

**SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION**

S.F. No. 3395

(SENATE AUTHORS: SENJEM)

DATE
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OFFICIAL STATUS
Introduction and first reading
Referred to Human Services Reform Finance and Policy

1.1 A bill for an act
1.2 relating to judiciary; establishing a statutory procedure to assess the competency
1.3 of a defendant to stand trial; providing for contested hearings; establishing
1.4 continuing supervision for certain defendants found incompetent to stand trial;
1.5 establishing requirements to restore certain defendants to competency; providing
1.6 for jail-based competency restoration programs; establishing forensic navigators;
1.7 requiring forensic navigators to provide services to certain defendants; establishing
1.8 dismissal plans for certain defendants found incompetent to stand trial; establishing
1.9 a planning and implementation committee; appropriating money; amending
1.10 Minnesota Statutes 2020, sections 253B.07, subdivision 2a; 253B.10, subdivision
1.11 1; 480.182; proposing coding for new law in Minnesota Statutes, chapter 611.

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

1.13 **ARTICLE 1**
1.14 **COMPETENCY TO STAND TRIAL**

1.15 Section 1. **[611.40] APPLICABILITY.**

1.16 Notwithstanding Rules of Criminal Procedure, rule 20.01, sections 611.40 to 611.58
1.17 shall govern the proceedings for adults when competency to stand trial is at issue. This
1.18 section does not apply to juvenile courts. A competency examination ordered under Rules
1.19 of Criminal Procedure, rule 20.04, must follow the procedure in section 611.43.

1.20 Sec. 2. **[611.41] DEFINITIONS.**

1.21 Subdivision 1. **Definitions.** For the purposes of sections 611.40 to 611.58, the following
1.22 terms have the meanings given.

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

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

2.8 Subd. 4. **Competency restoration program.** "Competency restoration program" means
2.9 a structured program of clinical and educational services that is certified and designed to
2.10 identify and address barriers to a defendant's ability to understand the criminal proceedings,
2.11 consult with counsel, and participate in the defense.

2.12 Subd. 5. **Court examiner.** "Court examiner" means a person appointed to serve the
2.13 court, and who is a physician or licensed psychologist who has a doctoral degree in
2.14 psychology.

2.15 Subd. 6. **Head of the program.** "Head of the program" means the head of the competency
2.16 restoration program or the head of the facility or program where the defendant is being
2.17 served.

2.18 Subd. 7. **Mental illness.** "Mental illness" means an organic disorder of the brain or a
2.19 clinically significant disorder of thought, mood, perception, orientation, memory, or behavior
2.20 that is detailed in a diagnostic codes list published by the commissioner of human services,
2.21 and that seriously limits a person's capacity to function in primary aspects of daily living
2.22 such as personal relations, living arrangements, work, and recreation.

2.23 Subd. 8. **Suspend the criminal proceedings.** "Suspend the criminal proceedings" means
2.24 nothing can be heard or decided on the merits of the criminal charges except that the court
2.25 retains jurisdiction in all other matters, including but not limited to bail, conditions of release,
2.26 probation conditions, no contact orders, and appointment of counsel.

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

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

2.31 (1) rationally consult with counsel;

2.32 (2) understand the proceedings; or

3.1 (3) participate in the defense.

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

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

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

3.6 (3) comprehend the nature of the charge;

3.7 (4) comprehend the nature of the proceedings;

3.8 (5) comprehend the possible punishment; or

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

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

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

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

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

3.26 (d) In misdemeanor cases, if the court determines there is a reasonable basis to doubt
3.27 the defendant's competence and there is probable cause for the charge, the court must suspend
3.28 the criminal proceedings and either order an examination of the defendant under section
3.29 611.43 or dismiss the case as provided in paragraph (e). The court shall dismiss a case unless
3.30 dismissal would be contrary to public interest. For purposes of this paragraph, public interest
3.31 includes determining whether a defendant has the ability to access housing, food, income,

4.1 disability verification, medications, and treatment for medical conditions, or otherwise
4.2 address any basic needs.

