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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2904

05/17/2019 Authored by Edelson and Zerwas
The bill was read for the first time and referred to the Public Safety and Criminal Justice Reform Finance and Policy Division

1.1 A bill for an act
1.2 relating to crime; providing a procedure to determine a defendant's competence;
1.3 proposing coding for new law in Minnesota Statutes, chapter 628.

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

1.5 Section 1. 628.70 **COMPETENCE TO PARTICIPATE IN PROCEEDINGS.**

1.6 Subdivision 1. Definitions. (a) For the purposes of sections 628.70 to 628.81, the terms
1.7 in this subdivision have the meanings given them.

1.8 (b) "Mental illness" means an organic disorder of the brain or a clinically significant
1.9 disorder of thought, mood, perception, orientation, or memory.

1.10 (c) "Cognitive impairment" means a deficiency in the ability to think, perceive, reason,
1.11 or remember caused by injury, genetic condition, or brain abnormality.

1.12 (d) "Suspend the criminal proceedings" means nothing can be heard or decided on the
1.13 merits of the criminal charges except that the court retains jurisdiction in all other matters,
1.14 including but not limited to bail, conditions of release, probation conditions, no contact
1.15 orders, and appointment of counsel.

1.16 (e) "Examiner" means a person who is knowledgeable, trained, and practicing in the
1.17 diagnosis and assessment or in the treatment of the alleged impairment, and who is:

1.18 (1) a licensed psychiatrist; or

1.19 (2) a licensed psychologist who has a doctoral degree in psychology.

1.20 (f) "Secure treatment facility" means a locked facility, operated by the state or a county,
1.21 with a competence restoration program.

2.1 (g) "Competence restoration program" means any program or service designed to restore
2.2 the defendant to competence.

2.3 Subd. 2. **Competence to participate.** A defendant is incompetent and shall not be plead,
2.4 be tried, or be sentenced if, due to mental illness or cognitive impairment, the defendant
2.5 lacks the sufficient present ability to:

2.6 (1) rationally consult with counsel;

2.7 (2) understand the proceedings; or

2.8 (3) participate in the defense.

2.9 **Sec. 2. [628.71] COMPETENCE MOTION.**

2.10 (a) If the prosecutor, the defense counsel, or the court at any time doubts the defendant's
2.11 competence, the prosecutor or defense counsel shall make a motion challenging the
2.12 defendant's competence, or the court on its own initiative shall raise the issue. The defendant's
2.13 consent is not required. The motion shall be supported by specific facts, but shall not include
2.14 communications between the defendant and defense counsel if disclosure would violate
2.15 attorney-client privilege. By bringing the motion, the defendant does not waive attorney-client
2.16 privilege.

2.17 (b) Upon receipt of a motion, the court shall determine if there is a reasonable basis to
2.18 believe competence may be at issue. If the court determines there is a reasonable basis to
2.19 doubt the defendant's competence, the court shall determine whether there is probable cause
2.20 for the charge. If probable cause exists, the court shall suspend the criminal proceedings
2.21 and order an examination of the defendant pursuant to section 628.72. If no probable cause
2.22 exists, the charges shall be dismissed.

2.23 (c) If competence is at issue, the court shall appoint counsel for an unrepresented
2.24 defendant for the proceedings under this section.

2.25 **Sec. 3. [628.72] COMPETENCE EXAMINATION AND REPORT.**

2.26 Subdivision 1. **Competence examination.** (a) The court shall appoint an examiner to
2.27 examine the defendant and report to the court on the defendant's mental condition according
2.28 to subdivision 2. If the prosecutor or defense counsel has retained a qualified examiner, the
2.29 court, upon request, shall allow that examiner to observe any examination under this section.
2.30 An examiner may obtain and review the report of any prior or subsequent examination under
2.31 this section.

3.1 (b) If the defendant is in custody, the court shall order the defendant to participate in an
3.2 examination where the defendant is being held.

3.3 (c) If the defendant is not in custody, the court shall order the defendant to appear for
3.4 the purpose of an examination. If the defendant fails to appear at an examination, the court
3.5 may amend the conditions of release.

3.6 (d) If an examiner concludes that the defendant presents an imminent risk of harm to
3.7 self or others, or otherwise needs emergency intervention, the examiner shall promptly
3.8 notify the prosecutor, the defense counsel, and the court.

