

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 3728

(SENATE AUTHORS: ABELER, Bigham and Housley)		
DATE	D-PG	OFFICIAL STATUS
03/03/2022	5206	Introduction and first reading Referred to Human Services Reform Finance and Policy
03/10/2022	5274a	Comm report: Amended, No recommendation, re-referred to Judiciary and Public Safety Finance and Policy

1.1

A bill for an act

1.2

relating to judiciary; establishing statutory procedure to assess competency of

1.3

defendant to stand trial; providing for contested hearings; establishing forensic

1.4

navigators; requiring forensic navigators to provide services to certain defendants;

1.5

establishing continuing supervision for certain defendants found incompetent to

1.6

stand trial; authorizing administration of neuroleptic medications; establishing

1.7

requirements to restore certain defendants to competence; establishing planning

1.8

and implementation committee; establishing certification program for competence

1.9

restoration programs; establishing a juvenile competency restoration task force;

1.10

requiring a report; appropriating money; proposing coding for new law in Minnesota

1.11

Statutes, chapter 628.

1.12

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

1.13

Section 1. [628.70] APPLICATION.

1.14

Notwithstanding rule 20.01 of the Rules of Criminal Procedure, sections 628.70 to 628.88

1.15

shall govern the proceedings when competence to proceed is at issue in any nonjuvenile

1.16

criminal proceeding.

1.17

Sec. 2. [628.71] DEFINITIONS.

1.18

(a) As used in this chapter, the following terms have the meanings given.

1.19

(b) "Cognitive impairment" means any deficiency in the ability to think, perceive, reason,

1.20

or remember caused by injury, genetic condition, or brain abnormality.

1.21

(c) "Competence restoration program" means a structured program of clinical and

1.22

educational services that is certified by the Department of Human Services and designed

1.23

to restore the competence of a defendant found incompetent to stand trial.

1.24

(d) "Examiner" means a person who:

(1) is a licensed psychiatrist or a licensed psychologist with a doctoral degree in psychology;

(2) is currently practicing in the field of psychology, psychiatry, or other profession involving the diagnosis and treatment of mental illness or cognitive impairment; and

(3) has specific training in the diagnosis and assessment or treatment of the alleged impairment.

(e) "Forensic navigator" means a neutral mental health professional appropriately certified under section 628.76, subdivision 4, who is appointed by the court to provide the services described in section 628.76 and serves as a coordinator between the court, defendant, and the parties.

(f) "Jail-based program" means a competence restoration program that operates within a correctional facility licensed by the commissioner of corrections under section 241.021 that provides a separate housing unit which, at a minimum, meets the capacity standards governing jail facilities. A jail-based program may not be granted a variance to exceed its operational bed capacity.

(g) "Mental illness" means an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory.

(h) "Secure treatment facility" means a state, county, or privately operated locked facility with a competence restoration program that is licensed or operated by the Minnesota Department of Human Services.

(i) "Suspend the criminal proceedings" means nothing can be heard or decided on the merits of any criminal charge. The court retains jurisdiction in all other matters, including but not limited to bail, conditions of release, probation conditions, no contact orders, and appointment of counsel.

Sec. 3. [628.72] COMPETENCE TO PARTICIPATE.

A defendant is incompetent and shall not plead, be tried, or be sentenced if due to mental illness or cognitive impairment the defendant lacks the sufficient present ability to:

(1) rationally consult with counsel;

(2) understand the proceedings; or

(3) participate in the defense.

3.1 Sec. 4. **[628.73] COMPETENCE MOTION.**

3.2 (a) If the prosecutor, defense counsel, or the court at any time doubts the defendant's
3.3 competence, the prosecutor or defense counsel shall make a motion challenging the
3.4 defendant's competence, or the court on its initiative shall raise the issue. The defendant's
3.5 consent is not required. The motion shall be supported by specific facts, but shall not include
3.6 communications between the defendant and defense counsel if disclosure would violate the
3.7 attorney-client privilege. By bringing the motion, the defendant does not waive the
3.8 attorney-client privilege.

3.9 (b) Upon the receipt of a motion, the court must make a finding that reason exists to
3.10 doubt the defendant's competence. The court shall then determine whether there is probable
3.11 cause for the charge. If probable cause exists, the court shall suspend the criminal proceedings
3.12 and order an examination of the defendant pursuant to section 628.74. If no probable cause
3.13 exists, the charges shall be dismissed.

3.14 (c) If the court determines that reason exists to doubt the defendant's competence, a
3.15 defendant must not be allowed to waive counsel until the court enters a finding that the
3.16 defendant is competent. If the defendant is not represented by counsel at the time the court
3.17 determines that competence may be at issue, the court shall appoint counsel for the
3.18 proceedings under sections 628.70 to 628.88.

3.19 (d) If the court determines that reason exists to believe that competence may be at issue,
3.20 the court may appoint a forensic navigator to provide forensic navigator services for the
3.21 defendant.

3.22 (e) If the defendant is out of custody, the court shall impose conditions of release pursuant
3.23 to rule 6.02 of the Rules of Criminal Procedure to be monitored by the entity or agency
3.24 assigned to conduct such supervision and report violations to the court. The entity tasked
3.25 with the pretrial supervision of the defendant is responsible for the supervision of the
3.26 defendant until ordered otherwise by the court.

