CHAPTER 611

RIGHTS OF ACCUSED

611.001 MS 2006 [Renumbered 15.001]

GENERALLY

611.01 GROUND OF ARREST, KNOWLEDGE.

Every person arrested by virtue of process, or taken into custody by an officer, has a right to know from such officer the true ground of arrest; and every such officer who shall refuse to answer relative thereto, or shall answer untruly, or neglect on request to exhibit to the arrested person, or to any person acting in the arrested person's behalf, the precept by virtue of which such arrest is made, shall be punished by a fine not exceeding $3,000, or by imprisonment in the county jail not exceeding 364 days.

History: *(9951) RL s 4783; 1984 c 628 art 3 s 11; 1986 c 444; 2023 c 52 art 6 s 16*

611.02 PRESUMPTION OF INNOCENCE; CONVICTION OF LOWEST DEGREE, WHEN.

Every defendant in a criminal action is presumed innocent until the contrary is proved and, in case of a reasonable doubt, is entitled to acquittal; and when an offense has been proved against the defendant, and there exists a reasonable doubt as to which of two or more degrees the defendant is guilty, the defendant shall be convicted only of the lowest.

History: *(9952) RL s 4784; 1986 c 444*

611.025 PRESUMPTION OF RESPONSIBILITY.

Except as otherwise provided by law, in every criminal proceeding, a person is presumed to be responsible for the person's acts and bears the burden of rebutting such presumption.

History: *(9913) RL s 4754; 1963 c 753 art 2 s 7; 1986 c 444*

611.026 CRIMINAL RESPONSIBILITY OF PERSONS WITH A MENTAL ILLNESS OR COGNITIVE IMPAIRMENT.

No person having a mental illness or cognitive impairment so as to be incapable of understanding the proceedings or making a defense shall be tried, sentenced, or punished for any crime; but the person shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act the person was laboring under such a defect of reason, from one of these causes, as not to know the nature of the act, or that it was wrong.

History: *(9915) RL s 4756; 1971 c 352 s 1; 1986 c 444; 2013 c 59 art 3 s 18*

611.027 DISPOSITION OF CHILD OF PARENT ARRESTED.

A peace officer who arrests a person accompanied by a child of the person may release the child to any person designated by the parent unless it is necessary to remove the child under section 260C.175 because the child is found in surroundings or conditions which endanger the child's health or welfare or which the peace officer reasonably believes will endanger the child's health or welfare. An officer releasing a child under this section to a person designated by the parent has no civil or criminal liability for the child's release.

History: *2012 c 216 art 6 s 6*

611.03 CONVICTION.

No person indicted for any offense shall be convicted thereof, unless by admitting the truth of the charge in a demurrer, or plea, by confession in open court, or by verdict of a jury, accepted and recorded by the court.

History: *(9953) RL s 4785; 1986 c 444*

611.033 COPY OF CONFESSION OR ADMISSION.

A statement, confession, or admission in writing shall not be received in evidence in any criminal proceeding against any defendant unless within a reasonable time of the taking thereof the defendant is furnished with a copy thereof and which statement, confession, or admission shall have endorsed thereon or attached thereto the receipt of the accused or certification of a peace officer which shall state that a copy thereof has been received by or made available to the accused. Nothing in this section requires that a videotape, audiotape, or transcript of a tape be given to the defendant at the time the statement, confession, or admission is made or within a reasonable time thereafter, provided that the videotape or audiotape is available to the defendant or the defendant's attorney for review within a reasonable time of the defendant's arrest, as well as in discovery pursuant to the Rules of Criminal Procedure.

History: *1951 c 263 s 1; 1951 c 284 s 1; 1979 c 258 s 20; 1986 c 435 s 11*

611.04 [Repealed, 1979 c 233 s 42]

611.05 CONTINUANCE; EFFECT; BAIL.

When the defendant is not indicted or tried as herein provided, and good reasons therefor are shown, the court may order the action continued from term to term, and in the meantime commit the defendant, or, in case the offense is bailable, admit the defendant to bail, on the defendant's furnishing satisfactory sureties. When the action is dismissed, the defendant shall be discharged from custody, or, if admitted to bail, the bail shall be exonerated, and, if money has been deposited for bail, that shall be refunded.

History: *(9955) RL s 4787; 1986 c 444*

611.06 DEFENDANT ENTITLED TO BLANK SUBPOENAS.

The court administrator of the court in which any indictment is to be tried shall at all times, upon application of a defendant not represented by counsel, and without charge, issue as many blank subpoenas, under the seal of the court, and subscribed by the court administrator as court administrator, for witnesses in the state, as are approved by order of court as provided by rule 22.01, subdivision 3, of the Rules of Criminal Procedure and required by the defendant.

Issuance of subpoenas shall not require court approval if defendant is represented by counsel.

History: *(9956) RL s 4788; 1979 c 233 s 25; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

611.07 [Repealed, 1989 c 335 art 1 s 270; art 3 s 57]

611.071 [Repealed, 1989 c 335 art 1 s 270; art 3 s 57]

611.08 [Repealed, 1979 c 233 s 42]

611.09 [Repealed, 1963 c 753 art 2 s 17]

611.10 [Repealed, 1963 c 753 art 2 s 17]

611.11 NO PRESUMPTION FROM FAILURE TO TESTIFY.

The defendant in the trial of an indictment, complaint, or other criminal proceeding shall, at the defendant's own request and not otherwise, be allowed to testify; but failure to testify shall not create any presumption against the defendant, nor shall it be alluded to by the prosecuting attorney or by the court.

History: *(9815) RL s 4661; 1986 c 444*

611.12 [Repealed, 1989 c 335 art 3 s 57 subd 2]

611.13 [Repealed, 1969 c 838 s 7]

PUBLIC DEFENSE

611.14 RIGHT TO REPRESENTATION BY PUBLIC DEFENDER.

The following persons who are financially unable to obtain counsel are entitled to be represented by a public defender:

(1) a person charged with a felony, gross misdemeanor, or misdemeanor including a person charged under sections 629.01 to 629.29;

(2) a person appealing from a conviction of a felony, gross misdemeanor, or misdemeanor, or a person convicted of a felony, gross misdemeanor, or misdemeanor, who is pursuing a postconviction proceeding and who has not already had a direct appeal of the conviction;

(3) a person who is entitled to be represented by counsel under section 609.14, subdivision 2; or

(4) a minor ten years of age or older who is entitled to be represented by counsel under section 260B.163, subdivision 4, or 260C.163, subdivision 3.

