

S.F. No. 3728 – Statutory procedure to assess the competency of a defendant to stand trial establishment (as proposed to be amended by the A-2 and A-3 amendments)

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Section 1 [628.70] states that new sections 628.70 to 628.88 govern in nonjuvenile competency proceedings, notwithstanding competency proceedings under Rule 20.01 of Criminal Procedure.

Section 2 [628.71] provides the definitions that apply to new section 628.70 to 628.88.

Section 3 [628.72] states that a criminal defendant is incompetent and cannot plead, be tried, or be sentenced if the defendant, due to a mental illness or cognitive impairment, cannot rationally consult with counsel, understand the proceedings, or participate in the defense.

Section 4 [628.73] allows a prosecutor, defense counsel, or the court to challenge a defendant's competency. A court is required to find whether a reason exists to doubt the defendant's competence and whether there is probable cause to support the underlying charge. If probable cause exists, the court must suspend the criminal proceedings and order an examination, but if probable cause does not exist, the court must dismiss the charges. The defendant is prohibited from waiving right to counsel when the court determines that there is reason to doubt defendant's competence. The court may appoint a forensic navigator and is required to impose conditions of release if the defendant is out of custody.

Section 5 [628.74] states how a competency examination and report are completed, by who, and what must be included in the report.

Subdivision 1 directs the court to appoint an examiner to examine the defendant's mental condition, allows an examiner retained by the prosecutor or defense counsel to observe any examination, and allows the court examiner to obtain any prior or subsequent report about the defendant. If a defendant is in custody, the examination must be completed where the defendant is being held, but if the defendant is not in custody, the court must order the defendant to appear for an examination. The court examiner must provide notice if it's determined that the defendant poses an imminent risk of harm to others or needs emergency intervention.

Subdivision 2 requires the court examiner's report to be filed and include a diagnosis of the defendant's mental condition and facts that support the examiner's opinions about the defendant's competency, education required to gain competency, and whether the defendant is likely to attain competence. If the defendant shows up but does not participate in the examination, the examiner must still submit a report.

Subdivision 3 allows the prosecutor or defense counsel to retain an independent examiner.

Section 6 [628.75] 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 hearing on the court examiner's competency determination 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 at a contested hearing challenging a competency determination and allows the court, prosecutor, and defense counsel to question the court examiner. Defense counsel is allowed to testify but cannot violate attorney-client privilege.

Subdivision 3 requires the court to determine a defendant's competency based on the reports of any approved examiner if no request for hearing was made.

Subdivision 4 states that a defendant is presumed incompetent at a hearing challenging a competency determination unless the court finds by a preponderance of the evidence that the defendant is competent.

Section 7 [628.76] provides when and how a court must rule on a defendant's competency to stand trial, and what factors must be considered.

Subdivision 1 provides when a court is required to make a competency determination.

Subdivision 2 requires the criminal proceedings to continue if the defendant is found competent.

Subdivision 3 requires the case to proceed pursuant under section 328.78, which governs when a defendant is incompetent to stand trial, if the defendant is found incompetent to proceed.

Subdivision 4 requires the court to appoint a forensic navigator if the defendant is found incompetent.

Subdivision 5 allows any party to appeal the competency determination.

Section 8 [628.77] provides the requirements for a forensic navigator, when services are terminated, a navigator's duties, and the certification of navigators.

Subdivision 1 requires an appointed forensic navigator to assist the defendant in accessing competency restoration services and must advise all parties on options available. Forensic navigator services are terminated 90 days after a court order is filed discharging the navigator, after the charges are dismissed, or after the defendant is found competent.

Subdivision 2 provides the duties of the forensic navigator.

Subdivision 3 requires the forensic navigator to prepare and submit a bridge plan to assist the defendant in finding other services when the forensic navigator receives notice that their services will be terminated.

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.

Subdivision 5 allows forensic navigators to have access to not public data and medical records.

Section 9 [628.78] provides the process that must be followed if a defendant is deemed incompetent to stand trial or ordered into continuing supervision, both in community-based restoration settings and jail-based restoration settings.

Subdivision 1 states that the court, after finding a defendant incompetent and suspending the criminal proceedings, must determine whether the defendant poses a danger to public safety, that the court has jurisdiction to order a placement, and that a defendant can participate in jail-based programming if the defendant was found incompetent and jail-based programming is the least restrictive setting.

Subdivision 2 states that if a court finds a defendant is not a risk to public safety, there will be a status hearing scheduled and the forensic navigator will prepare a report that provides placement or services recommendations to restore the defendant to competency. The court is required to order the defendant into a competency restoration program as a condition of release.

Subdivision 3 states that if a court finds a defendant is a risk to public safety, the court must order the defendant to a secure treatment facility or jail-based program to restore the defendant to competency.

Subdivision 4 requires a report to be submitted by an examiner within 90 days of finding a defendant incompetent and an updated report every six months thereafter.

Section 10 [628.79] provides the procedures that must be followed if a facility or provider wants to administer neuroleptic medication to a defendant found incompetent over the defendant's objection.