3.27 Sec. 5. **[628.74] COMPETENCE EXAMINATION AND REPORT.**

3.28 Subdivision 1. **Competence examination.** (a) The court shall appoint an examiner as
3.29 defined in this section to examine the defendant and report to the court on the defendant's
3.30 mental condition as outlined in subdivision 3. If the prosecutor or defense counsel has
3.31 retained a qualified examiner, the court, upon request, shall allow that examiner to observe
3.32 any examination under this section. While an examiner is appointed or retained to examine

4.1 a defendant, the examiner may obtain and review the report of any prior or subsequent
4.2 examination of the defendant.

4.3 (b) The court shall order the defendant to participate in any approved examination as
4.4 follows:

4.5 (1) if the defendant is in custody, the examination shall be completed where the defendant
4.6 is being held, or the court may order that the defendant be confined in an available secure
4.7 treatment facility for up to 30 days to complete the examination. The time for the examination
4.8 may be extended for good cause unless the defendant is in custody on a misdemeanor charge.
4.9 If the defendant is in custody on a misdemeanor charge, the defendant shall be released
4.10 within 24 hours after the examination or after 30 days, whichever is less; or

4.11 (2) if the defendant is not in custody, the court shall order the defendant to appear for
4.12 the purpose of any approved examination. The examination shall occur within 60 days of
4.13 the order for examination. If the defendant fails to appear at an examination, the court may
4.14 amend conditions of release. The time for the examination may be extended for good cause.

4.15 (c) If any examiner concludes that the defendant presents an imminent risk of harm to
4.16 self or others, or otherwise needs emergency intervention, the examiner shall promptly
4.17 notify the prosecutor, defense counsel, court, and any party responsible for the care and
4.18 custody of the defendant.

4.19 Subd. 2. **Report of examination.** (a) The court-appointed examiner's written report shall
4.20 be filed with the court and served on the prosecutor and defense counsel within 15 days of
4.21 the date of the examination. The deadline for filing the written report may be extended for
4.22 good cause.

4.23 (b) The report shall include:

4.24 (1) any diagnosis of the defendant's mental condition, and the factual basis for the
4.25 diagnosis and opinions, including the results of any testing conducted with the defendant;
4.26 and

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

4.28 (i) the defendant's competence to participate as described in section 628.72;

4.29 (ii) any treatment, care, or education required for the defendant to attain or maintain
4.30 competence and an explanation of appropriate treatment alternatives by order of preference,
4.31 including:

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

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

(C) whether the defendant poses a likelihood of harm to self or others or otherwise poses a risk to public safety; and

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

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

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

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

Subd. 3. **Additional examination.** If either party intends to retain an independent examiner, the party shall give notice to the court and opposing counsel within ten days of receiving the court-appointed examiner's report. If an additional examiner is retained, that examiner's report shall be filed within 30 days of the filing of the notice, unless extended by the court for good cause.

Sec. 6. [628.75] COMPETENCE DETERMINATION.

Subdivision 1. **Request for hearing.** (a) Either party may request a hearing on the examiner's competence determination by filing objections to the competence report within ten days after filing of the report. The hearing shall be held within 30 days of the request, unless extended upon agreement of the parties or by the court for good cause.

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

Subd. 2. **Contested competence hearing.** (a) The court may admit all relevant and reliable evidence. The court-appointed examiner is considered the court's witness and may be called and questioned by the court or either party. The report of any court-appointed examiner shall be admitted into evidence without further foundation.

6.1 (b) Defense counsel may testify, subject to the prosecutor's cross-examination, but shall
6.2 not violate the attorney-client privilege. Testifying does not automatically disqualify defense
6.3 counsel from continuing to represent the defendant. The court may inquire of defense counsel
6.4 regarding the attorney-client relationship and the defendant's ability to communicate with
6.5 counsel. The court shall not require counsel to divulge communications protected by the
6.6 attorney-client privilege, and the prosecutor cannot cross-examine defense counsel concerning
6.7 responses to the court's inquiry.

6.8 Subd. 3. **Determination without hearing.** If no party timely files an objection and the
6.9 court does not hold a competence hearing, the court shall determine the defendant's
6.10 competence on the basis of any report submitted by an approved examiner.

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

6.13 Sec. 7. **[628.76] COMPETENCE FINDINGS.**

6.14 Subdivision 1. **Timeline.** The court shall enter a ruling on the issue of the defendant's
6.15 competence to stand trial within seven days after the examiner's report is submitted to the
6.16 court. If there is a contested hearing, the court shall enter a ruling within 14 days after the
6.17 conclusion of the hearing.

6.18 Subd. 2. **Finding of competence.** If the court finds the defendant competent, the court
6.19 shall enter a written order and the criminal proceeding shall resume.

6.20 Subd. 3. **Finding of incompetence.** If the court finds by a preponderance of the evidence
6.21 that the defendant is incompetent to proceed, the court shall enter a written order and the
6.22 matter shall proceed pursuant to section 628.78.

6.23 Subd. 4. **Appointment of forensic navigator.** Upon a finding of incompetence, the
6.24 court shall appoint a forensic navigator to provide forensic navigator services for the
6.25 defendant. The court shall order that the forensic navigator has access to data as authorized
6.26 under section 628.77, subdivision 5.

6.27 Subd. 5. **Appeal.** Any party may appeal a competence determination to the court of
6.28 appeals. The appeal is governed by rule 28 of the Rules of Criminal Procedure. A verbatim
6.29 record shall be made in all competence proceedings.

6.30 Sec. 8. **[628.77] FORENSIC NAVIGATOR.**

6.31 Subdivision 1. **Purpose.** (a) A forensic navigator appointed to provide services to a
6.32 defendant shall assist the defendant in accessing services related to competence restoration

and competence maintenance. The forensic navigator must advise the defendant, prosecutor, defense counsel, and court on the options available for restoring and maintaining competence and for any other relevant services. The forensic navigator is accountable as an officer of the court for faithful execution of the responsibilities outlined in this section.

