

CHAPTER 14--H.F.No. 121

An act relating to competency attainment; making certain technical changes; appropriating money; amending Minnesota Statutes 2022, sections 611.41, subdivisions 2, 5, 6, 7, 8, 9, 10, 13, 14, 16, by adding a subdivision; 611.42, subdivisions 2, 3, 4; 611.43, subdivisions 1, 2, 3; 611.44, subdivisions 1, 2; 611.45, subdivision 3; 611.46, subdivisions 1, 2, 3, 4, 5, 6; 611.47; 611.48; 611.49; 611.51; 611.55; 611.56; 611.57; 611.58; 611.59; Laws 2022, chapter 99, article 3, section 1.

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

Section 1. Minnesota Statutes 2022, section 611.41, subdivision 2, is amended to read:

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

Sec. 2. Minnesota Statutes 2022, section 611.41, is amended by adding a subdivision to read:

Subd. 4a. **Competency.** "Competency" means the ability to understand criminal proceedings, consult with counsel, and participate in the defense.

Sec. 3. Minnesota Statutes 2022, section 611.41, subdivision 5, is amended to read:

Subd. 5. **Competency ~~restoration~~ attainment program.** "Competency ~~restoration~~ attainment program" means a structured program of clinical and educational services that is certified and designed to identify and address barriers to a defendant's ability to understand the criminal proceedings, consult with counsel, and participate in the defense.

Sec. 4. Minnesota Statutes 2022, section 611.41, subdivision 6, is amended to read:

Subd. 6. **Competency ~~restoration~~ attainment services.** "Competency ~~restoration~~ attainment services" means education ~~provided by certified individuals to~~ for defendants found incompetent to proceed ~~provided by certified individuals using the approved curriculum to address barriers to a defendant's ability to understand the criminal proceedings, consult with counsel, and participate in the defense. Educational services must use the curriculum certified by the State Competency Restoration Board as the foundation for delivering competency restoration education.~~ Competency ~~restoration~~ attainment services does not include housing assistance or programs, social services, or treatment that must be provided by a licensed professional including mental health treatment, substance use disorder treatment, or co-occurring disorders treatment.

Sec. 5. Minnesota Statutes 2022, section 611.41, subdivision 7, is amended to read:

Subd. 7. **Court examiner.** "Court examiner" means a person appointed to serve the court; by examining a defendant whose competency is at issue and who is a physician or licensed psychologist who has a doctoral degree in psychology.

Sec. 6. Minnesota Statutes 2022, section 611.41, subdivision 8, is amended to read:

Subd. 8. **Forensic navigator.** "Forensic navigator" means a person ~~who meets the certification and continuing education requirements under section 611.56, subdivision 2, paragraph (b), clause (3), hired or contracted to facilitate competency attainment services, supervise certain defendants found to be incompetent, prepare bridge plans, and provides~~ provide the other services under section 611.55, subdivision 3.

Sec. 7. Minnesota Statutes 2022, section 611.41, subdivision 9, is amended to read:

Subd. 9. **Head of the program.** "Head of the program" means the head of the competency ~~restoration~~ attainment program or the head of the facility or program where the defendant is being served.

Sec. 8. Minnesota Statutes 2022, section 611.41, subdivision 10, is amended to read:

Subd. 10. **Jail-based program.** "Jail-based program" means a competency ~~restoration~~ attainment program that operates within a correctional facility licensed by the commissioner of corrections under section 241.021 that meets the capacity standards governing jail facilities. A jail-based program may not be granted a variance to exceed its operational capacity.

Sec. 9. Minnesota Statutes 2022, section 611.41, subdivision 13, is amended to read:

Subd. 13. **State-operated treatment program.** "State-operated treatment program" means any ~~state-operated program, including~~ community behavioral health ~~hospitals~~ hospital, crisis ~~centers~~ center, residential ~~facilities~~ facility, outpatient ~~services~~ service, and or other ~~community-based services developed and~~ program operated by the state and under the control of the commissioner of human services, for a person who has mental illness, developmental disability, or substance use disorder.

Sec. 10. Minnesota Statutes 2022, section 611.41, subdivision 14, is amended to read:

Subd. 14. **Suspend the criminal proceedings.** "Suspend the criminal proceedings" means ~~nothing can be heard or decided on~~ to cease all hearings and decisions regarding the merits of the criminal charges except that but not terminate the jurisdiction of the court ~~retains jurisdiction in all~~ or prevent hearings or decisions in any other matters, including but not limited to establishing or modifying bail, conditions of release, probation conditions, no contact orders, and appointment of counsel.

Sec. 11. Minnesota Statutes 2022, section 611.41, subdivision 16, is amended to read:

Subd. 16. **Treatment facility.** "Treatment facility" means a ~~non-state-operated~~ hospital, residential treatment provider, crisis residential withdrawal management center, or corporate foster care home ~~that is not operated by the state and is~~ qualified to provide care and treatment for persons who have mental illness, developmental disability, or substance use disorder.

Sec. 12. Minnesota Statutes 2022, section 611.42, subdivision 2, is amended to read:

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

- (1) knowingly, voluntarily, and intelligently waive the right to counsel;
- (2) appreciate the consequences of proceeding without counsel;

- (3) comprehend the nature of the charge;
- (4) comprehend the nature of the proceedings;
- (5) comprehend the possible punishment; or
- (6) comprehend any other matters essential to understanding the case.