4.3 (e) If the court indicates an intent to dismiss a misdemeanor charge, the court shall direct
4.4 the forensic examiner to complete a dismissal plan as described in section 611.55, subdivision
4.5 3. The court may dismiss the charge upon receipt of the dismissal plan without holding a
4.6 hearing unless any party objects. The court must order that the dismissal plan be completed
4.7 and submitted:

4.8 (1) within 48 hours, excluding weekends and holidays, if the defendant is in custody;
4.9 or

4.10 (2) within ten days if the defendant is not in custody.

4.11 (f) If competency is at issue, the court may appoint advisory counsel under Rules of
4.12 Criminal Procedure, rule 5, for an unrepresented defendant for the proceedings under this
4.13 section.

4.14 **Subd. 4. Dismissal, referrals for services, and collaboration.** (a) Except as provided
4.15 in this subdivision, when the court determines there is a reasonable basis to doubt the
4.16 defendant's competence and orders an examination of the defendant, a forensic navigator
4.17 must complete a dismissal plan with the defendant as described in section 611.55, subdivision
4.18 3, submit the dismissal plan to the court, and provide a written copy to the defendant before
4.19 the court or prosecutor dismisses any charges based on a belief or finding that the defendant
4.20 is incompetent.

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

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

4.31 (d) Courts may partner and collaborate with county social services, community-based
4.32 programs, jails, and any other resource available to the court to provide referrals to services

5.1 when a defendant's competency is at issue or a defendant has been found incompetent to
5.2 stand trial.

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

5.4 **Subdivision 1. Competency examination.** (a) If the court orders an examination pursuant
5.5 to section 611.42, subdivision 3, the court shall appoint a court examiner to examine the
5.6 defendant and report to the court on the defendant's competency to stand trial. A court
5.7 examiner may obtain from court administration and review the report of any prior or
5.8 subsequent examination under this section or under Rules of Criminal Procedure, rule 20.

5.9 (b) If the defendant is not entitled to release, the court shall order the defendant to
5.10 participate in an examination where the defendant is being held, or the court may order that
5.11 the defendant be confined in a program or other suitable treatment facility until the
5.12 examination is completed.

5.13 (c) If the defendant is entitled to release, the court shall order the defendant to appear
5.14 for an examination. If the defendant fails to appear at an examination, the court may amend
5.15 the conditions of release.

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

5.18 **Subd. 2. Report of examination.** (a) The court-appointed examiner's written report shall
5.19 be filed with the court and served on the prosecutor and defense counsel by the court. The
5.20 report shall be filed no more than 30 days after the order for examination of a defendant in
5.21 custody. If the defendant is out of custody or confined in a noncorrectional program or
5.22 treatment facility, the report shall be filed no more than 60 days after the order for
5.23 examination, unless extended by the court for good cause.

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

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

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

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

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

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

6.3 (6) the likelihood the defendant will attain competency in the reasonably foreseeable
6.4 future;

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

6.7 (8) whether the defendant poses a substantial risk to public safety.

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

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

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

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

6.26 Subd. 4. **Admissibility of defendant's statements.** When a defendant is examined under
6.27 this section, any statement made by the defendant for the purpose of the examination and
6.28 any evidence derived from the examination is admissible at the competence proceedings,
6.29 but not at the trial.

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

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

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

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

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

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

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

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

7.26 **Sec. 6. [611.45] COMPETENCE FINDINGS.**

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

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

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

8.3 Subd. 2. **Appeal.** The defense may appeal a competency determination to the court of
8.4 appeals. The appeal is governed by Rules of Criminal Procedure, rule 28. A verbatim record
8.5 shall be made in all competency proceedings.

8.6 Subd. 3. **Dismissal of criminal charge.** (a) If the court finds the defendant incompetent,
8.7 and the charge is a misdemeanor, the charge must be dismissed.

8.8 (b) In gross misdemeanor cases, the charges must be dismissed 30 days after the date
8.9 of the finding of incompetence, unless the prosecutor, before the expiration of the 30-day
8.10 period, files a written notice of intent to prosecute when the defendant regains competency.
8.11 If a notice has been filed and the defendant would be entitled to custody credit of at least
8.12 one year if convicted, gross misdemeanor charges must be dismissed one year after the date
8.13 of the finding of incompetency.

8.14 (c) In felony cases, except when the defendant is charged with murder, the charges must
8.15 be dismissed three years after the date of the finding of incompetency, unless the prosecutor,
8.16 before the expiration of the three-year period, files a written notice of intent to prosecute
8.17 when the defendant regains competency.