3.9 Subd. 2. **Report of examination.** (a) The court-appointed examiner's written report shall
3.10 be filed with the court and served on the prosecutor and defense counsel no later than 60
3.11 days after the date of the order under subdivision 1, paragraphs (b) and (c). The report shall
3.12 include:

3.13 (1) a diagnosis of the defendant's mental condition, and the factual basis for the diagnosis
3.14 and opinions, including but not limited to the results of any testing conducted with the
3.15 defendant;

3.16 (2) an opinion and supporting factual basis for that opinion as to:

3.17 (i) the defendant's competence to participate under section 628.70, subdivision 2; and

3.18 (ii) any treatment required for the defendant to attain or maintain competence and an
3.19 explanation of appropriate treatment alternatives by order of preference, including but not
3.20 limited to:

3.21 (A) whether the defendant can be treated on an outpatient basis;

3.22 (B) the reasons for rejecting outpatient treatment if an inpatient competence restoration
3.23 program is recommended; and

3.24 (C) the appropriate use of neuroleptics or other medications, if warranted, and within
3.25 the competence of the examiner; and

3.26 (3) the likelihood the defendant will ever attain competence to proceed.

3.27 (b) If the defendant appears for the examination but does not participate, the examiner
3.28 shall submit a report and render an opinion on competence based on all available information
3.29 and an opinion as to whether the unwillingness to participate resulted from the mental illness
3.30 or cognitive impairment.

3.31 Subd. 3. **Additional examination.** If either the prosecutor or defense counsel intends
3.32 to retain an independent examiner, the party shall give notice no later than ten days after

4.1 the date of receipt of the court-appointed examiner's report by the court and opposing
4.2 counsel. If an additional examiner is retained, the examiner's report shall be filed no later
4.3 than 30 days after the date of filing the notice, unless extended by the court for good cause
4.4 for up to an additional 30 days.

4.5 Sec. 4. [628.73] COMPETENCE DETERMINATION.

4.6 Subdivision 1. Request for hearing. (a) Either the prosecutor or defense counsel may
4.7 request a hearing on the examiner's competence determination by filing written objections
4.8 to the competence report no later than ten days after the date of the filing of the report. The
4.9 hearing shall be held no later than 14 days after the date of the request, unless extended
4.10 upon agreement of the prosecutor and defense counsel or by the court for good cause.

4.11 (b) If an additional examiner is retained, the hearing shall be continued up to 14 days
4.12 after the date of filing the additional examiner's report. The court may continue the hearing
4.13 for up to an additional 30 days for good cause or upon agreement of the prosecution and
4.14 defense.

4.15 Subd. 2. Competence hearing. (a) The requester of the competence hearing bears the
4.16 burden of production and persuasion.

4.17 (b) The court may admit all relevant and reliable evidence. The court-appointed examiner
4.18 is considered the court's witness and may be called and questioned by the court, prosecutor,
4.19 or defense counsel. The report of the court-appointed examiner shall be admitted into
4.20 evidence without further foundation.

4.21 (c) Defense counsel may testify, subject to the prosecutor's cross-examination, but shall
4.22 not violate attorney-client privilege. Testifying does not automatically disqualify defense
4.23 counsel from continuing to represent the defendant. The court may inquire of defense counsel
4.24 regarding the attorney-client relationship and the defendant's ability to communicate with
4.25 counsel. The court shall not require counsel to divulge communications protected by
4.26 attorney-client privilege, and the prosecutor shall not cross-examine defense counsel
4.27 concerning responses to the court's inquiry.

4.28 Subd. 3. Determination without hearing. If the prosecutor or defense counsel does not
4.29 timely file an objection and the court does not hold a competence hearing, the court shall
4.30 determine the defendant's competence on the basis of the reports of all examiners.

4.31 Subd. 4. Burden of proof and decision. The defendant is presumed competent unless
4.32 the court finds by a preponderance of the evidence that the defendant is not competent.

5.1 Sec. 5. **[628.74] COMPETENCE FINDINGS.**

5.2 Subdivision 1. **Finding of competence.** If the court finds the defendant competent, the
5.3 court shall enter a written order and the criminal proceeding shall resume.

5.4 Subd. 2. **Finding of incompetence.** If the court finds by a preponderance of the evidence
5.5 that the defendant is incompetent to proceed, the court shall enter a written order and suspend
5.6 the criminal proceeding. The matter shall proceed under section 628.76.

