611.47 ADMINISTRATION OF MEDICATION.

Subdivision 1. **Motion.** When a court finds that a defendant is incompetent or any time thereafter, upon the motion of the prosecutor or treating medical provider, the court shall hear and determine whether the defendant lacks capacity to make decisions regarding the administration of neuroleptic medication and, if so, whether the conditions and factors weigh in favor of authorizing involuntary administration of neuroleptic medication.

Subd. 2. **Reports.** (a) In making a determination under this section, the court shall consider the report of the court examiner completed pursuant to section 611.43 and any certification report filed by the treating medical practitioner in support of a motion under this section. The court may request a certification report from the defendant's treating medical practitioner.

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

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

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

(e) In addition to the court examiner appointed to report to the court on the defendant's competency to proceed, the court may appoint a court examiner to examine the defendant and report to the court and parties as to whether the defendant lacks capacity to make decisions regarding the administration of neuroleptic medication. If the defendant refuses to participate in an examination, the court examiner may rely on the defendant's clinically relevant medical records in reaching an opinion.

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

Subd. 3. **Determination.** (a) The court shall first determine whether the defendant lacks capacity to make decisions regarding the administration of neuroleptic medication. In making this determination, the court:

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

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

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

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

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

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

(b) If the court determines that the defendant lacks capacity to make decisions regarding the administration of neuroleptic medication, the court shall hear and determine whether any of the following is true:

(1) the defendant's mental illness requires medical treatment with neuroleptic medication, and, if the defendant's mental illness is not treated with neuroleptic medication, it is probable that serious harm to the physical or mental health of the defendant will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to the defendant's physical or mental health, or the defendant has previously suffered these effects as a result of a mental illness and the defendant's condition is substantially deteriorating or likely to deteriorate without administration of neuroleptic medication. The fact that a defendant has a diagnosis of a mental illness does not alone establish probability of serious harm to the physical or mental health of the defendant;

(2) neuroleptic medication is medically necessary, and the defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial bodily harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial bodily harm on another that resulted in being taken into custody, and the defendant presents, as a result of mental illness or cognitive impairment, a demonstrated danger of inflicting substantial bodily harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant and other relevant information; or

(3) the defendant does not meet the criteria under clause (1) or (2), but the state has shown by clear and convincing evidence that:

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

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

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

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

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

(c) If the conditions described in paragraph (b), clause (1), (2), or (3), exist, the court shall determine whether the following factors weigh in favor of authorizing the involuntary administration of neuroleptic medication:

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

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

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

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

(5) any other relevant factors.

(d) If the factors in paragraph (c) weigh in favor of authorizing involuntary administration of neuroleptic medication, the court shall issue an order authorizing involuntary administration of neuroleptic medication to the defendant when and as prescribed by the defendant's medical practitioner, including administration by a treatment facility or correctional facility. The court order shall specify which medications are authorized and may limit the maximum dosage of neuroleptic medication that may be administered. The order shall be valid for no more than one year. An order may be renewed by filing another petition under this section and following the process in this section. The order shall terminate no later than the closure of the criminal case in which it is issued.

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

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

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

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

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

Subd. 6. **Defendants with capacity to make informed decision.** If the court finds that the defendant has the capacity to decide whether to take neuroleptic medication, a facility or program may not administer medication without the defendant's informed written consent or without the declaration of an emergency, or until further review by the court.

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

History: *2022 c 99 art 1 s 33; 2023 c 14 s 27; 2023 c 52 art 1 s 14*