locked treatment facility or jail-based program, the court must calculate defendant's custody credit and cannot order defendant confined for a period that would exceed the maximum sentence for the underlying offense.

Subdivision 4 governs jail-based competency restoration for defendants charged with a gross misdemeanor or felony and requires a review hearing after 90 days if the defendant has not attained competency.

Subdivision 5 authorizes the court to order a defendant to participate in an alternative program if the defendant is entitled to release and a certified restoration program outside of jail is not available. If after 90 days the defendant has not attained competency the court must hold a review hearing.

Subdivision 6 requires the court examiner to provide an updated report to the court at least once every 6 months, or a longer period up to 12 months if the court and parties agree. Subdivision 7 provides for contested hearing procedures if a party files a written objection to a report. Subdivision 8 requires the court to make a competency determination based on the updated report within 14 days of receipt.

Section 8 (section 611.47) provides processes for the administration of neuroleptic medication. The court may appoint a court examiner and the defendant is entitled to a second court examiner under this process.

Section 9 (section 611.48) provides that the prosecutor or defense counsel may request review hearings on the defendant's competency restoration programming.

Section 10 (section 611.49) provides that the court may find a defendant unlikely to attain competency if the most recent report states the defendant is unlikely to attain competency in the foreseeable future, the defendant has not been restored within one year of the finding of incompetence, or the defendant has not received timely competency restoration services. If the court finds there is not a substantial probability the defendant will attain competency, the court may not order defendant to participate in competency restoration in a locked facility, must release the defendant, and require the forensic

navigator to develop a bridge plan. The court may order the county to conduct prepetition screening under section 253B.07. The court must dismiss the case unless the defendant is charged with certain offenses, or there is a danger to public safety. If not dismissed, the court must order continued supervision. Any party may request a hearing by timely objecting to the order for continued supervision. When the court orders continued supervision, it must identify the agency or entity responsible including but not limited to the forensic navigator. The court examiner must provide an updated report one year after the initial order for continued supervision, and the court must hold a review hearing. If continued supervision is ordered, the court must set a review hearing no more than 2 years from the date of the order and the court examiner must submit an updated report. The court may not order continued supervision for more than 10 years unless the defendant is charged with certain offenses. At any time, the head of a program may discharge the defendant and must notify the court, both counsel, the forensic navigator, and any entity responsible for defendant's supervision prior to discharge.

The court may provide, partner, or contract for pretrial supervision services or continued supervision if the defendant is unlikely to attain competency in the reasonably foreseeable future.

Section 11(section 611.50) governs defendant's participation in and conduct of hearings; and section 12 (section 611.51) provides for credit upon conviction for any time confined in a secure setting.

Article 1 is effective July 1, 2023 and applies to competency determinations initiated on or after that date.

Article 2, section 1, codified at section 611.55, governs forensic navigator services, requiring the State Competency Restoration Board to provide or contract for forensic navigators who shall be impartial party in all legal matters relating to the defendant, and shall provide services to assist defendants including developing bridge plans, assisting defendants in participating in court-ordered examinations and hearings, coordinating timely placement in court-ordered competency restoration programs, providing competency restoration education, reporting defendant's progress to the court, providing coordination services to access mental health, medical, housing, financial, social, and other services, and providing consultation and education to court officials. If a defendant's charges are dismissed, the appointed forensic navigator may continue assertive outreach with the defendant for up to 90 days. The bill also outlines what must be included in the bridge plans required to be filed with the court, making those reports inaccessible to the public.

In Section 2, section 611.56, the State Competency Restoration Board is established in the judicial branch but not subject to the administrative control of the judiciary. The board consists of 7 members including 3 members appointed by the supreme court, at least one of whom is a defense attorney, one a county attorney, and one public member. Active judges may not be appointed but retired judges may be. Terms, compensation, and removal shall be as provided in section 15.0575.

