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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 2725

- 01/31/2022 Authored by Edelson, Albright, Bahner, Urdahl, Bernardy and others
The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law
- 02/21/2022 Adoption of Report: Re-referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy
- 03/14/2022 Adoption of Report: Re-referred to the Committee on Human Services Finance and Policy
- 03/21/2022 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Civil Law
- 04/07/2022 Adoption of Report: Amended and re-referred to the Committee on Ways and Means
- 05/05/2022 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time
- 05/11/2022 Calendar for the Day
Read for the Third Time
Passed by the House and transmitted to the Senate

1.1 A bill for an act

1.2 relating to judiciary; establishing a statutory procedure to assess the competency

1.3 of a defendant to stand trial; providing for contested hearings; establishing

1.4 continuing supervision for certain defendants found incompetent to stand trial;

1.5 establishing requirements to restore certain defendants to competency; providing

1.6 for administration of medication; establishing forensic navigators; requiring forensic

1.7 navigators to provide services to certain defendants; establishing dismissal plans

1.8 for certain defendants found incompetent to stand trial; providing for jail-based

1.9 competency restoration programs; establishing the State Competency Restoration

1.10 Board and certification advisory committee; requiring a report; appropriating

1.11 money; amending Minnesota Statutes 2020, sections 253B.07, subdivision 2a;

1.12 480.182; proposing coding for new law in Minnesota Statutes, chapter 611.

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

1.14 ARTICLE 1

1.15 COMPETENCY TO STAND TRIAL

1.16 Section 1. [611.40] APPLICABILITY.

1.17 Notwithstanding Rules of Criminal Procedure, rule 20.01, sections 611.40 to 611.59

1.18 shall govern the proceedings for adults when competency to stand trial is at issue. This

1.19 section does not apply to juvenile courts. A competency examination ordered under Rules

1.20 of Criminal Procedure, rule 20.04, must follow the procedure in section 611.43.

1.21 Sec. 2. [611.41] DEFINITIONS.

1.22 Subdivision 1. Definitions. For the purposes of sections 611.40 to 611.58, the following

1.23 terms have the meanings given.

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

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

2.8 Subd. 4. **Community-based treatment program.** "Community-based treatment program"
2.9 means treatment and services provided at the community level, including but not limited
2.10 to community support services programs as defined in section 245.462, subdivision 6; day
2.11 treatment services as defined in section 245.462, subdivision 8; mental health crisis services
2.12 as defined in section 245.462, subdivision 14c; outpatient services as defined in section
2.13 245.462, subdivision 21; residential treatment services as defined in section 245.462,
2.14 subdivision 23; assertive community treatment services provided under section 256B.0622;
2.15 adult rehabilitation mental health services provided under section 256B.0623; home and
2.16 community-based waivers; and supportive housing. Community-based treatment program
2.17 does not include services provided by a state-operated treatment program.

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

2.22 Subd. 6. **Competency restoration services.** "Competency restoration services" means
2.23 education provided by certified individuals to defendants found incompetent to proceed.
2.24 Educational services must use the curriculum certified by the State Competency Restoration
2.25 Board as the foundation for delivering competency restoration education. Competency
2.26 restoration services does not include housing assistance or programs, social services, or
2.27 treatment that must be provided by a licensed professional including mental health treatment,
2.28 substance use disorder treatment, or co-occurring disorders treatment.

2.29 Subd. 7. **Court examiner.** "Court examiner" means a person appointed to serve the
2.30 court, and who is a physician or licensed psychologist who has a doctoral degree in
2.31 psychology.

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

3.1 Subd. 9. **Head of the program.** "Head of the program" means the head of the competency
3.2 restoration program or the head of the facility or program where the defendant is being
3.3 served.

3.4 Subd. 10. **Jail-based program.** "Jail-based program" means a competency restoration
3.5 program that operates within a correctional facility licensed by the commissioner of
3.6 corrections under section 241.021 that meets the capacity standards governing jail facilities.
3.7 A jail-based program may not be granted a variance to exceed its operational capacity.