(b) Forensic navigator services are terminated:

(1) 90 days after the filing of a court order discharging the forensic navigator unless the court order provides a different date;

(2) 90 days after the defendant's charges are dismissed; or

(3) 90 days after the defendant is found competent pursuant to section 628.76 or 628.80.

Subd. 2. **Duties.** The duties of the forensic navigator include, but are not limited to the following:

(1) collecting relevant information about the individual, including behavioral health services and supports available to the individual that might support placement in outpatient restoration;

(2) meeting with, interviewing, and observing the individual;

(3) presenting information to the court to assist the court in understanding the treatment options available to the individual for competence restoration and to facilitate access to services;

(4) when the individual is ordered to a secure treatment facility or jail-based program, providing services to the individual, including but not limited to:

(i) reporting to the court concerning the individual's progress and compliance with court-ordered conditions, which may include appearing at court hearings to provide information to the court;

(ii) assisting with coordination of court dates and any other off-site appointments; and

(iii) planning for an eventual coordinated transition of the individual to an outpatient restoration program or community behavioral system;

(5) when the individual is ordered to receive community outpatient restoration, providing services to the individual, including but not limited to:

(i) assisting the individual with attending appointments and classes relating to outpatient competency restoration;

(ii) coordinating access to housing for the individual;

8.1 (iii) meeting with the individual on a regular basis;

8.2 (iv) reporting to the court on the individual's progress and compliance with court-ordered
8.3 conditions of release, which may include appearing at court hearings to provide information
8.4 to the court;

8.5 (v) coordinating the individual's access to community case management services and
8.6 mental health services;

8.7 (vi) assisting the individual with obtaining prescribed medication and encouraging
8.8 adherence with prescribed medication;

8.9 (vii) planning for a coordinated transition of the individual to a case manager in a
8.10 community behavioral health system;

8.11 (viii) attempting to follow-up with the individual to ensure the transition to the
8.12 community-based case manager occurred; and

8.13 (ix) coordinating assistance with community services and programs to meet the specific
8.14 needs of individuals involved in the criminal justice system, including but not limited to
8.15 mental health treatment, substance use disorder treatment, insurance, medical and dental
8.16 care, medication, housing, financial, social, transportation, and opportunities for diversion;

8.17 (6) developing and administering bridge plans when necessary; and

8.18 (7) partnering and collaborating with county social services, community-based programs,
8.19 jails, and any other resource available to provide referrals to services.

8.20 Subd. 3. **Bridge plans.** (a) Upon receiving notice that forensic navigator services will
8.21 be terminated, the forensic navigator must prepare a bridge plan to assist the defendant in
8.22 attaining or maintaining stability and accessing any appropriate treatment or services in the
8.23 community. The forensic navigator shall prepare the bridge plan with the defendant. A copy
8.24 of the bridge plan must be submitted to the court. The bridge plan must include:

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

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

8.31 (3) any other referrals, resources, or recommendations the forensic navigator deems
8.32 necessary.

(b) Data on individuals collected as part of a bridge plan by any person or entity subject to the provisions of chapter 13 are private under section 13.46. Bridge plans, supporting documents, and any data on individuals collected as part of a bridge plan by the judicial branch are not accessible to the public.

Subd. 4. **Certification.** (a) By July 1, 2023, the judicial branch and the Department of Human Services must establish a certification and continuing education program for forensic navigators, including a process for renewing certification and a regularly updated list of certified forensic navigators.

(b) The program must include a training and education curriculum to certify mental health professionals as defined in section 245.462, subdivision 18; mental health practitioners as defined in section 245.462, subdivision 17; case management service providers as defined in section 245.462, subdivision 4; and peer specialists as defined in section 256B.0615, including the following topics:

(1) the criminal justice system, courts, and legal processes;

(2) the competence restoration process in Minnesota and the not guilty by reason of mental illness or cognitive impairment defense;

(3) the civil commitment process in Minnesota;

(4) housing options, supports, and assistance for people experiencing housing insecurity; and

(5) implicit bias and cultural humility.

(c) The program must include training to deliver the competence restoration curriculum certified by the judicial branch.

(d) The judicial branch and Department of Human Services may develop a certification program for individuals who are not described in paragraph (b). The program shall include those topics identified under paragraphs (b) and (c) and:

(1) the symptoms of mental illnesses, substance use disorders, and co-occurring disorders;

(2) the mental health system in Minnesota;

(3) the substance use disorder system in Minnesota;

(4) crisis intervention; and

(5) motivational interviewing.

10.1 Subd. 5. **Information sharing.** (a) Forensic navigators shall have access to not public
10.2 data, as defined in section 13.02, and medical records under sections 144.291 to 144.298,
10.3 that are maintained by facilities to the extent necessary to conduct their review. The chemical
10.4 dependency records shall be disclosed pursuant to Code of Federal Regulations, title 42,
10.5 part 2. Any further disclosure of this information is prohibited unless further disclosure is
10.6 expressly permitted by the written consent of the patient or as otherwise permitted by Code
10.7 of Federal Regulations, title 42, part 2.

10.8 (b) By presentation of the order issued pursuant to section 628.76, subdivision 2, whether
10.9 mailed, facsimile, or personally delivered, any agency, department, or health care provider
10.10 shall release all information and records, including medical, psychological, behavioral,
10.11 chemical dependency, social service, probation and correction, developmental disability,
10.12 employment, and educational to the forensic navigator or the forensic navigator's designee
10.13 for the purpose of review and compliance with this chapter.