History: *1965 c 869 s 1; 1969 c 655 s 1; 1976 c 2 s 153; 1983 c 247 s 213; 1987 c 384 art 2 s 111; 1991 c 345 art 3 s 2; 1998 c 367 art 8 s 12; 1999 c 139 art 4 s 2; 2000 c 357 s 2; 1Sp2003 c 2 art 3 s 3; 2007 c 61 s 3; 2012 c 212 s 9*

611.15 NOTIFICATION OF RIGHT TO REPRESENTATION.

In every criminal case or proceeding, including a juvenile delinquency or extended jurisdiction juvenile proceeding, in which any person entitled by law to representation by counsel shall appear without counsel, the court shall advise such person of the right to be represented by counsel and that counsel will be appointed to represent the person if the person is financially unable to obtain counsel.

History: *1965 c 869 s 2; 1986 c 444; 1994 c 576 s 50*

611.16 REQUEST FOR APPOINTMENT OF PUBLIC DEFENDER.

Any person described in section 611.14 may at any time request the court in which the matter is pending, or the court in which the conviction occurred, to appoint a public defender to represent the person.

History: *1965 c 869 s 3; 1986 c 444; 2012 c 212 s 10*

611.17 FINANCIAL INQUIRY; STATEMENTS; CO-PAYMENT; STANDARDS FOR DISTRICT PUBLIC DEFENSE ELIGIBILITY.

(a) Each judicial district must screen requests for representation by the district public defender. A defendant is financially unable to obtain counsel if:

(1) the defendant, or any dependent of the defendant who resides in the same household as the defendant, receives means-tested governmental benefits; or

(2) the court determines that the defendant, through any combination of liquid assets and current income, would be unable to pay the reasonable costs charged by private counsel in that judicial district for a defense of the same matter.

(b) Upon a request for the appointment of counsel, the court shall make an appropriate determination of financial eligibility under paragraph (a) of the applicant, who shall submit a financial statement under oath or affirmation setting forth the applicant's assets and liabilities, including the value of any real property owned by the applicant, whether homestead or otherwise, less the amount of any encumbrances on the real property, the source or sources of income, and any other information required by the court. The applicant shall be under a continuing duty while represented by a public defender to disclose any changes in the applicant's financial circumstances. The state public defender shall furnish appropriate forms for the financial statements, which must be used by the district courts throughout the state. The forms must contain conspicuous notice of the applicant's continuing duty to disclose to the court changes in the applicant's financial circumstances. The forms must also contain conspicuous notice of the applicant's obligation to make a co-payment for the services of the district public defender, as specified under paragraph (c). The information contained in the statement shall be confidential and for the exclusive use of the court and the public defender except for any prosecution under section 609.48. A refusal to execute the financial statement or produce financial records constitutes a waiver of the right to the appointment of a public defender. The court shall not appoint a public defender to a defendant who is financially able to retain private counsel but refuses to do so, refuses to execute the financial statement or refuses to provide information necessary to determine financial eligibility under this section, or waives the appointment of a public defender under section 611.19.

An inquiry to determine financial eligibility of a defendant for the appointment of the district public defender shall be made whenever possible prior to the court appearance and by such persons as the court may direct. This inquiry may be combined with the prerelease investigation provided for in Minnesota Rule of Criminal Procedure 6.02, subdivision 3. In no case shall the district public defender be required to perform this inquiry or investigate the defendant's assets or eligibility. The court has the sole duty to conduct a financial inquiry. The inquiry must include the following:

(1) the liquidity of real estate assets, including the defendant's homestead;

(2) any assets that can be readily converted to cash or used to secure a debt;

(3) the determination of whether the transfer of an asset is voidable as a fraudulent conveyance; and

(4) the value of all property transfers occurring on or after the date of the alleged offense or notice of the action. The burden is on the accused to show that the accused is financially unable to afford counsel. Defendants who fail to provide information necessary to determine eligibility shall be deemed ineligible. The court must not appoint the district public defender as advisory counsel or standby counsel. If the court appoints advisory or standby counsel, the cost of counsel shall be paid for by the Office of the State Court Administrator or, if the prosecutor requests the appointment, by the governmental unit conducting the

prosecution. In no event may the court order the Board of Public Defense to pay the cost of advisory or standby counsel.

(c) Upon disposition of the case, an individual who has received public defender services shall pay to the court a $75 co-payment for representation provided by a public defender, unless the co-payment is, or has been, reduced in part or waived by the court.

The co-payment must be credited to the general fund. If a term of probation is imposed as a part of an offender's sentence, the co-payment required by this section must not be made a condition of probation. The co-payment required by this section is a civil obligation and must not be made a condition of a criminal sentence.

History: *1965 c 869 s 4; 1983 c 359 s 91; 1986 c 444; 1989 c 335 art 1 s 260; 1991 c 345 art 3 s 3; 1993 c 146 art 2 s 19; 1994 c 636 art 11 s 3; 1995 c 226 art 2 s 24; 2002 c 220 art 6 s 13; 1Sp2003 c 2 art 3 s 4; 1Sp2003 c 23 s 6; 2007 c 61 s 4; 2009 c 83 art 2 s 47; 2012 c 212 s 11*

611.18 APPOINTMENT OF PUBLIC DEFENDER.

If it appears to a court that a person requesting the appointment of counsel satisfies the requirements of this chapter, the court shall order the public defender to represent the person. For a person appealing from a conviction, or a person pursuing a postconviction proceeding and who has not already had a direct appeal of the conviction, according to the standards of sections 611.14, clause (2), and 611.25, subdivision 1, paragraph (a), clause (2), the chief appellate public defender shall be appointed. For a person covered by section 611.14, clause (1), (3), or (4), the chief district public defender shall be appointed to represent that person. If at any stage of the proceedings the court finds that the defendant is financially unable to pay counsel whom the defendant had retained, the court may appoint the public defender to represent the defendant, as provided in this section. Prior to any court appearance, a public defender may represent a person accused of violating the law, who appears to be financially unable to obtain counsel, and shall continue to represent the person unless it is subsequently determined that the person is financially able to obtain counsel. The representation may be made available at the discretion of the public defender, upon the request of the person or someone on the person's behalf. Any law enforcement officer may notify the public defender of the arrest of any such person.