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

3.11 Subd. 12. **Mental illness.** "Mental illness" means an organic disorder of the brain or a
3.12 clinically significant disorder of thought, mood, perception, orientation, or memory, that
3.13 grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand,
3.14 that is manifested by instances of grossly disturbed behavior or faulty perceptions. Mental
3.15 illness does not include disorders defined as cognitive impairments in subdivision 3; epilepsy;
3.16 antisocial personality disorder; brief periods of intoxication caused by alcohol, drugs, or
3.17 other mind-altering substances; or repetitive or problematic patterns of using any alcohol,
3.18 drugs, or other mind-altering substances.

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

3.25 Subd. 14. **Suspend the criminal proceedings.** "Suspend the criminal proceedings"
3.26 means nothing can be heard or decided on the merits of the criminal charges except that the
3.27 court retains jurisdiction in all other matters, including but not limited to bail, conditions
3.28 of release, probation conditions, no contact orders, and appointment of counsel.

3.29 Subd. 15. **Targeted misdemeanor.** "Targeted misdemeanor" has the meaning given in
3.30 section 299C.10, subdivision 1, paragraph (e).

3.31 Subd. 16. **Treatment facility.** "Treatment facility" means a non-state-operated hospital,
3.32 residential treatment provider, crisis residential withdrawal management center, or corporate
3.33 foster care home qualified to provide care and treatment for persons who have a mental
3.34 illness, developmental disability, or chemical dependency.

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

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

4.5 (1) rationally consult with counsel;

4.6 (2) understand the proceedings; or

4.7 (3) participate in the defense.

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

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

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

4.12 (3) comprehend the nature of the charge;

4.13 (4) comprehend the nature of the proceedings;

4.14 (5) comprehend the possible punishment; or

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

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

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

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

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

5.1 (d) In misdemeanor cases, other than cases involving a targeted misdemeanor, if the
5.2 court determines there is a reasonable basis to doubt the defendant's competence and there
5.3 is probable cause for the charge, the court must suspend the criminal proceedings. The court
5.4 may order an examination of the defendant under section 611.43 if the examination is in
5.5 the public interest. For purposes of this paragraph, an examination is in the public interest
5.6 when it is necessary to assess whether the defendant has a cognitive impairment or mental
5.7 illness; determine whether a defendant has the ability to access housing, food, income,
5.8 disability verification, medications, and treatment for medical conditions; or whether a
5.9 defendant has the ability to otherwise address any basic needs. The court shall order the
5.10 forensic navigator to complete a bridge plan as described in section 611.55, subdivision 3
5.11 and submit it to the court. The court may dismiss the charge upon receipt of the bridge plan
5.12 without holding a hearing unless either party objects.

5.13 Subd. 4. **Dismissal, referrals for services, and collaboration.** (a) Except as provided
5.14 in this subdivision, when the court determines there is a reasonable basis to doubt the
5.15 defendant's competence and orders an examination of the defendant, a forensic navigator
5.16 must complete a bridge plan with the defendant as described in section 611.55, subdivision
5.17 3, submit the bridge plan to the court, and provide a written copy to the defendant before
5.18 the court or prosecutor dismisses any charges based on a belief or finding that the defendant
5.19 is incompetent.

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

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

5.30 (d) Courts may partner and collaborate with county social services, community-based
5.31 programs, jails, and any other resource available to the court to provide referrals to services
5.32 when a defendant's competency is at issue or a defendant has been found incompetent to
5.33 proceed.

6.1 (e) Counsel for the defendant may bring a motion to dismiss the proceedings in the
6.2 interest of justice at any stage of the proceedings.

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

6.4 Subdivision 1. **Competency examination.** (a) If the court orders an examination pursuant
6.5 to section 611.42, subdivision 3, the court shall appoint a court examiner to examine the
6.6 defendant and report to the court on the defendant's competency to proceed. A court examiner
6.7 may obtain from court administration and review the report of any prior or subsequent
6.8 examination under this section or under Rules of Criminal Procedure, rule 20.

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

6.13 (c) If the defendant is entitled to release, the court shall order the defendant to appear
6.14 for an examination. If the defendant fails to appear at an examination, the court may amend
6.15 the conditions of release and bail pursuant to the Rules of Criminal Procedure, rule 6.