8.18 Sec. 7. **[611.46] INCOMPETENT TO STAND TRIAL AND CONTINUING**
8.19 **SUPERVISION.**

8.20 Subdivision 1. **Order to competency restoration.** (a) If the court finds the defendant
8.21 incompetent and the charges have not been dismissed, the court must determine the
8.22 least-restrictive competency restoration program appropriate to meet the defendant's needs
8.23 and public safety. In making this determination, the court must consult with the forensic
8.24 navigator and consider any recommendations of the court examiner.

8.25 (b) After making the determination under paragraph (a), the court shall order the defendant
8.26 to participate in a competency restoration program if an appropriate program is available
8.27 and accessible to the defendant within a reasonable time. If an appropriate program is not
8.28 available or accessible, the court must proceed under subdivision 4.

8.29 (c) Upon the order to a competency restoration program, the court may order any hospital,
8.30 treatment facility, or correctional facility that has provided care or supervision to the
8.31 defendant in the previous two years to provide copies of the defendant's medical records to
8.32 the competency restoration program. This information shall be provided in a consistent and
8.33 timely manner and pursuant to all applicable laws.

9.1 (d) If at any time the defendant refuses to participate in the competency restoration
9.2 program or an alternative program, the head of the program shall notify the court and any
9.3 entity responsible for supervision of the defendant.

9.4 (e) At any time, the head of the program may discharge the defendant from the program
9.5 or facility. The head of the program must notify the court, prosecutor, defense counsel, and
9.6 any entity responsible for the supervision of the defendant five business days prior to any
9.7 planned discharge.

9.8 (f) A defendant under this section must not be ordered to a competency restoration
9.9 program or pretrial supervision for a cumulative number of days that exceeds the maximum
9.10 term provided by law for the offense with which the defendant was charged.

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

9.16 (b) If the court determines that the defendant requires pretrial supervision, the court may
9.17 appoint a willing entity to be responsible for supervising the defendant.

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

9.24 (d) If the court finds a violation, the court may revise the conditions of release. In addition
9.25 to the considerations required by the Rules of Criminal Procedure, when determining the
9.26 conditions of release, the court must consider whether a condition is likely to result in the
9.27 pretrial detention of the defendant and whether it is more probable than not that the detention
9.28 will interfere with the defendant attaining competency. The court shall impose the least
9.29 restrictive conditions of release that will provide ongoing access to a competency restoration
9.30 program or alternative program under this section.

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

10.1 Subd. 3. Eligibility and procedures for jail-based competency restoration
10.2 programs. (a) A defendant is eligible to participate in a jail-based competency restoration
10.3 program if the defendant has been found incompetent, the defendant is not entitled to release,
10.4 and a court-appointed examiner has recommended jail-based competency restoration as the
10.5 least restrictive setting to meet the person's needs.

10.6 (b) If after 90 days of the order to a jail-based program the defendant has not attained
10.7 competency, the court must proceed under section 611.48 to determine if the defendant is
10.8 likely to attain competency in the reasonably foreseeable future.

10.9 (c) If after 90 days of the order to a jail-based program the defendant has not attained
10.10 competency and the court finds the defendant is likely to attain competency in the reasonably
10.11 foreseeable future, the court must determine if a less restrictive competency restoration
10.12 program is available and appropriate to meet the needs of the defendant and public safety,
10.13 and may order the defendant to the program. If the court does not find an appropriate
10.14 program, the court must review the case with input from the prosecutor and defense counsel
10.15 and must dismiss the case or conditionally release the defendant.

10.16 (d) If a defendant is in custody and is ordered to a non-jail-based competency restoration
10.17 program, the court may order time-limited placement in a jail-based program until transfer,
10.18 if one is available within a reasonable distance to the county where the defendant is present.

10.19 (e) When the court orders time-limited placement in a jail-based competency restoration
10.20 program, the court's order must include a period of no more than 30 days by which the
10.21 defendant must be transferred. If the defendant cannot be transferred to the non-jail-based
10.22 competency restoration program in the ordered time, the court must dismiss the case or
10.23 conditionally release the defendant and proceed under subdivision 4.