10.14 Sec. 9. **[628.78] INCOMPETENT TO STAND TRIAL AND CONTINUING**
10.15 **SUPERVISION.**

10.16 Subdivision 1. **Procedures on finding of incompetence.** (a) If the court finds the
10.17 defendant incompetent and suspends the criminal proceedings, the court shall determine
10.18 from any relevant information available whether the defendant poses a danger to public
10.19 safety. After making its determination, the court shall follow the procedures outlined in
10.20 subdivision 2 or 3 as required.

10.21 (b) The criminal court making the finding of incompetence has jurisdiction to order a
10.22 placement regardless of the defendant's county of residence or the county of financial
10.23 responsibility. All monetary and nonmonetary conditions of release shall continue in full
10.24 force and effect, including any no contact provisions, so long as the defendant remains
10.25 incompetent to stand trial. If the defendant is out of custody and no conditions of release
10.26 have previously been ordered, the court shall order conditions of release pursuant to rule
10.27 6.02 of the Rules of Criminal Procedure.

10.28 (c) Each district shall assign an entity or agency to conduct such supervision and report
10.29 violations to the court. The entity tasked with the pretrial supervision of the defendant is
10.30 responsible for the supervision of the defendant until ordered otherwise by the court.

10.31 (d) A court may order a defendant to make all future court appearances, attend an
10.32 identified competence restoration program, and appear for additional competence
10.33 examinations independent of any conditions of pretrial release. Such an order does not
10.34 prohibit similar requirements as a condition of pretrial release or probation.

11.1 (e) A defendant is eligible to participate in jail-based programming if the defendant has
11.2 been found incompetent and a court makes a finding that jail-based programming is the
11.3 least restrictive setting to meet the defendant's needs.

11.4 Subd. 2. **Community-based competence restoration.** (a) If the court finds the defendant
11.5 does not pose a risk to public safety and is otherwise qualified for pretrial release, the court
11.6 shall schedule a status hearing to take place within 12 days and order the forensic navigator
11.7 to issue a report detailing out of custody recommendations for the defendant.

11.8 (b) The forensic navigator shall report within ten days, in writing, to the court with a
11.9 recommendation as to placement or services that are appropriate to restore the defendant
11.10 to competence and protect public safety. The forensic navigator shall also identify the agency
11.11 or party responsible for monitoring the conditions and informing the court if there are any
11.12 violations of conditions of release.

11.13 (c) The court shall distribute the forensic navigator's report to the parties 48 hours prior
11.14 to the status hearing. The status hearing may be continued for good cause for up to an
11.15 additional 14 days. If the status hearing does not take place within 14 days, the court shall
11.16 order interim placement based on the information available.

11.17 (d) Upon conclusion of the status hearing, the court shall review the conditions of release.
11.18 The court shall order the defendant into a competence restoration program as a condition
11.19 of release.

11.20 (e) Upon application by the prosecutor, the agency assigned to supervise a defendant or
11.21 its designee, or court services, alleging that the defendant violated a condition of release,
11.22 the court shall follow the procedures within rule 6 of the Rules of Criminal Procedure. Any
11.23 hearing on the alleged violation of release conditions shall be held within 15 days of the
11.24 issuance of a summons or apprehension on the warrant.

11.25 Subd. 3. **In-custody competence restoration.** (a) If the court finds that the defendant
11.26 poses a risk to public safety, or that the defendant is otherwise not qualified for pretrial
11.27 release, the court shall order the defendant to a secure treatment facility or jail-based program
11.28 where the defendant shall receive the appropriate care, education, and treatment to restore
11.29 the defendant to competence.

11.30 (b) If the defendant is in custody at the time of the finding of incompetence, the defendant
11.31 shall be transported to the secure treatment facility or a jail-based program pursuant to
11.32 section 628.74 within 72 hours, excluding weekends and holidays, of the finding of
11.33 incompetence.

12.1 (c) A defendant under this section must not be ordered to participate in a secure treatment
12.2 facility or jail-based program for a total number of days that exceeds the maximum term
12.3 provided by law for the offense for which the defendant was charged.

12.4 Subd. 4. **Report requirement.** (a) Within 90 days of filing of the order finding the
12.5 defendant incompetent, and every six months thereafter, the court shall appoint an examiner
12.6 to provide to the court a written report pursuant to section 628.74, subdivision 2, paragraph
12.7 (b), and the following:

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

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

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

12.11 (i) whether the defendant meets the criteria for civil commitment under one or more of
12.12 the provisions in section 253B.02, subdivision 2, 17, 17a, or 17b; and

12.13 (ii) whether the administration of neuroleptics pursuant to section 628.77 should be
12.14 initiated or continued.

12.15 (b) The court shall furnish copies of these reports to the prosecutor and defense counsel.

12.16 Sec. 10. **[628.79] ADMINISTRATION OF NEUROLEPTIC MEDICATIONS.**

12.17 Subdivision 1. **Application.** This section applies to a defendant who has been determined
12.18 to be incompetent to proceed in a criminal matter and is presently in a competence restoration
12.19 program.

12.20 Subd. 2. **Medication refusal.** (a) At any time after a defendant has been found
12.21 incompetent to proceed and ordered into a competence restoration program, a request may
12.22 be made for the administration of neuroleptic medications. If the defendant is not consenting
12.23 to, lacks the capacity to consent, or is not responding to treatment and is unlikely to be
12.24 restored to competence without the administration of psychiatric medication over the
12.25 defendant's objection, the director of the treatment facility or defendant's treatment provider
12.26 may request that the court order the administration of neuroleptic medications.

