

Subject Establishing procedures related to competency to stand trial

Authors Edelson and Albright

Analyst Ben Johnson (ben.johnson@house.mn)

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Overview

A person who does not have the ability to understand criminal proceedings or rationally consult with an attorney because of a mental illness or cognitive impairment cannot be tried for committing a crime. Currently, defense attorneys, prosecutors, and judges who suspect that a defendant lacks those abilities must request an assessment under rule 20.01 of the Rules of Criminal Procedure. If a person is found to be incompetent, misdemeanor criminal charges must be dismissed. Proceedings in felony and gross misdemeanor cases must be paused to see if the person becomes competent, but there is no formal procedure to restore the person to competence.

Courts have limited power to hold or supervise a person who has been found to be incompetent. Mental health facilities have limited space. As a result, some individuals charged with a crime and found to be incompetent have been released without being connected to mental health or other social services and with little or no supervision.

This bill places many of the provisions of rule 20.01 into statute, establishes a process for restoring a person to competency, establishes guidelines for continued supervision of individuals found to be incompetent, and creates forensic navigators to work with defendants in the competency process and develop plans to connect defendants to appropriate services. The bill does not address the defense of not guilty by reason of mental disease or defect, more commonly referred to as the “insanity defense.”

Article 1: Competency to Stand Trial

This article establishes standards to assess a person’s competency to stand trial, describes the procedures to be followed for obtaining and reviewing a competency report, establishes competency restoration programs, and provides for continuing supervision of some individuals found to be incompetent.

Section Description – Article 1: Competency to Stand Trial

1 Applicability.

Provides that, the new statutory provisions replace the procedures described in rule 20.01 of the Rules of Criminal Procedure.

2 Definitions.

Defines terms, including “cognitive impairment,” “competency restoration program,” “court examiner,” “mental illness,” and “suspend the criminal proceedings” for purposes of the new sections of law.

3 Competency motion procedures.

Subd. 1. Competency to stand trial. Codifies the existing standard in rule 20.01 that a defendant cannot be tried, plead, or be sentenced if a mental illness or cognitive impairment prevents the defendant from rationally consulting with an attorney, understanding the proceedings, or participating in the defense.

Subd. 2. Waiver of counsel in competency proceedings. Provides that a person is incapable of waiving the right to an attorney when the person lacks certain abilities including the ability to understand the proceedings and possible punishment.

Subd. 3. Competency motion. Establishes, consistent with rule 20.01, that a defense attorney, prosecutor, or judge may raise the issue of competency at any time during criminal proceedings without the consent of a defendant. Permits defense attorneys to disclose specific facts relating to the representation provided the disclosure does not violate attorney-client privilege. Directs the court to appoint a forensic navigator if competency is at issue and requires that person to develop a specific plan for housing and other services if the defendant is released or charges are dismissed. Requires the court to suspend the criminal proceedings in felony and gross misdemeanor cases and order an examination of the defendant. Permits the court to dismiss charges in misdemeanor cases without ordering an examination and after completion of a dismissal plan, or to order an examination of the defendant. Establishes deadlines for completion of dismissal plans in misdemeanor cases where the court has indicated an intent to dismiss the charges.

Subd. 4. Dismissal, referrals for services, and collaboration. Requires forensic navigators to complete dismissal plans in all cases where the court orders an examination of the defendant and prohibits dismissing charges against a defendant until the dismissal plan is complete unless (1) a forensic navigator has not been appointed and the court has made every reasonable effort to coordinate with available resources and referred the defendant to appropriate services or (2) working with the forensic navigator would cause an unreasonable delay in the release of the defendant. If working with a forensic navigator would

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cause an unreasonable delay, the court may direct the forensic navigator to work with the defendant for up to 90 days after dismissal of the charges.

4 Competency examination and report.

Subd. 1. Competency examination. Requires the court to appoint an examiner when ordering an examination. Permits the examiner to have access to certain court records. Requires a defendant held in custody to cooperate with the examination where the person is confined or in a suitable treatment facility. Directs a person who is not held in custody to cooperate with the examination and permits a court to amend the conditions of the person's release if the person fails to cooperate. Directs that evaluations ordered under rule 20.04 of the Rules of Criminal Procedure, which assess both a defendant's competence and the defendant's mental responsibility for committing a crime, must proceed under this section.

Subd. 2. Report of examination. Requires the examiner's report to be submitted within 30 days if the defendant is in custody and 60 days if the defendant is out of custody. Requires the report to offer facts and opinions on subjects including the defendant's diagnosis, the defendant's competency to stand trial, the level of care and education needed to bring the person to competency, and whether the defendant poses a substantial risk to self, others, or public safety. Requires the examiner to immediately notify the court, prosecutor, defense attorney, and others if the person presents a serious danger to self or others. Permits the examiner to proceed with a report if a defendant is not cooperative and to refer the defendant to appropriate services.

Subd. 3. Additional examination. Permits a defense attorney or prosecutor to obtain an independent examination of the defendant and requires that the report be submitted within 30 days.

Subd. 4. Admissibility of defendant's statements. Provides that any statements made by a defendant in an examination may be admitted at the competency hearing but not at trial.