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

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

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

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

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

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

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

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

7.7 (6) the likelihood the defendant will attain competency in the reasonably foreseeable
7.8 future;

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

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

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

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

7.24 (e) If the court examiner determines the defendant would benefit from services for
7.25 engagement in mental health treatment under section 253B.041 or any other referral to
7.26 social services, the court examiner may recommend referral of the defendant to services
7.27 where available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9.9 Subd. 2. Appeal. Appeals under this chapter are governed by Rules of Criminal
9.10 Procedure, rule 28. A verbatim record shall be made in all competency proceedings.

9.11 Subd. 3. Dismissal of criminal charge. (a) If the court finds the defendant incompetent,
9.12 and the charge is a misdemeanor other than a targeted misdemeanor, the charge must be
9.13 dismissed.

9.14 (b) In targeted misdemeanor and gross misdemeanor cases, the charges must be dismissed
9.15 30 days after the date of the finding of incompetence, unless the prosecutor, before the
9.16 expiration of the 30-day period, files a written notice of intent to prosecute when the
9.17 defendant regains competency. If a notice has been filed and the charge is a targeted
9.18 misdemeanor, charges must be dismissed within one year after the finding of incompetency.
9.19 If a notice has been filed and the charge is a gross misdemeanor, charges must be dismissed
9.20 within two years after the finding of incompetency.

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

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

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

9.30 or

9.31 (2) the defendant is charged with a violation of sections 609.185 (murder in the first
9.32 degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20
9.33 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.2112

10.1 (criminal vehicular homicide); 609.2114, subdivision 1 (criminal vehicular operation, death
10.2 to an unborn child); 609.2661 (murder of an unborn child in the first degree); 609.2662
10.3 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in
10.4 the third degree); 609.2664 (manslaughter of an unborn child in the first degree); or 609.2665
10.5 (manslaughter of an unborn child in the second degree); or a crime of violence as defined
10.6 in section 624.712, subdivision 5, except for a violation of chapter 152.

10.7 Sec. 7. **[611.46] INCOMPETENT TO STAND TRIAL AND CONTINUING**
10.8 **SUPERVISION.**

10.9 Subdivision 1. **Order to competency restoration.** (a) If the court finds the defendant
10.10 incompetent and the charges have not been dismissed, the court shall order the defendant
10.11 to participate in a competency restoration program to restore the defendant's competence.
10.12 The court may order participation in a competency restoration program provided outside
10.13 of a jail, a jail-based competency restoration program, or an alternative program. The court
10.14 must determine the least-restrictive program appropriate to meet the defendant's needs and
10.15 public safety. In making this determination, the court must consult with the forensic navigator
10.16 and consider any recommendations of the court examiner. The court shall not order a
10.17 defendant to participate in a jail-based program or a state-operated treatment program if the
10.18 highest criminal charge is a misdemeanor or targeted misdemeanor.

10.19 (b) The court may only order the defendant to participate in competency restoration at
10.20 an inpatient or residential treatment program under this section if the head of the treatment
10.21 program determines that admission to the program is clinically appropriate and consents to
10.22 the defendant's admission. The court may only order the defendant to participate in
10.23 competency restoration at a state-operated treatment facility under this section if the
10.24 commissioner of human services or a designee determines that admission of the defendant
10.25 is clinically appropriate and consents to the defendant's admission. The court may require
10.26 a certified competency program that qualifies as a locked facility or a state-operated treatment
10.27 program to notify the court in writing of the basis for refusing consent for admission of the
10.28 defendant in order to ensure transparency and maintain an accurate record. The court may
10.29 not require personal appearance of any representative of a certified competency program.
10.30 The court shall send a written request for notification to the locked facility or state-operated
10.31 treatment program and the locked facility or state-operated treatment program shall provide
10.32 a written response to the court within ten days of receipt of the court's request.

11.1 (c) If the defendant is confined in jail and has not received competency restoration
11.2 services within 30 days of the finding of incompetency, the court shall review the case with
11.3 input from the prosecutor and defense counsel and may:

11.4 (1) order the defendant to participate in an appropriate competency restoration program
11.5 that takes place outside of a jail;

11.6 (2) conditionally release the defendant, including but not limited to conditions that the
11.7 defendant participate in a competency restoration program when one becomes available
11.8 and accessible;

11.9 (3) make a determination as to whether the defendant is likely to attain competency in
11.10 the reasonably foreseeable future and proceed under section 611.49; or

11.11 (4) upon a motion, dismiss the charges in the interest of justice.