The Board shall create and administer a statewide, independent competency restoration system that certifies competency restoration programs and uses forensic navigators to support defendants and assist courts and partners in coordinating competency restoration services. The Board shall approve and recommend to the legislature a budget, establish procedures for distribution of funding to the forensic navigator services program, establish forensic navigator standards, policies, procedures and rules consistent with the laws that affect forensic navigator work, establish certification requirements for competency restoration programs; and carry out the programs under section 611.57-.59. The Board may adopt standards and procedures necessary to ensure quality assistance to defendants, establish district forensic navigator offices, and propose statutory and court rule changes.

The Board shall appoint a program administrator to carry out all administrative functions. The Board may establish district forensic navigator offices, and may contract with the State Court Administrator's Office for administrative support services. Sections 15.039 and 15.471-15.474 apply to the Board.

Section 3, section 611.57, establishes a Certification Advisory Committee to provide the Board with advice related to the competency restoration programs including jail-based programs. The Committee members are mental health, social services, corrections, and law enforcement professionals. Members serve without compensation at the pleasure of the appointment authority. The Committee shall consult with the appropriate state agencies regarding competency restoration curriculum, requirements for programs, and other issues.

Section 4, section 611.58, establishes the competency restoration curriculum and certification requirements, requiring that by January 1, 2023 the Board must recommend a curriculum and develop a process for certifying individuals to deliver the competency restoration curriculum.

Section 5, section 611.59, requires the Board in consultation with the Committee to develop procedures for certification

and recertification of competency restoration programs. The bill establishes requirements for jail-based competency restoration including requiring that correctional facilities licensed by the Department of Corrections must have a designated program director, multidisciplinary staff, and designated space. The Board is required to collect data on competency examinations ordered by the district courts. The bill requires the Board to submit a report to the legislature by February 15 of each year.

In Article 3 the bill makes conforming amendments to chapter 253B and to section 480.182.

The bill appropriates unspecified funds to the State Competency Restoration Board for operations, forensic navigators, and competency restoration programs.

Assumptions

It is assumed that to the extent the provisions of this bill conflict with Rule 20, matters of substantive law will be governed by these statutes and anything deemed by the court to be a matter of procedure will continue to be governed by the court rule unless the rules are modified to be in conformity with the statutes.

It is assumed that the provisions of the bill that will require the district court to have increased oversight in cases with a competency issue, and to schedule additional hearings as needed will require additional judge and court staff time. It is assumed the requirement for additional competency exams, including the requirement for exams every 6 months, will increase examination costs for the district courts.

It is unclear how the provisions in section 611.46, subdivisions 4-6 would work in practice or be implemented. The court is required to hold a review hearing 90 days after placement in a competency restoration program if the defendant has not attained competency, but the court would not know whether the defendant has attained competency unless the court examiner has filed an updated report prior to the 90 days. It is assumed that the court would either need to order more competency examinations than specifically provided for in the bill, and/or will have to hold a review hearing at 90 days in every case in order to make the competency determination and perform the required review. Implementation of these provisions could result in additional costs beyond those estimated below.

Regarding the provisions of the bill that state the court may provide, partner, or contract for pretrial supervision services or continued supervision for certain defendants, it is assumed that the court will either appoint a forensic navigator to supervise the defendant, or in those locations where there is a pretrial services agency that would ordinarily be ordered to supervise defendants pretrial, the court will continue to order the pretrial services agency to supervise the defendant. It is assumed that any supervision work ordered to be done by a local pretrial services agency will continue to be the financial responsibility of that agency/location.

Expenditure and/or Revenue Formula

All case counts were calculated by averaging 3 years of judicial branch data from calendar years 2019-2021.

