

S.F. No. 3395 – Statutory procedure establishment to assess the competency of a defendant to stand trial

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Date: March 8, 2022

ARTICLE 1

COMPETENCY TO STAND TRIAL

Section 1 [611.40] states the applicability of new sections 611.40 to 611.58 to adult criminal proceedings where competency to stand trial is at issue, notwithstanding competency proceedings under Rule 20.01 of Criminal Procedure.

Section 2 [611.41] provides definitions that apply to new sections 611.40 to 611.58.

Section 3 [611.42] states the procedure to follow if a party wishes to challenge a defendant's competency.

Subdivision 1 states that a defendant is incompetent and cannot plead, be tried, or be sentenced if, due to mental illness or cognitive impairment, the defendant cannot rationally consult with counsel, understand the proceedings, or participate in the defense.

Subdivision 2 provides that a defendant cannot waive counsel if the defendant lacks certain abilities.

Subdivision 3 allows a prosecutor, defense counsel, or the court to challenge a defendant's competency, and if competency is at issue, requires the appointment of a forensic navigator. Requires the court to suspend criminal proceedings and order an examination in felony, gross misdemeanor, or misdemeanor cases if there is reasonable basis to doubt the defendant's competence and probable cause for the underlying charge exists. Also requires a dismissal plan be completed by the navigator when the court determines it wants to dismiss a misdemeanor charge.

Subdivision 4 requires a forensic navigator to complete a dismissal plan, submit the plan to the court, and provide a copy of the plan to the defendant prior to any dismissal of charges

and allows the court to dismiss the underlying charges if working with the navigator would cause an unreasonable delay in the release of the defendant being held in custody.

Section 4 [611.43] states how a competency examination and report are completed, by who, and what must be included in the report.

Subdivision 1 requires the court to appoint a court examiner to examine and provide a report on the defendant's competency when the court orders an examination. If a defendant is not entitled to release, the defendant will participate in an examination where the defendant is being held and the court is allowed to confine the defendant in a program or suitable treatment facility until the examination is completed. If a defendant is entitled to release, the defendant will be ordered to appear for an examination.

Subdivision 2 requires the court examiner's report to be filed within certain deadlines. The report must include an evaluation of the defendant's mental health and cognition, along with facts that support the examiner's opinions, and the examiner must provide notice if it's determined that the defendant poses an imminent risk of serious danger to others, is suicidal, or needs emergency intervention. If a defendant shows up but does not participate in the examination, the examiner must still submit a report.

Subdivision 3 requires prosecutor or defense counsel to provide notice if either party wishes to retain an independent examiner.

Subdivision 4 provides that any statement made by the defendant during the examination or evidence obtained from the examination is admissible at competency proceedings, but not at trial.

Section 5 [611.44] provides the procedures that must be followed to request a contested hearing on the court examiner's competency report and what is allowed during the hearing.

Subdivision 1 allows the prosecutor or defense counsel to request a contested hearing on the court examiner's competency report and requires the hearing to be held no later than 30 days after a request was made, unless an independent examiner's report is filed.

Subdivision 2 allows the court to admit all relevant and reliable evidence during a contested hearing and allows the court, prosecutor, and defense counsel to question the examiner. Defense counsel is allowed to testify at the hearing but cannot violate attorney-client privilege.

Subdivision 3 requires the court to determine a defendant's competency based on the reports of all examiners if no contested hearing was requested.

Subdivision 4 states that a defendant is presumed incompetent in a contested hearing unless the court finds by a preponderance of the evidence that the defendant is competent.

Section 6 [611.45] provides when and how a court must rule on a defendant's competency to stand trial, and what factors must be considered.

Subdivision 1 requires the court to rule on a defendant's competency no more than 14 days after the court examiner's report is filed, unless there was a contested hearing. If a defendant is considered competent, the court is required to resume the criminal proceedings. If a

defendant is considered incompetent, the court is required to suspend the criminal proceedings.

Subdivision 2 allows the defendant to appeal a competency determination.