10.24 Subd. 4. Services unavailable. (a) After a finding of incompetence, the court must do
10.25 everything in its power to ensure that the defendant receives competency restoration services
10.26 in a timely manner.

10.27 (b) As soon as the court has reason to believe that no appropriate competency restoration
10.28 services will be available within a reasonable time, the court must consult a forensic navigator
10.29 to determine if there are available alternative programs that are likely to assist the defendant
10.30 in attaining competency and may order the defendant to participate in appropriate alternative
10.31 programs.

10.32 (c) The court must make every effort to assist the defendant in attaining competency in
10.33 the alternative program, including but not limited to providing competency restoration
10.34 education in the setting where the defendant is being served.

11.1 (d) If the defendant is entitled to release, the court must not order the defendant to a
11.2 jail-based competency restoration program unless the defendant is returned to custody for
11.3 violating conditions of release.

11.4 (e) At any time, the head of the alternative program may notify the court and recommend
11.5 that a court examiner provide an updated competency examination and report.

11.6 (f) The court may order the defendant to participate in alternative programs for up to 60
11.7 days after the finding of incompetency. The court may extend the 60-day period if, in
11.8 consultation with the forensic navigator and based on the most recent court examiner's
11.9 report, the court finds the defendant is receiving appropriate competency restoration services
11.10 in the alternative program.

11.11 (g) If after 60 days in the alternative program the defendant has not been restored to
11.12 competency and the court determines that no appropriate competency restoration programs
11.13 will be available within a reasonable time, the court must review the case with input from
11.14 the prosecutor and defense counsel and must:

11.15 (1) dismiss the case; or

11.16 (2) find the defendant unlikely to attain competency in the reasonably foreseeable future
11.17 and proceed under section 611.48.

11.18 (h) If the defendant is confined in jail and has not received competency restoration
11.19 services within 30 days of the finding of incompetency, the court shall review the case with
11.20 input from the prosecutor and defense counsel and must:

11.21 (1) dismiss the case;

11.22 (2) conditionally release the defendant; or

11.23 (3) find the defendant unlikely to attain competency in the reasonably foreseeable future
11.24 and proceed under section 611.48.

11.25 **Subd. 5. Reporting to the court.** (a) The court examiner must provide an updated report
11.26 to the court at least once every six months as to the defendant's competency and a description
11.27 of the efforts made to restore the defendant to competency.

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

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

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

12.4 Subd. 6. **Contested hearings.** The prosecutor or defense counsel may request a hearing
12.5 on the court examiner's competency opinion by filing written objections to the competency
12.6 report no later than ten days after receiving the report. All parties are entitled to notice before
12.7 the hearing. If the hearing is held, it shall conform with the procedures of section 611.44.

12.8 Subd. 7. **Competency determination.** (a) The court must determine whether the
12.9 defendant is competent based on the updated report from the court examiner no more than
12.10 14 days after receiving the report.

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

12.13 (c) If the court finds the defendant incompetent, the court may order the defendant to
12.14 continue existing services, or in consultation with any resources available to the court,
12.15 determine the least restrictive competency restoration program appropriate to meet the
12.16 defendant's needs and order the defendant to participate unless:

12.17 (1) the criminal charges must be dismissed under section 611.45, subdivision 3; or

12.18 (2) the court finds the defendant unlikely to be restored to competency in the reasonably
12.19 foreseeable future.

12.20 **Sec. 8. [611.47] REVIEW HEARINGS.**

12.21 The prosecutor or defense counsel may apply to the court for a hearing to review the
12.22 defendant's competency restoration programming. All parties are entitled to notice before
12.23 the hearing. The hearing shall be held no later than 30 days after the date of the request,
12.24 unless extended upon agreement of the prosecutor and defense counsel or by the court for
12.25 good cause.

12.26 **Sec. 9. [611.48] UNLIKELY TO ATTAIN COMPETENCE.**

12.27 Subdivision 1. **Applicability.** The court may find a defendant unlikely to attain
12.28 competency in the reasonably foreseeable future when:

12.29 (1) the most recent court examiner's report states that the defendant is not likely to attain
12.30 competency in the reasonably foreseeable future;

13.1 (2) the defendant has not been restored to competency within one year of the finding of
 13.2 incompetence; or

13.3 (3) the defendant has not received timely competency restoration services under section
 13.4 611.46, subdivision 3 or 4.

