

1.1 moves to amend H.F. No. 2725 as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "ARTICLE 1

1.4 COMPETENCY TO STAND TRIAL

1.5 Section 1. [611.40] APPLICABILITY.

1.6 Notwithstanding Rules of Criminal Procedure, rule 20.01, sections 611.40 to 611.59
1.7 shall govern the proceedings for adults when competency to stand trial is at issue. This
1.8 section does not apply to juvenile courts. A competency examination ordered under Rules
1.9 of Criminal Procedure, rule 20.04, must follow the procedure in section 611.43.

1.10 Sec. 2. [611.41] DEFINITIONS.

1.11 Subdivision 1. Definitions. For the purposes of sections 611.40 to 611.58, the following
1.12 terms have the meanings given.

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

1.16 Subd. 3. Cognitive impairment. "Cognitive impairment" means a condition that impairs
1.17 a person's memory, perception, communication, learning, or other ability to think. Cognitive
1.18 impairment may be caused by any factor including traumatic, developmental, acquired,
1.19 infectious, and degenerative processes.

1.20 Subd. 4. Community-based treatment program. "Community-based treatment program"
1.21 means treatment and services provided at the community level, including but not limited
1.22 to community support services programs as defined in section 245.462, subdivision 6; day
1.23 treatment services as defined in section 245.462, subdivision 8; mental health crisis services

2.1 as defined in section 245.462, subdivision 14c; outpatient services as defined in section
2.2 245.462, subdivision 21; residential treatment services as defined in section 245.462,
2.3 subdivision 23; assertive community treatment services provided under section 256B.0622;
2.4 adult rehabilitation mental health services provided under section 256B.0623; home and
2.5 community-based waivers; and supportive housing. Community-based treatment program
2.6 does not include services provided by a state-operated treatment program.

2.7 Subd. 5. **Competency restoration program.** "Competency restoration program" means
2.8 a structured program of clinical and educational services that is certified and designed to
2.9 identify and address barriers to a defendant's ability to understand the criminal proceedings,
2.10 consult with counsel, and participate in the defense.

2.11 Subd. 6. **Court examiner.** "Court examiner" means a person appointed to serve the
2.12 court, and who is a physician or licensed psychologist who has a doctoral degree in
2.13 psychology.

2.14 Subd. 7. **Defendant with recurring incidents.** "Defendant with recurring incidents"
2.15 means an individual who has been charged by citation or complaint with ten or more
2.16 misdemeanor offenses within an eight-month period.

2.17 Subd. 8. **Forensic navigator.** "Forensic navigator" means a person who meets the
2.18 certification and continuing education requirements under section 611.55, subdivision 4
2.19 and provides the services under section 611.55, subdivision 2.

2.20 Subd. 9. **Head of the program.** "Head of the program" means the head of the competency
2.21 restoration program or the head of the community-based treatment program, treatment
2.22 facility, or state-operated treatment program.

2.23 Subd. 10. **Jail-based program.** "Jail-based program" means a competency restoration
2.24 program that operates within a correctional facility that meets the capacity standards
2.25 governing jail facilities and is licensed by the commissioner of corrections under section
2.26 241.021.

2.27 Subd. 11. **Locked treatment facility.** "Locked treatment facility" means a
2.28 community-based treatment program, treatment facility, or state-operated treatment program
2.29 that is locked and is licensed by the Department of Health or Department of Human Services.

2.30 Subd. 12. **Mental illness.** "Mental illness" means an organic disorder of the brain or a
2.31 clinically significant disorder of thought, mood, perception, orientation, memory, or behavior
2.32 that is detailed in a diagnostic codes list published by the commissioner of human services,

3.1 and that seriously limits a person's capacity to function in primary aspects of daily living
3.2 such as personal relations, living arrangements, work, and recreation.

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

3.9 Subd. 14. **Supervisory agency.** "Supervisory agency" means the entity responsible for
3.10 supervising adults in a county including the Department of Corrections, county probation
3.11 officers, or a community corrections agency in a Community Corrections Act county, or
3.12 the designee of that entity.

3.13 Subd. 15. **Suspend the criminal proceedings.** "Suspend the criminal proceedings"
3.14 means nothing can be heard or decided on the merits of the criminal charges except that the
3.15 court retains jurisdiction in all other matters, including but not limited to bail, conditions
3.16 of release, probation conditions, no contact orders, and appointment of counsel.

3.17 Subd. 16. **Targeted misdemeanor.** "Targeted misdemeanor" has the meaning given in
3.18 section 299C.10, subdivision 1, paragraph (e).

3.19 Subd. 17. **Treatment facility.** "Treatment facility" means a non-state-operated hospital,
3.20 residential treatment provider, crisis residential withdrawal management center, or corporate
3.21 foster care home qualified to provide care and treatment for persons who have a mental
3.22 illness, developmental disability, or chemical dependency.

3.23 **Sec. 3. [611.42] COMPETENCY MOTION PROCEDURES.**

3.24 Subdivision 1. **Competency to stand trial.** A defendant is incompetent and shall not
3.25 plead, be tried, or be sentenced if, due to a mental illness or cognitive impairment, the
3.26 defendant lacks the ability to:

3.27 (1) rationally consult with counsel;

3.28 (2) understand the proceedings; or

3.29 (3) participate in the defense.

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

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

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

4.2 (3) comprehend the nature of the charge;

4.3 (4) comprehend the nature of the proceedings;

4.4 (5) comprehend the possible punishment; or

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

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

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

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

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

4.22 (d) In misdemeanor cases, other than cases involving a targeted misdemeanor, if the
4.23 court determines there is a reasonable basis to doubt the defendant's competence and there
4.24 is probable cause for the charge, the court must suspend the criminal proceedings and either
4.25 order an examination of the defendant under section 611.43 or dismiss the case as provided
4.26 in paragraph (e). The court shall dismiss a case unless dismissal would be contrary to public
4.27 interest. For purposes of this paragraph, public interest includes determining whether a
4.28 defendant has the ability to access housing, food, income, disability verification, medications,
4.29 and treatment for medical conditions, or otherwise address any basic needs.

4.30 (e) If the court indicates an intent to dismiss a misdemeanor charge, the court shall direct
4.31 the forensic examiner to complete a dismissal plan as described in section 611.55, subdivision
4.32 3. The court may dismiss the charge upon receipt of the dismissal plan without holding a

5.1 hearing unless any party objects. The court must order that the dismissal plan be completed
5.2 and submitted:

5.3 (1) within 48 hours, excluding weekends and holidays, if the defendant is in custody;

5.4 or

5.5 (2) within ten days if the defendant is not in custody.