11.12 (d) Upon the order to a competency restoration program or alternative program, the court
11.13 may order any hospital, treatment facility, or correctional facility that has provided care or
11.14 supervision to the defendant in the previous two years to provide copies of the defendant's
11.15 medical records to the competency restoration program or alternative program. This
11.16 information shall be provided in a consistent and timely manner and pursuant to all applicable
11.17 laws.

11.18 (e) If at any time the defendant refuses to participate in a competency restoration program
11.19 or an alternative program, the head of the program shall notify the court and any entity
11.20 responsible for supervision of the defendant.

11.21 (f) At any time, the head of the program may discharge the defendant from the program
11.22 or facility. The head of the program must notify the court, prosecutor, defense counsel, and
11.23 any entity responsible for the supervision of the defendant prior to any planned discharge.
11.24 Absent emergency circumstances, this notification shall be made five days prior to the
11.25 discharge if the defendant is not being discharged to jail or a correctional facility. Upon the
11.26 receipt of notification of discharge or upon the request of either party in response to
11.27 notification of discharge, the court may order that a defendant who is subject to bail or
11.28 unmet conditions of release be returned to jail upon being discharged from the program or
11.29 facility. If the court orders a defendant returned to jail, the court shall notify the parties and
11.30 head of the program at least one day before the defendant's planned discharge, except in
11.31 the event of an emergency discharge where one day notice is not possible. The court must
11.32 hold a review hearing within seven days of the defendant's return to jail. The forensic
11.33 navigator must be given notice of the hearing and be allowed to participate.

12.1 (g) If the defendant is discharged from the program or facility under emergency
12.2 circumstances, notification of emergency discharge shall include a description of the
12.3 emergency circumstances and may include a request for emergency transportation. The
12.4 court shall make a determination on a request for emergency transportation within 24 hours.
12.5 Nothing in this section prohibits a law enforcement agency from transporting a defendant
12.6 pursuant to any other authority.

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

12.12 (b) If the court determines that the defendant requires pretrial supervision, the court shall
12.13 direct the forensic navigator to conduct pretrial supervision and report violations to the
12.14 court. The forensic navigator shall be responsible for the supervision of the defendant until
12.15 ordered otherwise by the court.

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

12.22 (d) If the court finds a violation, the court may revise the conditions of release and bail
12.23 as appropriate pursuant to the Rules of Criminal Procedure, including but not limited to
12.24 consideration of the defendant's need for ongoing access to a competency restoration program
12.25 or alternative program under this section.

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

12.30 Subd. 3. **Certified competency restoration programs; procedure.** (a) If the court
12.31 orders a defendant to participate in a competency restoration program that takes place outside
12.32 of a jail, or an alternative program that the court has determined is providing appropriate
12.33 competency restoration services to the defendant, the court shall specify whether the program
12.34 is a community-based treatment program or provided in a locked treatment facility.

13.1 (b) If the court finds that the defendant continues to be incompetent at a review hearing
13.2 held after the initial determination of competency, the court must hold a review hearing
13.3 pursuant to section 611.49 and consider any changes to the defendant's conditions of release
13.4 or competency restoration programming to restore the defendant's competency in the least
13.5 restrictive program appropriate.

13.6 (c) If the court orders the defendant to a locked treatment facility or jail-based program,
13.7 the court must calculate the defendant's custody credit and cannot order the defendant to a
13.8 locked treatment facility or jail-based program for a period that would cause the defendant's
13.9 custody credit to exceed the maximum sentence for the underlying charge.

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 when the underlying
13.12 charge is a gross misdemeanor or felony and either:

13.13 (1) the defendant has been found incompetent, the defendant has not met the conditions
13.14 of release ordered pursuant to rule 6.02 of the Rules of Criminal Procedure, including posting
13.15 bail, and either a court-appointed examiner has recommended jail-based competency
13.16 restoration as the least restrictive setting to meet the person's needs, or the court finds that
13.17 after a reasonable effort by the forensic navigator, there has not been consent by another
13.18 secure setting to the defendant's placement; or

13.19 (2) the defendant is in custody and is ordered to a certified competency restoration
13.20 program that takes place outside of a jail, a jail-based competency restoration program is
13.21 available within a reasonable distance to the county where the defendant is being held, and
13.22 the court ordered a time-limited placement in a jail-based program until transfer to a certified
13.23 competency restoration program that takes place outside of a jail.