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

Sec. 13. Minnesota Statutes 2022, section 611.42, subdivision 3, is amended to read:

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

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

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

(d) In misdemeanor cases, other than cases involving a targeted misdemeanor, if the court determines there is a reasonable basis to doubt the defendant's ~~competence~~ competency and there is probable cause for the charge, the court must suspend the criminal proceedings. The court may order an examination of the defendant under section 611.43 if the examination is in the public interest. For purposes of this paragraph, an examination is in the public interest when it is necessary to assess whether the defendant has a cognitive impairment or mental illness; determine whether a defendant has the ability to access housing, food, income, disability verification, medications, and treatment for medical conditions; or whether a defendant has the ability to otherwise address any basic needs. The court shall order the forensic navigator to complete a bridge plan as described in section 611.55, subdivision 4, and submit it to the court. The court may dismiss the charge upon receipt of the bridge plan without holding a hearing unless either party objects.

Sec. 14. Minnesota Statutes 2022, section 611.42, subdivision 4, is amended to read:

Subd. 4. **Dismissal, referrals for services, and collaboration.** (a) Except as provided in this subdivision, when the court determines there is a reasonable basis to doubt ~~the~~ a defendant's ~~competence~~ competency and orders an examination of the defendant, a forensic navigator must complete a bridge plan with the defendant as described in section 611.55, subdivision 4, submit the bridge plan to the court, and provide a written copy to the defendant before the court or prosecutor dismisses any charges based on a belief or finding that the defendant is incompetent. The court may dismiss a case where the most serious charge is a misdemeanor, other than a targeted misdemeanor, without holding a hearing unless either party objects.

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

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

(d) Courts may partner and collaborate with county social services, community-based programs, jails, and any other available resource ~~available to the court~~ to provide referrals to services when a defendant's competency is at issue or a defendant has been found incompetent to proceed.

(e) Counsel for the defendant may bring a motion to dismiss the proceedings in the interest of justice at any stage of the proceedings.

Sec. 15. Minnesota Statutes 2022, section 611.43, subdivision 1, is amended to read:

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

(b) If the defendant is not entitled to release, the court shall order the defendant to participate in an examination where the defendant is being held, or the court may order that the defendant be confined in a treatment facility, locked treatment facility, or a state-operated treatment facility until the examination is completed.

(c) If the defendant is entitled to release, the court shall order the defendant to appear for an examination. If the defendant fails to appear at an examination, the court may amend the conditions of release and bail ~~pursuant to Minnesota Rules of Criminal Procedure, rule 6.~~

(d) A competency examination ordered under Minnesota Rules of Criminal Procedure, rule 20.04, shall proceed under ~~subdivision 2~~ this section.

Sec. 16. Minnesota Statutes 2022, section 611.43, subdivision 2, is amended to read:

Subd. 2. **Report of examination.** (a) The ~~court-appointed~~ court examiner's written report shall be filed with the court and ~~serve~~ provided to the prosecutor and defense counsel by the court. The report shall be filed no more than 30 days after the order for examination of a defendant in custody unless extended by the court for good cause. If the defendant is out of custody or confined in a ~~noncorrectional~~ state-operated treatment program or treatment facility, the report shall be filed no more than 60 days after the order for examination, unless extended by the court for good cause. The report shall not include opinions concerning the defendant's mental condition at the time of the alleged offense or any statements made by the defendant regarding the alleged criminal conduct, unless necessary to support the examiner's opinion regarding competence or incompetence.

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

- (1) any diagnoses made, and the results of any testing conducted with the defendant;
- (2) the defendant's competency to stand trial;
- (3) the level of care and education required for the defendant to attain, be restored to, or maintain competency;
- (4) a recommendation of the least restrictive setting appropriate to meet the defendant's needs for ~~restoration~~ attaining competency and immediate safety;
- (5) the impact of any substance use disorder on the defendant, including the defendant's competency, and any recommendations for treatment;
- (6) the likelihood the defendant will attain competency in the reasonably foreseeable future;
- (7) whether the defendant poses a substantial likelihood of physical harm to self or others; and
- (8) if the court examiner's opinion is that the defendant is incompetent to proceed, ~~the report must include an opinion as to~~ whether the defendant possesses capacity to make decisions regarding neuroleptic medication unless the examiner is unable to render an opinion on capacity. If the examiner is unable to render an opinion on capacity, the report must document the reasons why the examiner is unable to render that opinion.

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

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

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

Sec. 17. Minnesota Statutes 2022, section 611.43, subdivision 3, is amended to read:

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

Sec. 18. Minnesota Statutes 2022, section 611.44, subdivision 1, is amended to read:

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

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

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

Sec. 19. Minnesota Statutes 2022, section 611.44, subdivision 2, is amended to read:

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

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

Sec. 20. Minnesota Statutes 2022, section 611.45, subdivision 3, is amended to read:

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

(b) In targeted misdemeanor and gross misdemeanor cases, the charges must be dismissed 30 days after the date of the finding of incompetence, unless the prosecutor, before the expiration of the 30-day period, files a written notice of intent to prosecute when the defendant ~~regains~~ attains competency. If a notice has been filed and the charge is a targeted misdemeanor, charges must be dismissed within one year after the finding of incompetence. If a notice has been filed and the charge is a gross misdemeanor, charges must be dismissed within two years after the finding of incompetence.