5.6 (f) If competency is at issue, the court may appoint advisory counsel under Rules of
5.7 Criminal Procedure, rule 5, for an unrepresented defendant for the proceedings under this
5.8 section.

5.9 Subd. 4. **Dismissal, referrals for services, and collaboration.** (a) Except as provided
5.10 in this subdivision, when the court determines there is a reasonable basis to doubt the
5.11 defendant's competence and orders an examination of the defendant, a forensic navigator
5.12 must complete a dismissal plan with the defendant as described in section 611.55, subdivision
5.13 3, submit the dismissal plan to the court, and provide a written copy to the defendant before
5.14 the court or prosecutor dismisses any charges based on a belief or finding that the defendant
5.15 is incompetent.

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

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

5.26 (d) Courts may partner and collaborate with county social services, community-based
5.27 treatment programs, locked treatment facilities, state-operated treatment programs, treatment
5.28 facilities, jails, and any other resource available to the court to provide referrals to services
5.29 when a defendant's competency is at issue or a defendant has been found incompetent to
5.30 stand trial.

5.31 Sec. 4. **[611.43] COMPETENCY EXAMINATION AND REPORT.**

5.32 Subdivision 1. **Competency examination.** (a) If the court orders an examination pursuant
5.33 to section 611.42, subdivision 3, the court shall appoint a court examiner to examine the

6.1 defendant and report to the court on the defendant's competency to stand trial. A court
6.2 examiner may obtain from court administration and review the report of any prior or
6.3 subsequent examination under this section or under Rules of Criminal Procedure, rule 20.

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

6.8 (c) If the defendant is entitled to release, the court shall order the defendant to appear
6.9 for an examination. If the defendant fails to appear at an examination, the court may amend
6.10 the conditions of release.

6.11 (d) A competency examination ordered under Rules of Criminal Procedure, rule 20.04,
6.12 shall proceed under subdivision 2.

6.13 Subd. 2. **Report of examination.** (a) The court-appointed examiner's written report shall
6.14 be filed with the court and served on the prosecutor and defense counsel by the court. The
6.15 report shall be filed no more than 30 days after the order for examination of a defendant in
6.16 custody. If the defendant is out of custody or confined in a noncorrectional program or
6.17 treatment facility, the report shall be filed no more than 60 days after the order for
6.18 examination, unless extended by the court for good cause. The report shall not include
6.19 opinions concerning the defendant's mental condition at the time of the alleged offense or
6.20 any statements made by the defendant regarding the alleged criminal conduct, unless
6.21 necessary to support the examiner's opinion regarding competence or incompetence.

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

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

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

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

6.28 (4) a recommendation of the least restrictive setting appropriate to meet the defendant's
6.29 needs for restoration and immediate safety;

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

7.1 (6) the likelihood the defendant will attain competency in the reasonably foreseeable
7.2 future;

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

7.5 (8) whether the defendant poses a substantial risk to public safety.

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

7.10 (d) If the court examiner's opinion is that the defendant is incompetent to proceed, the
7.11 report must include an opinion as to whether the defendant possesses capacity to make
7.12 decisions regarding neuroleptic medication unless the examiner is unable to render an
7.13 opinion on capacity. If the examiner is unable to render an opinion on capacity, the report
7.14 must document the reasons why the examiner is unable to render that opinion.

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

7.19 (f) If the court examiner determines the defendant would benefit from services for
7.20 engagement in mental health treatment under section 253B.041 or any other referral to
7.21 social services, the court examiner may recommend referral of the defendant to services
7.22 where available.

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

7.29 Subd. 4. **Admissibility of defendant's statements.** When a defendant is examined under
7.30 this section, any statement made by the defendant for the purpose of the examination and
7.31 any evidence derived from the examination is admissible at the competency proceedings,
7.32 but not in the criminal proceedings.

8.1 **Sec. 5. [611.44] CONTESTED HEARING PROCEDURES.**

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

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

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

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

8.15 (b) Defense counsel may testify, subject to the prosecutor's cross-examination, but shall
8.16 not violate attorney-client privilege. Testifying does not automatically disqualify defense
8.17 counsel from continuing to represent the defendant. The court may inquire of defense counsel
8.18 regarding the attorney-client relationship and the defendant's ability to communicate with
8.19 counsel. The court shall not require counsel to divulge communications protected by
8.20 attorney-client privilege, and the prosecutor shall not cross-examine defense counsel
8.21 concerning responses to the court's inquiry.

8.22 Subd. 3. **Determination without hearing.** If neither party files an objection, the court
8.23 shall determine the defendant's competency based on the reports of all examiners.

8.24 Subd. 4. **Burden of proof and decision.** The defendant is presumed incompetent unless
8.25 the court finds by a preponderance of the evidence that the defendant is competent.

8.26 **Sec. 6. [611.45] COMPETENCY FINDINGS.**

8.27 Subdivision 1. **Findings.** (a) The court must rule on the defendant's competency to stand
8.28 trial no more than 14 days after the examiner's report is submitted to the court. If there is a
8.29 contested hearing, the court must rule no more than 30 days after the date of the hearing.

8.30 (b) If the court finds the defendant competent, the court shall enter an order and the
8.31 criminal proceedings shall resume.

9.1 (c) If the court finds the defendant incompetent, the court shall enter a written order and
9.2 suspend the criminal proceedings. The matter shall proceed under section 611.46.

9.3 Subd. 2. **Appeal.** The defense may appeal a competency determination to the court of
9.4 appeals. The appeal is governed by Rules of Criminal Procedure, rule 28. A verbatim record
9.5 shall be made in all competency proceedings.

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

9.9 (b) In targeted misdemeanor and gross misdemeanor cases, the charges must be dismissed
9.10 30 days after the date of the finding of incompetence, unless the prosecutor, before the
9.11 expiration of the 30-day period, files a written notice of intent to prosecute when the
9.12 defendant regains competency. If a notice has been filed and the charge is a targeted
9.13 misdemeanor, charges must be dismissed within 90 days after the finding of incompetency
9.14 or when the defendant would be entitled to custody credit of 90 days, whichever is earlier.
9.15 If a notice has been filed and the charge is a gross misdemeanor, charges must be dismissed
9.16 within two years after the finding of incompetency or when the defendant would be entitled
9.17 to custody credit of one year, whichever is earlier.

