

**Subject** Establishing procedures related to competency to stand trial

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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 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.

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**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, gross misdemeanor, and targeted misdemeanor cases and order an examination of the defendant. Permits the court to dismiss charges in other misdemeanor cases without ordering an examination and after completion of a bridge plan, or to order an examination of the defendant.

**Subd. 4. Dismissal, referrals for services, and collaboration.** Requires forensic navigators to complete bridge plans in all cases where the court orders an examination of the defendant and prohibits dismissing charges against a defendant until the bridge plan is complete unless working with the forensic navigator would cause an unreasonable delay in the release of the defendant. If working with a forensic navigator would 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. Permits courts to partner and collaborate with county social services, community-based programs, jails, and any other source to provide services to a defendant. Permits counsel for a defendant to bring a

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motion to dismiss the proceedings in the interests of justice at any stage of the proceedings.

**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, unless the court extends either deadline for good cause. 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; whether a defendant who is not competent possesses capacity to make decisions regarding neuroleptic medication; 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 unless the deadline is extended for good cause.

**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 within ten days after receiving the report of the examiner. Requires the hearing to be held as soon as possible and no more than 30 days

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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. 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 either party to appeal a competency determination.

**Subd. 3. Dismissal of criminal charge.** Requires the court to dismiss misdemeanor charges, other than targeted misdemeanors, if the defendant is incompetent. Requires the court to dismiss targeted misdemeanor and 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 targeted misdemeanor charges regardless of the filing of a notice after one year. Requires dismissal of gross misdemeanor charges under the same circumstances after two years. Requires the court to dismiss most felony charges three years after a finding that a defendant is incompetent unless the prosecutor files a notice of intent to prosecute. If the prosecutor files notice of an intent to prosecute, charges must be dismissed after five years or, if the maximum sentence for the offense is ten years or more, after ten years. The requirement that felony charges be dismissed does not apply if the court orders continuing supervision or the defendant is charged with any of the listed serious offenses including murder, manslaughter, and any crime of violence other than a controlled substance offense.

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**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. Prohibits the court from ordering a jail-based program if the defendant is charged with a misdemeanor or targeted misdemeanor. Directs the court to order the defendant to participate in the appropriate program if the head of the program agrees that the program is clinically appropriate and accepts the person into the program. Requires the court to review a defendant's situation if the defendant remains in custody for 30 days without receiving services. 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.

**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 the forensic navigator to provide that supervision if needed. Permits the prosecutor or the forensic navigator 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. Certified competency restoration programs; procedure.** Requires a court to specify whether a defendant must participate in a competency restoration program that takes place in a locked facility or in a community-based program. Requires a court to determine whether a defendant is likely to attain competency in the reasonably foreseeable future at a review hearing where a defendant has not attained competency. Requires a court to calculate a defendant's custody credit and prohibits ordering the defendant to participate in a program in a locked facility if such an order would result in the defendant serving more time in custody than the statutory maximum of the offense with which the person was charged.

**Subd. 4. Jail-based competency restoration programs; procedure.** Provides that a defendant is eligible to participate in jail-based competency restoration programs if the defendant is charged with a gross misdemeanor or felony, is found to be incompetent, is not entitled to release, and the examiner

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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 an additional 90 days after a review if the court determines that placement in a locked facility is the most appropriate placement and no other locked facility is available.

**Subd. 5. Alternative programs; procedure.** Permits courts to order that a defendant participate in an alternative program if a certified competency restoration program is not available. 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 and requires that the court conduct a review hearing after 90 days at which the court must determine if the defendant is reasonably likely to attain competency in the foreseeable future.

**Subd. 6. 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. 7. Contested hearings.** Permits prosecutors and defense attorneys to request hearings on updated competency reports.

**Subd. 8. 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 Administration of medication.**

Permits a prosecutor and treating medical provider to make a motion to the court to determine whether a defendant lacks capacity to make decisions about the administration of neuroleptic medication. Establishes procedures and standards for the court to determine whether a defendant can be forced to take neuroleptic medication while under an order to be restored to competency.

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**9 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.

**10 Likelihood to attain competency.**

**Subd. 1. Applicability.** Permits a court to hold a hearing on its own motion or request of the parties to determine whether a defendant is likely to attain competency provided the defendant has not been restored to competency after participating in a competency restoration program for a year or the defendant has not received competency restoration services after a year. Provides that parties are entitled to 30-day notice before a hearing is held and requires a court to issue a decision within 30 days of the hearing.

**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. Requires a court to release a person who is unlikely to attain competency from any locked facility. Permits the court to order a prepetition screening for judicial commitment. Requires the court to dismiss the charges against a defendant who is unlikely to attain competency unless that person is charged with a listed serious felony or there is a showing of a danger to public safety if the charge is dismissed.

**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. Permits a party to request a hearing on the issue of continued supervision. Requires the court to identify a person or entity, including the forensic navigator, to be responsible for continued supervision. 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 court to order continued supervision for up to ten years unless the person is charged with a listed serious felony, in which case there is no limit. 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. Permits the court to partner for pretrial services and continued supervision if the defendant is found incompetent and unlikely to attain competency.

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- 11 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 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.
- 12 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.
- 13 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.

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- 1 Forensic navigator services.**
- Subd. 1. Definition.** States that “board” means the State Competency Restoration Board for the purposes of this section.
- Subd. 2. Availability of forensic navigator services.** Requires the board to provide or contract for sufficient forensic navigator services to meet the needs of defendants who are found incompetent to stand trial.
- Subd. 3. 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 bridge plans, assisting defendants in participating in court-ordered examination,

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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. 4. Bridge plans.** Requires forensic navigators to prepare bridge plans and provide them to the court. Requires bridge plans to include information related to housing, appropriate services including mental health and substance abuse treatment, and any other appropriate referrals or recommendations. Provides that bridge plans and supporting records are not accessible to the public.

**2 State Competency Restoration Board.**

Establishes the State Competency Restoration Board which consists of seven members. Establishes the duties and responsibilities of the board, including establishing forensic navigator standards and establishing certification requirements for competency restoration programs. Requires appointment of an administrator. Permits establishment of regional offices. Permits contracting with the Department of Administration for support services. Provides that sections 15.039 and 15.471 to 15.474 apply to the board.

**3 Certification Advisory Committee.**

Establishes a Certification Advisory Committee to advise the board on appropriate standards for competency restoration programs, including jail-based programs. Describes the membership and duties of the advisory committee.

**4 Competency restoration curriculum and certification.**

Directs the board 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 board to develop a process for certifying individuals to provide competency restoration services by January 1, 2023.

**5 Competency restoration programs.**

Directs the board to provide or contract for sufficient competency restoration services to meet the needs of adult defendants in each judicial district. Directs the board to establish certification standards for programs and maintain a list of approved restoration programs. Establishes requirements related to jail-based programs. Provides for program evaluations.

## 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

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- 1 **Petition originating from criminal proceedings.**  
Makes conforming changes.
- 2 **State assumption of certain court costs.**  
Makes conforming changes.
- 3 **Appropriation base established.**
  - Subd. 1. Department of Corrections.** Establishes a general fund base beginning in FY24 of \$202,000 for correctional facilities inspectors.
  - Subd. 2. District courts.** Establishes a general fund base of \$5,042,290 in FY24 for the judicial branch to pay for additional competency evaluations.
  - Subd. 3. State Competency Restoration Board.** Establishes a general fund base of \$11,350,000 in FY24 and \$10,900,000 in FY25 to establish the board and for the board to perform its duties, including providing or contracting for competency restoration services.



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