(c) In felony cases, except as provided in paragraph (d), the charges must be dismissed three years after the date of the finding of incompetence, unless the prosecutor, before the expiration of the three-year period, files a written notice of intent to prosecute when the defendant ~~regains~~ attains competency. If a notice has been filed, charges must be dismissed within five years after the finding of incompetence or ten years if the maximum sentence for the crime with which the defendant is charged is ten years or more.

(d) The requirement that felony charges be dismissed under paragraph (c) does not apply if:

(1) the court orders continuing supervision pursuant to section 611.49, ~~subdivision 3~~; or

(2) the defendant is charged with a violation of sections ~~609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.2112 (criminal vehicular homicide); 609.2114, subdivision 1 (criminal vehicular operation, death to an unborn child); 609.2661 (murder of an unborn child in the first degree); 609.2662 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in the third degree); 609.2664 (manslaughter of an unborn child in the first degree); or 609.2665 (manslaughter of an unborn child in the second degree); or a crime of violence as defined in section 624.712, subdivision 5, except for a violation of chapter 152.~~

(e) Nothing in this subdivision requires dismissal of any charge if the court finds the defendant competent and enters an order directing that the criminal proceedings shall resume.

Sec. 21. Minnesota Statutes 2022, section 611.46, subdivision 1, is amended to read:

Subdivision 1. **Order to competency ~~restoration~~ attainment program.** (a) If the court finds the defendant incompetent and the charges have not been dismissed, the court shall order the defendant to participate in a ~~competency restoration~~ program to ~~restore~~ assist the defendant's competence ~~defendant in attaining competency~~. The court may order participation in a competency ~~restoration~~ attainment program provided outside of a jail, a jail-based competency ~~restoration~~ attainment program, or an alternative program. The court must determine the least-restrictive program appropriate to meet the defendant's needs and public safety. In making this determination, the court must consult with the forensic navigator and consider any recommendations of the court examiner. The court shall not order a defendant to participate in a jail-based program or a state-operated treatment program if the highest criminal charge is a ~~misdemeanor~~ or targeted misdemeanor.

(b) If the court orders the defendant to a locked treatment facility or jail-based program, the court must calculate the defendant's custody credit and cannot order the defendant to a locked treatment facility or jail-based program for a period that would cause the defendant's custody credit to exceed the maximum sentence for the underlying charge.

~~(b)~~ (c) The court may only order the defendant to participate in competency ~~restoration~~ attainment at an inpatient or residential treatment program under this section if the head of the treatment program determines that admission to the program is clinically appropriate and consents to the defendant's admission. The court may only order the defendant to participate in competency ~~restoration~~ attainment at a state-operated treatment facility under this section if the commissioner of human services or a designee determines that admission of the defendant is clinically appropriate and consents to the defendant's admission. The court may require a ~~certified~~ competency program that qualifies as a locked facility or a state-operated treatment program to notify the court in writing of the basis for refusing consent for admission of the defendant in order to ensure transparency and maintain an accurate record. The court may not require personal appearance of any representative of a ~~certified~~ competency program. The court shall send a written request for notification to the locked facility or state-operated treatment program and the locked facility or state-operated treatment program shall provide a written response to the court within ten days of receipt of the court's request.

~~(e)~~ (d) If the defendant is confined in jail and has not received competency ~~restoration~~ attainment services within 30 days of the finding of incompetency, the court shall review the case with input from the prosecutor and defense counsel and may:

(1) order the defendant to participate in an appropriate competency ~~restoration~~ attainment program that takes place outside of a jail;

(2) ~~conditionally~~ order a conditional release of the defendant, including with conditions that include but are not limited to ~~conditions a requirement~~ that the defendant participate in a competency ~~restoration~~ attainment program when one becomes available and accessible;

(3) make a determination as to whether the defendant is likely to attain competency in the reasonably foreseeable future and proceed under section 611.49; or

(4) upon a motion, dismiss the charges in the interest of justice.

~~(d) Upon the order to a competency restoration program or alternative program, (e)~~ The court may order any hospital, treatment facility, or correctional facility that has provided care or supervision to ~~the~~ a defendant in the previous two years to provide copies of the defendant's medical records to the competency ~~restoration~~ attainment program or alternative program in which the defendant was ordered to participate. This information shall be provided in a consistent and timely manner and pursuant to all applicable laws.

~~(e)~~ (f) If at any time the defendant refuses to participate in a competency ~~restoration~~ attainment program or an alternative program, the head of the program shall notify the court and any entity responsible for supervision of the defendant.

~~(f)~~ (g) At any time, the head of the program may discharge the defendant from the program or facility. The head of the program must notify the court, prosecutor, defense counsel, and any entity responsible for the supervision of the defendant prior to any planned discharge. Absent emergency circumstances, this notification shall be made five days prior to the discharge if the defendant is not being discharged to jail or a correctional facility. Upon the receipt of notification of discharge or upon the request of either party in response to notification of discharge, the court may order that a defendant who is subject to bail or unmet conditions of release be returned to jail upon being discharged from the program or facility. If the court orders a defendant returned to jail, the court shall notify the parties and head of the program at least one day before the defendant's planned discharge, except in the event of an emergency discharge where one day notice is not possible. The court must hold a review hearing within seven days of the defendant's return to jail. The forensic navigator must be given notice of the hearing and be allowed to participate.

~~(g)~~ (h) If the defendant is discharged from the program or facility under emergency circumstances, notification of emergency discharge shall include a description of the emergency circumstances and may include a request for emergency transportation. The court shall make a determination on a request for emergency transportation within 24 hours. Nothing in this section prohibits a law enforcement agency from transporting a defendant pursuant to any other authority.