It is estimated that the requirement for additional competency exams, including the requirement for exams every 6 months, will increase the number of competency examinations and examination costs. Although updated Rule 20 examination reports are filed in some cases, they are not routinely filed every 6 months as required by the provisions of this bill. For purposes of this fiscal note, it is estimated that the bill will result in an increase in the number of exams required in all cases with a finding of incompetency that are not required to be dismissed. If all targeted misdemeanor cases with a finding of incompetency (an average of 225 cases per year) require 1 additional exam, all gross misdemeanor cases with a finding of incompetency (an average of 188 cases per year) require an average of 2 additional exams (up to 4 or more are possible under the provisions of the bill), and felony cases with a finding of incompetency (an average of 677 cases per year) require 5 additional exams on average (some could require more), that would require an additional 3,986 updated competency exams per year (225 targeted misdemeanor exams + 376 gross misdemeanor exams (188 x 2) + 3,385 felony exams (677 x 5)), which are estimated to cost on average of \$1,265 per exam, for **a total of \$5,042,290 in additional exam costs per year** (3,986 exams x \$1,265 per exam).

It is estimated that the increase in judicial oversight of 1,090 targeted misdemeanor, gross misdemeanor, and felony cases (225 + 188 + 677) with a competency issue and the additional 2 or 3 hearings that will likely be required will result in the need for additional judge time. If each hearing lasts 15 minutes, and if each case requires an average of 2 additional

hearings per year, 1,090 cases x 30 additional minutes of judge time = 32,700 judge minutes needed per year. If the time required is doubled that would require 65,400 judge minutes, which is less than a judge year in minutes (78,000). Although this oversight is anticipated to require significant judge time, it would likely not require an additional judge FTE per year.

Forensic Navigator Services Cost:

Regarding the cost of the forensic navigator services, the bill seeks to ensure defendants are assigned a navigator for the full duration of their case beginning with the court finding there is reason to doubt the defendant's competency and up to 90 days beyond the dismissal of charges. Forensic navigators are responsible for supporting the defendants' participation in a court-ordered examinations, supervising the defendant in all settings and reporting to the court, and providing a comprehensive level of support to defendants through the court process as well as engagement with community services for a wide variety of social and other supports.

It is estimated that based on the provisions in this bill, the following numbers of defendants would be entitled to assignment of a forensic navigator:

- 3,714 cases per year for defendants charged with a misdemeanor. A competency examination is ordered in an average of 1,279 misdemeanor cases annually. This represents approximately 1.5% of all misdemeanor cases heard in court per year. However, a competency examination is ordered in over 4% of felony cases, indicating the rate at which cases have competency issues is likely closer to 4% of all cases filed, and that it is likely many misdemeanor cases where competency is at issue are dismissed without the court ordering a competency examination. Because the bill requires a forensic navigator to be appointed in every misdemeanor case where there is reason to doubt competency, even if the court does not order a competency examination, it is estimated the court will appoint a forensic navigator in 4% of all misdemeanor cases heard by the court. An average of 92,838 misdemeanor cases are heard in court per year, and 4% is 3,714 cases.
- 1,143 cases per year for defendants charged with a gross misdemeanor. Applying the same logic applied to misdemeanor cases above, it is estimated that more gross misdemeanor cases will qualify for forensic navigator services than the number of cases that currently result in an order for a competency examination. It is estimated the court will appoint a forensic navigator in 4% of all gross misdemeanor cases heard by the court per year. An average of 28,586 gross misdemeanor cases are heard in court per year, and 4% is 1,143 cases.
- 1,627 cases per year for defendants charged with a felony. An average of 1,627 felony cases per year result in an order for a competency examination is (which is over 4% of all felony cases heard).

Total: 6,484 cases per year.

Estimated Caseloads

Forensic navigators would work with a caseload of defendants. It is estimated that defendants charged with a misdemeanor are likely to only need forensic navigator support for an average of 100 days (ranging from the shortest assignment of a few days with no follow-up needed to approximately 180 days, which is 60 days for an exam to be completed, plus 30 days for the court to issue an order finding the defendant incompetent after a hearing and dismissing the case, plus 90 days post dismissal), while those charged with a gross misdemeanor or felony are anticipated to need support for at least one year on average.

