

Rule 20. Mentally Ill or Cognitively Impaired Defendants**20.01 Competency Proceedings**

Subd. 1. Repealed September 20, 2024, eff. November 1, 2024.

Subd. 2. Repealed September 20, 2024, eff. November 1, 2024.

Subd. 3. Competency Issue Raised. (a) If the prosecutor, defense counsel, or the court, at any time before or after conviction, doubts the defendant's competency to proceed, the prosecutor or defense counsel must make a competency motion under Minnesota Statutes, section 611.42, or the court on its initiative must raise the issue. The defendant's consent is not required. If the defendant is without counsel, the court must appoint counsel for the defendant.

(b) If the court determines that there is a reasonable basis to doubt the defendant's competency and there is probable cause for the charge(s), the court must suspend the criminal proceedings and proceed as provided in Minnesota Statutes, chapter 611, governing Competency Proceedings.

(c) While the proceedings are suspended, the court must cease all hearings and decisions regarding the merits of the criminal charges but retains authority over other matters, including but not limited to establishing or modifying bail, conditions of release, probation conditions, and no contact orders, and appointing counsel in accordance with the relevant rules of criminal procedure, including Minn. R. Crim. P. 6.02.

(d) If there is a reasonable basis to doubt the defendant's competency, the most serious charge is a misdemeanor other than a targeted misdemeanor, and the court determines that ordering an examination of the defendant is not in the public interest, the court must dismiss the case.

(e) If the court finds by a preponderance of the evidence that a defendant is presently incompetent in proceedings occurring after conviction, including but not limited to probation violation proceedings, the court must suspend the proceedings and proceed under the provisions of Minnesota Statutes, chapter 611, governing Competency Proceedings, except that the conviction is not required to be vacated and the case is not required to be dismissed based on the finding of present incompetency.

Subd. 4. Examination and Report.

(a) Competency Examination.

(1) If a competency examination cannot be done on an outpatient basis, the court may order the defendant confined in a state hospital or other suitable facility for up to 60 days to complete the examination.

(2) If the prosecutor or defense counsel has retained a qualified examiner, the court, on request, must allow the qualified examiner to observe the examination and examine the defendant.

(3) Upon appointment of an examiner and without need of a court order, the court must provide the examiner a copy of the filed report of any prior competency, Rule 20.02, or civil commitment examination of the defendant. The court shall order known providers of care to the defendant to release records to the examiner via the method used in the providers' jurisdiction for records sharing. Examiners may request additional records as needed to complete the examination.

(4) If a defendant is entitled to release, the court must order the defendant to appear for an examination. If the defendant fails to appear for an examination, the court may amend the conditions of release and bail in accordance with Minn. R. Crim. P. 6.02, to require the defendant to appear for an examination, or order the defendant held for purposes of conducting the examination.

in accordance with the standard applied under Minnesota Statutes, section 253B.07, subdivision 2b, paragraph (a), clause (2).

(5) The court may order that a defendant participate in a jail-based competency attainment program only after considering the requirements set forth in Minnesota Statutes, section 611.46, subdivisions 1 and 4.

(b) Report of Examination.

(1) If an examiner is unable to complete the written report by the due date, the examiner must file a written request for an extension. The court must provide a copy of the request to the parties.

(2) The report must include the criteria found in Minnesota Statutes, section 611.43, subdivision 2, and must state the factual basis for the diagnosis and opinions.

(3) The court must promptly provide a copy of the report to the forensic navigator, prosecutor, and defense counsel. The court may order release of the report to other persons to assist in the defendant's treatment including but not limited to the defendant's mental health case managers, treatment providers, and supervising probation agents. The report must not be otherwise disclosed until the competency hearing. Once a competency finding is made, upon the request of a prosecutor or defense counsel, or on the court's own initiative, the court may order release of the competency report to jurisdictions where the defendant has criminal competency cases pending.

Subd. 5. Competency Hearing Procedures.

(a) Access to Records. If competency is contested, upon the request of either party, the court may order the examiner to furnish to the parties all records reviewed by the examiner(s).

(b) Hearing Order. The party that requested the competency hearing must present evidence first.

(c) Burden of Proof. The burden of proving competency by a preponderance of the evidence is on the party asserting that the defendant is competent.

(d) Examiner Testimony. Examiners may testify by remote means unless the court determines in-person testimony is necessary based on the facts and circumstances of the particular case.

Subd. 6. Procedure After a Finding of Incompetency.