13.5 Subd. 2. **Procedure.** (a) The court must determine whether there is a substantial
 13.6 probability that the defendant will attain competency within the reasonably foreseeable
 13.7 future.

13.8 (b) If the court finds that there is a substantial probability that the defendant will attain
 13.9 competency within the reasonably foreseeable future, the court shall rule the defendant
 13.10 incompetent and proceed under section 611.46, subdivision 7.

13.11 (c) If the court finds that there is not a substantial probability the defendant will attain
 13.12 competency within the reasonably foreseeable future, the court must:

13.13 (1) dismiss the case;

13.14 (2) dismiss the case and issue an order to the designated agency in the county of financial
 13.15 responsibility or the county where the defendant is present to conduct a prepetition screening
 13.16 pursuant to section 253B.07; or

13.17 (3) order the continued supervision of the defendant under subdivision 3.

13.18 (d) Any party may request a hearing by submitting a written objection to the
 13.19 court-appointed examiner's report no more than ten days after the report is submitted. If a
 13.20 hearing is held under this subdivision, there is a presumption that the defendant will not
 13.21 attain competency within the reasonably foreseeable future. A party attempting to overcome
 13.22 that presumption must prove by a preponderance of the evidence that there is a substantial
 13.23 probability that restoration efforts will be successful within the reasonably foreseeable
 13.24 future.

13.25 Subd. 3. **Continued supervision.** (a) The court may order continued supervision of a
 13.26 defendant charged with a felony violation of section 518B.01, subdivision 14; 609.165;
 13.27 609.185; 609.19; 609.195; 609.20; 609.205; 609.2112; 609.2113; 609.2114; 609.221;
 13.28 609.222; 609.223; 609.2231; 609.224; 609.2242; 609.2247; 609.228; 609.229; 609.2325;
 13.29 609.233; 609.235; 609.24; 609.245; 609.25; 609.255; 609.2661; 609.2662; 609.2663;
 13.30 609.2664; 609.2665; 609.267; 609.2671; 609.268; 609.322; 609.342; 609.343; 609.344;
 13.31 609.345; 609.3451; 609.3458; 609.377; 609.3775; 609.378; 609.487; 609.498, subdivision
 13.32 1; 609.561; 609.562; 609.563; 609.582, subdivision 1 or 2; 609.66, subdivision 1e; 609.687;

14.1 609.71; 609.713; 609.748, subdivision 6; 609.749; 609.855, subdivision 5; 624.713; or
14.2 629.75.

14.3 (b) Any party may request a hearing by submitting a written objection no more than ten
14.4 days after the order for continued supervision.

14.5 (c) Any time the court orders the continued supervision of a defendant under this
14.6 subdivision, the court shall clarify the willing entity or person responsible to the court for
14.7 the supervision of the defendant, including but not limited to directing an appointed forensic
14.8 navigator to be responsible for continued supervision.

14.9 (d) The court must determine the least-restrictive setting to meet the defendant's needs
14.10 and public safety. The court shall consider the recommendations of the most-recent court
14.11 examiner's report and consult with any resources available to the court.

14.12 (e) Notwithstanding the reporting requirements of section 611.46, subdivision 5, the
14.13 court examiner must provide an updated report to the court one year after the initial order
14.14 for continued supervision as to the defendant's competency and a description of the efforts
14.15 made to restore the defendant to competence.

14.16 (f) If after one year of continued supervision under this section the court finds that there
14.17 is a substantial probability that the defendant will attain competency within the reasonably
14.18 foreseeable future, the court shall rule the defendant incompetent and proceed under section
14.19 611.46, subdivision 7.

14.20 (g) If after one year of continued supervision under this section the court finds that there
14.21 is not a substantial probability that the defendant will attain competency within the reasonably
14.22 foreseeable future, the court must consult the prosecutor and defense counsel and:

14.23 (1) dismiss the case; or

14.24 (2) order continuing supervision. If continued supervision is ordered under this clause,
14.25 the court must set a date when an updated competency examination and report must be
14.26 submitted to the court, at no time more than five years after the order for continuing
14.27 supervision.