13.24 (b) A defendant may not be ordered to participate in a jail-based competency restoration
13.25 program for more than 90 days without a review hearing. If after 90 days of the order to a
13.26 jail-based program the defendant has not attained competency, the court must review the
13.27 case with input from the prosecutor and defense counsel and may:

13.28 (1) order the defendant to participate in an appropriate certified competency restoration
13.29 program that takes place outside of a locked facility; or

13.30 (2) determine whether, after a reasonable effort by the forensic navigator, there is consent
13.31 to the defendant's placement by another locked facility. If court determines that a locked
13.32 facility is the least restrictive program appropriate and no appropriate locked facility is
13.33 available, it may order the defendant to the jail-based program for an additional 90 days.

14.1 (c) Nothing in this section prohibits the court from ordering the defendant transferred
14.2 to a certified competency restoration program that takes place outside of a jail if the court
14.3 determines that transition is appropriate, or the defendant satisfies the conditions of release
14.4 or bail. Before the defendant is transitioned to a certified competency restoration program
14.5 that takes place outside of a jail or an alternative program, the court shall notify the prosecutor
14.6 and the defense counsel, and the provisions of subdivision 2 shall apply.

14.7 (d) The court may require a certified competency program that qualifies as a locked
14.8 facility to notify the court in writing of the basis for refusing consent of the defendant in
14.9 order to ensure transparency and maintain an accurate record. The court may not require
14.10 personal appearance of any representative of a certified competency program.

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 forensic navigator has reason to believe that no certified competency
14.16 restoration program outside of a jail will be available within a reasonable time, the forensic
14.17 navigator shall determine if there are available alternative programs that are likely to assist
14.18 the defendant in attaining competency. Upon notification by the forensic navigator, the
14.19 court may order the defendant to participate in an appropriate alternative program and notify
14.20 the prosecutor and the defense counsel.

14.21 (c) If at any time while the defendant is participating in an alternative program, an
14.22 appropriate certified competency restoration program that takes place outside of a jail
14.23 becomes available, the forensic navigator must notify the court. The court must notify the
14.24 prosecutor and the defense counsel and must order the defendant to participate in an
14.25 appropriate certified competency restoration program, unless the court determines that the
14.26 defendant is receiving appropriate competency restoration services in the alternative program.
14.27 If appropriate and in the public interest, the court may order the defendant to participate in
14.28 the certified competency restoration program and an alternative program.

14.29 (d) At any time, the head of the alternative program or the forensic navigator may notify
14.30 the court that the defendant is receiving appropriate competency restoration services in the
14.31 alternative program, and recommend that remaining in the alternative program is in the best
14.32 interest of the defendant and the defendant's progress in attaining competency. The court
14.33 may order the defendant to continue programming in the alternative program and proceed
14.34 under subdivision 3.

15.1 (e) If after 90 days of the order to an alternative program the defendant has not attained
15.2 competency and the defendant is not participating in a certified competency restoration
15.3 program, the court must hold a review hearing pursuant to section 611.49.

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, unless the court and the parties agree to a longer
15.6 period that is not more than 12 months, as to the defendant's competency and a description
15.7 of the efforts made to restore the defendant to competency.

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

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

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

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

15.19 Subd. 8. **Competency determination.** (a) The court must determine whether the
15.20 defendant is competent based on the updated report from the court examiner no more than
15.21 14 days after receiving the report.

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

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

15.26 (d) Counsel for the defendant may bring a motion to dismiss the proceedings in the
15.27 interest of justice at any stage of the proceedings.

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

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

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

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

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

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

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

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

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

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

17.1 defendant's physical or mental health, or the defendant has previously suffered these effects
17.2 as a result of a mental illness and the defendant's condition is substantially deteriorating or
17.3 likely to deteriorate without administration of neuroleptic medication. The fact that a
17.4 defendant has a diagnosis of a mental illness does not alone establish probability of serious
17.5 harm to the physical or mental health of the defendant;

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

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

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

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

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

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

17.27 (v) neuroleptic medication is in the patient's best medical interest in light of the patient's
17.28 medical condition.