If the defendant is found incompetent by a preponderance of the evidence, the court should comply with the procedures set forth in Minnesota Statutes, section 611.46. If the defendant is not under civil commitment, the court may issue an order directing the designated agency in the county where the criminal case is filed to conduct prepetition screening pursuant to the Minnesota Commitment and Treatment Act to make a recommendation on whether the defendant should be civilly committed under the Act. The prepetition screening team must prepare and send a written report to the county attorney and social services agency for that county within five days. The county attorney must determine whether a commitment petition should be filed and may file the petition in the district court on behalf of the county attorney, the designated agency, or another interested person. By agreement between county attorneys, the prepetition screening and county attorney's functions described in this paragraph may be handled in the county of financial responsibility or the county where the defendant is present.

(Amended effective July 1, 2015; amended effective September 1, 2018; amended effective November 1, 2024.)

20.02 Defense of Mental Illness or Cognitive Impairment - Mental Examination

Subd. 1. Authority to Order Examination. The trial court may order the defendant's mental examination if:

- (a) the defense notifies the prosecutor of its intent to assert a mental illness or cognitive impairment defense pursuant to Rule 9.02, subd. 1(5);
- (b) the defendant in a misdemeanor case pleads not guilty by reason of mental illness or cognitive impairment; or
- (c) the defendant offers evidence of mental illness or cognitive impairment at trial.

Subd. 2. Defendant's Examination. If the court orders a mental examination of the defendant, it must appoint at least one examiner as defined in Minnesota Statutes, chapter 253B, or successor statute, to examine the defendant and report to the court on the defendant's mental condition. The court may order the defendant to be confined to a hospital or other facility for up to 60 days to complete the examination if special need is shown. If any party has retained an examiner, the examiner must be permitted to observe the mental examination and examine the defendant.

Subd. 3. Defendant's Refusal to be Examined. If the defendant does not participate in the examination and thereby prevents the examiner from making an adequate report to the court, the court may:

- (a) prohibit the defendant from introducing evidence of the defendant's mental condition;
- (b) strike any previously introduced evidence of the defendant's mental condition;
- (c) permit any party to introduce evidence of the defendant's refusal to cooperate and to comment on it to the trier of fact;
- (d) make any other ruling as it deems just.

Subd. 4. Report of Examination. The examiner must forward a written examination report to the court. The court must provide copies of the report to the prosecutor and defense. The contents of the report must not otherwise be disclosed except as provided in this rule. The report must contain:

- (a) A diagnosis of the defendant's mental condition as requested by the court;
- (b) If directed by the court, an opinion as to whether, because of mental illness or cognitive impairment, the defendant, at the time of committing the alleged criminal act, was laboring under such a defect of reason as not to know the nature of the act or that it was wrong;
- (c) Any opinion requested by the court that is based on the examiner's diagnosis;
- (d) A statement of the factual basis on which the diagnosis and any opinion are based; and
- (e) If the examination could not be conducted because of the defendant's unwillingness to participate, an opinion, if possible, as to whether the defendant's unwillingness resulted from mental illness or cognitive impairment.

Subd. 5. Admissibility of Examination. Evidence derived from the examination is not admissible against the defendant unless the defendant has previously made his or her mental condition an issue in the case. If the defendant's mental condition is an issue, any party may call the court-appointed examiner to testify as a witness at trial, and the examiner is subject to cross-examination by any other party. The report or portions of it may be received in evidence to impeach the examiner.

Subd. 6. Admissibility of Defendant's Statements. When a defendant is examined under Rule 20.01, Rule 20.02, or both, the admissibility at trial of any statements the defendant made for the purpose of the examination and any evidence derived from the statements must be determined by the following rules.

(1) Sole Defense of Mental Condition. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of intent to rely solely on the defense of mental illness or cognitive impairment, or if the defendant in a misdemeanor case relies solely on the plea of not guilty by reason of mental illness or cognitive impairment under Rule 14.01(c), statements the defendant made for the purpose of the mental examination and evidence derived from the statements are admissible at the trial on the issue of the defendant's mental condition.

(2) Multiple Defenses. If a defendant relies on the defense of mental illness or cognitive impairment together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or cognitive impairment, the statements the defendant made for the purpose of the mental examination and any evidence derived from the statements are admissible against the defendant only at the mental illness or cognitive impairment stage of the trial.

Subd. 7. Trial Procedure for Multiple Defenses.

(a) Order of Proof. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of intent to rely on the defense of mental illness or cognitive impairment together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or cognitive impairment, the court must separate the two defenses. The defense of not guilty must be heard and determined first. The defense of mental illness or cognitive impairment must be heard and determined second.