5 Contested hearing procedures.

Subd. 1. Request for hearing. Permits a prosecutor or defense attorney to request a hearing after receiving the report of the examiner. Requires the hearing to be held as soon as possible and no more than 30 days after the request unless that deadline is extended by agreement or for good cause, including if an independent examiner is retained.

Subd. 2. Competency hearing. Permits a court to admit all relevant evidence. Establishes that the examiner appointed by the court is the court's witness.

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Permits defense attorneys to testify and be cross-examined, but not to violate attorney-client privilege.

Subd. 3. Determination without a hearing. Permits a court to determine a defendant's competence without a hearing if neither the prosecutor nor the defense attorney requests a hearing.

Subd. 4. Burden of proof and decision. Codifies case law holding that a defendant is presumed incompetent unless the court finds by a preponderance of the evidence that the defendant is competent.

6 Competence findings.

Subd. 1. Findings. Requires a court to rule on a defendant's competence within either 14 days if there is no hearing or 30 days after a hearing. Directs the court to resume the criminal proceedings if the defendant is competent and to suspend the proceedings and proceed as directed in this new law if the defendant is incompetent.

Subd. 2. Appeal. Permits the defense to appeal a competency determination.

Subd. 3. Dismissal of criminal charge. Requires the court to dismiss misdemeanor charges if the defendant is incompetent. Requires the court to dismiss gross misdemeanor charges 30 days after a finding that a defendant is incompetent unless the prosecutor files notice of intent to prosecute. Requires dismissal of gross misdemeanor charges regardless of the filing of a notice if the defendant would be entitled to custody credit of one year if the defendant were convicted. Requires the court to dismiss felony charges three years after a finding that a defendant is incompetent unless the prosecutor files a notice of intent to prosecute.

7 Incompetent to stand trial and continuing supervision.

Subd. 1. Order to competency restoration. Directs a court to determine the least restrictive competency restoration program appropriate for the defendant in cases where charges have not been dismissed. Directs the court to order the defendant to participate in the appropriate program if the program is available and accessible. Permits the court to order disclosure of certain medical and mental health records to the restoration program. Requires the head of a restoration program to notify the court if a defendant refuses to participate. Permits the head of a restoration program to discharge a defendant after providing notice to the court, prosecutor, and defense attorney. Limits the duration of the program to the period of time for which a defendant could be sentenced.

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Subd. 2. Supervision. Requires the court to determine whether a defendant needs pretrial supervision if the defendant is entitled to release. Directs the court to appoint a willing party to provide that supervision if needed. Permits the prosecutor or the person or entity assigned to supervise the defendant to notify the court that a defendant has violated conditions of release and directs the court to proceed as though the defendant violated any other condition of pretrial release. Permits a court to amend the conditions of pretrial release, but directs the court to consider whether changes will interfere with competency restoration and requires the court to impose conditions that provide ongoing access to restoration programs. Requires the court to review conditions of release on the motion of any party and permits the court to amend those conditions if they interfere with the defendant reaching competency.

Subd. 3. Eligibility and procedures for jail-based competency restoration programs. Provides that a defendant is eligible to participate in jail-based competency restoration programs if the defendant is found to be incompetent, is not entitled to release, and the examiner recommends jail-based competency restoration as the least restrictive setting to meet the person's needs. Requires the court to review the case if the defendant has not reached competency within 90 days and directs the court to refer the defendant to a less restrictive program if appropriate. Permits the court to order that a defendant be held for up to 30 days before being transferred to a less-restrictive program.

Subd. 4. Services unavailable. Requires courts to do everything in their power to ensure that a defendant receives competency restoration services in a timely manner. Directs courts to consult with forensic navigators if appropriate services will not be available for a defendant within a reasonable period. Permits the court to order the defendant to participate in alternative programs for up to 60 days and permits the court to extend that period if the defendant is making progress in an alternative program. Requires the court to review cases where defendants are held in custody and have not received restoration services within 30 days.

Subd. 5. Reporting to the court. Requires court examiners to provide an updated report at least every six months as to a defendant's competency and efforts made to restore the defendant to competency. Permits the head of restoration programs to recommend an updated report at any time, requires that updated reports must be provided to the prosecutor and defense attorney, and permits the report to recommend continued services appropriate for a defendant who has become competent.

Subd. 6. Contested hearings. Permits prosecutors and defense attorneys to request hearings on updated competency reports.

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Subd. 7. Competency determination. Requires courts to make a determination of competency based on an updated report within 14 days of receiving the report. Requires the court to resume criminal proceedings if the defendant is competent and permits the court to amend the defendant's conditions of release or ordered services as appropriate if the defendant remains incompetent.

8 Review hearings.

Permits a prosecutor or defense attorney to request a review hearing on a defendant's competence. Requires the hearing to be held within 30 days of the date of the request unless that period is extended by agreement or for good cause.

9 Unlikely to attain competence.

Subd. 1. Applicability. Establishes the conditions under which a court may find that a defendant is unlikely to attain competency.