14.28 (h) At any time, the head of the program may notify the court and recommend that a
14.29 court examiner provide an updated competency examination and report. At any time, the
14.30 head of the program may discharge a defendant from the program or facility. The head of
14.31 the program must notify the court, prosecutor, defense counsel, and the entity responsible
14.32 for supervision of the defendant five business days prior to any planned discharge.

15.1 (i) The court may provide, partner, or contract for pretrial supervision services or
15.2 continued supervision if the defendant is found incompetent and unlikely to attain competency
15.3 in the reasonably foreseeable future.

15.4 **Sec. 10. [611.49] DEFENDANT'S PARTICIPATION AND CONDUCT OF**
15.5 **HEARINGS.**

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

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

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

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

15.24 **Sec. 11. [611.50] CREDIT FOR CONFINEMENT.**

15.25 If the defendant is convicted, any time spent confined in a secured setting while being
15.26 assessed and restored to competency must be credited as time served.

15.27 **Sec. 12. EFFECTIVE DATE.**

15.28 This article is effective July 1, 2023, and applies to competency determinations initiated
15.29 on or after that date.

ARTICLE 2

COMPETENCY RESTORATION SERVICES

Section 1. [611.55] FORENSIC NAVIGATOR SERVICES.

Subdivision 1. Availability of forensic navigator services. The judicial branch must provide or contract for enough forensic navigator services to meet the needs of adult defendants in each judicial district who are found incompetent to stand trial.

Subd. 2. Duties. (a) Forensic navigators shall serve as an impartial party in all legal matters relating to the defendant and the criminal case. Nothing shall be construed to permit the forensic navigator to provide legal counsel as a representative of the court, prosecutor, or defense counsel.

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

(1) developing dismissal plans;

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

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

(4) providing competency restoration education;

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

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

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

(8) providing consultation and education to court officials on emerging issues and innovations in serving defendants with mental illnesses in the court system.

(c) If a defendant's charges are dismissed, the appointed forensic navigator may continue assertive outreach with the individual for up to 90 days to assist in attaining stability in the community.

Subd. 3. Dismissal plans. (a) The forensic navigator must prepare dismissal plans with the defendant and submit them to the court. Dismissal plans must be submitted before the time the court makes a competency finding pursuant to section 611.45. The dismissal plan must include:

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

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

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

17.9 (b) Dismissal plans and any supporting records or other data submitted with those plans
17.10 are not accessible to the public.

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

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

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

17.21 (2) competency to stand trial procedures and the not guilty by reason of mental illness
17.22 or cognitive impairment defense in Minnesota;

17.23 (3) the civil commitment process in Minnesota;

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

17.26 (5) implicit bias and cultural humility.

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

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

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

18.1 (2) the mental health system in Minnesota;

18.2 (3) the substance use disorder system in Minnesota;

18.3 (4) crisis intervention; and

18.4 (5) motivational interviewing.

18.5 **Sec. 2. [611.56] PLANNING AND IMPLEMENTATION.**

18.6 Subdivision 1. **Planning.** (a) By September 1, 2022, the judicial branch shall establish
18.7 a planning committee to oversee the development and implementation of forensic navigator
18.8 programs in each judicial district.

18.9 (b) The planning committee must include:

18.10 (1) the chief justice or a designee;

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

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

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

18.14 (5) a county attorney selected by the Minnesota County Attorney's Association;

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

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

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

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

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

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

18.23 (12) at least one representative from a community organization representing victims of
18.24 crimes, selected by the chief justice; and

18.25 (13) the executive director of the National Alliance on Mental Illness Minnesota or a
18.26 designee.

18.27 (c) Forensic navigator programs shall be planned and designed to promote prevention
18.28 and diversion of people with mental illnesses and cognitive impairments from entering the
18.29 legal system, support defendants with mental illnesses and cognitive impairments, support

19.1 defendants in the competency process, and assist courts and partners in coordinating and
19.2 providing competency restoration services to defendants. The plan must include:

19.3 (1) procedures for hiring and training forensic navigators according to the standards of
19.4 section 611.55;

19.5 (2) policies and procedures for interagency partnerships, communication with defendants,
19.6 data privacy, and public safety; and

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

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

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

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

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

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

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

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

19.24 Sec. 3. **[611.57] COMPETENCY RESTORATION CURRICULUM AND**
19.25 **CERTIFICATION.**

19.26 Subdivision 1. **Curriculum.** (a) By January 1, 2023, the judicial branch must recommend
19.27 a competency restoration curriculum to educate and assist defendants found incompetent
19.28 in attaining the ability to:

19.29 (1) rationally consult with counsel;

19.30 (2) understand the proceedings; and

19.31 (3) participate in the defense.