Sec. 22. Minnesota Statutes 2022, section 611.46, subdivision 2, is amended to read:

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

(b) If the court determines that the defendant requires pretrial supervision, the court shall direct the forensic navigator to conduct pretrial supervision and report violations to the court. The forensic navigator shall be responsible for the supervision of the defendant until ordered otherwise by the court.

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

(d) If the court finds a violation, the court may revise the conditions of release and bail as appropriate pursuant to Minnesota Rules of Criminal Procedure, ~~including but not limited to consideration of~~ and must consider the defendant's need for ongoing access to a competency ~~restoration~~ attainment program or alternative program under this section.

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

Sec. 23. Minnesota Statutes 2022, section 611.46, subdivision 3, is amended to read:

Subd. 3. **Certified Competency ~~restoration attainment~~ programs; procedure.** (a) If the court orders a defendant to participate in a competency ~~restoration attainment~~ program that takes place outside of a jail, or an alternative program that the court has determined is providing appropriate competency ~~restoration attainment~~ services to the defendant, the court shall specify whether the program is ~~a community-based treatment program or~~ provided in a locked treatment facility.

(b) If the court finds that the defendant continues to be incompetent at a review hearing held after the initial determination of competency, the court must hold a review hearing pursuant to section 611.49 and consider any changes to the defendant's conditions of release or competency ~~restoration attainment~~ programming to restore the defendant's competency in the least restrictive program appropriate.

~~(c) If the court orders the defendant to a locked treatment facility or jail-based program, the court must calculate the defendant's custody credit and cannot order the defendant to a locked treatment facility or jail-based program for a period that would cause the defendant's custody credit to exceed the maximum sentence for the underlying charge.~~

Sec. 24. Minnesota Statutes 2022, section 611.46, subdivision 4, is amended to read:

Subd. 4. **Jail-based competency ~~restoration attainment~~ programs; procedure.** (a) A defendant is eligible to participate in a jail-based competency ~~restoration attainment~~ program when the underlying charge is a gross misdemeanor or felony and either:

(1) the defendant has been found incompetent, the defendant has not met the conditions of release ordered pursuant to rule 6.02 of Minnesota Rules of Criminal Procedure, including posting bail, and either a ~~court-appointed court~~ examiner has recommended jail-based competency ~~restoration attainment~~ as the least restrictive setting to meet the person's needs, or the court finds that after a reasonable effort by the forensic navigator, there has not been consent by another secure setting to the defendant's placement; or

(2) the defendant is in custody and is ordered to a ~~certified~~ competency ~~restoration attainment~~ program that takes place outside of a jail, a jail-based competency ~~restoration attainment~~ program is available within a reasonable distance to the county where the defendant is being held, and the court ordered a time-limited placement in a jail-based program until transfer to a ~~certified~~ competency ~~restoration attainment~~ program that takes place outside of a jail.

(b) A defendant may not be ordered to participate in a jail-based competency ~~restoration attainment~~ program for more than 90 days without a review hearing. If after 90 days of the order to a jail-based program the defendant has not attained competency, the court must review the case with input from the prosecutor and defense counsel and may:

(1) order the defendant to participate in an appropriate ~~certified~~ competency ~~restoration attainment~~ program that takes place outside of a locked facility; or

(2) determine whether, after a reasonable effort by the forensic navigator, there is consent to the defendant's placement by another locked facility. If court determines that a locked facility is the least

restrictive program appropriate and no appropriate locked facility is available, it may order the defendant to the jail-based program for an additional 90 days.

(c) Nothing in this section prohibits the court from ordering the defendant transferred to a ~~certified~~ competency ~~restoration~~ attainment program that takes place outside of a jail if the court determines that transition is appropriate, or the defendant satisfies the conditions of release or bail. Before the defendant is ~~transitioned~~ transferred to a ~~certified~~ competency ~~restoration~~ attainment program that takes place outside of a jail or an alternative program, the court shall notify the prosecutor and the defense counsel, and the provisions of subdivision 2 shall apply.

~~(d) The court may require a certified competency program that qualifies as a locked facility to notify the court in writing of the basis for refusing consent of the defendant in order to ensure transparency and maintain an accurate record. The court may not require personal appearance of any representative of a certified competency program.~~

Sec. 25. Minnesota Statutes 2022, section 611.46, subdivision 5, is amended to read:

Subd. 5. **Alternative programs; procedure.** (a) A defendant is eligible to participate in an alternative program if the defendant has been found incompetent, the defendant is entitled to release, and a ~~certified~~ competency ~~restoration~~ attainment program outside of a jail is not available.

(b) As soon as the forensic navigator has reason to believe that no ~~certified~~ competency ~~restoration~~ attainment program outside of a jail will be available within a reasonable time, the forensic navigator shall determine if there are available alternative programs that are likely to assist the defendant in attaining competency. ~~Upon notification by the forensic navigator,~~ The court may order the defendant to participate in an appropriate alternative program identified by the forensic navigator and must notify the prosecutor and the defense counsel of the order.