9.18 (c) In felony cases, except as provided in paragraph (d), the charges must be dismissed
9.19 three years after the date of the finding of incompetency, unless the prosecutor, before the
9.20 expiration of the three-year period, files a written notice of intent to prosecute when the
9.21 defendant regains competency. If a notice has been filed, charges must be dismissed within
9.22 five years after the finding of incompetency or when the defendant would be entitled to
9.23 custody credit equal to the maximum sentence for the crime with which the defendant is
9.24 charged, whichever is earlier.

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

9.27 (1) the court orders continuing supervision pursuant to section 611.49, subdivision 3;

9.28 or

9.29 (2) the defendant is charged with a violation of sections 609.185 (murder in the first
9.30 degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20
9.31 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.2112
9.32 (criminal vehicular homicide); 609.2114, subdivision 1 (criminal vehicular operation, death
9.33 to an unborn child); 609.2661 (murder of an unborn child in the first degree); 609.2662
9.34 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in

10.1 the third degree), 609.2664 (manslaughter of an unborn child in the first degree); or 609.2665
10.2 (manslaughter of an unborn child in the second degree).

10.3 **Sec. 7. [611.46] INCOMPETENT TO STAND TRIAL AND CONTINUING**
10.4 **SUPERVISION.**

10.5 Subdivision 1. **Order to competency restoration.** (a) If the court finds the defendant
10.6 incompetent and the charges have not been dismissed, the court shall order the defendant
10.7 to participate in a program to restore the defendant's competence. The court may order
10.8 participation in a competency restoration program provided outside of a jail, a jail-based
10.9 competency restoration program, or an alternative program. The court must determine the
10.10 least-restrictive program appropriate to meet the defendant's needs and public safety. In
10.11 making this determination, the court must consult with the forensic navigator and consider
10.12 any recommendations of the court examiner on the level of care and education required for
10.13 the defendant to attain competency.

10.14 (b) The court shall order the defendant to participate in a competency restoration program
10.15 that takes place outside of a jail unless such a program is unavailable or inaccessible to the
10.16 defendant within a reasonable time. If a competency restoration program that takes place
10.17 outside of a jail is unavailable or inaccessible, the court shall order the defendant to participate
10.18 in either a jail-based program or an alternative program as provided in subdivisions 4 and
10.19 5.

10.20 (c) The court may only order the defendant to participate in competency restoration at
10.21 a community-based treatment program, locked treatment facility, or treatment facility under
10.22 this section if the head of the program determines that admission is clinically appropriate
10.23 and consents to the defendant's admission. The court may only order the defendant to
10.24 participate in competency restoration at a state-operated treatment program under this section
10.25 if the commissioner of human services or a designee determines that admission of the
10.26 defendant is clinically appropriate and consents to the defendant's admission.

10.27 (d) If the defendant is confined in jail and has not received competency restoration
10.28 services within 30 days of the finding of incompetency, the court shall review the case with
10.29 input from the prosecutor and defense counsel and must:

10.30 (1) dismiss the case;

10.31 (2) order the defendant to participate in an appropriate competency restoration program
10.32 that takes place outside of a jail;

11.1 (3) conditionally release the defendant, including but not limited to conditions that the
11.2 defendant participate in a competency restoration program when one becomes available
11.3 and accessible; or

11.4 (4) find the defendant unlikely to attain competency in the reasonably foreseeable future
11.5 and proceed under section 611.49.

11.6 (e) Upon the order to a competency restoration program or alternative program, the court
11.7 may order any hospital, treatment facility, or correctional facility that has provided care or
11.8 supervision to the defendant in the previous two years to provide copies of the defendant's
11.9 medical records to the competency restoration program or alternative program. This
11.10 information shall be provided in a consistent and timely manner and pursuant to all applicable
11.11 laws.

11.12 (f) If at any time the defendant refuses to participate in a competency restoration program
11.13 or an alternative program, the head of the program shall notify the court and any entity
11.14 responsible for supervision of the defendant.

11.15 (g) At any time, the head of the program may discharge the defendant from the program
11.16 or facility. The head of the program must notify the court, prosecutor, defense counsel, and
11.17 any entity responsible for the supervision of the defendant prior to any planned discharge.
11.18 Whenever possible, this notification shall be made five business days prior to the discharge.

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

11.24 (b) If the court determines that the defendant requires pretrial supervision, the court shall
11.25 appoint a supervisory agency to conduct pretrial supervision and report violations to the
11.26 court. The supervisory agency shall be responsible for the supervision of the defendant until
11.27 ordered otherwise by the court.

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

12.1 (d) If the court finds a violation, the court may revise the conditions of release. In addition
12.2 to the considerations required by the Rules of Criminal Procedure, when determining the
12.3 conditions of release, the court must consider whether a condition is likely to result in the
12.4 pretrial detention of the defendant and whether it is more probable than not that the detention
12.5 will interfere with the defendant attaining competency. The court shall impose the least
12.6 restrictive conditions of release and bail that will provide ongoing access to a competency
12.7 restoration program or alternative program under this section.

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

12.12 **Subd. 3. Certified competency restoration programs; procedure.** (a) If the court
12.13 orders a defendant to participate in a competency restoration program that takes place outside
12.14 of a jail, the court shall specify whether the program is a community-based treatment program
12.15 or provided in a locked treatment facility.

12.16 (b) If the court finds that the defendant is incompetent at a review hearing held after the
12.17 initial determination of competency, the court may order the defendant to continue
12.18 participation in a competency restoration program as follows:

12.19 (1) if the defendant is not being held in a locked treatment facility and:

12.20 (i) the highest underlying charge is a targeted misdemeanor, for up to one year from the
12.21 date the defendant was ordered to participate in a competency restoration program;

12.22 (ii) the highest underlying charge is a gross misdemeanor, for up to two years from the
12.23 date the defendant was ordered to participate in a competency restoration program; or

12.24 (iii) the highest underlying charge is a felony, for up to five years from the date the
12.25 defendant was ordered to participate in a competency restoration program; and

12.26 (2) if the defendant is being held in a locked treatment facility solely due to the order to
12.27 participate in a certified competency restoration program and:

12.28 (i) the highest underlying charge is a targeted misdemeanor, for a number of days that
12.29 does not result in the defendant being held for more than 90 days in a locked treatment
12.30 facility in connection with the underlying criminal charge and competency proceeding;

12.31 (ii) the highest underlying charge is a gross misdemeanor, for up to 180 additional days
12.32 provided the cumulative number of days does not result in the defendant being held for

13.1 more than 365 days in a locked treatment facility in connection with the underlying criminal
13.2 charge and competency proceeding; or

13.3 (iii) the highest underlying charge is a felony, for up to 180 additional days.