12.27 (b) The request shall be in writing and shall address whether:

12.28 (1) medication is necessary to render the defendant competent;

12.29 (2) medication is substantially likely to render the defendant competent;

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

13.1 (4) no less intrusive means of treatment are available; and

13.2 (5) medication is medically appropriate and is in the defendant's best medical interest
13.3 in light of the defendant's medical condition.

13.4 (c) The director or provider shall also state in the request a description of the defendant's
13.5 diagnosis and whether less intrusive means of treatment have been attempted to render the
13.6 defendant competent.

13.7 Subd. 3. **Independent examiner.** Upon receipt of the request, the court shall appoint
13.8 an independent examiner to provide a written report addressing factors listed in subdivision
13.9 2, paragraph (b). The report shall be submitted at least 48 hours before a hearing.

13.10 Subd. 4. **Hearing.** (a) The court shall hold a hearing within 14 days of the filing of the
13.11 request. By agreement of the parties or for good cause, the court may extend the time for
13.12 the hearing up to 14 additional days.

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

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

13.16 (2) any involuntary medication proposed:

13.17 (i) is substantially likely to render the defendant competent to proceed in the criminal
13.18 matter; and

13.19 (ii) is not substantially likely to produce side effects that would significantly interfere
13.20 with the defendant's ability to assist the defense counsel in conducting the defendant's
13.21 defense;

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

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

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

13.27 (c) The court shall weigh the factors listed in paragraph (b) against the defendant's interest
13.28 to be free from unwanted medical treatment based on the following:

13.29 (1) whether the defendant demonstrates an awareness of the nature of the defendant's
13.30 situation, including the reasons for hospitalization;

14.1 (2) whether the defendant demonstrates an understanding of treatment with neuroleptic
14.2 medications and the risks, benefits, and alternatives; and

14.3 (3) whether the defendant communicates verbally or nonverbally a clear choice regarding
14.4 treatment with neuroleptic medications that is a reasoned one not based on delusion.

14.5 (d) The court may base its decision on relevant and admissible evidence, including
14.6 reliable hearsay, the testimony of a treating physician or other qualified physician, a member
14.7 of the defendant's treatment team or treatment provider, a court-appointed examiner, witness
14.8 testimony, or the defendant's treatment records.

14.9 Subd. 5. **Findings; order.** (a) If the court finds by preponderance of the evidence that
14.10 the involuntary administration of psychiatric medication to a defendant under this section
14.11 is necessary and appropriate, it shall make findings addressing each of the factors in
14.12 subdivision 4, paragraphs (b) and (c), and shall issue an order authorizing the administration
14.13 of psychiatric medication to the defendant over the defendant's objection to restore the
14.14 defendant to competence.

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

14.19 (c) If physical force is required to administer the neuroleptic medication, the facility or
14.20 program may only use injectable medications. If physical force is needed to administer the
14.21 medication, medication may only be administered in a setting where the person's condition
14.22 can be reassessed and medical personnel qualified to administer medication are available,
14.23 including in the community, a jail-based program, or a secure treatment facility. The facility
14.24 or program may not use a nasogastric tube to administer neuroleptic medication involuntarily.

14.25 Subd. 6. **Emergency administration.** A treating physician may administer neuroleptic
14.26 medication to a defendant if the treating physician determines that the medication is necessary
14.27 to prevent serious, immediate physical harm to the defendant or to others. Medication may
14.28 be administered for as long as the emergency continues to exist, up to 14 days. The treating
14.29 physician may continue the medication through the date of the first court hearing under this
14.30 section if a request has been filed and the emergency continues to exist. The treatment
14.31 facility shall document the emergency in the defendant's medical record in specific behavioral
14.32 terms.

Sec. 11. **[628.80] PROCEDURES UPON RESTORATION TO COMPETENCE.**

Subdivision 1. Restoration. (a) When the head of the competence restoration program believes a defendant is competent, the head of the program shall send a written report to the court setting forth the basis for that opinion. The report may also make recommendations for continued treatment to ensure continued competence. If the defendant is found guilty, these recommendations may be considered by the court in imposing a sentence, including any conditions of probation.

(b) The court shall promptly provide copies of this report to the prosecutor and the defense counsel. Within ten days of receiving such report, either party may request, in writing, a hearing on the issue of whether the defendant has been restored to competence.

Subd. 2. Request for hearing on restoration to competence. (a) If a hearing on the defendant's restoration to competence is requested, the court shall schedule a hearing within 30 days of the filing of the request, unless extended upon agreement of the parties or for good cause.

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

Subd. 3. Procedures on hearing on restoration to competence. (a) The party who requested the competence hearing shall present evidence first.

(b) The court may admit all relevant and reliable evidence, including the report from the competence restoration program. The examiner who authored the report stating that the defendant had been restored to competence is considered the court's witness and may be called and cross-examined by any party. The report of any court-appointed examiner shall be admitted into evidence without further foundation.

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

Subd. 4. Burden of proof and decision. If the court finds by preponderance of the evidence that the defendant has been restored to competence, the court shall enter an order

finding the defendant competent. Otherwise, the court shall enter an order finding that the defendant remains incompetent and shall refer the defendant for continued treatment subject to section 628.78.

Subd. 5. **Determination without a hearing.** If no contested competence hearing is requested, upon the expiration of the ten-day period, the court shall make a determination whether the defendant has been restored to competence based solely on the report from the competence restoration program. The court shall address any conditions of release or change in custody of the defendant and shall set the matter on for further criminal proceedings.