5.7 Subd. 3. **Appeal.** Either the prosecutor or defense counsel may appeal a competence
5.8 determination to the court of appeals. The appeal is governed by Rule 28 of the Rules of
5.9 Criminal Procedure. A verbatim record shall be made in all competence proceedings.

5.10 Sec. 6. **[628.75] MULTIDISCIPLINARY PLACEMENT TEAM.**

5.11 Subdivision 1. **Establishment of placement team.** A county shall establish a
5.12 multidisciplinary placement team to review all available records to determine and recommend
5.13 the appropriate placement and services that are the least restrictive setting that meets public
5.14 safety needs and restores the defendant to competence. The placement team shall be
5.15 comprised of persons selected by the county in which the crime was committed who have
5.16 expertise in the treatment of individuals who are mentally ill or cognitively impaired, which
5.17 may include but not be limited to social services workers, tribal representatives, probation
5.18 officers, and law enforcement.

5.19 Subd. 2. **Duty.** (a) A member of the placement team shall share data, acquired in the
5.20 member's professional capacity, with the placement team to assist in the determination and
5.21 recommendation of placement for the defendant. To the extent necessary to conduct its
5.22 review, the placement team shall have access to not public data, as defined in section 13.02,
5.23 and medical records under sections 144.291 to 144.298, that are maintained by facilities.
5.24 The interest of an accurate and complete review outweighs the injury to the patient, and
5.25 constitutes good cause. The chemical dependency records shall be disclosed pursuant to
5.26 Code of Federal Regulations, title 42, part 2. Any further disclosure of this information is
5.27 prohibited unless further disclosure is expressly permitted by the written consent of the
5.28 patient or as otherwise permitted by Code of Federal Regulations, title 42, part 2.

5.29 (b) Pursuant to a court order under section 628.74, subdivision 2, a state or local agency
5.30 or department or health care provider shall release all information and records including
5.31 medical, psychological, behavioral, chemical dependency, social service, probation and
5.32 correction, developmental disability, employment, and educational records to the placement
5.33 team or its designee for the purpose of the review.

6.1 Sec. 7. **[628.76] INCOMPETENT TO STAND TRIAL AND CONTINUING**
6.2 **SUPERVISION.**

6.3 Subdivision 1. Procedures upon finding of incompetence. (a) If the court finds the
6.4 defendant incompetent and suspends the criminal proceedings, the court shall determine
6.5 from any relevant information available whether the defendant poses a danger to public
6.6 safety. After making its determination, the court shall follow the procedures in subdivision
6.7 2 or 3, as required.

6.8 (b) The criminal court making the finding of incompetence has jurisdiction to order a
6.9 placement regardless of the defendant's county of residence or the county of financial
6.10 responsibility. All monetary and nonmonetary conditions of release shall continue in full
6.11 force and effect, including any no contact provisions, so long as the defendant remains
6.12 incompetent to stand trial.

6.13 Subd. 2. Community-based competence restoration. (a) If the court finds the defendant
6.14 does not pose a risk to public safety, and is otherwise qualified for pretrial release, the court
6.15 shall order the placement team to convene and have access to all relevant information from
6.16 any source.

6.17 (b) No later than five days after convening, the placement team shall report in writing
6.18 to the court with a recommendation as to placement and services that will restore the
6.19 defendant to competence and protect public safety. The placement team shall also identify
6.20 the state or local agency or department responsible for monitoring the conditions and
6.21 informing the court if there are any violations of conditions of release.

6.22 (c) The court shall distribute the placement team report to the parties at least 48 hours
6.23 before the hearing. The hearing may be continued for good cause for up to an additional 14
6.24 days. If the hearing does not take place during that 14-day period, the court shall order
6.25 interim placement based on the available information.

6.26 (d) Upon conclusion of the hearing, the court shall review the conditions of release. The
6.27 court shall order the defendant into a competence restoration program as a condition of
6.28 release.

6.29 (e) Upon application by the prosecutor, the agency or its designee assigned to supervise
6.30 a defendant, or court services, alleging that the defendant violated a condition of release
6.31 the court shall follow the procedures under Rule 6 of the Minnesota Rules of Criminal
6.32 Procedure. Any hearing on the alleged violation of release conditions shall be held no later
6.33 than 15 days after the date of issuance of a summons or apprehension on the warrant.