20.1 (b) The curriculum must be flexible enough to be delivered in community and correctional
20.2 settings by individuals with various levels of education and qualifications, including but
20.3 not limited to professionals in criminal justice, health care, mental health care, and social
20.4 services. The judicial branch must review and update the curriculum as needed.

20.5 Subd. 2. **Certification and distribution.** By January 1, 2023, the judicial branch must
20.6 develop a process for certifying individuals to deliver the competency restoration curriculum
20.7 and make the curriculum available to every certified competency restoration program and
20.8 forensic navigator in the state. Each competency restoration program in the state must use
20.9 the competency restoration curriculum under this section as the foundation for delivering
20.10 competency restoration education and must not substantially alter the content.

20.11 Sec. 4. **[611.58] COMPETENCY RESTORATION PROGRAMS.**

20.12 Subdivision 1. **Certification.** The judicial branch shall work with the Department of
20.13 Human Services, the Department of Health, and the Department of Corrections to develop
20.14 procedures to certify that the standards in this section are met, including procedures for
20.15 regular recertification of competency restoration programs. The judicial branch shall maintain
20.16 a list of certified competency restoration programs on the branch's website to be updated at
20.17 least once every year.

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

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

20.23 (2) ensure that competency restoration education certified by the judicial branch is
20.24 provided to defendants and that regular assessments of defendants' progress in attaining
20.25 competency are documented;

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

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

20.30 Subd. 3. **Jail-based competency restoration standards.** Jail-based competency
20.31 restoration programs must be housed in correctional facilities licensed by the Department
20.32 of Corrections under section 241.021 and must:

21.1 (1) have a designated program director who meets minimum qualification standards set
 21.2 by the judicial branch, including understanding the requirements of competency to stand
 21.3 trial procedures;

21.4 (2) provide minimum mental health services including:

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

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

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

21.11 (3) ensure that competency restoration education certified by the judicial branch is
 21.12 provided to defendants and regular assessments of defendants' progress in attaining
 21.13 competency to stand trial are documented;

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

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

21.17 **ARTICLE 3**

21.18 **CONFORMING CHANGES AND APPROPRIATIONS**

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

21.20 Subd. 2a. **Petition originating from criminal proceedings.** (a) If criminal charges are
 21.21 pending against a defendant, the court shall order simultaneous competency and civil
 21.22 commitment examinations in accordance with Minnesota Rules of Criminal Procedure, rule
 21.23 20.04, when the following conditions are met:

21.24 (1) the prosecutor or defense counsel doubts the defendant's competency and a motion
 21.25 is made challenging competency, or the court on its initiative raises the issue under section
 21.26 611.42 or Rules of Criminal Procedure, rule 20.01; and

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

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

22.1 (b) Only a court examiner may conduct an assessment as described in section 611.43 or
22.2 Minnesota Rules of Criminal Procedure, rules 20.01, subdivision 4, and 20.02, subdivision
22.3 2.

22.4 (c) Where a county is ordered to consider civil commitment following a determination
22.5 of incompetency under section 611.45 or Minnesota Rules of Criminal Procedure, rule
22.6 20.01, the county in which the criminal matter is pending is responsible to conduct prepetition
22.7 screening and, if statutory conditions for commitment are satisfied, to file the commitment
22.8 petition in that county. By agreement between county attorneys, prepetition screening and
22.9 filing the petition may be handled in the county of financial responsibility or the county
22.10 where the proposed patient is present.

22.11 (d) Following an acquittal of a person of a criminal charge under section 611.026, the
22.12 petition shall be filed by the county attorney of the county in which the acquittal took place
22.13 and the petition shall be filed with the court in which the acquittal took place, and that court
22.14 shall be the committing court for purposes of this chapter. When a petition is filed pursuant
22.15 to subdivision 2 with the court in which acquittal of a criminal charge took place, the court
22.16 shall assign the judge before whom the acquittal took place to hear the commitment
22.17 proceedings unless that judge is unavailable.