Sec. 12. **[628.81] REQUEST FOR CHANGES IN SUPERVISION.**

(a) The prosecutor, defense counsel, forensic navigator, or person charged with the defendant's supervision shall request that the court approve any changes to the defendant's placement, conditions of release, or both. Notice of the proposed changes must be given to both parties, the court, and the forensic navigator. Either party or the court may object to the proposed changes within seven days.

(b) If either party or the court object to the proposed changes, the court must schedule a hearing to occur within 14 days to review the defendant's competence restoration programming, any conditions of release, or both. The court may issue orders for access by the parties to information or records referenced in this chapter. The forensic navigator must be given notice of the hearing and be allowed to participate.

(c) No changes to the defendant's placement or conditions of release may occur prior to the expiration of the notice period unless permitted by the court.

Sec. 13. **[628.82] CONCURRENT FILING.**

If the report under section 628.78 provides an opinion that the defendant is unlikely to be restored to competence, nothing in that section precludes or impedes the prosecutor's ability to proceed concurrently under chapter 253B. Upon request of the prosecutor, the court shall order the report released to the prepetition screening team.

Sec. 14. **[628.83] DISMISSAL OF CRIMINAL CHARGE.**

Subdivision 1. **Felonies.** Except when the defendant is charged with murder, felony-level criminal charges shall be dismissed three years after the date on which the defendant was found incompetent to proceed unless the defendant is found competent by the court prior to the expiration of three years or the prosecutor, before the expiration of the three-year period, files a notice of intent to prosecute when the defendant regains competence.

17.1 Subd. 2. **Gross misdemeanors.** Gross misdemeanor criminal charges shall be dismissed
17.2 120 days after the date of finding the defendant incompetent to proceed unless before that
17.3 date the defendant is found competent by the court or the prosecutor files a notice of intent
17.4 to prosecute when the defendant regains competence. If a notice of intent to prosecute is
17.5 filed, the charges shall be dismissed when the defendant would be entitled under these rules
17.6 to custody credit of at least one year if convicted or three years after the date of finding the
17.7 defendant incompetent to proceed.

17.8 Subd. 3. **Misdemeanors.** Misdemeanor criminal charges shall be dismissed after receipt
17.9 of the 90-day report under section 628.78, subdivision 4, unless the defendant becomes
17.10 competent prior to that date or the defendant is charged with a misdemeanor as listed in
17.11 section 299C.10, subdivision 1, paragraph (e). If the defendant is charged with a misdemeanor
17.12 listed in section 299C.10, subdivision 1, paragraph (e), the procedures under subdivision 2
17.13 of this section apply.

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

17.17 Sec. 15. **[628.84] DEFENDANT'S PARTICIPATION AND CONDUCT AT**
17.18 **HEARINGS.**

17.19 Subdivision 1. **Place of hearing.** Upon request of a party and approval of the court, a
17.20 hearing may be held at a treatment facility. A hearing may be conducted by interactive video
17.21 conference consistent with the Rules of Criminal Procedure, or other procedure authorized
17.22 by the supreme court.

17.23 Subd. 2. **Absence permitted.** When a mental health provider treating the defendant
17.24 submits a written report that participating in a hearing under this statute is not in the best
17.25 interest of the defendant and would be detrimental to the defendant's mental or physical
17.26 health, then the court shall allow the hearing to proceed without defendant's participation.

17.27 Subd. 3. **Disruption of hearing.** At any hearing required under this statute, the court,
17.28 on its motion or on the motion of any party, may exclude or excuse a defendant who is
17.29 seriously disruptive, refuses to participate, or who is incapable of comprehending and
17.30 participating in the proceedings. In such instances, the court shall, with specificity on the
17.31 record, state the behavior of the defendant or other circumstances which justify proceeding
17.32 in the absence of the defendant.

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

18.4 Sec. 16. **[628.85] ADMISSIBILITY OF DEFENDANT'S STATEMENTS.**

18.5 When a defendant is examined under this statute, any statement made by the defendant
18.6 for the purpose of the examination and any evidence derived from the examination is
18.7 admissible at the competence proceedings only.

18.8 Sec. 17. **[628.86] CREDIT FOR CONFINEMENT.**

18.9 If the defendant is convicted, any time spent confined in a secure treatment facility or
18.10 jail-based program pursuant to any section of this chapter shall be credited as time served
18.11 in addition to any other credit as time served the defendant is otherwise entitled. At
18.12 sentencing, the court may consider granting credit as time served for time spent in a
18.13 competence restoration program.

18.14 Sec. 18. **[628.87] PLANNING AND IMPLEMENTATION.**

18.15 Subdivision 1. **Planning.** (a) By September 1, 2023, the judicial branch shall establish
18.16 a planning committee to oversee the implementation of forensic navigator programs in each
18.17 judicial district.

18.18 (b) The planning committee must include:

18.19 (1) the chief justice or a designee;

18.20 (2) the commissioner of human services or a designee;

18.21 (3) the direct care and treatment deputy commissioner or a designee;

18.22 (4) the state court administrator or a designee;

18.23 (5) a county attorney or assistant county attorney selected by the Minnesota County
18.24 Attorney's Association;

18.25 (6) the state public defender or a designee;

18.26 (7) the president of the Association of Minnesota Counties or a designee;

18.27 (8) the president of the Minnesota Association of County Social Service Administrators
18.28 or a designee;

19.1 (9) the president of the Minnesota Association of Community Mental Health Providers
19.2 or a designee;

19.3 (10) the president of the Minnesota Corrections Association or a designee;

19.4 (11) the president of the Minnesota Sheriffs' Association or a designee;

19.5 (12) the president of the Minnesota Chiefs of Police association or a designee;

19.6 (13) the president of the board of directors of the League of Minnesota Cities or a
19.7 designee; and

19.8 (14) a representative from a community organization representing victims of crimes,
19.9 selected by the chief justice.