13.4 (c) The head of the program may recommend that a court examiner provide an updated
13.5 competency examination and report to the court at any time.

13.6 (d) If the defendant has not attained competency within the time periods described in
13.7 paragraph (b), the court shall dismiss the criminal charges or proceed pursuant to section
13.8 611.49. Nothing in this section prohibits the court from determining that a defendant is
13.9 unlikely to attain competency at any other time.

13.10 Subd. 4. **Jail-based competency restoration programs; procedure.** (a) A defendant
13.11 is eligible to participate in a jail-based competency restoration program if the defendant has
13.12 been found incompetent, the defendant has not met the conditions of release, including
13.13 posting bail, ordered pursuant to rule 6.02 of the Rules of Criminal Procedure, and a
13.14 court-appointed examiner has recommended jail-based competency restoration as the least
13.15 restrictive setting to meet the person's needs.

13.16 (b) A defendant may not be ordered to participate in a jail-based competency restoration
13.17 program for more than 90 days. If after 90 days of the order to a jail-based program the
13.18 defendant has not attained competency, the court must proceed under section 611.49 to
13.19 determine if the defendant is likely to attain competency in the reasonably foreseeable future.
13.20 If the court finds the defendant is likely to attain competency in the reasonably foreseeable
13.21 future, the court must determine if a competency restoration program that takes place outside
13.22 of a jail is available and appropriate to meet the needs of the defendant and public safety,
13.23 and may order the defendant to participate in the program. If the court does not find an
13.24 appropriate program, the court must review the case with input from the prosecutor and
13.25 defense counsel and must dismiss the case or conditionally release the defendant with
13.26 conditions that include, but are not limited to, a requirement that the defendant participate
13.27 in a competency restoration program that takes place outside of a jail when one is available
13.28 and appropriate.

13.29 (c) Nothing in this section prohibits transitioning a defendant to a competency restoration
13.30 program that takes place outside of a jail if the transition is appropriate or the defendant
13.31 satisfies the conditions of release or bail.

13.32 (d) If a defendant is in custody and is ordered to a competency restoration program that
13.33 takes place outside of a jail, the court may order time-limited placement in a jail-based

14.1 program until transfer, if a jail-based program is available within a reasonable distance to
14.2 the county where the defendant is present.

14.3 (e) When the court orders time-limited placement in a jail-based competency restoration
14.4 program, the court's order must include a period of no more than 30 days by which the
14.5 defendant must be transferred. If the defendant cannot be transferred to the certified
14.6 competency restoration program that takes place outside of a jail in the ordered time, the
14.7 court shall determine whether to continue the defendant in the program or conditionally
14.8 release the defendant and proceed under subdivision 5. If the defendant is transitioned to a
14.9 competency restoration program that takes place outside of a jail or an alternative program,
14.10 the provisions of subdivision 2 shall apply.

14.11 Subd. 5. **Alternative programs; procedure.** (a) A defendant is eligible to participate
14.12 in an alternative program if the defendant has been found incompetent, the defendant is
14.13 entitled to release, and a certified competency restoration program outside of a jail is not
14.14 available.

14.15 (b) As soon as the court has reason to believe that no competency restoration program
14.16 that takes place outside of a jail will be available within a reasonable time, the court must
14.17 consult a forensic navigator to determine if there are available alternative programs that are
14.18 likely to assist the defendant in attaining competency and may order the defendant to
14.19 participate in appropriate alternative programs.

14.20 (c) If at any time while the defendant is participating in an alternative program, the court
14.21 or the forensic navigator determines that an appropriate competency restoration program
14.22 that takes place outside of a jail will be available, the court must order the defendant to
14.23 participate and transfer the defendant as soon as possible unless the court determines that
14.24 the defendant is receiving appropriate competency restoration services in the alternative
14.25 program.

14.26 (d) If after 90 days of the order to an alternative program the defendant has not attained
14.27 competency, the court must proceed under section 611.49 to determine if the defendant is
14.28 likely to attain competency in the reasonably foreseeable future. If the court finds the
14.29 defendant is likely to attain competency in the reasonably foreseeable future, the court must
14.30 determine if a competency restoration program is available and appropriate to meet the
14.31 needs of the defendant and public safety and may order the defendant to the program. If the
14.32 court does not find an appropriate program, the court must review the case with input from
14.33 the prosecutor and defense counsel and must dismiss the case or continue the defendant in
14.34 the alternative program.

15.1 (e) If the defendant has not attained competency within 180 days from the date of the
15.2 initial order, the court shall dismiss the criminal charges or order the defendant to participate
15.3 in a competency restoration program pursuant to subdivision 2.

15.4 Subd. 6. **Reporting to the court.** (a) The court examiner must provide an updated report
15.5 to the court at least once every six months as to the defendant's competency and a description
15.6 of the efforts made to restore the defendant to competency.

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

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

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

15.14 Subd. 7. **Contested hearings.** The prosecutor or defense counsel may request a hearing
15.15 on the court examiner's competency opinion by filing written objections to the competency
15.16 report no later than ten days after receiving the report. All parties are entitled to notice before
15.17 the hearing. If the hearing is held, it shall conform with the procedures of section 611.44.

15.18 Subd. 8. **Competency determination.** (a) The court must determine whether the
15.19 defendant is competent based on the updated report from the court examiner no more than
15.20 14 days after receiving the report.

15.21 (b) If the court finds the defendant competent, the court must enter an order and the
15.22 criminal proceedings shall resume.

15.23 (c) If the court finds the defendant incompetent, the court may order the defendant to
15.24 continue participating in a program as provided in this section or dismiss the criminal
15.25 charges.

15.26 Sec. 8. **[611.47] ADMINISTRATION OF MEDICATION.**

15.27 Subdivision 1. **Motion.** When a court finds that a defendant is incompetent or any time
15.28 thereafter, upon the motion of the prosecutor or treating medical provider, the court shall
15.29 hear and determine whether the defendant lacks capacity to make decisions regarding the
15.30 administration of neuroleptic medication.

15.31 Subd. 2. **Certification report.** (a) If the defendant's treating medical practitioner is of
15.32 the opinion that the defendant lacks capacity to make decisions regarding neuroleptic

16.1 medication, the treating medical practitioner shall certify in a report that the lack of capacity
16.2 exists and which conditions under subdivision 3 are applicable. The certification report shall
16.3 contain an assessment of the current mental status of the defendant and the opinion of the
16.4 treating medical practitioner that involuntary neuroleptic medication has become medically
16.5 necessary and appropriate under subdivision 3, paragraph (b), clause (1) or (2), or in the
16.6 patient's best medical interest under subdivision 3, paragraph (b), clause (3). The certification
16.7 report shall be filed with the court when a motion for a hearing is made under this section.