Consultation with forensic navigator programs in Washington and Colorado, as well as Minnesota standards for mental health case management, found that typical caseloads range from 20-45 defendants at any given time, based on complexity and available resources. For the purposes of this fiscal note, it is estimated that forensic navigators will have an average caseload size of 30 defendants.

If 3,714 defendants charged with a misdemeanor each year are eligible for forensic navigator services for an average of 100 days, then at any given time it is anticipated that about 1,061 defendants (3,714/3.5) will need navigator support because a navigator would turnover their caseload approximately 3.5 times per year. With a caseload of approximately 30, that would require the support of 35 forensic navigators per year for misdemeanor cases.

In addition, 1,143 defendants charged with a gross misdemeanor and 1,627 defendants charged with a felony are eligible for forensic navigator services annually. With a caseload of approximately 30, that would require the support of 92 forensic navigators per year for gross misdemeanor and felony cases.

The market rate annual salary estimate for this level of position in Minnesota is \$60,000 according to ZipRecruiter and Salary.com. With an additional 25% expense for fringe, it is estimated to cost an additional \$15,000 per year for a total cost of \$75,000 per Navigator.

Estimated total cost of forensic navigator staff: \$9,525,000 per year (127 FTE x \$75,000).

It is anticipated that the staffing would be a mix of employee and contractor staff to meet the needs of all defendants statewide.

Competency Restoration Board Staff

In addition to forensic navigator staff, the program will need an Executive Director and a small staff responsible for managing the staff and scheduling. It is estimated that the cost of salary and benefits for staff to manage the program will be:

1 Director (\$175,000)

2 Managers (\$125,000 each)

8 Supervisors to supervise teams of about 15 forensic navigators (\$100,000 each).

Estimated forensic navigator program management staff cost of \$1,225,000 per year.

The bill provides that the Board may contract with the State Court Administrator's Office for administrative support services. It is also anticipated the program will require judicial branch IT, human resources and other office support, some of which the judicial branch will provide and absorb. The cost of designing and implementing a new scheduling and billing system for forensic navigators and competency restoration providers is estimated to be **\$600,000 to create, with \$150,000 is ongoing annual costs**, which is based on the costs associated with implementing and maintaining the current Psychological Services Examiner Resource Application (ERA).

The total annual cost for the forensic navigator program is estimated to be \$11,350,000 the first year the program is up and running and \$10,900,000 each subsequent year.

Competency Restoration Program Cost:

Competency restoration is required under the provisions of this bill for defendants charged with a targeted misdemeanor, gross misdemeanor, or felony who are found incompetent. If targeted misdemeanor cases with a finding of incompetency (225 per year), all gross misdemeanor cases with a finding of incompetency (188 per year), and all felony cases with a finding of incompetency (677 per year) meet this criteria, an average of 1,090 defendants per year would be eligible for competency restoration each year under the provisions of this bill. Although the exact numbers cannot be estimated with certainty, for purposes of this fiscal note, it is estimated that 3% of defendants (33) would be ordered to inpatient competency restoration, 5% (55) to jail-based competency restoration, and the remainder, an estimated 1,002 defendant would receive outpatient services.

According to the department of human services and the Minnesota chapter of NAMI, there is no need to estimate the cost of competency restoration clinical services because access to clinical resources is largely already determined by existing eligibility requirements that then are funded by private insurance, Medicaid programs, and other current funding mechanisms. The competency board would not be liable for financing clinical services. The Competency Board would be responsible for providing education services.

TOTAL ANNUAL COST BREAKDOWN:

\$5,042,290 in additional competency examination costs per year.

\$11,350,000 the first year and \$10,900,000 each subsequent year in forensic navigator program costs.