(c) If at any time while the defendant is participating in an alternative program, an appropriate ~~certified~~ competency ~~restoration~~ attainment program that takes place outside of a jail becomes available, the forensic navigator must notify the court. The court must notify the prosecutor and the defense counsel and must order the defendant to participate in an appropriate ~~certified~~ competency ~~restoration~~ attainment program, unless the court determines that the defendant is receiving appropriate competency ~~restoration~~ attainment services in the alternative program. If appropriate and in the public interest, the court may order the defendant to participate in the ~~certified~~ competency ~~restoration~~ attainment program and an alternative program.

(d) At any time, the head of the alternative program or the forensic navigator may notify the court that the defendant is receiving appropriate competency ~~restoration~~ attainment services in the alternative program, and recommend that remaining in the alternative program is in the best interest of the defendant and the defendant's progress in attaining competency. The court may order the defendant to continue programming in the alternative program and proceed under subdivision 3.

(e) If after 90 days of the order to an alternative program the defendant has not attained competency and the defendant is not participating in a ~~certified~~ competency ~~restoration~~ attainment program, the court must hold a review hearing pursuant to section 611.49.

Sec. 26. Minnesota Statutes 2022, section 611.46, subdivision 6, is amended to read:

Subd. 6. **Reporting to the court.** (a) The court examiner must provide an updated report to the court at least once every six months, unless the court and the parties agree to a longer period that is not more than

12 months, as to the defendant's competency and a description of the efforts made to restore the defendant to competency.

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

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

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

Sec. 27. Minnesota Statutes 2022, section 611.47, is amended to read:

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. ~~**Certification report 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.

~~(a)~~ (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 ~~shall~~ may certify in a report that the lack of capacity exists and which conditions under subdivision 3 are applicable. ~~The A~~ A certification report ~~shall~~ must contain an assessment of the current mental status of the defendant and the opinion of the treating medical practitioner ~~that as to whether~~ as to whether involuntary neuroleptic medication has become medically necessary and appropriate under subdivision 3, paragraph (b), clause (1) or (2), or in the ~~patient's~~ 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.

~~(b)~~ (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.

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

~~(d)~~ (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 ~~patient~~ defendant refuses to participate in an examination, the court examiner may rely on the ~~patient's~~ defendant's clinically relevant medical records in reaching an opinion.

~~(e)~~ (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 ~~consider opinions in the reports prepared under subdivision 2 as applicable to the issue of~~ first determine whether the defendant lacks capacity to make decisions regarding the administration of neuroleptic medication ~~and shall proceed under paragraph (b).~~ 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 lacks capacity to make decisions regarding neuroleptic medication, as defined in section 253B.092, subdivision 5,~~ 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 ~~patient~~ 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) the defendant lacks capacity to make decisions regarding neuroleptic medication, as defined in section 253B.092, subdivision 5,~~ 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 lacks capacity to make decisions regarding neuroleptic medication, as defined in section 253B.092, subdivision 5, and 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 patient's defendant's best medical interest in light of the patient's defendant's medical condition.~~

~~(c) In ruling on a petition under this section, the court shall also take into consideration any evidence on 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 patient defendant would choose to do in the situation if the patient 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) In determining whether the defendant possesses capacity to consent to neuroleptic medications, 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.~~

~~(e)~~ (d) If ~~consideration of the evidence presented on~~ the factors in paragraph (c) ~~weighs weigh~~ in favor of authorizing involuntary administration of neuroleptic medication, ~~and the court finds any of the conditions described in paragraph (b) to be true,~~ 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. ~~The court shall not order involuntary administration of neuroleptic medication under paragraph (b), clause (3), unless the court has first found that the defendant does not meet the criteria for involuntary administration of neuroleptic medication under paragraph (b), clause (1), and does not meet the criteria under paragraph (b), clause (2).~~

~~(f)~~ (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 ~~patient~~ 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 ~~patient~~ 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 ~~patient's~~ 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 ~~patient~~ 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 ~~patient's~~ 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 person's 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.

Sec. 28. Minnesota Statutes 2022, section 611.48, is amended to read:

611.48 REVIEW HEARINGS.

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

Sec. 29. Minnesota Statutes 2022, section 611.49, is amended to read:

611.49 LIKELIHOOD TO ATTAIN COMPETENCY.

Subdivision 1. **Applicability.** (a) The court may hold a hearing on its own initiative or upon request of either party to determine whether the defendant is likely to attain competency in the foreseeable future when the most recent court examiner's report states that the defendant is unlikely to attain competency in the foreseeable future, and either:

(1) the defendant has not been restored to competence attained competency after participating and cooperating with court-ordered competency ~~restoration~~ attainment programming for at least one year; or

(2) the defendant has not received timely competency ~~restoration~~ attainment services under section 611.46 after one year.

(b) The court cannot find a defendant unlikely to attain competency based upon a defendant's refusal to cooperate with or remain at a ~~certified~~ competency program or cooperate with an examination.

(c) The parties are entitled to 30 days of notice prior to the hearing and, unless the parties agree to a longer time period, the court must determine within 30 days after the hearing whether there is a substantial probability that the defendant will attain competency within the foreseeable future.

(d) A party attempting to demonstrate that there is a substantial probability that the defendant will attain competency within the foreseeable future must prove that probability by a preponderance of the evidence.

Subd. 2. **Procedure.** (a) If the court finds that there is a substantial probability that the defendant will attain competency within the reasonably foreseeable future, the court shall find the defendant incompetent and proceed under section 611.46.