16.8 (b) A certification report made pursuant to this section shall include a description of the
16.9 neuroleptic medication proposed to be administered to the defendant and its likely effects
16.10 and side effects, including effects on the defendant's condition or behavior that would affect
16.11 the defendant's ability to understand the nature of the criminal proceedings or to assist
16.12 counsel in the conduct of a defense in a reasonable manner.

16.13 (c) Any defendant subject to an order under subdivision 3 of this section or the state
16.14 may request review of that order.

16.15 (d) The court may appoint a court examiner to examine the defendant and report to the
16.16 court and parties as to whether the defendant lacks capacity to make decisions regarding
16.17 the administration of neuroleptic medication. If the patient refuses to participate in an
16.18 examination, the court examiner may rely on the patient's clinically relevant medical records
16.19 in reaching an opinion.

16.20 (e) The defendant is entitled to a second court examiner under this section, if requested
16.21 by the defendant.

16.22 Subd. 3. **Determination.** (a) The court shall consider opinions in the reports prepared
16.23 under subdivision 2 as applicable to the issue of whether the defendant lacks capacity to
16.24 make decisions regarding the administration of neuroleptic medication and shall proceed
16.25 under paragraph (b).

16.26 (b) The court shall hear and determine whether any of the following is true:

16.27 (1) the defendant lacks capacity to make decisions regarding neuroleptic medication, as
16.28 defined in section 253B.092, subdivision 5, the defendant's mental illness requires medical
16.29 treatment with neuroleptic medication, and, if the defendant's mental illness is not treated
16.30 with neuroleptic medication, it is probable that serious harm to the physical or mental health
16.31 of the patient will result. Probability of serious harm to the physical or mental health of the
16.32 defendant requires evidence that the defendant is presently suffering adverse effects to the
16.33 defendant's physical or mental health, or the defendant has previously suffered these effects
16.34 as a result of a mental illness and the defendant's condition is substantially deteriorating or

17.1 likely to deteriorate without administration of neuroleptic medication. The fact that a
17.2 defendant has a diagnosis of a mental illness does not alone establish probability of serious
17.3 harm to the physical or mental health of the defendant;

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

17.14 (3) the defendant lacks capacity to make decisions regarding neuroleptic medication, as
17.15 defined in section 253B.092, subdivision 5, and the state has shown by clear and convincing
17.16 evidence that:

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

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

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

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

17.25 (v) neuroleptic medication is in the patient's best medical interest in light of his or her
17.26 medical condition.

17.27 (c) In ruling on a petition under this section, the court shall also take into consideration
17.28 any evidence on:

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

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

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

18.1 (4) past efficacy and any extenuating circumstances of past use of neuroleptic
18.2 medications; and

18.3 (5) any other relevant factors.

18.4 (d) In determining whether the defendant possesses capacity to consent to neuroleptic
18.5 medications, the court:

18.6 (1) must presume that a defendant has the capacity to make decisions regarding
18.7 administration of neuroleptic medication unless that presumption is overcome by sufficient
18.8 evidence to the contrary;

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

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

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

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

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

18.20 (e) If consideration of the evidence presented on the factors in paragraph (c) weighs in
18.21 favor of authorizing involuntary administration of neuroleptic medication, and the court
18.22 finds any of the conditions described in paragraph (b) to be true, the court shall issue an
18.23 order authorizing involuntary administration of neuroleptic medication to the defendant
18.24 when and as prescribed by the defendant's medical practitioner, including administration
18.25 by a treatment facility or correctional facility. The court order shall specify which medications
18.26 are authorized and may limit the maximum dosage of neuroleptic medication that may be
18.27 administered. The order shall be valid for no more than one year. An order may be renewed
18.28 by filing another petition under this section and following the process in this section. The
18.29 order shall terminate no later than the closure of the criminal case in which it is issued. The
18.30 court shall not order involuntary administration of neuroleptic medication under paragraph
18.31 (b), clause (3), unless the court has first found that the defendant does not meet the criteria
18.32 for involuntary administration of neuroleptic medication under paragraph (b), clause (1),
18.33 and does not meet the criteria under paragraph (b), clause (2).

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

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

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

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

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

19.33 Subd. 6. **Defendants with capacity to make informed decision.** If the court finds that
19.34 the defendant has the capacity to decide whether to take neuroleptic medication, a facility

20.1 or program may not administer medication without the patient's informed written consent
20.2 or without the declaration of an emergency, or until further review by the court.

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

20.10 Sec. 9. **[611.48] REVIEW HEARINGS.**

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

20.16 Sec. 10. **[611.49] UNLIKELY TO ATTAIN COMPETENCY.**

20.17 Subdivision 1. **Applicability.** The court may find a defendant unlikely to attain
20.18 competency in the reasonably foreseeable future when:

20.19 (1) the most recent court examiner's report states that the defendant is not likely to attain
20.20 competency in the reasonably foreseeable future;

20.21 (2) the defendant has not been restored to competency within one year of the finding of
20.22 incompetence; or

20.23 (3) the defendant has not received timely competency restoration services under section
20.24 611.46, subdivision 3 or 4.

20.25 Subd. 2. **Procedure.** (a) The court must determine whether there is a substantial
20.26 probability that the defendant will attain competency within the reasonably foreseeable
20.27 future.

20.28 (b) If the court finds that there is a substantial probability that the defendant will attain
20.29 competency within the reasonably foreseeable future, the court shall find the defendant
20.30 incompetent and proceed under section 611.46, subdivision 7.

21.1 (c) If the court finds that there is not a substantial probability the defendant will attain
21.2 competency within the reasonably foreseeable future, the court must either:

21.3 (1) dismiss the case unless the defendant is charged with a violation of section 609.185
21.4 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the
21.5 third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second
21.6 degree); 609.2112 (criminal vehicular homicide); 609.2114, subdivision 1 (criminal vehicular
21.7 operation, death to an unborn child); 609.2661 (murder of an unborn child in the first degree);
21.8 609.2662 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn
21.9 child in the third degree), 609.2664 (manslaughter of an unborn child in the first degree);
21.10 or 609.2665 (manslaughter of an unborn child in the second degree);

21.11 (2) dismiss the case and issue an order to the designated agency in the county of financial
21.12 responsibility or the county where the defendant is present to conduct a prepetition screening
21.13 pursuant to section 253B.07; or

21.14 (3) order the continued supervision of the defendant under subdivision 3.