7.1 Subd. 3. **Inpatient competence restoration.** (a) If the court finds that the defendant
 7.2 poses a risk to public safety, or that the defendant is otherwise not qualified for pretrial
 7.3 release, the court shall order the defendant to a secure treatment facility where the defendant
 7.4 shall receive mental health treatment to restore the defendant to competence.

7.5 (b) If the defendant is in custody at the time of the finding of incompetence, the defendant
 7.6 shall be transported to the inpatient competence restoration program pursuant to section
 7.7 628.80 no later than 48 hours after the finding of incompetence.

7.8 (c) If the defendant is placed in an inpatient competence restoration program, the
 7.9 defendant shall remain in the inpatient competence restoration program pursuant to section
 7.10 628.80.

7.11 Subd. 4. **Report requirement.** (a) No later than 90 days from the date of filing the order
 7.12 finding the defendant incompetent, and every six months thereafter, the court shall appoint
 7.13 an examiner to provide to the court a written report pursuant to section 628.72, subdivision
 7.14 2, paragraph (b), and the following:

7.15 (1) an opinion on the defendant's current mental condition;

7.16 (2) a description of the efforts made to restore the defendant to competence;

7.17 (3) if it is reported that the defendant cannot be restored to competence, an opinion on:

7.18 (i) whether the defendant meets the criteria for civil commitment under one or more of
 7.19 the provisions in section 253B.02, subdivisions 2, 13, 14, and 17; and

7.20 (ii) whether the administration of neuroleptics under section 628.77 should be initiated
 7.21 or continued.

7.22 (b) The court shall furnish copies of the report in paragraph (a) to the prosecutor and
 7.23 defense counsel.

7.24 **Sec. 8. [628.77] ADMINISTRATION OF NEUROLEPTIC MEDICATIONS.**

7.25 Subdivision 1. **Medication refusal.** At any time after a defendant has been found
 7.26 incompetent to proceed and ordered into a competence restoration program, a request may
 7.27 be made for the administration of neuroleptic medications. If the defendant is not consenting
 7.28 to or responding to treatment and is unlikely to be restored to competence without the
 7.29 administration of psychiatric medication over the defendant's objection, the director of the
 7.30 treatment facility or defendant's treatment provider may request the court to order the
 7.31 administration of neuroleptic medications. The request shall be in writing and shall describe
 7.32 the defendant's diagnosis and whether:

8.1 (1) less intrusive means of treatment have been attempted to render the defendant
8.2 competent;

8.3 (2) medication is necessary to render the defendant competent;

8.4 (3) medication is substantially likely to render the defendant competent;

8.5 (4) medication is substantially unlikely to produce side effects that would significantly
8.6 interfere with the defendant's ability to assist in the defendant's defense;

8.7 (5) no less intrusive means of treatment are available; and

8.8 (6) medication is medically appropriate and is in the defendant's best medical interest
8.9 in light of the defendant's medical condition.

8.10 Subd. 2. **Independent examiner.** Upon receipt of the request, the court shall appoint
8.11 an independent examiner to give a written opinion on the factors in subdivision 1 as related
8.12 to the defendant. The report shall be submitted at least 48 hours before a hearing.

8.13 Subd. 3. **Hearing.** (a) The court shall hold a hearing no later than 14 days after the date
8.14 of filing the request. By agreement of the prosecutor and defense counsel or for good cause,
8.15 the court may extend the time for the hearing up to 14 additional days.

8.16 (b) The court, in determining whether a defendant should be medicated over the
8.17 defendant's objection, shall consider whether:

8.18 (1) important state interests are at stake in restoring the defendant's competence;

8.19 (2) any involuntary medications proposed:

8.20 (i) are substantially likely to render the defendant competent to proceed in the criminal
8.21 matter; and

8.22 (ii) are not substantially likely to produce side effects that would significantly interfere
8.23 with the defendant's ability to assist the defense counsel in conducting the defendant's
8.24 defense;

8.25 (3) involuntary medication is necessary to further important state interests;

8.26 (4) the medications are necessary because any alternate less intrusive treatments are
8.27 unlikely to achieve substantially the same results; and

8.28 (5) the administration of the proposed medication is medically appropriate, as it is in
8.29 the defendant's best medical interest in light of the defendant's medical condition.