(b) If the court finds that there is not a substantial probability the defendant will attain competency within the reasonably foreseeable future, the court may not order the defendant to participate in or continue to participate in a competency ~~restoration~~ attainment program in a locked treatment facility. The court must release the defendant from any custody holds pertaining to the underlying criminal case and require the forensic navigator to develop a bridge plan.

(c) If the court finds that there is not a substantial probability the defendant will attain competency within the foreseeable future, the court may issue an order to the designated agency in the county of financial responsibility or the county where the defendant is present to conduct a prepetition screening pursuant to section 253B.07.

~~(d) If a hearing is held under this subdivision and the criteria pursuant to subdivision 1, paragraphs (a) and (b) are satisfied, a party attempting to demonstrate that there is a substantial probability that the defendant will attain competency within the foreseeable future must prove by a preponderance of the evidence.~~

~~(e)~~ (d) If the court finds that there is not a substantial probability that the defendant will attain competency within the foreseeable future, the court must dismiss the case unless:

(1) the person is charged with a violation of section ~~609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.2112 (criminal vehicular homicide); 609.2114, subdivision 1 (criminal vehicular operation, death to an unborn child); 609.2661 (murder of an unborn child in the first degree); 609.2662 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in the third degree); 609.2664 (manslaughter of an unborn child in the first degree); or 609.2665 (manslaughter of an unborn child in the second degree);~~ or a crime of violence as defined in section 624.712, subdivision 5, except for a violation of chapter 152; or

(2) there is a showing of a danger to public safety if the matter is dismissed.

~~(f)~~ (e) If the court does not dismiss the charges, the court must order continued supervision under subdivision 3.

Subd. 3. **Continued supervision.** (a) If the court orders the continued supervision of a defendant, any party may request a hearing on the issue of continued supervision by filing a notice no more than ten days after the order for continued supervision.

(b) When continued supervision is ordered, the court must identify the supervisory agency responsible for the supervision of the defendant, ~~including but not limited to directing~~ and may identify a forensic navigator as the responsible entity.

(c) Notwithstanding the reporting requirements of section 611.46, subdivision 6, the court examiner must provide an updated report to the court one year after the initial order for continued supervision as to the defendant's competency and a description of the efforts made to ~~restore~~ assist the defendant ~~to~~ in attaining competency. The court shall hold a review hearing within 30 days of receipt of the report.

(d) If continued supervision is ordered at the review hearing under paragraph (c), the court must set a date for a review hearing no later than two years after the most recent order for continuing supervision. The court must order review of the defendant's status, including an updated competency examination and report by the court examiner. The court examiner must submit the updated report to the court. At the review hearing, the court must determine if the defendant has attained competency, whether there is a substantial probability that the defendant will attain competency within the foreseeable future, and whether the absence of continuing supervision of the defendant is a danger to public safety. Notwithstanding subdivision 2, paragraph ~~(e)~~ (d), the court may hear any motions to dismiss pursuant to the interest of justice at the review hearing.

(e) Continued supervision of a defendant in cases where the most serious charge is a targeted misdemeanor or gross misdemeanor is subject to the limitations established in section 611.45, subdivision 3, paragraph (b).

~~(e)~~ (f) The court may not order continued supervision of a defendant charged with a felony for more than ten years unless the defendant is charged with a violation of section ~~609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree);~~ 609.2112 (criminal vehicular homicide); 609.2114, subdivision 1 (criminal vehicular operation, death to an unborn child); 609.2661 (murder of an unborn child in the first degree); 609.2662 (murder of an unborn child in the second degree); 609.2663 (murder of an unborn child in the third degree); 609.2664 (manslaughter of an unborn child in the first degree); or 609.2665 (manslaughter of an unborn child in the second degree); or a crime of violence as defined in section 624.712, subdivision 5, except for a violation of chapter 152.

~~(f)~~ (g) At any time, the head of the program may discharge the defendant from the program or facility. The head of the program must notify the court, prosecutor, defense counsel, forensic navigator, and any entity responsible for the supervision of the defendant prior to any planned discharge. Absent emergency circumstances, this notification shall be made five days prior to the discharge. If the defendant is discharged from the program or facility under emergency circumstances, notification of emergency discharge shall include a description of the emergency circumstances and may include a request for emergency transportation. The court shall make a determination on a request for emergency transportation within 24 hours. Nothing in this section prohibits a law enforcement agency from transporting a defendant pursuant to any other authority.

~~(g)~~ (h) The court may provide, partner, or contract for pretrial supervision services or continued supervision if the defendant is found incompetent and unlikely to attain competency in the foreseeable future.

Sec. 30. Minnesota Statutes 2022, section 611.51, is amended to read:

611.51 CREDIT FOR CONFINEMENT.

If the defendant is convicted, any time spent confined in a ~~secured~~ secure setting while being assessed ~~and restored to~~ or receiving competency attainment services must be credited as time served.

Sec. 31. Minnesota Statutes 2022, section 611.55, is amended to read:

611.55 FORENSIC NAVIGATOR SERVICES.

Subdivision 1. **Definition.** As used in this section, "board" means the State Competency ~~Restoration~~ Attainment Board established in section 611.56.

Subd. 2. **Availability of forensic navigator services.** The board 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 proceed.