For a total annual cost of \$16,392,290 the first year and \$15,942,290 each subsequent year.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact:

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HF9064 - 0 - Competency to Stand Trial

Chief Author: **Heather Edelson**
 Committee: **Judiciary Finance and Civil Law**
 Date Completed: **5/3/2022 8:30:40 PM**
 Agency: **Corrections Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		
	X	

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	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	202	202	
Total	-	-	-	202	202	
Biennial Total						404

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	2	2
Total	-	-	-	2	2

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 5/3/2022 7:57:29 PM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

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Total		-	-	-	202	202
Biennial Total					-	404
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	-	-	-	202	202
Total		-	-	-	202	202
Biennial Total					-	404
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total		-	-	-	-	-
Biennial Total					-	-

Bill Description

The proposed legislation would establish procedures for when a defendant's competency to stand trial is questioned and, if found incompetent to stand trial, what happens to the defendant. The bill would also create a new State Competency Restoration Board, Forensic Navigator Services, and a Certification Advisory Committee.

Article 2, Section 3 directs the Certification Advisory Committee to consult with three state agencies including the Department of Corrections (DOC) and make recommendations to the State Competency Restoration Board regarding competency restoration curriculum, certification requirements for competency restoration programs including jail-based programs, and certification of individuals to provide competency restoration services; and to provide information and recommendations on other issues relevant to competency restoration as requested by the board.

Article 2, Section 5 contains standards and requirements for competency restoration programs including jail-based programs.

Assumptions

It is assumed the requirements in Article 2 of this bill that are specific to the DOC would be similar to other programs where the DOC enforces certification standards and provides technical and other ongoing support. This bill also requires recertification.

It is assumed the DOC would be responsible to inspect the jail competency programs for certification and recertification.

The bill does not require jails to establish competency restoration programs. There are 87 jails in the state of Minnesota. For the purposes of this fiscal note, it is assumed 25% of the jails (22 jails) would establish competency restoration programs.

There would be a need for the DOC to add two full-time equivalent positions (FTEs) for Corrections Detention Facility Inspectors to accomplish the work required by the provisions of this bill. Based on similar FTEs currently employed by the DOC, the average annual cost including salary and fringe is \$97,000 for each position. An additional \$4,000 per FTE would be required for supplies, equipment and other business expenses.

For the purposes of this fiscal note, it is assumed jail-based competency restoration programs would start to be implemented and ready for certification in FY2024.

It is assumed the DOC would provide, as part of existing responsibilities, copies of records to competency restoration

programs as requested for individuals who have been incarcerated in a state correctional facility for the previous two years.

It is assumed the provision of pre-trial supervision services required by Article 1, section 7, subdivision 2(b) would not be a DOC responsibility.

Expenditure and/or Revenue Formula

Costs for Corrections Detention Facility Inspectors - DOC

Fiscal Year	2021	2022	2023	2024	2025
2 FTEs x \$101,000 annual cost including salary, fringe, and expenses (\$ in 000s)	0	0	0	\$202	\$202

Long-Term Fiscal Considerations

Costs would continue into subsequent years, and increase if more jails establish competency restoration programs.

Local Fiscal Impact

The impact to local correctional resources as a result of this bill is uncertain. Counties may be required to provide pre-trial supervision services when ordered by the court.

References/Sources

Department of Corrections staff

Agency Contact: Karen Juneski 651-361-7259

Agency Fiscal Note Coordinator Signature: Chris Dodge

Phone: 651-361-7264

Date: 5/2/2022 10:21:32 AM

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HF9064 - 0 - Competency to Stand Trial

Chief Author: **Heather Edelson**
 Committee: **Judiciary Finance and Civil Law**
 Date Completed: **5/3/2022 8:30:40 PM**
 Agency: **Governors Office**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		
		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Christian Larson **Date:** 5/3/2022 8:25:56 PM
Phone: 651-284-6436 **Email:** christian.larson@lbo.mn.gov

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund						
Expenditures	-	-	1	-	-	-
Absorbed Costs	-	-	(1)	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
General Fund						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

This bill creates a State Competency Restoration Board and establishes a Certification Advisory Committee.

Assumptions

The Appointments team and members of the Policy team will prepare appointments for the 8 members listed in the bill.