8.30 (c) The court shall weigh the factors in paragraph (b) against the defendant's interest to
8.31 be free from unwanted medical treatment based on whether the defendant:

9.1 (1) demonstrates an awareness of the nature of the defendant's situation, including but
9.2 not limited to the reasons for hospitalization;

9.3 (2) demonstrates an understanding of treatment with neuroleptic medications and the
9.4 risks, benefits, and alternatives; and

9.5 (3) communicates verbally or nonverbally a clear choice regarding treatment with
9.6 neuroleptic medications that is reasoned and not based on delusion.

9.7 (d) The court may base its decision on relevant and admissible evidence, including but
9.8 not limited to reliable hearsay, the testimony of a treating physician or other qualified
9.9 physician, a member of the defendant's treatment team or treatment provider, a
9.10 court-appointed examiner, witness testimony, or the defendant's treatment records.

9.11 Subd. 4. **Findings; order.** (a) If the court finds by clear and convincing evidence that
9.12 the involuntary administration of psychiatric medication to a defendant under this section
9.13 is necessary and appropriate, it shall make findings addressing each of the factors in
9.14 subdivision 4, paragraphs (b) and (c), and shall issue an order authorizing the administration
9.15 of psychiatric medication to the defendant over the defendant's objection in order to restore
9.16 the defendant to competence.

9.17 (b) The court may order that medication be administered by more intrusive methods
9.18 only if the defendant has refused administration by less intrusive methods. The court may
9.19 order that the director or provider report to the court within a reasonable period following
9.20 entry of the order as to whether the authorized treatment remains appropriate.

9.21 Subd. 5. **Emergency administration.** A treating physician may administer neuroleptic
9.22 medication to a defendant if the treating physician determines that the medication is necessary
9.23 to prevent serious, immediate physical harm to the defendant or to others. Medication may
9.24 be administered for as long as the emergency continues to exist, but for no longer than 14
9.25 days. The treating physician may continue the medication through the date of the first court
9.26 hearing under this section, if a request has been filed and the emergency continues to exist.
9.27 The treatment facility shall document the emergency in the defendant's medical record in
9.28 specific behavioral terms.

9.29 Sec. 9. **[628.78] PROCEDURES UPON RESTORATION TO COMPETENCE.**

9.30 Subdivision 1. **Restoration.** (a) As soon as the defendant is competent in the opinion
9.31 of the head of the competence restoration program, the head of the program shall send a
9.32 written report to the court setting forth the basis for that opinion. The report may also make
9.33 recommendations for continued treatment to ensure continued competence. If the defendant

10.1 is found guilty, these recommendations may be considered by the court in imposing a
10.2 sentence, including any conditions of probation.

10.3 (b) The court shall promptly provide copies of this report to the prosecutor and defense
10.4 counsel. No later than ten days after receiving the report, either party may request, in writing,
10.5 a hearing on the issue of whether the defendant has been restored to competence.

10.6 Subd. 2. **Request for hearing.** (a) If a hearing on the defendant's restoration to
10.7 competence is requested, the court shall schedule a hearing no later than 14 days from the
10.8 date of filing the request, unless extended upon agreement of the parties or for good cause.

10.9 (b) If an additional examiner is retained, the hearing shall be continued up to 14 days
10.10 after the date of filing the additional examiner's report. The court may continue the hearing
10.11 for up to an additional 30 days for good cause or upon agreement of the parties.

10.12 Subd. 3. **Procedures for hearing.** (a) The party who requested the competence hearing
10.13 shall present evidence first. The court may admit all relevant and reliable evidence, including
10.14 but not limited to the report from the competence restoration program. The examiner
10.15 authoring the restored to competence report is considered the court's witness and may be
10.16 called and cross-examined by the prosecutor or defense counsel. The report of a
10.17 court-appointed examiner shall be admitted into evidence without further foundation.

10.18 (b) Defense counsel may testify, subject to the prosecutor's cross-examination, but shall
10.19 not violate attorney-client privilege. Testifying does not automatically disqualify defense
10.20 counsel from continuing to represent the defendant. The court may inquire of defense counsel
10.21 regarding the attorney-client relationship and the defendant's ability to communicate with
10.22 counsel. The court shall not require counsel to divulge communications protected by
10.23 attorney-client privilege, and the prosecutor cannot cross-examine defense counsel concerning
10.24 responses to the court's inquiry.