History: *1965 c 869 s 5; 1969 c 655 s 2; 1983 c 247 s 214; 1986 c 444; 1991 c 345 art 3 s 4; 1Sp2003 c 2 art 3 s 5; 2012 c 212 s 12*

611.19 WAIVER OF APPOINTMENT OF COUNSEL.

Where counsel is waived by a defendant, the waiver shall in all instances be made in writing, signed by the defendant, except that in such situation if the defendant refuses to sign the written waiver, then the court shall make a record evidencing such refusal of counsel. Waiver of counsel by a child who is the subject of a delinquency or extended jurisdiction juvenile proceeding is governed by section 260B.163, subdivisions 4 and 10.

History: *1965 c 869 s 6; 1994 c 576 s 51; 1999 c 139 art 4 s 2*

611.20 SUBSEQUENT ABILITY TO PAY COUNSEL.

Subdivision 1. **Court determination.** If at any time after the state public defender or a district public defender has been directed to act, the court having jurisdiction in the matter is satisfied that the defendant or other person is financially able to obtain counsel, the court shall terminate the appointment of the public

defender. The judicial district may investigate the financial status of a defendant or other person for whom a public defender has been appointed and may act to collect payments directed by the court.

If at any time after appointment a public defender should have reason to believe that a defendant is financially able to obtain counsel or to make partial payment for counsel, it shall be the public defender's duty to so advise the court so that appropriate action may be taken.

Subd. 2. **Partial payment.** If the court determines that the defendant is able to make partial payment, the court shall direct the partial payments to the state general fund. Payments directed by the court to the state shall be recorded by the court administrator who shall transfer the payments to the commissioner of management and budget.

Subd. 3. **Reimbursement.** In each fiscal year, the commissioner of management and budget shall deposit the payments in the special revenue fund and credit them to a separate account with the Board of Public Defense. The amount credited to this account is appropriated to the Board of Public Defense.

The balance of this account does not cancel but is available until expended. Expenditures by the board from this account for each judicial district public defense office must be based on the amount of the payments received by the state from the courts in each judicial district. A district public defender's office that receives money under this subdivision shall use the money to supplement office overhead payments to part-time attorneys providing public defense services in the district. By January 15 of each year, the Board of Public Defense shall report to the chairs and ranking minority members of the senate and house of representatives divisions having jurisdiction over criminal justice funding on the amount appropriated under this subdivision, the number of cases handled by each district public defender's office, the number of cases in which reimbursements were ordered, the average amount of reimbursement ordered, and the average amount of money received by part-time attorneys under this subdivision.

Subd. 4. **Employed defendants; ability to pay.** (a) A court may order a defendant to reimburse the state for the cost of the public defender. In determining the amount of reimbursement, the court shall consider the defendant's income, assets, and employment. If reimbursement is required under this subdivision, the court shall order the reimbursement when a public defender is first appointed or as soon as possible after the court determines that reimbursement is required. The court may accept partial reimbursement from the defendant if the defendant's financial circumstances warrant establishing a reduced reimbursement schedule. If a defendant does not agree to make payments, the court may order the defendant's employer to withhold a percentage of the defendant's income to be turned over to the court.

(b) If a court determines under section 611.17 that a defendant is financially unable to pay the reasonable costs charged by private counsel due to the cost of a private retainer fee, the court shall evaluate the defendant's ability to make partial payments or reimbursement.

Subd. 5. [Repealed, 2007 c 54 art 5 s 21; 2007 c 61 s 17]

Subd. 6. [Repealed, 2012 c 212 s 18]

Subd. 7. **Income withholding.** (a) Whenever an obligation for reimbursement of public defender costs is ordered by a court under this section, the amount of reimbursement as determined by court order must be withheld from the income of the person obligated to pay. The court shall serve a copy of the reimbursement order on the defendant's employer. Notwithstanding any law to the contrary, the order is binding on the employer when served. Withholding must begin no later than the first pay period that occurs after 14 days following the date of the notice. The employer shall withhold from the income payable to the defendant the

amount specified in the order and shall remit, within ten days of the date the defendant is paid the remainder of the income, the amounts withheld to the court.

(b) An employer shall not discharge, or refuse to hire, or otherwise discipline an employee as a result of a wage or salary withholding authorized by this section. The employer shall be liable to the court for any amounts required to be withheld. An employer that fails to withhold or transfer funds in accordance with this section is also liable for interest on the funds at the rate applicable to judgments under section 549.09, computed from the date the funds were required to be withheld. An employer that has failed to comply with the requirements of this section is subject to contempt of court.

(c) Amounts withheld under this section do not supersede or have priority over amounts withheld pursuant to other sections of law.

History: *1965 c 869 s 7; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1990 c 604 art 9 s 5; 1991 c 345 art 3 s 5; 1993 c 146 art 2 s 20,31; 1994 c 636 art 11 s 4; 1995 c 226 art 2 s 25-29,36; 1998 c 367 art 8 s 13-15; 2003 c 112 art 2 s 50; 2007 c 61 s 5; 2009 c 101 art 2 s 109; 1Sp2010 c 1 art 14 s 18; 2012 c 212 s 13*

611.21 SERVICES OTHER THAN COUNSEL.

(a) Counsel appointed by the court for an indigent defendant, or representing a defendant who, at the outset of the prosecution, has an annual income not greater than 125 percent of the poverty line established under United States Code, title 42, section 9902(2), may file an ex parte application requesting investigative, expert, interpreter, or other services necessary to an adequate defense in the case. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain the services on behalf of the defendant. The court may establish a limit on the amount which may be expended or promised for such services. The court may, in the interests of justice, and upon a finding that timely procurement of necessary services could not await prior authorization, ratify such services after they have been obtained, but such ratification shall be given only in unusual situations. The court shall determine reasonable compensation for the services and direct payment by the county in which the prosecution originated, to the organization or person who rendered them, upon the filing of a claim for compensation supported by an affidavit specifying the time expended, services rendered, and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source.

(b) The compensation to be paid to a person for such service rendered to a defendant under this section, or to be paid to an organization for such services rendered by an employee, may not exceed $1,000, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court as necessary to provide fair compensation for services of an unusual character or duration and the amount of the excess payment is approved by the chief judge of the district. The chief judge of the judicial district may delegate approval authority to an active district judge.

(c) If the court denies authorizing counsel to obtain services on behalf of the defendant, the court shall make written findings of fact and conclusions of law that state the basis for determining that counsel may not obtain services on behalf of the defendant. When the court issues an order denying counsel the authority to obtain services, the defendant may appeal immediately from that order to the court of appeals and may request an expedited hearing.