21.15 (d) Any party may request a hearing by submitting a written objection to the
21.16 court-appointed examiner's report no more than ten days after the report is submitted. If a
21.17 hearing is held under this subdivision, there is a presumption that the defendant will not
21.18 attain competency within the reasonably foreseeable future. A party attempting to overcome
21.19 that presumption must prove by a preponderance of the evidence that there is a substantial
21.20 probability that restoration efforts will be successful within the reasonably foreseeable
21.21 future.

21.22 Subd. 3. **Continued supervision.** (a) The court may order continued supervision of a
21.23 defendant who is a danger to public safety and is charged with a felony violation of section
21.24 518B.01, subdivision 14; 609.165; 609.185; 609.19; 609.195; 609.20; 609.205; 609.2112;
21.25 609.2113; 609.2114; 609.221; 609.222; 609.223; 609.2231; 609.224; 609.2242; 609.2247;
21.26 609.228; 609.229; 609.2325; 609.233; 609.235; 609.24; 609.245; 609.25; 609.255; 609.2661;
21.27 609.2662; 609.2663; 609.2664; 609.2665; 609.267; 609.2671; 609.268; 609.322; 609.342;
21.28 609.343; 609.344; 609.345; 609.3451; 609.3458; 609.377; 609.3775; 609.378; 609.487;
21.29 609.498, subdivision 1; 609.561; 609.562; 609.563; 609.582, subdivision 1 or 2; 609.66,
21.30 subdivision 1e; 609.687; 609.71; 609.713; 609.748, subdivision 6; 609.749; 609.855,
21.31 subdivision 5; 624.713; or 629.75.

21.32 (b) Any party may request a hearing on the issue of continued supervision by submitting
21.33 a written objection no more than ten days after the order for continued supervision.

22.1 (c) Any time the court orders the continued supervision of a defendant under this
22.2 subdivision, the court shall clarify the willing entity or person responsible to the court for
22.3 the supervision of the defendant, including but not limited to directing an appointed forensic
22.4 navigator to be responsible for continued supervision.

22.5 (d) The court must determine the most appropriate setting that is not a jail or locked
22.6 treatment facility to meet the defendant's needs and public safety. The court shall consider
22.7 the recommendations of the most-recent court examiner's report and consult with any
22.8 resources available to the court.

22.9 (e) Notwithstanding the reporting requirements of section 611.46, subdivision 5, the
22.10 court examiner must provide an updated report to the court one year after the initial order
22.11 for continued supervision as to the defendant's competency and a description of the efforts
22.12 made to restore the defendant to competency.

22.13 (f) If after one year of continued supervision under this section the court finds that there
22.14 is a substantial probability that the defendant will attain competency within the reasonably
22.15 foreseeable future, the court shall rule the defendant incompetent and proceed under section
22.16 611.46, subdivision 7.

22.17 (g) If after one year of continued supervision under this section the court finds that there
22.18 is not a substantial probability that the defendant will attain competency within the reasonably
22.19 foreseeable future, the court must consult the prosecutor and defense counsel and:

22.20 (1) dismiss the case; or

22.21 (2) if the defendant poses a danger to public safety, order continuing supervision.

22.22 (h) If the court orders continuing supervision under paragraph (g), the court must order
22.23 an annual review of the defendant's status, including ordering that an updated competency
22.24 examination and report be submitted to the court. At the annual review, the court must
22.25 determine if the defendant has attained competency, if there is a substantial probability that
22.26 the defendant will attain competency in the foreseeable future, and if the defendant poses
22.27 a danger to public safety. If the court finds the defendant competent, the court must enter
22.28 an order and the criminal proceedings shall resume. If the court finds that the defendant
22.29 poses a danger to public safety, the court may continue the supervision. If the court finds
22.30 that the defendant does not pose a danger to public safety, the court shall dismiss the charges.
22.31 The court may not order continued supervision for more than ten years after a finding that
22.32 a defendant is incompetent.

23.1 (h) At any time, the head of the program may notify the court and recommend that a
23.2 court examiner provide an updated competency examination and report. At any time, the
23.3 head of the program may discharge a defendant from the program or facility. The head of
23.4 the program must notify the court, prosecutor, defense counsel, and the entity responsible
23.5 for supervision of the defendant five business days prior to any planned discharge.

23.6 (i) The court may provide, partner, or contract for pretrial supervision services or
23.7 continued supervision if the defendant is found incompetent and unlikely to attain competency
23.8 in the reasonably foreseeable future.

23.9 **Sec. 11. [611.50] DEFENDANT'S PARTICIPATION AND CONDUCT OF**
23.10 **HEARINGS.**

23.11 Subdivision 1. **Place of hearing.** Upon request of the prosecutor, defense counsel, or
23.12 head of the treatment facility or state-operated treatment program, and approval by the court
23.13 and the treatment facility or state-operated treatment program, a hearing may be held at a
23.14 treatment facility or state-operated treatment program. A hearing may be conducted by
23.15 interactive video conference consistent with the Rules of Criminal Procedure.

23.16 Subd. 2. **Absence permitted.** When a medical professional treating the defendant submits
23.17 a written report stating that participating in a hearing under this statute is not in the best
23.18 interest of the defendant and would be detrimental to the defendant's mental or physical
23.19 health, the court shall notify the defense counsel and the defendant and allow the hearing
23.20 to proceed without the defendant's participation.

23.21 Subd. 3. **Disruption of hearing.** At any hearing required under this section, the court,
23.22 on its motion or on the motion of any party, may exclude or excuse a defendant who is
23.23 seriously disruptive, refuses to participate, or who is incapable of comprehending and
23.24 participating in the proceedings. In such instances, the court shall, with specificity on the
23.25 record, state the behavior of the defendant or other circumstances which justify proceeding
23.26 in the absence of the defendant.

23.27 Subd. 4. **Issues not requiring defendant's participation.** The defendant's incompetence
23.28 does not preclude the defense counsel from making an objection or defense before trial that
23.29 can be fairly determined without the defendant's participation.

23.30 **Sec. 12. [611.51] CREDIT FOR CONFINEMENT.**

23.31 If the defendant is convicted, any time spent confined in a secured setting while being
23.32 assessed and restored to competency must be credited as time served.

24.1 Sec. 13. **EFFECTIVE DATE.**

24.2 This article is effective July 1, 2023, and applies to competency determinations initiated
24.3 on or after that date.