(b) Jury Instructions. The jury must be informed at the start of the trial that:

- (1) the defendant has offered two defenses;
- (2) the defense of not guilty will be tried first and the defense of mental illness or cognitive impairment will be tried second;
- (3) if the jury finds that the elements of the offense have not been proved, the defendant will be acquitted;
- (4) if the jury finds the elements of the offense have been proved then the defense of mental illness or cognitive impairment will be tried and determined by the jury.

(c) Proof of Elements - Effect. The court or jury must determine whether the elements of the offense have been proved beyond a reasonable doubt. If the elements of the offense have not been proved, a judgment of acquittal must be entered.

If the defendant has been convicted in the guilt phase, then the defense of mental illness or cognitive impairment must be tried. The jury must render a verdict or the court make a finding of:

- (1) not guilty by reason of mental illness;
- (2) not guilty by reason of cognitive impairment; or
- (3) guilty.

The defendant bears the burden of proving mental illness or cognitive impairment by a preponderance of the evidence.

Subd. 8. Effect of Not Guilty by Reason of Mental Illness or Cognitive Impairment.

(1) Mental Illness or Cognitive Impairment. When a defendant is found not guilty by reason of mental illness or cognitive impairment, and the defendant is under civil commitment as mentally ill or developmentally disabled, the court must order the commitment to continue. If the defendant is not under commitment, a petition for commitment must be filed by the county attorney in the county in which the acquittal took place. The court must order the defendant to be detained in a state hospital or other facility pending completion of the proceedings. In felony and gross misdemeanor cases, the court must supervise the commitment as provided in Rule 20.02, subd. 8(4).

(2) Continuing Supervision. In felony and gross misdemeanor cases, the court and the prosecutor must be notified of any proposed institutional transfer, partial hospitalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The prosecutor has the right to participate as a party in any proceedings concerning proposed changes in the defendant's civil commitment or status.

(Amended effective September 1, 2018.)

20.03 Disclosure of Reports and Records of Defendant's Mental Examinations

Subd. 1. Disclosure Order. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of an intent to rely on the defense of mental illness or cognitive impairment, the court, on the prosecutor's motion with notice to defense counsel, may order the defendant to furnish to the court for in camera review or to the prosecutor copies of all medical reports and records previously or subsequently made concerning the defendant's mental condition that are relevant to the mental illness or cognitive impairment defense. The court must inspect any reports and records furnished to it, and if the court finds them relevant, order them disclosed to the prosecutor. Otherwise, they must be returned to the defendant.

A subpoena duces tecum may be issued under Rule 22 if the defendant cannot comply with the court's disclosure order.

Subd. 2. Use of Reports and Records. Reports and records furnished to the prosecutor under Rule 20.03, subd. 1, and any evidence obtained from them, may be admitted in evidence only on the defense of mental illness or cognitive impairment when it is the sole defense, or during the mental illness or cognitive impairment phase when there are multiple defenses, as specified by Rule 20.02, subd. 7.

(Amended effective July 1, 2015; amended effective September 1, 2018.)

20.04 Simultaneous Examinations

(a) The court must not order that a competency examination and an examination under Rule 20.02 be done simultaneously, unless one of the specific grounds for ordering an examination under Rule 20.02, subdivision 1, exists, and ordering simultaneous examinations is warranted based on the facts and circumstances of the specific case. If a simultaneous competency and Rule 20.02 examination is ordered, the examiner must not proceed with the Rule 20.02 examination if, based on the competency examination, the examiner's opinion and recommendation is that the defendant be found incompetent.

(b) The court in a criminal case must not order a civil commitment examination under Minnesota Statutes, chapter 253B, or successor statute.

(Amended effective November 1, 2024.)

Comment - Rule 20

Competency proceedings are governed by Minnesota Statutes, sections 611.40 to 611.59, as supplemented by these rules.

As required by Minnesota Statutes, section 253B.24, the court must electronically transmit any finding of incompetency to the National Instant Criminal Background Check System.

Rule 20.01, subd. 4(a)(3), provides that the examiners may obtain and review any reports of prior examinations conducted under the rule. This includes prior reports conducted under both Rules 20.01 and 20.02. This express authorization, which was adopted in 2005, is intended merely to clarify the rule and not to change it. The provision was modified in 2024 to include reports of prior civil commitment examinations.

No limitation exists for the time or number of hearings that may be held to determine the defendant's competency.

The definitions of mental illness and cognitive impairment contained in Minnesota Statutes, section 611.026, and its judicial interpretations are not affected by these rules.

Rule 20.02, subd. 8, addresses the constitutional requirements of equal protection and due process. No continuing supervision by the trial court exists in misdemeanor cases.