10.25 Subd. 4. **Burden of proof; decision.** If the court finds by a preponderance of the evidence
10.26 that the defendant has been restored to competence, the court shall enter an order finding
10.27 the defendant competent. Otherwise, the court shall enter an order finding that the defendant
10.28 remains incompetent and shall refer the defendant for continued treatment as incompetent
10.29 to stand trial, subject to section 628.76.

10.30 Subd. 5. **Determination without hearing.** If a contested competence hearing is not
10.31 requested, upon the expiration of the ten-day period, the court shall make a determination
10.32 whether the defendant has been restored to competence based solely on the report from the
10.33 competence restoration program. The court shall address any conditions of release or change
10.34 in custody of the defendant and shall set the matter on for further criminal proceedings.

11.1 Sec. 10. **[628.79] REVIEW HEARING.**

11.2 The prosecutor, defense counsel, defendant, or person charged with the defendant's
11.3 supervision, may apply to the court for a hearing to review the defendant's competence
11.4 restoration programming. All parties are entitled to notice before the hearing. If the hearing
11.5 is held, it shall conform with the procedures of sections 628.70 to 628.81.

11.6 Sec. 11. **[628.80] DEFENDANT NOT LIKELY TO BE RESTORED.**

11.7 If the report under section 628.76 provides an opinion that the defendant is unlikely to
11.8 be restored to competence, nothing in that section precludes or impedes the prosecutor's
11.9 ability to proceed concurrently under chapter 253B. Upon the request of the prosecutor, the
11.10 court shall order the report released to the prepetition screening team.

11.11 Sec. 12. **[628.81] DISMISSAL OF CRIMINAL CHARGE.**

11.12 Subdivision 1. **Felonies.** Except when the defendant is charged with murder, felony-level
11.13 criminal charges shall be dismissed three years after the date of finding the defendant
11.14 incompetent to proceed unless the prosecutor, before the expiration of the three-year period,
11.15 files a written notice of intent to prosecute when the defendant regains competence.

11.16 Subd. 2. **Gross misdemeanors.** Gross misdemeanor criminal charges shall be dismissed
11.17 no later than 120 days after the date of finding the defendant incompetent to proceed unless
11.18 before that date the prosecutor files a written notice of intent to prosecute when the defendant
11.19 regains competence. If a notice of intent to prosecute is filed, the charges shall be dismissed
11.20 when the defendant would be entitled under section 628.84 to custody credit of at least one
11.21 year if convicted.

11.22 Subd. 3. **Misdemeanors.** Misdemeanor criminal charges shall be dismissed no later than
11.23 120 days after receipt of the 90-day report under section 628.76, subdivision 4.

11.24 Subd. 4. **Court-appointed counsel.** If the defendant has been represented in the criminal
11.25 matter by a public defender or other court-appointed attorney, the court shall discharge the
11.26 criminal defense attorney upon dismissal of the criminal charges.

11.27 Sec. 13. **[628.82] DEFENDANT'S PARTICIPATION AND CONDUCT OF**
11.28 **HEARINGS.**

11.29 Subdivision 1. **Place of hearing.** Upon request of the prosecutor or defense counsel and
11.30 approval of the court, a hearing may be held at a treatment facility. A hearing may be

12.1 conducted by interactive video conference consistent with the Minnesota Rules of Criminal
 12.2 Procedure.

12.3 Subd. 2. **Absence permitted.** When a licensed physician or licensed psychologist treating
 12.4 the defendant submits a written report that participating in a hearing under this statute is
 12.5 not in the best interest of the defendant and would be detrimental to the defendant's mental
 12.6 or physical health, the court shall allow the hearing to proceed without the defendant's
 12.7 participation.

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

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

12.17 Sec. 14. **[628.83] ADMISSIBILITY OF DEFENDANT'S STATEMENTS.**

12.18 When a defendant is examined under this section, any statement made by the defendant
 12.19 for the purpose of the examination and any evidence derived from the examination is
 12.20 admissible at the competence proceedings.

12.21 Sec. 15. **[628.84] CREDIT FOR CONFINEMENT.**

12.22 If the defendant is convicted, any time spent confined in a secure treatment facility for
 12.23 a mental examination under this section shall be credited as time served. If a defendant is
 12.24 placed in a secure treatment facility to be restored to competence, the time spent in the
 12.25 secure treatment facility shall be credited as time served. No credit for time served shall be
 12.26 given when the defendant is examined or treated in a nonsecure facility.