History: *1965 c 869 s 8; 1969 c 9 s 91; 1986 c 444; 1989 c 335 art 1 s 261; 1994 c 636 art 8 s 14; 1Sp2021 c 11 art 3 s 28*

611.214 [Repealed, 1989 c 335 art 3 s 57 subd 2]

611.215 STATE BOARD OF PUBLIC DEFENSE CREATED.

Subdivision 1. **Structure; membership.** (a) The State Board of Public Defense is a part of, but is not subject to the administrative control of, the judicial branch of government. The State Board of Public Defense shall consist of nine members including:

(1) five attorneys admitted to the practice of law, well acquainted with the defense of persons accused of crime, but not employed as prosecutors, appointed by the supreme court, of which one must be a retired or former public defender within the past five years; and

(2) four public members appointed by the governor.

The appointing authorities may not appoint a person who is a judge to be a member of the State Board of Public Defense, other than as a member of the ad hoc Board of Public Defense.

(b) All members shall demonstrate an interest in maintaining a high quality, independent defense system for those who are unable to obtain adequate representation. Appointments to the board shall include qualified women and members of minority groups. At least three members of the board shall be from judicial districts other than the First, Second, Fourth, and Tenth Judicial Districts. The terms, compensation, and removal of members shall be as provided in section 15.0575. The chair shall be elected by the members from among the membership for a term of two years.

(c) In addition, the State Board of Public Defense shall consist of a nine-member ad hoc board when considering the appointment of district public defenders under section 611.26, subdivision 2. The terms of chief district public defenders currently serving shall terminate in accordance with the staggered term schedule set forth in section 611.26, subdivision 2.

(d) Meetings of the board are subject to chapter 13D.

Subd. 1a. **Chief administrator.** The State Board of Public Defense, with the advice of the state public defender, shall appoint a chief administrator who must be chosen solely on the basis of training, experience, and other qualifications, and who will serve at the pleasure of the State Board of Public Defense. The chief administrator need not be licensed to practice law. The chief administrator shall attend all meetings of the board, but may not vote, and shall:

(1) enforce all resolutions, rules, regulations, or orders of the board;

(2) present to the board and the state public defender plans, studies, and reports prepared for the board's and the state public defender's purposes and recommend to the board and the state public defender for adoption measures necessary to enforce or carry out the powers and duties of the board and the state public defender, or to efficiently administer the affairs of the board and the state public defender;

(3) keep the board fully advised as to its financial condition, and prepare and submit to the board its annual budget and other financial information as it may request;

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

(5) perform other duties prescribed by the board and the state public defender.

Subd. 2. **Duties and responsibilities.** (a) The board shall approve and recommend to the legislature a budget for the board, the office of state public defender, the judicial district public defenders, and the public defense corporations.

(b) The board shall establish procedures for distribution of state funding under this chapter to the state and district public defenders and to the public defense corporations.

(c) The state public defender with the approval of the board shall establish standards for the offices of the state and district public defenders and for the conduct of all appointed counsel systems. The standards must include, but are not limited to:

(1) standards needed to maintain and operate an office of public defender including requirements regarding the qualifications, training, and size of the legal and supporting staff for a public defender or appointed counsel system;

(2) standards for public defender caseloads;

(3) standards and procedures for the eligibility for appointment, assessment, and collection of the costs for legal representation provided by public defenders or appointed counsel;

(4) standards for contracts between a board of county commissioners and a county public defender system for the legal representation of indigent persons;

(5) standards prescribing minimum qualifications of counsel appointed under the board's authority or by the courts; and

(6) standards ensuring the independent, competent, and efficient representation of clients whose cases present conflicts of interest, in both the trial and appellate courts.

(d) The board may require the reporting of statistical data, budget information, and other cost factors by the state and district public defenders and appointed counsel systems.

Subd. 3. **Limitation.** In no event shall the board or its members interfere with the discretion, judgment or zealous advocacy of counsel in their handling of individual cases as a part of the judicial branch of government.

Subd. 4. [Repealed, 1991 c 345 art 3 s 30]

History: *1981 c 356 s 360; 1985 c 285 s 49; 1986 c 444; 1987 c 250 s 2-4; 1988 c 686 art 1 s 73; 1989 c 335 art 1 s 262; 1990 c 604 art 9 s 6; 1990 c 612 s 12; 1991 c 345 art 3 s 6-8; 2007 c 61 s 6,7; 2023 c 52 art 19 s 41*

611.216 CRIMINAL AND JUVENILE DEFENSE GRANTS.

Subdivision 1. **Eligible recipients.** The Board of Public Defense shall establish procedures for public defense corporations based in this state to apply for funding by the legislature. The applications must be submitted to the board. The board must review and prioritize them and include a recommended funding level for each corporation in the budget request the board submits to the legislature. Money appropriated to provide criminal and juvenile defense to indigent individuals must be distributed by the Board of Public Defense to the nonprofit criminal and juvenile defense corporations included in the board's budget request or otherwise designated by law. Money may not be disbursed to a corporation in the Leech Lake Reservation area or the White Earth Reservation area without prior approval by the respective reservation tribal council. A corporation may accept cases involving felony, gross misdemeanor, and misdemeanor charges, and juvenile cases if financial eligibility standards are met, unless there is a legal or ethical reason for rejecting a case. A corporation may accept cases arising outside its geographic area of responsibility, as appropriate. Each corporation, in order to ensure broad support, shall provide matching money received from nonstate sources, which may include money or in-kind contribution from federal agencies, local governments, private agencies,

and community groups, equal to ten percent of its state appropriation. The Board of Public Defense shall give notice 30 days in advance and conduct a hearing if it has reasonable grounds to believe money appropriated for this purpose is being improperly used, or if it has reasonable cause to believe criminal and juvenile defense of proper quality is not being supplied. Payment must cease from the date of notice until either the Board of Public Defense determines that the money appropriated will be properly handled, or the Board of Public Defense determines that criminal and juvenile defense of proper quality will be provided. A participating corporation may give notice at any time of its withdrawal from this program of financial assistance.

Subd. 1a. [Repealed, 1998 c 367 art 8 s 26]

Subd. 2. **Discrimination; penalty.** An employee, administrator, officer, contractor, or agent of a recipient of the money provided by this section who discriminates on the basis of sex, race, color, national origin, religion, or creed is guilty of a gross misdemeanor.

Subd. 3. **Report.** Each corporation shall submit reports showing, at a minimum, the number of clients served, the number of charges brought, the number of cases of each kind, such as felonies, gross misdemeanors, misdemeanors, and juvenile delinquencies, the number of dispositions of each kind, such as jury trials, court trials, guilty pleas, and dismissals, the number of court appearances, and financial data.