22.18 Sec. 2. Minnesota Statutes 2020, section 253B.10, subdivision 1, is amended to read:

22.19 Subdivision 1. **Administrative requirements.** (a) When a person is committed, the
22.20 court shall issue a warrant or an order committing the patient to the custody of the head of
22.21 the treatment facility, state-operated treatment program, or community-based treatment
22.22 program. The warrant or order shall state that the patient meets the statutory criteria for
22.23 civil commitment.

22.24 (b) The commissioner shall prioritize patients being admitted from jail or a correctional
22.25 institution who are:

22.26 (1) ordered confined in a state-operated treatment program for an examination under
22.27 section 611.43 or Minnesota Rules of Criminal Procedure, rules 20.01, subdivision 4,
22.28 paragraph (a), and 20.02, subdivision 2;

22.29 (2) under civil commitment for competency treatment and continuing supervision under
22.30 section 611.46 or Minnesota Rules of Criminal Procedure, rule 20.01, subdivision 7;

22.31 (3) found not guilty by reason of mental illness under Minnesota Rules of Criminal
22.32 Procedure, rule 20.02, subdivision 8, and under civil commitment or are ordered to be

23.1 detained in a state-operated treatment program pending completion of the civil commitment
 23.2 proceedings; or

23.3 (4) committed under this chapter to the commissioner after dismissal of the patient's
 23.4 criminal charges.

23.5 Patients described in this paragraph must be admitted to a state-operated treatment program
 23.6 within 48 hours. The commitment must be ordered by the court as provided in section
 23.7 253B.09, subdivision 1, paragraph (d).

23.8 (c) Upon the arrival of a patient at the designated treatment facility, state-operated
 23.9 treatment program, or community-based treatment program, the head of the facility or
 23.10 program shall retain the duplicate of the warrant and endorse receipt upon the original
 23.11 warrant or acknowledge receipt of the order. The endorsed receipt or acknowledgment must
 23.12 be filed in the court of commitment. After arrival, the patient shall be under the control and
 23.13 custody of the head of the facility or program.

23.14 (d) Copies of the petition for commitment, the court's findings of fact and conclusions
 23.15 of law, the court order committing the patient, the report of the court examiners, and the
 23.16 prepetition report, and any medical and behavioral information available shall be provided
 23.17 at the time of admission of a patient to the designated treatment facility or program to which
 23.18 the patient is committed. Upon a patient's referral to the commissioner of human services
 23.19 for admission pursuant to subdivision 1, paragraph (b), any inpatient hospital, treatment
 23.20 facility, jail, or correctional facility that has provided care or supervision to the patient in
 23.21 the previous two years shall, when requested by the treatment facility or commissioner,
 23.22 provide copies of the patient's medical and behavioral records to the Department of Human
 23.23 Services for purposes of preadmission planning. This information shall be provided by the
 23.24 head of the treatment facility to treatment facility staff in a consistent and timely manner
 23.25 and pursuant to all applicable laws.

23.26 Sec. 3. Minnesota Statutes 2020, section 480.182, is amended to read:

23.27 **480.182 STATE ASSUMPTION OF CERTAIN COURT COSTS.**

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

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

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

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

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

24.4 (5) in forma pauperis costs;

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

24.7 (7) jury program costs; and

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

24.11 Sec. 4. **SUPREME COURT; APPROPRIATIONS.**

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

24.19 **Subd. 2. Competency restoration programs.** \$..... in fiscal year 2023 is appropriated
24.20 from the general fund to the supreme court to establish competency restoration programs
24.21 in each of the ten judicial districts. The amount given to each district must be based on the
24.22 population of the district according to the most-recent United States census data. Competency
24.23 restoration programs must meet the requirements of Minnesota Statutes, section 611.58.
24.24 Judicial districts may contract to establish competency restoration programs, including but
24.25 not limited to contracting with counties, Adult Mental Health Initiative regions, hospitals,
24.26 mental health treatment providers, substance use disorder treatment providers, correctional
24.27 facilities, and community-based programs.