19.10 (c) Forensic navigator programs shall be planned and designed to promote prevention
19.11 and diversion of people found to be incompetent as the result of mental illnesses and cognitive
19.12 impairments from entering the legal system, support defendants in the competency process,
19.13 and assist courts and partners in coordinating and providing competence restoration services
19.14 to defendants. The plan must include:

19.15 (1) procedures for hiring and training forensic navigators according to the standards of
19.16 section 628.77;

19.17 (2) policies and procedures for interagency communication and collaboration,
19.18 communication with defendants, data privacy, and public safety; and

19.19 (3) policies and procedures for evaluating the program according to this section.

19.20 Subd. 2. **Program evaluation.** (a) Each judicial district shall collect the following data
19.21 and submit it annually to the state court administrator's office:

19.22 (1) the total number of competency examinations ordered in the judicial district separated
19.23 by county;

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

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

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

19.30 (b) The judicial branch must include a summary and analysis of the data collected under
19.31 this section in every annual report beginning in 2024.

(c) The state court administrator's office must include a summary and analysis of the data collected under this section in a report and submit it to the legislature by January 1, 2025, including any recommendations for improving forensic navigator services or competency to stand trial procedures.

Sec. 19. **[628.88] CERTIFICATION OF COMPETENCE RESTORATION PROGRAMMING.**

Subdivision 1. **Certification.** The Department of Human Services shall, by January 2023, establish a statewide certification process for certifying that a competence restoration program, whether secure, inpatient, or outpatient:

(1) complies with state licensing requirements and any additional requirements issued by the commissioner;

(2) employs or contracts for clinic staff who have backgrounds in diverse disciplines, including licensed mental health professionals and licensed alcohol and drug counselors, and staff who are culturally and linguistically trained to meet the needs of the population receiving services;

(3) complies with quality assurance reporting requirements and other reporting requirements, including any required reporting of encounter data, clinical outcomes data, and quality data;

(4) provides coordination of care across settings and providers to ensure seamless transitions for individuals being served across the full spectrum of health services, including acute, chronic, and behavioral needs. Care coordination may be accomplished through partnerships or formal contracts with counties, health plans, pharmacists, pharmacies, rural health clinics, federally qualified health centers, inpatient psychiatric facilities, substance use and detoxification facilities, or community-based mental health providers; and

(5) employs any recommended evidence-based practices as required by the commissioner.

Subd. 2. **Evaluation.** (a) The Department of Human Services shall contract with experts to evaluate the certification standards and review and identify relevant information and evidence-based best practices and methodologies for effectively assessing and restoring individuals to competency.

(b) These experts must include at least three who are licensed psychologists, psychiatrists, clinical therapists, or other mental health treatment providers with established and recognized training and experience in the assessment and treatment of individuals with serious and

21.1 persistent mental illness and at least one nontreatment professional with relevant training
21.2 and experience regarding the oversight or licensing of mental health treatment programs.

21.3 (c) The Department of Human Services shall enter into contracts as necessary to fulfill
21.4 the responsibilities under this subdivision.

21.5 Subd. 3. **Public-private partnerships.** The Department of Human Services may establish
21.6 a mechanism by which counties, the Department of Human Services, hospitals, health plans,
21.7 consumers, providers, and others may enter into agreements that allow for capacity building
21.8 and oversight of any agreed-upon entity that is developed through these partnerships. The
21.9 purpose of these partnerships is the development and provision of mental health services
21.10 and competence restoration services which would be more effective, efficient, and accessible
21.11 than services that might be provided separately by each partner.

21.12 Sec. 20. **JUVENILE COMPETENCY RESTORATION TASK FORCE.**

21.13 Subdivision 1. **Establishment; purpose.** The juvenile competency restoration task force
21.14 is established to evaluate and study juvenile competency restoration programs and develop
21.15 recommendations to address the needs of juveniles deemed incompetent to stand trial.

21.16 Subd. 2. **Membership.** (a) The juvenile competency restoration task force consists of
21.17 the following members, appointed as follows:

21.18 (1) a representative appointed by the governor's office;

21.19 (2) the commissioner of human services or designee;

21.20 (3) the commissioner of corrections or designee;

21.21 (4) a representative from direct care and treatment services with experience in competency
21.22 evaluations, appointed by the commissioner of human services;

21.23 (5) a representative appointed by the designated State Protection and Advocacy system;

21.24 (6) the ombudsman for mental health and developmental disabilities;

21.25 (7) a representative appointed by the Minnesota Hospital Association;

21.26 (8) a representative appointed by the Association of Minnesota Counties;

21.27 (9) two representatives appointed by the Minnesota Association of County Social Service
21.28 Administrators: one from the seven-county metropolitan area, as defined under Minnesota
21.29 Statutes, section 473.121, subdivision 2; and one from outside the seven-county metropolitan
21.30 area;

21.31 (10) a representative appointed by the Minnesota Board of Public Defense;