Subd. 4. **Audits.** The legislative auditor may conduct periodic postaward audits of these grants as may be requested by the Board of Public Defense and approved by the Legislative Audit Commission.

History: *1984 c 544 s 86; 1Sp1985 c 13 s 367,368; 1987 c 250 s 5-7; 1993 c 146 art 2 s 21; 1997 c 7 art 2 s 62*

611.22 [Repealed, 1987 c 250 s 20]

611.23 OFFICE OF STATE PUBLIC DEFENDER; APPOINTMENT; SALARY.

The state public defender is responsible to the State Board of Public Defense. The state public defender shall supervise the operation, activities, policies, and procedures of the statewide public defender system. When requested by a district public defender or appointed counsel, the state public defender may assist the district public defender, appointed counsel, or an organization designated in section 611.216 in the performance of duties, including trial representation in matters involving legal conflicts of interest or other special circumstances, and assistance with legal research and brief preparation. The state public defender shall be appointed by the State Board of Public Defense for a term of four years, except as otherwise provided in this section, and until a successor is appointed and qualified. The state public defender shall be a full-time qualified attorney, licensed to practice law in this state, serve in the unclassified service of the state, and be removed only for cause by the appointing authority. Vacancies in the office shall be filled by the appointing authority for the unexpired term. The salary of the state public defender shall be fixed by the State Board of Public Defense. Terms of the state public defender shall commence on July 1. The state public defender shall devote full time to the performance of duties and shall not engage in the general practice of law.

History: *1965 c 869 s 10; 1967 c 696 s 2; 1981 c 356 s 361; 1986 c 444; 1987 c 250 s 8; 1991 c 345 art 3 s 9; 1Sp2001 c 9 art 18 s 18; 2002 c 379 art 1 s 113; 2007 c 61 s 8; 2023 c 52 art 3 s 5*

611.24 CHIEF APPELLATE PUBLIC DEFENDER; ORGANIZATION OF OFFICE; ASSISTANTS.

(a) Beginning January 1, 2007, and for every four years after that date, the State Board of Public Defense shall appoint a chief appellate public defender in charge of appellate services, who shall employ or retain assistant state public defenders and other personnel as may be necessary to discharge the functions of the

office. The chief appellate public defender shall serve a four-year term and may be removed only for cause upon the order of the State Board of Public Defense. The chief appellate public defender shall be a full-time qualified attorney, licensed to practice law in this state, and serve in the unclassified service of the state. Vacancies in the office shall be filled by the appointing authority for the unexpired term.

(b) An assistant state public defender shall be a qualified attorney, licensed to practice law in this state, serve in the unclassified service of the state if employed, and serve at the pleasure of the appointing authority at a salary or retainer fee not to exceed reasonable compensation for comparable services performed for other governmental agencies or departments. Retained or part-time employed assistant state public defenders may engage in the general practice of law. The compensation of the chief appellate public defender and the compensation of each assistant state public defender shall be set by the State Board of Public Defense. The chief appellate public defender shall devote full time to the performance of duties and shall not engage in the general practice of law.

(c) The incumbent deputy state public defender as of December 31, 2006, shall be appointed as the chief appellate public defender for the four-year term beginning on January 1, 2007.

History: *1965 c 869 s 11; 1978 c 540 s 1; 1981 c 356 s 362; 1987 c 250 s 9; 1988 c 686 art 1 s 74; 1991 c 345 art 3 s 10; 2007 c 61 s 9*

611.25 POWERS; DUTIES; LIMITATIONS.

Subdivision 1. **Representation.** (a) The chief appellate public defender shall represent, without charge:

(1) a defendant or other person appealing from a conviction of a felony, gross misdemeanor, or misdemeanor;

(2) a person convicted of a felony, gross misdemeanor, or misdemeanor who is pursuing a postconviction proceeding and who has not already had a direct appeal of the conviction; and

(3) a child who is appealing from a delinquency adjudication or from an extended jurisdiction juvenile conviction.

(b) The chief appellate public defender may represent, without charge, all other persons pursuing a postconviction remedy under section 590.01, who are financially unable to obtain counsel.

(c) The chief appellate public defender shall not represent a person in any action or proceeding in which a party is seeking a monetary judgment, recovery or award.

Subd. 2. [Repealed, 1989 c 335 art 1 s 270; art 3 s 57]

Subd. 3. **Duties.** The state public defender may require the reporting of statistical data, budget information, and other cost factors by the chief district public defenders and appointed counsel systems. The state public defender shall design and conduct programs for the training of all state and district public defenders, appointed counsel, and attorneys for public defense corporations funded under section 611.26. The state public defender shall establish policies and procedures to administer the district public defender system, consistent with standards adopted by the State Board of Public Defense.

History: *1965 c 869 s 12; 1969 c 655 s 3; 1983 c 247 s 215; 1986 c 444; 1987 c 250 s 10; 1991 c 345 art 3 s 11,12; 1993 c 146 art 2 s 22; 1994 c 576 s 52; 1997 c 7 art 2 s 63; 1998 c 367 art 8 s 16; 1Sp2003 c 2 art 3 s 6; 2007 c 61 s 10; 2012 c 212 s 14*

611.26 DISTRICT PUBLIC DEFENDERS.

Subdivision 1. [Repealed, 1991 c 345 art 3 s 30]

Subd. 2. **Appointment; terms.** The state Board of Public Defense shall appoint a chief district public defender for each judicial district. When appointing a chief district public defender, the state Board of Public Defense membership shall be increased to include two residents of the district appointed by the chief judge of the district to reflect the characteristics of the population served by the public defender in that district. The additional members shall serve only in the capacity of selecting the district public defender. The ad hoc state Board of Public Defense shall appoint a chief district public defender only after requesting and giving reasonable time to receive any recommendations from the public, the local bar association, and the judges of the district. Each chief district public defender shall be a qualified attorney licensed to practice law in this state. The chief district public defender shall be appointed for a term of four years, beginning January 1, pursuant to the following staggered term schedule: (1) in 2008, the second and eighth districts; (2) in 2009, the first, third, fourth, and tenth districts; (3) in 2010, the fifth and ninth districts; and (4) in 2011, the sixth and seventh districts. The chief district public defenders shall serve for four-year terms and may be removed for cause upon the order of the state Board of Public Defense. Vacancies in the office shall be filled by the appointing authority for the unexpired term. The chief district public defenders shall devote full time to the performance of duties and shall not engage in the general practice of law.