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

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

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

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

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

18.4 (5) any other relevant factors.

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

18.7 (1) must apply a rebuttable presumption that a defendant has the capacity to make
18.8 decisions regarding administration of neuroleptic medication;

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] LIKELIHOOD TO ATTAIN COMPETENCY.**

20.17 Subdivision 1. **Applicability.** (a) The court may hold a hearing on its own initiative or
20.18 upon request of either party to determine whether the defendant is likely to attain competency
20.19 in the foreseeable future when the most recent court examiner's report states that the defendant
20.20 is unlikely to attain competency in the foreseeable future, and either:

20.21 (1) defendant has not been restored to competence after participating and cooperating
20.22 with court ordered competency restoration programming for at least one year; or

20.23 (2) the defendant has not received timely competency restoration services under section
20.24 611.46 after one year.

20.25 (b) The court cannot find a defendant unlikely to attain competency based upon a
20.26 defendant's refusal to cooperate with or remain at a certified competency program or
20.27 cooperate with an examination.

20.28 (c) The parties are entitled to 30 days of notice prior to the hearing and, unless the parties
20.29 agree to a longer time period, the court must determine within 30 days after the hearing
20.30 whether there is a substantial probability that the defendant will attain competency within
20.31 the foreseeable future.

21.1 Subd. 2. Procedure. (a) If the court finds that there is a substantial probability that the
21.2 defendant will attain competency within the reasonably foreseeable future, the court shall
21.3 find the defendant incompetent and proceed under section 611.46.

21.4 (b) If the court finds that there is not a substantial probability the defendant will attain
21.5 competency within the reasonably foreseeable future, the court may not order the defendant
21.6 to participate in or continue to participate in a competency restoration program in a locked
21.7 treatment facility. The court must release the defendant from any custody holds pertaining
21.8 to the underlying criminal case and require the forensic navigator to develop a bridge plan.

21.9 (c) If the court finds that there is not a substantial probability the defendant will attain
21.10 competency within the foreseeable future, the court may issue an order to the designated
21.11 agency in the county of financial responsibility or the county where the defendant is present
21.12 to conduct a prepetition screening pursuant to section 253B.07.

21.13 (d) If a hearing is held under this subdivision and the criteria pursuant to subdivision 1,
21.14 paragraphs (a) and (b) are satisfied, a party attempting to demonstrate that there is a
21.15 substantial probability that the defendant will attain competency within the foreseeable
21.16 future must prove by a preponderance of the evidence.

21.17 (e) If the court finds that there is not a substantial probability that the defendant will
21.18 attain competency within the foreseeable future, the court must dismiss the case unless:

21.19 (1) the person is charged with a violation of section 609.185 (murder in the first degree);
21.20 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20
21.21 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.2112
21.22 (criminal vehicular homicide); 609.2114, subdivision 1 (criminal vehicular operation, death
21.23 to an unborn child); 609.2661 (murder of an unborn child in the first degree); 609.2662
21.24 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in
21.25 the third degree); 609.2664 (manslaughter of an unborn child in the first degree); or 609.2665
21.26 (manslaughter of an unborn child in the second degree); or a crime of violence as defined
21.27 in section 624.712, subdivision 5, except for a violation of chapter 152; or

21.28 (2) there is a showing of a danger to public safety if the matter is dismissed.

21.29 (f) If the court does not dismiss the charges, the court must order continued supervision
21.30 under subdivision 3.

21.31 Subd. 3. Continued supervision. (a) If the court orders the continued supervision of a
21.32 defendant, any party may request a hearing on the issue of continued supervision by filing
21.33 a notice no more than ten days after the order for continued supervision.

22.1 (b) When continued supervision is ordered, the court must identify the supervisory
22.2 agency responsible for the supervision of the defendant, including but not limited to directing
22.3 a forensic navigator as the responsible entity.