- 22.1 (11) two representatives appointed by the Minnesota County Attorneys Association;
- 22.2 (12) a representative appointed by the Minnesota Chiefs of Police Association;
- 22.3 (13) a representative appointed by the Minnesota Psychiatric Society;
- 22.4 (14) a representative appointed by the Minnesota Psychological Association;
- 22.5 (15) a representative appointed by the State Court Administrator;
- 22.6 (16) a representative appointed by the Minnesota Association of Community Mental
- 22.7 Health Programs;
- 22.8 (17) a representative appointed by the Minnesota Sheriffs' Association;
- 22.9 (18) a representative appointed by the Minnesota Sentencing Guidelines Commission;
- 22.10 (19) a jail administrator appointed by the commissioner of corrections;
- 22.11 (20) a representative from an organization providing reentry services appointed by the
- 22.12 commissioner of corrections;
- 22.13 (21) a representative from a mental health advocacy organization appointed by the
- 22.14 commissioner of human services;
- 22.15 (22) a person with direct experience with competency restoration appointed by the
- 22.16 commissioner of human services;
- 22.17 (23) representatives from organizations representing racial and ethnic groups
- 22.18 overrepresented in the justice system appointed by the commissioner of corrections;
- 22.19 (24) a crime victim appointed by the commissioner of corrections; and
- 22.20 (25) a pediatrician appointed by the Minnesota Academy of Pediatrics.
- 22.21 (b) Appointments to the task force must be made no later than July 15, 2022, and members
- 22.22 of the task force may be compensated as provided under Minnesota Statutes, section 15.059,
- 22.23 subdivision 3.
- 22.24 Subd. 3. **Duties.** The task force must:
- 22.25 (1) identify current services and resources available for juveniles in the criminal justice
- 22.26 system who have been found incompetent to stand trial;
- 22.27 (2) analyze current trends of competency referrals by county and the impact of any
- 22.28 diversion projects or stepping-up initiatives;

23.1 (3) analyze selected case reviews and other data to identify risk levels, service usage,
23.2 housing status, and health insurance status of those individuals in the selected case reviews
23.3 prior to being jailed;

23.4 (4) research how other states address juvenile competency restoration, including funding
23.5 and structure of juvenile competency restoration programs and jail-based programs; and

23.6 (5) develop recommendations to address the issue of juveniles deemed incompetent to
23.7 stand trial, including increasing prevention and diversion efforts, providing a timely process
23.8 for reducing the amount of time individuals remain in the criminal justice system, determining
23.9 how to provide and fund juvenile competency restoration services in the community, and
23.10 defining the role of counties and the state in providing competency restoration to juveniles.

23.11 Subd. 4. **Officers; meetings.** (a) The commissioner of human services shall convene
23.12 the first meeting of the task force no later than August 1, 2022.

23.13 (b) The task force must elect a chair and vice-chair from among its members and may
23.14 elect other officers as necessary.

23.15 (c) The task force is subject to the Minnesota Open Meeting Law under Minnesota
23.16 Statutes, chapter 13D.

23.17 Subd. 5. **Staff.** (a) The commissioner of human services must provide administrative
23.18 support to the task force.

23.19 (b) The task force may utilize the expertise of the Council of State Governments Justice
23.20 Center.

23.21 Subd. 6. **Report required.** (a) By February 1, 2023, the task force shall submit a report
23.22 on its progress and findings to the chairs and ranking minority members of the legislative
23.23 committees with jurisdiction over mental health and corrections.

23.24 (b) By February 1, 2024, the task force must submit a written report including
23.25 recommendations and proposed legislation to address the growing number of juveniles
23.26 deemed incompetent to stand trial to the chairs and ranking minority members of the
23.27 legislative committees with jurisdiction over mental health and corrections.

23.28 Subd. 7. **Expiration.** The task force expires upon submission of the report in subdivision
23.29 6, paragraph (b), or February 1, 2024, whichever is later.

23.30 **EFFECTIVE DATE.** This section is effective the day following final enactment.

24.1 Sec. 21. **CORRECTIONS; APPROPRIATION.**

24.2 \$2,000,000 in fiscal year 2023 is appropriated from the general fund to the commissioner
24.3 of corrections to supervise individuals covered by this act. This is a onetime appropriation.

24.4 Of this amount:

24.5 (1) \$1,420,000 is added to the Community Corrections Act subsidy under Minnesota
24.6 Statutes, section 401.14;

24.7 (2) \$220,000 is added to the county probation officers reimbursement under Minnesota
24.8 Statutes, section 244.19, subdivision 6; and

24.9 (3) \$360,000 is to be retained by the department for supervision by its own agents.

24.10 Sec. 22. **SUPREME COURT; APPROPRIATIONS.**

24.11 Subdivision 1. Forensic navigator services. \$..... in fiscal year 2023 is appropriated
24.12 from the general fund to the supreme court for forensic navigator services in each of the
24.13 ten judicial districts. The amount given to each district must be based on the population of
24.14 the district according to the most-recent United States census data. In distributing funds,
24.15 the supreme court may also consider the specific needs of each district, including disparities
24.16 in current available resources, travel time and costs for forensic navigators in rural areas,
24.17 and video technology for remote hearings.

24.18 Subd. 2. Competence restoration programs. \$..... in fiscal year 2023 is appropriated
24.19 from the general fund to the supreme court to establish competence restoration programs
24.20 in each of the ten judicial districts. The amount given to each district must be based on the
24.21 population of the district according to the most-recent United States census data. Competence
24.22 restoration programs must meet the requirements of Minnesota Statutes, section 628.88.
24.23 Judicial districts may contract to establish competence restoration programs, including but
24.24 not limited to contracting with counties, Adult Mental Health Initiative regions, hospitals,
24.25 mental health treatment providers, substance use disorder treatment providers, correctional
24.26 facilities, and community-based programs.

24.27 Subd. 3. Competence examiners. \$..... in fiscal year 2023 is appropriated from the
24.28 general fund to the supreme court to retain or contract for examiners and evaluators to
24.29 complete competence evaluations.