Subd. 3. **Compensation.** (a) The compensation of the chief district public defender and the compensation of each assistant district public defender shall be set by the Board of Public Defense. To assist the Board of Public Defense in determining compensation under this subdivision, counties shall provide to the board information on the compensation of county attorneys, including salaries and benefits, rent, secretarial staff, and other pertinent budget data. For purposes of this subdivision, compensation means salaries, cash payments, and employee benefits including paid time off and group insurance benefits, and other direct and indirect items of compensation including the value of office space provided by the employer.

(b) This subdivision does not limit the rights of public defenders to collectively bargain with their employers.

Subd. 3a. **Budget; compensation.** (a) Notwithstanding subdivision 3 or any other law to the contrary, compensation and economic benefit increases for chief district public defenders and assistant district public defenders, who are full-time county employees, shall be paid out of the budget for that judicial district public defender's office.

(b) In the Second Judicial District, the district public defender's office shall be funded by the Board of Public Defense. The budget for the Second Judicial District Public Defender's Office shall not include Ramsey County property taxes.

(c) In the Fourth Judicial District, the district public defender's office shall be funded by the Board of Public Defense and by the Hennepin County Board. Personnel expenses of state employees hired on or after January 1, 1999, in the Fourth Judicial District Public Defender's Office shall be funded by the Board of Public Defense.

(d) Those budgets for district public defender services in the Second and Fourth Judicial Districts under the jurisdiction of the state Board of Public Defense shall be eligible for adjustments to their base budgets in the same manner as other state agencies. In making biennial budget base adjustments, the commissioner of management and budget shall consider the budgets for district public defender services in all judicial districts, as allocated by the state Board of Public Defense, in the same manner as other state agencies.

Subd. 4. **Assistant public defenders.** A chief district public defender shall appoint assistants who are qualified attorneys licensed to practice law in this state and other staff as the chief district public defender finds prudent and necessary subject to the standards adopted by the state public defender. Assistant district public defenders must be appointed to ensure broad geographic representation and caseload distribution within the district. Each assistant district public defender serves at the pleasure of the chief district public defender. A chief district public defender is authorized, subject to approval by the state Board of Public Defense or their designee, to hire an independent contractor to perform the duties of an assistant public defender.

Subd. 5. [Repealed, 1987 c 250 s 20]

Subd. 6. **Persons defended.** The district public defender shall represent, without charge, a defendant charged with a felony, a gross misdemeanor, or misdemeanor when so directed by the district court. The district public defender shall also represent a minor ten years of age or older in the juvenile court when so directed by the juvenile court. The district public defender must not serve as advisory counsel or standby counsel. The juvenile court may not order the district public defender to represent a minor who is under the age of ten years, to serve as a guardian ad litem, or to represent a guardian ad litem.

Subd. 7. **Other employment.** Assistant district public defenders may engage in the general practice of law where not employed on a full-time basis.

Subd. 8. [Repealed, 1987 c 250 s 20]

Subd. 9. [Repealed, 1998 c 367 art 8 s 26]

Subd. 10. **Services.** The chief district public defender is responsible for the administration of public defender services in the district, consistent with standards adopted by the state Board of Public Defense and the policies and procedures adopted by the state public defender.

History: *1965 c 869 s 13; 1969 c 655 s 4; 1971 c 25 s 93; 1974 c 322 s 10; 1981 c 356 s 363-367; 1986 c 444; 1987 c 250 s 11-15; 1989 c 335 art 3 s 36; 1990 c 604 art 9 s 7,8; 1990 c 612 s 12; 1991 c 345 art 3 s 13-20; 1993 c 146 art 2 s 23; 1994 c 636 art 11 s 5,6; 1998 c 367 art 8 s 17-19; 2000 c 357 s 3; 1Sp2003 c 2 art 3 s 7; 2007 c 61 s 11,12; 2009 c 101 art 2 s 109; 2012 c 212 s 15*

611.261 [Repealed, 1991 c 345 art 3 s 30]

611.262 REPRESENTATION BEFORE APPOINTMENT.

A district public defender or appointed assistant may, on request of a peace officer, a defendant, suspect, or other person, represent or consult with a person before formal appointment if there is a substantial factual basis to believe the person is indigent.

History: *1987 c 250 s 16*

611.263 EMPLOYER; RAMSEY, HENNEPIN DEFENDERS.

Subdivision 1. **Employees.** (a) Except as provided in subdivision 3, the district public defender and assistant public defenders of the Second Judicial District are employees of Ramsey County in the unclassified service under section 383A.286.

(b) Except as provided in subdivision 3, the district public defender and assistant public defenders of the Fourth Judicial District are employees of Hennepin County under section 383B.63, subdivision 6.

Subd. 2. **Public employer.** (a) Except as provided in subdivision 3, and notwithstanding section 179A.03, subdivision 15, clause (c), the Ramsey County Board is the public employer under the Public Employment Labor Relations Act for the district public defender and assistant public defenders of the Second Judicial District.

(b) Except as provided in subdivision 3, and notwithstanding section 179A.03, subdivision 15, clause (c), the Hennepin County Board is the public employer under the Public Employment Labor Relations Act for the district public defender and assistant public defenders of the Fourth Judicial District.

Subd. 3. **Exception.** Notwithstanding section 611.265, district public defenders and employees in the Second and Fourth Judicial Districts who are hired on or after January 1, 1999, are state employees of the Board of Public Defense and are governed by the personnel rules adopted by the Board of Public Defense. Employees of the public defender's office in the Second and Fourth Judicial Districts who are hired before January 1, 1999, remain employees of Ramsey and Hennepin Counties, respectively, under subdivisions 1 and 2.

History: *1989 c 335 art 3 s 37; 1998 c 367 art 8 s 20*

611.265 TRANSITION.

(a) District public defenders and their employees, other than in the Second and Fourth Judicial Districts, are state employees in the judicial branch, and are governed by the personnel rules adopted by the state Board of Public Defense.

(b) A district public defender or district public defender employee who becomes a state employee under this section, and who participated in a county insurance program on June 30, 1993, may elect to continue to participate in the county program according to procedures established by the Board of Public Defense. An affected county shall bill the Board of Public Defense for employer contributions, in a manner prescribed by the board. The county shall not charge the board any administrative fee. Notwithstanding any law to the contrary, a person who is first employed as a district public defender after July 1, 1993, shall participate in the state employee insurance program, as determined by the state Board of Public Defense, in consultation with the commissioner of management and budget.