22.4 (c) Notwithstanding the reporting requirements of section 611.46, subdivision 5, the
22.5 court examiner must provide an updated report to the court one year after the initial order
22.6 for continued supervision as to the defendant's competency and a description of the efforts
22.7 made to restore the defendant to competency. The court shall hold a review hearing within
22.8 30 days of receipt of the report.

22.9 (d) If continued supervision is ordered at the review hearing under paragraph (c), the
22.10 court must set a date for a review hearing no later than two years after the most recent order
22.11 for continuing supervision. The court must order review of the defendant's status, including
22.12 an updated competency examination and report by the court examiner. The court examiner
22.13 must submit the updated report to the court. At the review hearing, the court must determine
22.14 if the defendant has attained competency, whether there is a substantial probability that the
22.15 defendant will attain competency within the foreseeable future, and whether the absence of
22.16 continuing supervision of the defendant is a danger to public safety. Notwithstanding
22.17 subdivision 2, paragraph (e), the court may hear any motions to dismiss pursuant to the
22.18 interest of justice at the review hearing.

22.19 (e) The court may not order continued supervision for more than ten years unless the
22.20 defendant is charged with a violation of section 609.185 (murder in the first degree); 609.19
22.21 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter
22.22 in the first degree); 609.205 (manslaughter in the second degree); 609.2112 (criminal
22.23 vehicular homicide); 609.2114, subdivision 1 (criminal vehicular operation, death to an
22.24 unborn child); 609.2661 (murder of an unborn child in the first degree); 609.2662 (murder
22.25 of an unborn child in the second degree); 609.2663 (murder of an unborn child in the third
22.26 degree); 609.2664 (manslaughter of an unborn child in the first degree); or 609.2665
22.27 (manslaughter of an unborn child in the second degree); or a crime of violence as defined
22.28 in section 624.712, subdivision 5, except for a violation of chapter 152.

22.29 (f) At any time, the head of the program may discharge the defendant from the program
22.30 or facility. The head of the program must notify the court, prosecutor, defense counsel,
22.31 forensic navigator, and any entity responsible for the supervision of the defendant prior to
22.32 any planned discharge. Absent emergency circumstances, this notification shall be made
22.33 five days prior to the discharge. If the defendant is discharged from the program or facility
22.34 under emergency circumstances, notification of emergency discharge shall include a
22.35 description of the emergency circumstances and may include a request for emergency

23.1 transportation. The court shall make a determination on a request for emergency
23.2 transportation within 24 hours. Nothing in this section prohibits a law enforcement agency
23.3 from transporting a defendant pursuant to any other authority.

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

23.7 **Sec. 11. [611.50] DEFENDANT'S PARTICIPATION AND CONDUCT OF**
23.8 **HEARINGS.**

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

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

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

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

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

23.28 If the defendant is convicted, any time spent confined in a secured setting while being
23.29 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 proceed.

24.12 Subd. 3. Duties. (a) Forensic navigators shall be impartial in all legal matters relating
24.13 to the criminal case. Nothing shall be construed to permit the forensic navigator to provide
24.14 legal counsel as a representative of the court, prosecutor, or defense counsel. Forensic
24.15 navigators shall be required to report compliance and noncompliance with pretrial supervision
24.16 and any orders of the court.

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

24.19 (1) developing bridge plans;

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

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

24.22 (4) providing competency restoration education;

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

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

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

24.29 (8) providing consultation and education to court officials on emerging issues and
24.30 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. **Bridge plans.** (a) The forensic navigator must prepare bridge plans with the
25.5 defendant and submit them to the court. Bridge plans must be submitted before the time the
25.6 court makes a competency finding pursuant to section 611.45. The bridge plan must include:

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

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

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

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

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

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

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

25.23 (2) four members appointed by the governor, at least one of whom must be a mental
25.24 health professional with experience in competency restoration.

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 sections 611.40 to 611.59. Following the initial
25.31 terms of appointment, at least one member appointed by the supreme court must have
25.32 previous experience working as a forensic navigator. At least three members of the board

26.1 shall live outside the First, Second, Fourth, and Tenth Judicial Districts. The terms,
26.2 compensation, and removal of members shall be as provided in section 15.0575. The members
26.3 shall elect 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; and

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 245I.02, subdivision 27, 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;

27.31 (4) the president of the Minnesota Corrections Association or a designee;

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

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

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

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

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

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

28.12 Subd. 3. Meetings. At its first meeting, the advisory committee shall elect a chair and
28.13 may elect a vice-chair. The advisory committee shall meet at least monthly or upon the call
28.14 the chair. The advisory committee shall meet sufficiently enough to accomplish the tasks
28.15 identified in this section.