24.4 **ARTICLE 2**

24.5 **COMPETENCY RESTORATION SERVICES**

24.6 Section 1. **[611.55] FORENSIC NAVIGATOR SERVICES.**

24.7 Subdivision 1. **Definition.** As used in this section, "board" means the State Competency
24.8 Restoration Board established in section 611.56.

24.9 Subd. 2. **Availability of forensic navigator services.** The board must provide or contract
24.10 for enough forensic navigator services to meet the needs of adult defendants in each judicial
24.11 district who are found incompetent to stand trial.

24.12 Subd. 3. **Duties.** (a) Forensic navigators shall serve as an impartial party in all legal
24.13 matters relating to the defendant and the criminal case. Nothing shall be construed to permit
24.14 the forensic navigator to provide legal counsel as a representative of the court, prosecutor,
24.15 or defense counsel.

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

24.18 (1) developing dismissal plans;

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

24.20 (3) coordinating timely placement in court-ordered competency restoration programs;

24.21 (4) providing competency restoration education;

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

24.23 (6) providing coordinating services to help defendants access needed mental health,
24.24 medical, housing, financial, social, transportation, precharge and pretrial diversion, and
24.25 other necessary services provided by other programs and community service providers;

24.26 (7) communicating with and offering supportive resources to defendants and family
24.27 members of defendants; and

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

25.1 (c) If a defendant's charges are dismissed, the appointed forensic navigator may continue
25.2 assertive outreach with the individual for up to 90 days to assist in attaining stability in the
25.3 community.

25.4 Subd. 4. **Dismissal plans.** (a) The forensic navigator must prepare dismissal plans with
25.5 the defendant and submit them to the court. Dismissal plans must be submitted before the
25.6 time the court makes a competency finding pursuant to section 611.45. The dismissal plan
25.7 must include:

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

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

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

25.16 (b) Dismissal plans and any supporting records or other data submitted with those plans
25.17 are not accessible to the public.

25.18 **Sec. 2. [611.56] STATE COMPETENCY RESTORATION BOARD.**

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

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

25.24 (2) four members appointed by the governor.

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

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

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

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

26.10 (b) The board shall:

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

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

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

26.17 (4) establish certification requirements for competency restoration programs; and

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

26.19 (c) The board may:

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

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

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

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

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

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

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

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

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

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

27.14 Subd. 5. **Administration.** The board may contract with the Office of State Court
27.15 Administrator for administrative support services for the fiscal years following fiscal year
27.16 2022.

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

27.19 Sec. 3. **[611.57] CERTIFICATION ADVISORY COMMITTEE.**

27.20 Subdivision 1. **Establishment.** The Certification Advisory Committee is established to
27.21 provide the State Competency Restoration Board with advice and expertise related to the
27.22 certification of competency restoration programs, including jail-based programs.

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

27.25 (1) a mental health professional, as defined in section 245.462, subdivision 18, with
27.26 community behavioral health experience, appointed by the governor;

27.27 (2) a board certified forensic psychiatrist with experience in competency evaluations,
27.28 providing competency restoration services, or both, appointed by the governor;

27.29 (3) a board certified forensic psychologist with experience in competency evaluations,
27.30 providing competency restoration services, or both, appointed by the governor;

28.1 (4) a member of a human services board established pursuant to section 402.01, appointed
28.2 by the governor;

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

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

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

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

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

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

28.14 Subd. 3. **Meetings.** At its first meeting, the advisory committee shall elect a chair and
28.15 may elect a vice-chair. The advisory committee shall meet at least monthly or upon the call
28.16 the chair. The advisory committee shall meet sufficiently enough to accomplish the tasks
28.17 identified in this section. Meetings of the advisory committee are subject to Minnesota
28.18 Statutes, chapter 13D.

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

28.26 Sec. 4. **[611.58] COMPETENCY RESTORATION CURRICULUM AND**
28.27 **CERTIFICATION.**

28.28 Subdivision 1. **Curriculum.** (a) By January 1, 2023, the board must recommend a
28.29 competency restoration curriculum to educate and assist defendants found incompetent in
28.30 attaining the ability to:

28.31 (1) rationally consult with counsel;

28.32 (2) understand the proceedings; and

29.1 (3) participate in the defense.

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

29.6 Subd. 2. **Certification and distribution.** By January 1, 2023, the board must develop
29.7 a process for certifying individuals to deliver the competency restoration curriculum and
29.8 make the curriculum available to every certified competency restoration program and forensic
29.9 navigator in the state. Each competency restoration program in the state must use the
29.10 competency restoration curriculum under this section as the foundation for delivering
29.11 competency restoration education and must not substantially alter the content.

29.12 Sec. 5. **[611.59] COMPETENCY RESTORATION PROGRAMS.**

29.13 Subdivision 1. **Certification.** The board, in consultation with the Certification Advisory
29.14 Committee, shall develop procedures to certify that the standards in this section are met,
29.15 including procedures for regular recertification of competency restoration programs. The
29.16 board shall maintain a list of certified competency restoration programs on the board's
29.17 website to be updated at least once every year.

29.18 Subd. 2. **Competency restoration provider standards.** Except for jail-based programs,
29.19 a competency restoration provider must:

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

29.23 (2) ensure that competency restoration education certified by the board is provided to
29.24 defendants and that regular assessments of defendants' progress in attaining competency
29.25 are documented;

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

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

29.30 Subd. 3. **Jail-based competency restoration standards.** Jail-based competency
29.31 restoration programs must be housed in correctional facilities licensed by the Department
29.32 of Corrections under section 241.021 and must:

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

30.4 (2) provide minimum mental health services including:

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

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

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

30.11 (3) ensure that competency restoration education certified by the board is provided to
30.12 defendants and regular assessments of defendants' progress in attaining competency to stand
30.13 trial are documented;

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

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

30.17 Subd. 2. **Program evaluations.** (a) The board shall collect the following data:

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

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

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

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

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

31.1 **ARTICLE 3**

31.2 **CONFORMING CHANGES AND APPROPRIATIONS**

31.3 Section 1. Minnesota Statutes 2020, section 253B.07, subdivision 2a, is amended to read:

31.4 Subd. 2a. **Petition originating from criminal proceedings.** (a) If criminal charges are
31.5 pending against a defendant, the court shall order simultaneous competency and civil
31.6 commitment examinations in accordance with Minnesota Rules of Criminal Procedure, rule
31.7 20.04, when the following conditions are met:

31.8 (1) the prosecutor or defense counsel doubts the defendant's competency and a motion
31.9 is made challenging competency, or the court on its initiative raises the issue under section
31.10 611.42 or Rules of Criminal Procedure, rule 20.01; and

31.11 (2) the prosecutor and defense counsel agree simultaneous examinations are appropriate.