Subd. 3. **Duties.** (a) ~~Forensic navigators shall assist and supervise defendants when appointed to do so by a court. Forensic navigators shall be impartial in all legal matters relating to 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. Forensic navigators shall be required to report compliance and noncompliance with pretrial supervision and any orders of the court.~~

(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 bridge plans;

- (2) assisting defendants in participating in court-ordered examinations and hearings;
- (3) coordinating timely placement in court-ordered competency ~~restoration~~ attainment programs;
- (4) providing competency ~~restoration~~ attainment 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~~ needed mental health services, medical care, stable housing and housing assistance, financial assistance, social services, 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) When ordered to supervise a defendant, a forensic navigator shall report to the court on a defendant's compliance or noncompliance with conditions of pretrial supervision and any order of the court.

~~(e)~~ (d) 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. 4. **Bridge plans.** (a) ~~The Forensic navigator must prepare bridge plans~~ A forensic navigator must prepare a bridge plan with the defendant and submit ~~them~~ the bridge plan to the court. Bridge plans must be submitted before the time the court makes a competency finding pursuant to section 611.45. ~~The~~ A bridge plan must include:

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

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

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

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

Sec. 32. Minnesota Statutes 2022, section 611.56, is amended to read:

611.56 STATE COMPETENCY ~~RESTORATION~~ ATTAINMENT BOARD.

Subdivision 1. **Establishment; membership.** (a) The State Competency ~~Restoration~~ Attainment Board is established in the judicial branch. The board is not subject to the administrative control of the judiciary. The board shall consist of seven members, including:

(1) three members appointed by the supreme court, at least one of whom must be a defense attorney, one a county attorney, and one public member; and

(2) four members appointed by the governor, at least one of whom must be a mental health professional with experience in competency ~~restoration~~ attainment.

(b) The appointing authorities may not appoint an active judge to be a member of the board, but may appoint a retired judge.

(c) All members must demonstrate an interest in maintaining a high quality, independent forensic navigator program and a thorough process for certification of competency ~~restoration~~ attainment programs. Members shall be familiar with the Minnesota Rules of Criminal Procedure, particularly rule 20; chapter 253B; and sections 611.40 to 611.59. Following the initial terms of appointment, at least one member appointed by the supreme court must have previous experience working as a forensic navigator. At least three members of the board shall live outside the First, Second, Fourth, and Tenth Judicial Districts. The terms, compensation, and removal of members shall be as provided in section 15.0575. The members shall elect the chair from among the membership for a term of two years.

Subd. 2. **Duties and responsibilities.** (a) The board shall create and administer a statewide, independent competency ~~restoration~~ attainment system that certifies competency ~~restoration~~ attainment programs and uses forensic navigators to promote prevention and diversion of people with mental illnesses and cognitive impairments from entering the legal system, support defendants with mental illness and cognitive impairments, support defendants in the competency process, and assist courts and partners in coordinating competency ~~restoration~~ attainment services.

(b) The board shall:

- (1) approve and recommend to the legislature a budget for the board and the forensic navigator program;
- (2) establish procedures for distribution of funding under this section to the forensic navigator program;
- (3) establish forensic navigator standards, administrative policies, procedures, and rules consistent with statute, rules of court, and laws that affect a forensic navigator's work;
- (4) establish certification requirements for competency ~~restoration~~ attainment programs; and
- (5) carry out the programs under sections 611.57, 611.58, and 611.59.

(c) The board may:

- (1) adopt standards, policies, or procedures necessary to ensure quality assistance for defendants found incompetent to stand trial and charged with a felony, gross misdemeanor, or targeted misdemeanor, or for defendants found incompetent to stand trial who have recurring incidents;
- (2) establish district forensic navigator offices as provided in subdivision 4; and
- (3) propose statutory changes to the legislature and rule changes to the supreme court that would facilitate the effective operation of the forensic navigator program.

Subd. 3. **Administrator.** The board shall appoint a program administrator who serves at the pleasure of the board. The program administrator shall attend all meetings of the board and the Certification Advisory Committee, but may not vote, and shall:

- (1) carry out all administrative functions necessary for the efficient and effective operation of the board and the program, including but not limited to hiring, supervising, and disciplining program staff and forensic navigators;

(2) implement, as necessary, resolutions, standards, rules, regulations, and policies of the board;

(3) keep the board fully advised as to its financial condition, and prepare and submit to the board the annual program and budget and other financial information as requested by the board;

(4) recommend to the board the adoption of rules and regulations necessary for the efficient operation of the board and the program; and

(5) perform other duties prescribed by the board.

Subd. 4. **District offices.** The board may establish district forensic navigator offices in counties, judicial districts, or other areas where the number of defendants receiving competency ~~restoration~~ attainment services requires more than one full-time forensic navigator and establishment of an office is fiscally responsible and in the best interest of defendants found to be incompetent.

Subd. 5. **Administration.** The board may contract with the Office of State Court Administrator for administrative support services for the fiscal years following fiscal year 2022.

Subd. 6. **Fees and costs; civil actions on contested case.** Sections 15.039 and 15.471 to 15.474 apply to the State Competency ~~Restoration~~ Attainment Board.

Subd. 7. **Access to records.** Access to records of the board is subject to the Rules of Public Access for Records of the Judicial Branch. The board may propose amendments for supreme court consideration.

Sec. 33. Minnesota Statutes 2022, section 611.57, is amended to read:

611.57 CERTIFICATION ADVISORY COMMITTEE.

Subdivision 1. **Establishment.** The Certification Advisory Committee is established to provide the State Competency ~~Restoration~~ Attainment Board with advice and expertise related to the certification of competency ~~restoration~~ attainment programs, including jail-based programs.