The impact to the Governor’s Office will be 25 hours of work for the Director of Appointments, 15 hours of work for the Jr Appointments Coordinator and 5 hours of work for the relevant Policy Advisor in the first year of the appointing the Council. The future appointments will be absorbed as part of the work of the Appointments team.

Expenditure and/or Revenue Formula

The Governor’s Office will absorb the costs of this bill.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact: Alyssa Haugen (651-201-3416)

Agency Fiscal Note Coordinator Signature: Alyssa Haugen

Date: 5/3/2022 8:21:29 PM

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HF9064 - 0 - Competency to Stand Trial

Chief Author: **Heather Edelson**
 Committee: **Judiciary Finance and Civil Law**
 Date Completed: **5/3/2022 8:30:40 PM**
 Agency: **Human Services Dept**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

This fiscal note has been reviewed and meets the LBO requirements for compliance with the fiscal note Uniform Standards and Procedures. This proposed legislation might have a fiscal impact to DHS; however, an accurate fiscal impact cannot be determined due to a lack of data.

LBO Signature: Steve McDaniel **Date:** 4/29/2022 2:31:16 PM
Phone: 651-284-6437 **Email:** steve.mcdaniel@lbo.mn.gov

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

Bill Description

This bill creates a new series of criminal procedure statute sections (611.40 to 611.59) concerning procedures for when a defendant’s competency to stand trial is questioned and, if found incompetent to stand trial (IST), what happens to the defendant. The bill also creates a new State Competency Restoration Board, Forensic Navigator Services and a Certification Advisory Committee as well as adds reference to the new criminal procedures into MS Statutes 253B.07.

Article 1 Competency to Stand Trial

Sec. 1-6 relates to the criminal procedures and evaluations of individuals found incompetent to stand trial.

Sec. 7 - Incompetent to Stand Trial and Continuing Supervision

· If the court finds a defendant incompetent and charges have not been dismissed, the court shall order a defendant to participate in a program to restore the defendant’s competence in the least restrictive setting.

.0001pt>· The head of a treatment program shall determine if admission to the program is clinically appropriate and must agree to the admission.

· The head of the program may discharge the defendant at any time with prior notice to the court, prosecutor, defense counsel, and any entity responsible for the supervision of the defendant. Prior notice shall be made five business days prior to discharge whenever possible.

Sec. 8 Administration of Medication

Sec. 9 Review Hearings

Sec. 10 Likelihood to Attain Competency courts may dismiss charges or continue supervision based on the most recent court examination report and consultation with a Forensic Navigator.

Sec. 11 Defendant’s Participation and Conduct of Hearings.

Sec. 12 Credit for Confinement

Sec. 13 - Effective Date - July 1, 2023.

Article 2 Competency Restoration Services

Sec. 1 Forensic Navigator Services defines and identifies the duties of a Forensic Navigator

Sec. 2 State Competency Restoration Board establishes membership and duties of the board.

Sec. 3 Certification Advisory Committee establishes membership and duties of the committee

Sec. 4 Competency Restoration Curriculum and Certification by January 1, 2023 the board must recommend a curriculum to educate and assist defendants found incompetent and a certification process for individuals to deliver the curriculum.

Sec. 5 Competency Restoration Programs the board must provide or contract for enough competency restoration services to meet the needs of adult defendants in each judicial brand who are found incompetent to proceed and do not have access to competency restoration services as part of any other programing. This section also identifies program and evaluation standards for competency restoration programs.

Article 3 Conforming Changes and Appropriations

Sec. 1 - Adds some of the new criminal procedures to MS 253B.07 Judicial Commitment; Preliminary Procedures.

Sec. 2 Adds the new chapter of criminal procedures to MS. 480.182 and specifies that the state courts are responsible to pay for competency restoration examinations.