Subdivision 3 requires the court to dismiss a misdemeanor charge if the defendant is found incompetent, requires gross misdemeanor charges to be dismissed 30 days after defendant is found incompetent unless the prosecutor files a written notice of intent to prosecute when defendant regains competency, and requires felony charges, except murder, to be dismissed three years after a defendant is found incompetent unless the prosecutor files a written notice of intent to prosecute when defendant regains competency.

Section 7 [611.46] provides the process that must be followed if a defendant is deemed incompetent to stand trial or ordered into continuing supervision.

Subdivision 1 requires the court to determine the least-restrictive competency restoration program to meet the needs of the defendant and public safety and order the defendant to participate in a program if one is available and accessible within a reasonable time. The head of a competency restoration program must notify the court if the defendant refuses to participate in the program and is allowed to discharge a defendant at any time with notice.

Subdivision 2 requires a court to determine whether a defendant entitled to release and found incompetent requires pretrial supervision and allows the appointment of an entity to supervise the defendant. The court is required to follow the pretrial release procedure under Rule 6 of Criminal Procedure if it's alleged the defendant violated a condition of release and hold a hearing. The court is required to review the conditions of a defendant's release at the request of any party and is allowed to amend the conditions of release under certain circumstances.

Subdivision 3 states a defendant is eligible for jail-based competency restoration only if certain requirements are met. If the defendant has not attained competency within 90 days in a jail-based program, the court must determine whether the defendant is likely to gain competency. If so, the court must determine whether a less restrictive competency program is available to the defendant and if no program is found, the court must dismiss the case or conditionally release the defendant. If a defendant is in custody, a court may temporarily order a defendant to a jail-based program until transfer to a non-jail-based program.

Subdivision 4 requires the court to do everything in its power to ensure a defendant receives timely competency restoration, including consulting with a forensic navigator to find alternative programs. A court cannot order a defendant entitled to release to a jail-based program unless the defendant is returned to custody. A court may order a defendant to participate in alternative programs for up to 60 days but must dismiss the case or find the defendant unlikely to attain competency if the defendant has not been restored to competency in the alternative program. The court must dismiss the case, conditionally release the defendant, or find the defendant unlikely to attain competency if the defendant is in jail and has not received competency restoration services within 30 days of being found incompetent.

Subdivision 5 requires the court examiner to provide an updated competency report every six months, allows the head of a program to recommend the examiner provide an updated competency examination and report, allows the updated report to make recommendations

for continued competency services, and allows the recommendations to be considered by the court in imposing a sentence if the defendant is found guilty.

Subdivision 6 allows the prosecutor or defense counsel to request a contested hearing on the updated competency report.

Subdivision 7 requires the court to make a competency determination no more than 14 days after receiving an updated report from a court examiner, requires the criminal proceedings to continue if the defendant is found competent, and allows the court to order the defendant to continue existing services or determine the least restrictive program if the defendant is found incompetent.

Section 8 [611.47] allows the prosecutor or defense counsel to request a hearing on a defendant's competency restoration programming and requires the hearing to be held no later than 30 days after the request.

Section 9 [611.48] provides the procedure when a defendant is deemed unlikely to attain competence.

Subdivision 1 allows a court to find a defendant unlikely to attain competency when the most recent court examiner's competency report states the defendant is unlikely to attain competency, the defendant has not attained competency within one year of being found incompetent, or the defendant did not receive timely competency restoration services.

Subdivision 2 requires the court to determine whether the defendant will attain competency, and if so, rule the defendant incompetent and follow the competency determination procedure under section 611.46, subdivision 7. If the court determines that the defendant will not attain competency, it must either dismiss the case, dismiss the case and issue an order for a prepetition screening, or order the continued supervision of the defendant. Any party may request a contested hearing and if a hearing is held, the defendant is presumed to not attain competency.

Subdivision 3 allows a court to order continued supervision of a defendant charged with certain felonies, determine the entity responsible for the supervision, and choose the least-restrictive setting to meet the defendant's needs and public safety. An updated competency report must be provided one year after the order for continued supervision. After one year of continuing supervision, the court is required to determine whether the defendant will attain competency, and if so, rule the defendant incompetent and follow the competency determination procedure under section 611.46, subdivision 7. If the court determines that the defendant will not attain competency, it must either dismiss the case or order continuing supervision.