Subdivision 1 provides that the section applies to a defendant found to be incompetent and is in a competency restoration program.

Subdivision 2 allows a director of a treatment facility or the defendant's treatment provider to request a court order to administer neuroleptic medicine to a defendant found incompetent and in a restoration program over the defendant's objection, and the request must address certain factors.

Subdivision 3 requires a court to appoint an independent examiner to provide a written report on the factors addressed in the request.

Subdivision 4 requires the court to hold a hearing within 14 days of receiving the request to administer neuroleptic medication, consider specific factors when determining whether the defendant should be medicated over the defendant's objection, and weigh the factors against the defendant's interest to be free from unwanted medical treatment. Evidence is allowed in the hearing, including reliable hearsay.

Subdivision 5 states if a court finds involuntary administration of neuroleptic medication is necessary and appropriate, the court's findings must address the factors laid out in subdivision 4. If physical force is required to administer medication, only injectable medication is allowed and the use of a nasogastric tube is forbidden when administering medication involuntarily.

Subdivision 6 allows the emergency administration of neuroleptic medication to prevent serious, immediate harm to the defendant or others.

Section 11 [628.80] provides the procedure to decide if a defendant has been restored to competence.

Subdivision 1 requires the head of a competence restoration program to submit a report to the court if they believe the defendant is competent and allows the report to be considered by the court during sentencing if the defendant is found guilty.

Subdivision 2 permits a hearing on the defendant's restoration to competence to be requested.

Subdivision 3 sets forth the restoration to competence hearing procedure, which requires the requesting party to present evidence first, allows the court to admit all relevant and reliable evidence, and allows defense counsel to testify.

Subdivision 4 requires the court to find the defendant has been restored to competence by a preponderance of the evidence or is incompetent and ordered to continued treatment.

Subdivision 5 requires the court to determine whether the defendant has been restored to competence if no hearing was requested based on the report from the competence restoration program.

Section 12 [628.81] requires any requested changes to a defendant's placement, conditions of release, or both, be approved by the court and allows any party to object to the proposed changes, in which a hearing would be scheduled.

Section 13 [628.82] allows a prosecutor to proceed concurrently under chapter 253B, which governs civil commitment, if a defendant is found unlikely to be restored to competence.

Section 14 [628.83] provides the procedure for dismissing criminal charges.

Subdivision 1 requires felony criminal charges, excluding murder, be dismissed three years after defendant was found incompetent, unless the defendant is found competent prior to the

expiration, or the prosecutor files a notice of intent to prosecute when the defendant regains competence.

Subdivision 2 requires gross misdemeanor criminal charges be dismissed 120 days after defendant was found incompetent, unless the defendant is found competent prior to the expiration, or the prosecutor files a notice of intent to prosecute when the defendant regains competence.

Subdivision 3 requires misdemeanor criminal charges be dismissed after receipt of the 90-day report from the examiner unless the defendant is found competent prior to that date. However, if a defendant is charged with a certain targeted misdemeanor, the procedures under subdivision 2 apply.

Subdivision 4 requires the court to discharge a public defender or other court-appointed counsel if the criminal charges are dismissed.

Section 15 [628.84] 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 16 [628.85] states that any statement made by the defendant during any examination or evidence obtained from the examination is admissible at competency proceedings only.

Section 17 [628.86] requires any time a defendant spent in a secured setting be credited as time served if the defendant is convicted.

Section 18 [628.87] 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, 2023, 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 19 [628.88] provides the requirements for competency restoration curriculum and certification.

Subdivision 1 requires the Department of Human Services to establish a statewide certification process for certifying competence restoration programs by January 2023 and include certain criteria.

Subdivision 2 requires the Department of Human Services to contract with experts to evaluate the certification standards for assessing and restoring individuals to competency, and requires the experts to include licensed psychologists, psychiatrists, clinical therapists, or other mental health treatment providers.

Subdivision 3 allows the Department of Human Services to establish a way for counties, providers, hospitals, and others to enter into agreements to allow for capacity building.

Section 20 establishes a juvenile competency restoration task force.

Subdivision 1 establishes the task force to evaluate and study juvenile restoration programs and develop recommendations.

Subdivision 2 provides the membership of the task force.

Subdivision 3 provides the duties of the task force.

Subdivision 4 provides that the task force must elect a chair and vice-chair and is subject to the open meeting law.

Subdivision 5 requires the commissioner of human services to provide administrative support to the task force and that the task force can utilize the expertise of the Council of State Governments Justice Center.

Subdivision 6 requires the task force to submit a report by February 1, 2023, on its progress and findings, and must submit a final report by February 1, 2024.

Subdivision 7 provides the expiration date of the task force.

Section 21 appropriates money in fiscal year 2023 from the general fund to the commissioner of corrections to supervise individuals under this bill.

Section 22 appropriates money in fiscal year 2023 from the general fund to the supreme court for forensic navigator services, competency restoration services, and competence examiners.