Sec. 3 State Competency Restoration Board: Appropriations

- Appropriates funds to the board for staff and establishing an office
- .0001pt>· Appropriates funds to the board for costs associated with providing forensic navigator services in each judicial district.
- Appropriates funds to the board to establish certified competency restoration programs and provide competency restoration services in each judicial district.

Assumptions

Under Section 7, courts shall order a defendant to participate in a program to restore the defendant's competence in the least restrictive setting. It also allows the head of a program to determine if admission is clinically appropriate. The head of the program may also discharge the defendant at any time with proper notice.

Individuals found incompetent to stand trial and in need of Mental Health (MH) or Substance Use Disorder (SUD) treatment may be ordered to a treatment facility or alternative program and would receive competency restoration education while in treatment. However, when the individual no longer needs MH or SUD treatment but remains incompetent, the individual will be discharged since there is no funding source available to continue to pay for a stay in the treatment facility or alternative program once treatment is no longer required.

Individuals discharged from a treatment facility or alternative programs and still incompetent to stand trial most likely will be committed to the Commissioner of Human Services, if they meet commitment criteria. There is no data available to estimate the number that may be committed; therefore, no cost can be provided.

Adding the new criminal procedures to MS 253B.07 may have an impact on the number of individuals committed to the Department of Human Services (DHS). There is no data available to estimate this impact; however, it is assumed DHS will continue to serve individuals committed under Minnesota Rule of Criminal Procedure 20 within available bed capacity. Therefore, not additional costs are being estimated at this time.

The Competency Restoration Board is being created to certify community competency restoration programs but is not funded to develop new capacity.

DHS' Direct Care and Treatment (DCT) has no available bed capacity to house individuals incompetent to stand trial that do not need inpatient MH or SUD treatment. If additional bed capacity is needed, the estimated associated operating costs would be as identified in the table below:

Number of Beds Needed	Annual Operating Expense	Annual Lease Expense	Renovation of Lease Space	Total Cost	FTEs
50	\$19.4 million	\$3 million	\$15.6 million	\$38 million	186
100	\$38.9 million	\$5.8 million	\$31.2 million	\$75.9 million	372
200	\$77.8 million	\$11.5 million	\$62.4 million	\$151.7 million	744

Annual operating expense and FTEs are based on the average FY2022 operating expense and FTEs for Anoka Metro Regional Treatment Center and the Forensic Mental Health Program (aka MSH). Lease expense is estimated at \$37 per square foot and renovation cost is estimated at \$200 per square foot. All estimates are calculated based on the number of beds needed and the information in the following table:

FY2022 DCT OPERATING EXPENSE AND FTES FOR A NEW COMPETENCY RESTORATION PROGRAM (\$ IN 000'S)

	Facility Sq FT	Operating Expense	Budgeted FTEs	Budgeted Beds	Sq Ft Per Bed	Exp Per Bed	FTEs Per Bed
AMRTC	223,000	\$53,774	524.75	110	2,027	\$489	4.77
FMHP	393,476	\$100,033	945.30	285	1,381	\$351	3.32
TOTAL	616,476	\$153,807	1,470.05	395	1,561	\$389	3.72

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

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HF9064 - 0 - Competency to Stand Trial

Chief Author: **Heather Edelson**
 Committee: **Judiciary Finance and Civil Law**
 Date Completed: **5/3/2022 8:30:40 PM**
 Agency: **Public Defense Board**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Karen McKey **Date:** 5/3/2022 7:56:52 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

Overall, the proposed bill addresses what are considered short comings in current Rule and Statute.

Currently, no law in Minnesota mandates competency restoration. The only source for this process is Rule 20.01 of the Minnesota Rules of Criminal Procedure, but the Rule does not reflect the needs of today’s court or mental health system. The result is a patchwork system that lends itself to confusion with only one path to restoration through the civil commitment process. This bill addresses three types of cases that Rule 20 does not Gap Cases: If a person is found incompetent to stand trial, but they do not meet the criteria for civil commitment, they fall in a “gap” and must seek treatment voluntarily. People in this gap are at a high risk of languishing in jail or being rearrested. Unlikely to Attain Competency: A small subset of people will never attain competency due to the nature of their cognitive impairment or psychiatric condition. These cases often strain resources and leave cases unresolved. Misdemeanor Cases: Upon a finding of incompetency, Rule 20.01 requires misdemeanor charges to be dismissed and referred for civil commitment.