31.12 No additional examination under subdivision 3 is required in a subsequent civil commitment
31.13 proceeding unless a second examination is requested by defense counsel appointed following
31.14 the filing of any petition for commitment.

31.15 (b) Only a court examiner may conduct an assessment as described in section 611.43 or
31.16 Minnesota Rules of Criminal Procedure, rules 20.01, subdivision 4, and 20.02, subdivision
31.17 2.

31.18 (c) Where a county is ordered to consider civil commitment following a determination
31.19 of incompetency under section 611.45 or Minnesota Rules of Criminal Procedure, rule
31.20 20.01, the county in which the criminal matter is pending is responsible to conduct prepetition
31.21 screening and, if statutory conditions for commitment are satisfied, to file the commitment
31.22 petition in that county. By agreement between county attorneys, prepetition screening and
31.23 filing the petition may be handled in the county of financial responsibility or the county
31.24 where the proposed patient is present.

31.25 (d) Following an acquittal of a person of a criminal charge under section 611.026, the
31.26 petition shall be filed by the county attorney of the county in which the acquittal took place
31.27 and the petition shall be filed with the court in which the acquittal took place, and that court
31.28 shall be the committing court for purposes of this chapter. When a petition is filed pursuant
31.29 to subdivision 2 with the court in which acquittal of a criminal charge took place, the court
31.30 shall assign the judge before whom the acquittal took place to hear the commitment
31.31 proceedings unless that judge is unavailable.

32.1 Sec. 2. Minnesota Statutes 2020, section 253B.10, subdivision 1, is amended to read:

32.2 Subdivision 1. **Administrative requirements.** (a) When a person is committed, the
32.3 court shall issue a warrant or an order committing the patient to the custody of the head of
32.4 the treatment facility, state-operated treatment program, or community-based treatment
32.5 program. The warrant or order shall state that the patient meets the statutory criteria for
32.6 civil commitment.

32.7 (b) The commissioner shall prioritize patients being admitted from jail or a correctional
32.8 institution who are:

32.9 (1) ordered confined in a state-operated treatment program for an examination under
32.10 section 611.43 or Minnesota Rules of Criminal Procedure, rules 20.01, subdivision 4,
32.11 paragraph (a), and 20.02, subdivision 2;

32.12 (2) under civil commitment for competency treatment and continuing supervision under
32.13 section 611.46 or Minnesota Rules of Criminal Procedure, rule 20.01, subdivision 7;

32.14 (3) found not guilty by reason of mental illness under Minnesota Rules of Criminal
32.15 Procedure, rule 20.02, subdivision 8, and under civil commitment or are ordered to be
32.16 detained in a state-operated treatment program pending completion of the civil commitment
32.17 proceedings; or

32.18 (4) committed under this chapter to the commissioner after dismissal of the patient's
32.19 criminal charges.

32.20 Patients described in this paragraph must be admitted to a state-operated treatment program
32.21 within 48 hours. The commitment must be ordered by the court as provided in section
32.22 253B.09, subdivision 1, paragraph (d).

32.23 (c) Upon the arrival of a patient at the designated treatment facility, state-operated
32.24 treatment program, or community-based treatment program, the head of the facility or
32.25 program shall retain the duplicate of the warrant and endorse receipt upon the original
32.26 warrant or acknowledge receipt of the order. The endorsed receipt or acknowledgment must
32.27 be filed in the court of commitment. After arrival, the patient shall be under the control and
32.28 custody of the head of the facility or program.

32.29 (d) Copies of the petition for commitment, the court's findings of fact and conclusions
32.30 of law, the court order committing the patient, the report of the court examiners, and the
32.31 prepetition report, and any medical and behavioral information available shall be provided
32.32 at the time of admission of a patient to the designated treatment facility or program to which
32.33 the patient is committed. Upon a patient's referral to the commissioner of human services

33.1 for admission pursuant to subdivision 1, paragraph (b), any inpatient hospital, treatment
 33.2 facility, jail, or correctional facility that has provided care or supervision to the patient in
 33.3 the previous two years shall, when requested by the treatment facility or commissioner,
 33.4 provide copies of the patient's medical and behavioral records to the Department of Human
 33.5 Services for purposes of preadmission planning. This information shall be provided by the
 33.6 head of the treatment facility to treatment facility staff in a consistent and timely manner
 33.7 and pursuant to all applicable laws.

33.8 Sec. 3. Minnesota Statutes 2020, section 480.182, is amended to read:

33.9 **480.182 STATE ASSUMPTION OF CERTAIN COURT COSTS.**

33.10 Notwithstanding any law to the contrary, the state courts will pay for the following
 33.11 court-related programs and costs:

33.12 (1) court interpreter program costs, including the costs of hiring court interpreters;

33.13 (2) guardian ad litem program and personnel costs;

33.14 (3) examination costs, not including hospitalization or treatment costs, for mental
 33.15 commitments and related proceedings under chapter 253B;

33.16 (4) examination costs under chapter 611 or rule 20 of the Rules of Criminal Procedure;

33.17 (5) in forma pauperis costs;

33.18 (6) costs for transcripts mandated by statute, except in appeal cases and postconviction
 33.19 cases handled by the Board of Public Defense;

33.20 (7) jury program costs; and

33.21 (8) witness fees and mileage fees specified in sections 253B.23, subdivision 1; 260B.152,
 33.22 subdivision 2; 260B.331, subdivision 3, clause (1); 260C.152, subdivision 2; 260C.331,
 33.23 subdivision 3, clause (1); 357.24; 357.32; and 627.02.

33.24 **Sec. 4. STATE BOARD OF COMPETENCY RESTORATION; APPROPRIATIONS.**

33.25 Subdivision 1. **Operations.** \$..... in fiscal year 2023 is appropriated from the general
 33.26 fund to the State Board of Competency Restoration for staff and establishment of the office.

33.27 Subd. 2. **Forensic navigators.** \$..... in fiscal year 2023 is appropriated from the general
 33.28 fund to the State Board of Competency Restoration for the costs associated with providing
 33.29 forensic navigator services in each judicial district.

- 34.1 Subd. 3. **Competency restoration programs and providers.** \$..... in fiscal year 2023
- 34.2 is appropriated from the general fund to the State Board of Competency Restoration to
- 34.3 establish certification standards for competency restoration programs and providers in each
- 34.4 of the ten judicial districts."
- 34.5 Amend the title accordingly