Subd. 2. Procedure. Requires courts to determine whether there is a substantial probability that a defendant will attain competency. Directs the court to order competency restoration if there is a substantial probability that the defendant will attain competency. Permits the court to dismiss cases, order a prepetition screening for judicial commitment, or order the continued supervision of a defendant who is unlikely to attain competency. Permits the prosecutor or defense attorney to request a hearing on the likelihood that a defendant will attain competency.

Subd. 3. Continued supervision. Permits the court to order continued supervision of a defendant who is unlikely to attain competency and is charged with certain felony offenses including violent crimes and cases related to harassment or domestic violence. Permits a party to request a hearing on the issue of continued supervision. Requires the court to identify a person or entity responsible for continued supervision and to determine the least-restrictive setting to meet the defendant's needs and public safety. Requires a court examiner to provide an updated report one year after the court places the defendant on continued supervision. Requires the court to make a determination after one year as to whether charges should be dismissed or continued, and when the next review should take place if charges are not dismissed. Permits the head of a program supervising the defendant to discharge the defendant after giving notice and to recommend that the court order an updated competency report.

10 Defendant's participation and conduct of hearings.

Permits competency hearings to be held at a treatment facility or through the use of interactive video. Permits a hearing to take place without the presence of the defendant if a medical professional provides a written report stating that

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participation would be detrimental to the defendant’s mental or physical health. Permits a court to exclude a defendant who is disruptive or incapable of comprehending the proceedings and requires the court to make specific findings if the defendant is excluded. Provides that defense counsel may make objections and motions related to the defense that can be fairly determined with the defendant’s participation.

11 Credit for confinement.

Provides that a defendant who is the subject of a competency examination and is later convicted is entitled to credit for any time spent confined in a secure setting while being assessed and restored to competency.

12 Effective date.

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

Article 2: Competency Restoration Services

This article establishes forensic navigator positions and services, creates a planning committee to oversee the development of forensic navigator programs, and establishes standards for competency restoration services.

Section Description – Article 2: Competency Restoration Services

1 Forensic navigator services.

Subd. 1. Availability of forensic navigator services. Requires the judicial branch to provide or contract for sufficient forensic navigator services to meet the needs of defendants who are found incompetent to stand trial.

Subd. 2. Duties. Provides that forensic navigators serve as impartial parties in relation to the defendant and the criminal case. Prohibits the forensic navigator from providing legal counsel. Requires forensic navigators to provide services to assist defendants with cognitive impairments that include developing dismissal plans, assisting defendants in participating in court-ordered examination, providing competency restoration education, coordinating social services to assist defendants, and communicating with family members of defendants. Permits forensic navigators to continue to provide services for up to 90 days after charges against a defendant are dismissed.

Subd. 3. Dismissal plans. Requires forensic navigators to prepare dismissal plans and provide them to the court. Requires dismissal plans to include information

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related to housing, appropriate services including mental health and substance abuse treatment, and any other appropriate referrals or recommendations. Provides that dismissal plans and supporting records are not accessible to the public.

Subd. 4. Certification. Requires the court to establish a certification and continuing education program for forensic navigators who may be mental health professionals and practitioners, case managers, or others. Requires the program to include certain components related to mental health, the criminal justice system, the civil commitment process, and assisting individuals facing housing insecurity.

2 Planning and implementation.

Subd. 1. Planning. Requires the judicial branch to establish a planning committee to oversee the development and implementation of forensic navigator services in each judicial district. Requires the committees to be established by September 1, 2022, and lists the membership of the committee. Requires programs to be developed with the goal of preventing individuals with mental illnesses or cognitive impairments from entering the criminal justice system, supporting defendants with mental illnesses and cognitive impairments, and assisting the courts in providing competency restoration services.

Subd. 2. Program evaluation. Requires each judicial district to collect information and provide an annual report. Directs that the information must include the number of examinations ordered, demographic information about those defendants, and information about the outcome of cases. Directs the judicial branch to report on this information in its annual report. Directs the state court administrator to submit a report on the program to the legislature by January 1, 2025.

3 Competency restoration curriculum and certification.

Directs the judicial branch to recommend a competency restoration curriculum by January 1, 2023. Requires the curriculum to be flexible and able to be provided in multiple settings. Requires the court to develop a process for certifying individuals to provide competency restoration services by January 1, 2023.

4 Competency restoration programs.

Directs the judicial branch to work with the Department of Human Services, Department of Health, and Department of Corrections to develop procedures to certify competency restoration programs. Directs the judicial branch to maintain a list of approved restoration programs. Establishes minimum requirements for competency restoration programs and jail-based competency restoration programs.

Article 3: Conforming Changes and Appropriation

This article makes conforming changes related to the new competency determination requirements and appropriates money to fund the new programs.

Section Description – Article 3: Conforming Changes and Appropriation

- 1 **Petition originating from criminal proceedings.**
Makes conforming changes.

- 2 **Administrative requirements.**
Makes conforming changes.

- 3 **State assumption of certain court costs.**
Makes conforming changes.

- 4 **Supreme court; appropriations.**
Appropriates an unspecified amount to the supreme court in fiscal year 2023 for forensic navigator services and to establish competency restoration programs.



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