Article 1

Section 3

Outlines under what circumstances a defendant would be defined as incompetent to proceed with their criminal case. It prohibits waiver of counsel by the defendant in those circumstances. Allows the prosecutor or defense counsel to make a motion to challenge the defendant’s competency, as well as allowing the court to raise the issue.

If competency is at issue, the court is required to appoint a forensic navigator to provide

services for the defendant including development of a specific plan to identify appropriate housing and services if the defendant is released from custody or any charges are dismissed.

If the court determines there is a reasonable basis to doubt the defendant's competence the court must order an examination and suspend the proceedings.

If the court intends to dismiss the case due to competency the navigator is required to provide a dismissal plan within a specified time period.

If there is an unreasonable delay in development of the plan or coordination referral services, the court may release the defendant from custody and dismiss the charges.

Section 4

Requires the appointment of court examiner to evaluate competency of the defendant. The court examiner’s report must be filed with the court, defense, and prosecutor. Outlines timelines for the report and what must be contained in the report. Provides that statements made by the defendant during the exam are admissible for the competency hearing but not for the criminal proceeding.

Section 5

Outlines the procedure for contesting hearings.

Section 6

Provides for timelines for the court to determine competency as well as provide for appeal, and dismissal of charges (misdemeanor, gross misdemeanor, and felony) if a defendant is found to be incompetent.

Section 7

Outlines the competency restoration program requirements in the event that the defendant is found incompetent. The section also outlines the supervision requirements when a defendant is found incompetent and is released. Outlines the procedure for violation of conditions of release by the defendant.

Outlines eligibility and procedures for defendants who are in jail. Outlines provisions for the court to have the assistance of a competency navigator to find alternative programming in the event that no competency restoration services can be found for a defendant. Prohibits the court from ordering a defendant into jail-based programming if the defendant is entitled to release. Outlines the procedure for further determination of competency and options the court has after defendant participation in alternative programming. Prosecutors or defense may contest the court examiner's competency opinion. Outlines timeline and court options after the updated court examiner report has been received.

Section 8

Allows the prosecutor or defense to request a review hearing on the defendant's competency programming.

Section 9

Outlines the court procedure if a defendant is found by the court to be unlikely to attain competency including supervision.

Section 10

Allows for a competency hearing to be held remotely or at a treatment facility; outlines procedures for the hearing without the defendant being present, and that the court may exclude the defendant in the event that the defendant is being disruptive.

Section 11

If convicted, the time served in a secure facility while being assessed is credited as time served.

Section 12

Effective July 1, 2023.

Article 2

Section 1

Outlines the duties of the forensic navigator including dismissal plans; requires certification for forensic navigators.

Section 2

Requires establishment and outlines the requirements for planning committees that the court must establish in each judicial district to develop forensic navigator programs.

Section 3

Requires the court to recommend a competency restoration curriculum to educate and assist defendants found incompetent.

Section 4

Requires the court to work with the departments of Human Services, Health and Corrections on standards for competency restoration providers.

Article 3

Sections 1 and 2

Conforming changes to statute

Section 3

Requires that examination costs under the bill are the responsibility of the state.

Section 4

Blank appropriation to the Supreme Court for forensic navigator services and competency restoration programs.

Assumptions

Up and until an individual is deemed incompetent to stand trial, the Minnesota Board of Public Defense represents and assists individuals throughout all aspects of the criminal proceedings, including Rule 20.01 requests, filing challenges to competency findings, and hearings involving competency. The proposed statute does not change the responsibilities of our staff or increase time needed to be prepared in our representation.

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact:

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