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

28.23 Sec. 4. [611.58] COMPETENCY RESTORATION CURRICULUM AND
28.24 CERTIFICATION.

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

28.28 (1) rationally consult with counsel;

28.29 (2) understand the proceedings; and

28.30 (3) participate in the defense.

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

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

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

29.12 Subdivision 1. **Availability and certification.** The board must provide or contract for
29.13 enough competency restoration services to meet the needs of adult defendants in each judicial
29.14 district who are found incompetent to proceed and do not have access to competency
29.15 restoration services as a part of any other programming in which they are ordered to
29.16 participate. The board, in consultation with the Certification Advisory Committee, shall
29.17 develop procedures to certify that the standards in this section are met, including procedures
29.18 for regular recertification of competency restoration programs. The board shall maintain a
29.19 list of certified competency restoration programs on the board's website to be updated at
29.20 least once every year.

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

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

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

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

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

30.1 Subd. 3. Jail-based competency restoration standards. Jail-based competency
30.2 restoration programs must be housed in correctional facilities licensed by the Department
30.3 of Corrections under section 241.021 and must:

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

30.7 (2) provide minimum mental health services including:

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

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

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

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

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

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

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

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

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

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

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

30.29 (b) By February 15 of each year, the board must report to the legislative committees and
30.30 divisions with jurisdiction over human services, public safety, and the judiciary on the data

31.1 collected under this subdivision and may include recommendations for statutory or funding
31.2 changes related to competency restoration.

31.3 ARTICLE 3

31.4 CONFORMING CHANGES AND APPROPRIATIONS

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

31.6 Subd. 2a. **Petition originating from criminal proceedings.** (a) If criminal charges are
31.7 pending against a defendant, the court shall order simultaneous competency and civil
31.8 commitment examinations in accordance with Minnesota Rules of Criminal Procedure, rule
31.9 20.04, when the following conditions are met:

31.10 (1) the prosecutor or defense counsel doubts the defendant's competency and a motion
31.11 is made challenging competency, or the court on its initiative raises the issue under section
31.12 611.42 or Rules of Criminal Procedure, rule 20.01; and

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

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

31.17 (b) Only a court examiner may conduct an assessment as described in section 611.43 or
31.18 Minnesota Rules of Criminal Procedure, rules 20.01, subdivision 4, and 20.02, subdivision
31.19 2.

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

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

32.1 shall assign the judge before whom the acquittal took place to hear the commitment
32.2 proceedings unless that judge is unavailable.

32.3 Sec. 2. Minnesota Statutes 2020, section 480.182, is amended to read:

32.4 **480.182 STATE ASSUMPTION OF CERTAIN COURT COSTS.**

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

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

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

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

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

32.12 (5) in forma pauperis costs;

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

32.15 (7) jury program costs; and

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

32.19 Sec. 3. **APPROPRIATION BASE ESTABLISHED.**

32.20 Subdivision 1. **Department of Corrections.** The general fund appropriation base for
32.21 the commissioner of corrections is \$202,000 in fiscal year 2024 and \$202,000 in fiscal year
32.22 2025 for correctional facilities inspectors.

32.23 Subd. 2. **District courts.** The general fund appropriation base for the district courts is
32.24 \$5,042,290 in fiscal year 2024 and \$5,042,290 in fiscal year 2025 for costs associated with
32.25 additional competency examination costs.

32.26 Subd. 3. **State Competency Restoration Board.** The general fund appropriation base
32.27 for the State Competency Restoration Board is \$11,350,000 in fiscal year 2024 and
32.28 \$10,900,000 in fiscal year 2025 for staffing and other costs needed to establish and perform
32.29 the duties of the State Competency Restoration Board, including providing educational

- 33.1 services necessary to restore defendants to competency, or contracting or partnering with
- 33.2 other organizations to provide those services.