(c) A district public defender or district public defender employee who becomes a state employee under this section, and who participated in the Public Employee Retirement Association on June 30, 1993, may elect to continue to participate in the Public Employees Retirement Association according to procedures established by the Board of Public Defense and the association. Notwithstanding any law to the contrary, a person who is first employed as a state employee or by a district public defender after July 1, 1993, must participate in the Minnesota State Retirement System.

(d) A person performing district public defender work as an independent contractor is not eligible to be covered under the state group insurance plan or the Public Employee Retirement Association.

History: *1993 c 146 art 2 s 24; 2008 c 204 s 42; 2009 c 101 art 2 s 109*

611.27 OFFICES OF DISTRICT PUBLIC DEFENDER; FINANCING; REPRESENTATION.

Subdivision 1. **Budget.** (a) A chief district public defender shall annually submit a comprehensive budget to the state Board of Public Defense. The budget shall be in compliance with standards and forms required by the board. The chief district public defender shall, at times and in the form required by the board, submit reports to the board concerning its operations, including the number of cases handled and funds expended for these services.

(b) Money appropriated to the state Board of Public Defense for the board's administration, for the state public defender, for the judicial district public defenders, and for the public defense corporations shall be expended as determined by the board. In distributing funds to district public defenders, the board shall consider the geographic distribution of public defenders, the equity of compensation among the judicial districts, public defender case loads, and the results of the weighted case load study.

Subd. 2. [Repealed, 1998 c 367 art 8 s 26]

Subd. 3. **Transcript use.** If the chief appellate public defender or a district public defender deems it necessary to make a motion for a new trial, to take an appeal, or other postconviction proceedings in order to properly represent a defendant or other person whom that public defender had been directed to represent, that public defender may use the transcripts of the testimony and other proceedings filed with the court administrator of the district court as provided by section 243.49.

Subd. 4. [Repealed, 1998 c 367 art 8 s 26]

Subd. 5. **Representation; county payment.** The Board of Public Defense is solely responsible to provide counsel in adult criminal and juvenile cases, as specified under section 611.14. The court shall not appoint counsel at county expense for representation under section 611.14, except as provided in section 611.26, subdivision 3a, paragraph (c).

Subd. 6. **Case reporting system.** The state Board of Public Defense shall adopt and implement a uniform system for reporting of hours and cases by district public defenders. District public defenders shall provide whatever assistance the board requires in order to implement this reporting system.

Subd. 7. **Costs; state responsibility.** The state's obligation for the costs of the public defender services is limited to the appropriations made to the Board of Public Defense.

Subd. 8. **Adequate representation; review.** In a case where the chief district public defender does not believe that the office can provide adequate representation, the chief public defender of the district shall immediately notify the state public defender.

Subd. 9. **Request for other appointment of counsel.** The chief district public defender may request that the state public defender authorize appointment of counsel other than the district public defender in such cases.

Subd. 10. **Addition of permanent staff.** The chief public defender may not request nor may the state public defender approve the addition of permanent staff under subdivision 7.

Subd. 11. **Appointment of counsel.** If the state public defender finds that the provision of adequate legal representation, including associated services, is beyond the ability of the district public defender to provide, the state public defender may approve counsel to be appointed, with compensation and expenses to be paid under the provisions of this subdivision and subdivision 7. Counsel in such cases shall be appointed by the chief district public defender.

Subd. 12. **Compensation and expenses.** Counsel appointed under this subdivision shall document the time worked and expenses incurred in a manner prescribed by the chief district public defender.

Subd. 13. **Correctional facility inmates.** All billings for services rendered and ordered under subdivision 7 shall require the approval of the chief district public defender before being forwarded to the state public defender. In cases where adequate representation cannot be provided by the district public defender and where counsel has been approved by the state public defender, the Board of Public Defense shall pay all

services from county program aid transferred by the commissioner of revenue for that purpose under section 477A.03, subdivision 2b, paragraph (a).

The costs of appointed counsel and associated services in cases arising from new criminal charges brought against indigent inmates who are incarcerated in a Minnesota state correctional facility are the responsibility of the state Board of Public Defense. In such cases the state public defender may follow the procedures outlined in this section for obtaining court-ordered counsel.

Subd. 14. [Repealed, 1997 c 7 art 2 s 67]

Subd. 15. **Costs of transcripts.** In appeal cases and postconviction cases where the appellate public defender's office does not have sufficient funds to pay for transcripts and other necessary expenses because it has spent or committed all of the transcript funds in its annual budget, the Board of Public Defense may pay for these transcripts and other necessary expenses from county program aid transferred by the commissioner of revenue for that purpose under section 477A.03, subdivision 2b, paragraph (a).

Subd. 16. **Appeal by prosecuting attorney; attorney fees.** (a) When a prosecuting attorney appeals to the court of appeals, in any criminal case, from any pretrial order of the district court, reasonable attorney fees and costs incurred shall be allowed to the defendant on the appeal which shall be paid by the governmental unit responsible for the prosecution involved in accordance with paragraph (b).

(b) By January 15, 2013, and every year thereafter, the chief judge of the judicial district, after consultation with city and county attorneys, the chief public defender, and members of the private bar in the district, shall establish a reimbursement rate for attorney fees and costs associated with representation under paragraph (a). The compensation to be paid to an attorney for such service rendered to a defendant under this subdivision may not exceed $5,000, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the chief judge of the district as necessary to provide fair compensation for services of an unusual character or duration.

History: *1965 c 869 s 14; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 250 s 17,18; 1990 c 604 art 9 s 9; 1991 c 345 art 3 s 21-25; 1992 c 513 art 4 s 50-57; 1993 c 146 art 2 s 25; 1994 c 636 art 11 s 7; 1995 c 226 art 6 s 14; 1997 c 239 art 12 s 7,8; 1998 c 367 art 8 s 21,22; 1Sp2003 c 21 art 6 s 7,8; 1Sp2003 c 23 s 29; 2007 c 13 art 3 s 32,33; 2007 c 61 s 13-15; 2009 c 101 art 2 s 109; 2012 c 212 s 16,17; 2014 c 308 art 9 s 91,92; 1Sp2021 c 11 art 3 s 29-33*

611.271 COPIES OF DOCUMENTS; FEES.

The court administrators of courts, the prosecuting attorneys of counties and municipalities, and the law enforcement agencies of the state and its political subdivisions shall furnish, upon the request of the district public defender, the state public defender, or an attorney working for a public defense corporation under section 611.216, copies of any documents in their possession at no charge to the public defender, including the following: police reports, photographs, copies of existing grand jury transcripts, audiotapes, videotapes, audio or video files on CD Rom or DVD Rom disc, copies of existing transcripts of audiotapes, videotapes, or audio or video files on CD Rom or DVD Rom disc and, in child protection cases, reports prepared by local welfare agencies. When files are provided on CD Rom or DVD Rom disc, the provider shall, upon the request of the public defender, include the software needed to open, view, or play the disc. Nothing in this section shall compel production of documents that are not discoverable under the rules of court, court order, or chapter 13.