Section 10 [611.49] states where a hearing may be held and in what circumstances a defendant is not required to attend a hearing.

Subdivision 1 allows a hearing to be held at a treatment facility and be conducted by interactive video conferencing.

Subdivision 2 allows a hearing to proceed without a defendant's participation when a medical professional treating the defendant submits a report stating that participating in a hearing is not in the best interest of the defendant.

Subdivision 3 allows a court to exclude or excuse a defendant from a hearing if the defendant is disruptive, refuses to participate, or is incapable of comprehending and participating in the hearing.

Subdivision 4 allows defense counsel to make objections or defense arguments before trial that can be fairly determined without the defendant's participation.

Section 11 [611.50] requires any time a defendant spent in a secured setting be credited as time served if the defendant is convicted.

Section 12 provides the effective date of Article 1 as July 1, 2023.

ARTICLE 2

COMPETENCY RESTORATION SERVICES

Section 1 [611.55] provides the requirements for forensic navigator services.

Subdivision 1 requires the judicial branch to provide or contract with forensic navigator services to meet the needs in each judicial district.

Subdivision 2 states that forensic navigators serve as an impartial party in all legal matters relating to the defendant and criminal case, requires that the navigators provide services to assist defendants with mental illnesses and cognitive impairments, and allows a navigator to continue outreach with the defendant up to 90 days if the charges are dismissed.

Subdivision 3 requires the forensic navigator to prepare and submit dismissal plans with the defendant and states that the dismissal plans, and any supporting records, are not accessible to the public.

Subdivision 4 requires the judicial branch and Department of Human Services to develop a certification and continuing education program for forensic navigators by July 1, 2023. The program must include training and education curriculum on specific topics to certify mental health professionals, mental health practitioners, case management service providers, and peer specialists and that the training must deliver competency restoration curriculum. Also allows the development of a certification program for other individuals if the program includes certain topics.

Section 2 [611.56] provides the requirements for planning and implementation of forensic navigator programs.

Subdivision 1 requires the judicial branch to establish a planning committee to oversee the development and implementation of forensic navigator programs by September 1, 2022, provides requirements on what individuals the planning committee must include, and that the programs must be designed to provide support in the competency restoration process.

Subdivision 2 requires each judicial district to collect certain data and submit it annually to the state court administrator's office, requires the judicial branch to include a summary and analysis of the data in annual reports beginning in 2024, and requires the state administrator's office to include a summary and analysis of available data in a report submitted to the legislature by January 1, 2025.

Section 3 [611.57] provides the requirements for competency restoration curriculum and certification.

Subdivision 1 requires the judicial branch to recommend a competency restoration curriculum by January 1, 2023, and that the curriculum be flexible so that it can be delivered in community and correctional settings by individuals with various levels of educations and qualifications.

Subdivision 2 requires the judicial branch to develop a process for certifying individuals to deliver the competency restoration curriculum by January 1, 2023.

Section 4 [611.58] provides the requirements for certification of competency restoration programs.

Subdivision 1 requires the judicial branch to develop procedures to certify competency restoration provider standards are met, in conjunction with the Department of Human Services, Department of Health, and Department of Corrections.

Subdivision 2 provides certain requirements for competency restoration providers who are not jail-based.

Subdivision 3 provides certain requirements for jail-based competency restoration programs.

ARTICLE 3

CONFORMING CHANGES AND APPROPRIATIONS

Section 1 (253B.07, subd. 2a) adds references to new sections in statutory subdivision governing procedure for filing a petition for commitment.

Section 2 (253B.10, subd. 1) adds references to new sections in statutory subdivision governing administrative requirements for when a person is committed.

Section 3 (480.12) adds references to new sections in statute governing state assumption of certain court costs.

Section 4 appropriates money in fiscal year 2023 from the general fund to the supreme court for forensic navigator services and competency restoration services.