Subd. 2. **Membership.** (a) The Certification Advisory Committee consists of the following members:

(1) a mental health professional, as defined in section 245I.02, subdivision 27, with community behavioral health experience, appointed by the governor;

(2) a board-certified forensic psychiatrist with experience in competency evaluations, providing competency ~~restoration~~ attainment services, or both, appointed by the governor;

(3) a board-certified forensic psychologist with experience in competency evaluations, providing competency ~~restoration~~ attainment services, or both, appointed by the governor;

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

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

(6) the president of the Minnesota Association of County Social Service Administrators or a designee;

(7) the president of the Minnesota Association of Community Mental Health Providers or a designee;

(8) the president of the Minnesota Sheriffs' Association or a designee; and

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

(b) Members of the advisory committee serve without compensation and at the pleasure of the appointing authority. Vacancies shall be filled by the appointing authority consistent with the qualifications of the vacating member required by this subdivision.

Subd. 3. **Meetings.** At its first meeting, the advisory committee shall elect a chair and may elect a vice-chair. The advisory committee shall meet at least monthly or upon the call the chair. The advisory committee shall meet sufficiently enough to accomplish the tasks identified in this section.

Subd. 4. **Duties.** The Certification Advisory Committee shall consult with the Department of Human Services, the Department of Health, and the Department of Corrections; make recommendations to the State Competency ~~Restoration~~ Attainment Board regarding competency ~~restoration~~ attainment curriculum, certification requirements for competency ~~restoration~~ attainment programs including jail-based programs, and certification of individuals to provide competency ~~restoration~~ attainment services; and provide information and recommendations on other issues relevant to competency ~~restoration~~ attainment as requested by the board.

Sec. 34. Minnesota Statutes 2022, section 611.58, is amended to read:

611.58 COMPETENCY ~~RESTORATION~~ ATTAINMENT CURRICULUM AND CERTIFICATION.

Subdivision 1. **Curriculum.** (a) By January 1, 2023, the board must recommend a competency ~~restoration~~ attainment curriculum to educate and assist defendants found incompetent in attaining the ability to:

- (1) rationally consult with counsel;
- (2) understand the proceedings; and
- (3) participate in the defense.

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

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

Sec. 35. Minnesota Statutes 2022, section 611.59, is amended to read:

611.59 COMPETENCY ~~RESTORATION~~ ATTAINMENT PROGRAMS.

Subdivision 1. **Availability and certification.** The board must provide or contract for enough competency ~~restoration~~ attainment services to meet the needs of adult defendants in each judicial district who are found incompetent to proceed and do not have access to competency ~~restoration~~ attainment services as a part of any other programming in which they are ordered to participate. The board, in consultation with the Certification Advisory Committee, shall develop procedures to certify that the standards in this section

are met, including procedures for regular recertification of competency ~~restoration~~ attainment programs. The board shall maintain a list of programs it has certified ~~competency restoration programs~~ on the board's website ~~to be updated~~ and shall update the list of competency attainment programs at least once every year.

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

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

(2) ensure that competency ~~restoration~~ attainment education certified by the board is provided to defendants and that regular assessments of defendants' progress in attaining competency are documented;

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

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

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

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

(2) provide minimum mental health services including:

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

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

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

(3) ensure that competency ~~restoration~~ attainment education certified by the board is provided to defendants and regular assessments of defendants' progress in attaining competency to stand trial are documented;

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

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

Subd. 4. **Program evaluations.** (a) The board shall collect the following data:

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

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

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

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

(b) By February 15 of each year, the board must report to the legislative committees and divisions with jurisdiction over human services, public safety, and the judiciary on the data collected under this subdivision and may include recommendations for statutory or funding changes related to competency ~~restoration~~ attainment.

Sec. 36. Laws 2022, chapter 99, article 3, section 1, is amended to read:

Section 1. APPROPRIATION BASE ESTABLISHED; COMPETENCY ~~RESTORATION~~ ATTAINMENT.

Subdivision 1. **Department of Corrections.** The general fund appropriation base for the commissioner of corrections is \$202,000 in fiscal year 2024 and \$202,000 in fiscal year 2025 for correctional facilities inspectors.

Subd. 2. **District courts.** The general fund appropriation base for the district courts is \$5,042,000 in fiscal year 2024 and \$5,042,000 in fiscal year 2025 for costs associated with additional competency examination costs.

Subd. 3. **State Competency ~~Restoration~~ Attainment Board.** The general fund appropriation base for the State Competency ~~Restoration~~ Attainment Board is \$11,350,000 in fiscal year 2024 and \$10,900,000 in fiscal year 2025 for staffing and other costs needed to establish and perform the duties of the State Competency ~~Restoration~~ Attainment Board, including providing educational services necessary to ~~restore defendants to assist defendants in attaining~~ assist defendants in attaining competency, or contracting or partnering with other organizations to provide those services.

Sec. 37. COMPETENCY ATTAINMENT BOARD; ESTABLISHMENT; APPROPRIATION.

\$250,000 in fiscal year 2023 is appropriated from the general fund to the State Competency Attainment Board to establish the board, hire an administrator and any other necessary staff, establish appropriate standards and requirements for a forensic navigator program, and establish certifications requirements and procedures for competency attainment curriculum and programs. This is a onetime appropriation.

Sec. 38. EFFECTIVE DATE.

This act is effective the day following final enactment.

Presented to the governor March 16, 2023

Signed by the governor March 16, 2023, 1:57 p.m.