History: *1969 c 655 s 5; 1Sp1986 c 3 art 1 s 82; 1990 c 604 art 9 s 10; 1992 c 571 art 15 s 4; 1993 c 146 art 2 s 26; 1996 c 408 art 11 s 8; 2010 c 239 s 1*

611.272 ACCESS TO GOVERNMENT DATA.

The district public defender, the state public defender, or an attorney working for a public defense corporation under section 611.216 has access to the criminal justice data communications network described in section 299C.46, as provided in this section. Access to data under this section is limited to data necessary to prepare criminal cases in which the public defender has been appointed as follows:

(1) access to data about witnesses in a criminal case shall be limited to records of criminal convictions, custody status, custody history, aliases and known monikers, race, probation status, identity of probation officer, and booking photos; and

(2) access to data regarding the public defender's own client which includes, but is not limited to, criminal history data under section 13.87; juvenile offender data under section 299C.095; warrant information data under section 299C.115; incarceration data under section 299C.14; conditional release data under section 241.065; and diversion program data under section 299C.46, subdivision 5.

The public defender has access to data under this section, whether accessed via the integrated search service as defined in section 13.873 or other methods. The public defender does not have access to law enforcement active investigative data under section 13.82, subdivision 7; data protected under section 13.82, subdivision 17; confidential arrest warrant indices data under section 13.82, subdivision 19; or data systems maintained by a prosecuting attorney. The public defender has access to the data at no charge, except for the monthly network access charge under section 299C.46, subdivision 3, paragraph (b), and a reasonable installation charge for a terminal. Notwithstanding section 13.87, subdivision 3; 299C.46, subdivision 3, paragraph (b); 299C.48, or any other law to the contrary, there shall be no charge to public defenders for Internet access to the criminal justice data communications network.

History: *1999 c 227 s 22; 2000 c 377 s 5; 1Sp2001 c 8 art 5 s 11; 1Sp2003 c 2 art 3 s 8; 2005 c 136 art 14 s 15; 2008 c 277 art 1 s 95; 2009 c 59 art 6 s 23; 2013 c 82 s 36*

611.273 SURPLUS PROPERTY.

Notwithstanding the provisions of sections 15.054 and 16B.2975, the Board of Public Defense, in its sole discretion, may provide surplus computers to its part-time employees for their use.

History: *2005 c 136 art 14 s 16; 2014 c 196 art 2 s 15*

611.28 [Repealed, 1991 c 345 art 3 s 30]

611.29 [Repealed, 1991 c 345 art 3 s 30]

PERSONS WITH A DISABILITY; INTERPRETERS

611.30 RIGHT TO INTERPRETER, STATE POLICY.

It is hereby declared to be the policy of this state that the constitutional rights of persons disabled in communication cannot be fully protected unless qualified interpreters are available to assist them in legal proceedings. It is the intent of sections 611.30 to 611.34 to provide a procedure for the appointment of interpreters to avoid injustice and to assist persons disabled in communication in their own defense.

History: *1969 c 955 s 1; 1981 c 131 s 4; 2005 c 56 s 1*

611.31 DISABLED PERSON.

For the purposes of sections 611.30 to 611.34, "person disabled in communication" means a person who: (1) because of a hearing, speech or other communication disorder, or (2) because of difficulty in speaking or comprehending the English language, cannot fully understand the proceedings or any charges made against the person, or the seizure of the person's property, or is incapable of presenting or assisting in the presentation of a defense.

History: *1969 c 955 s 2; 1981 c 131 s 5; 1984 c 460 s 2; 1986 c 444; 1991 c 323 s 4; 2005 c 56 s 1*

611.32 PROCEEDINGS WHERE INTERPRETER APPOINTED.

Subdivision 1. **Proceedings and preliminary proceedings involving possible criminal sanctions or confinement.** In any proceeding in which a person disabled in communication may be subjected to confinement, criminal sanction, or forfeiture of the person's property, and in any proceeding preliminary to that proceeding, including coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the person disabled in communication and any witness disabled in communication throughout the proceedings.

Subd. 2. **Proceedings at time of apprehension or arrest.** Following the apprehension or arrest of a person disabled in communication for an alleged violation of a criminal law, the arresting officer, sheriff or other law enforcement official shall immediately make necessary contacts to obtain a qualified interpreter and shall obtain an interpreter at the earliest possible time at the place of detention. A law enforcement officer shall, with the assistance of the interpreter, explain to the person disabled in communication, all charges filed against the person, and all procedures relating to the person's detainment and release. If the property of a person is seized under section 609.531, subdivision 4, the seizing officer, sheriff, or other law enforcement official shall, upon request, make available to the person at the earliest possible time a qualified interpreter to assist the person in understanding the possible consequences of the seizure and the person's right to judicial review. If the seizure is governed by section 609.5314, subdivision 2, a request for an interpreter must be made within 15 days after service of the notice of seizure and forfeiture. For a person who requests an interpreter under this section because of a seizure of property under section 609.5314, the 60 days for filing a demand for a judicial determination of a forfeiture begins when the interpreter is provided. The interpreter shall also assist the person with all other communications, including communications relating to needed medical attention. Prior to interrogating or taking the statement of the person disabled in communication, the arresting officer, sheriff, or other law enforcement official shall make available to the person a qualified interpreter to assist the person throughout the interrogation or taking of a statement.

History: *1969 c 955 s 3; 1984 c 460 s 3; 1986 c 444; 1991 c 323 s 5; 2005 c 56 s 1*

611.33 QUALIFIED INTERPRETER.

Subdivision 1. **Qualifications.** No person shall be appointed as a qualified interpreter pursuant to sections 611.30 to 611.34 unless said person is readily able to communicate with the disabled person, translate the proceedings for the disabled person, and accurately repeat and translate the statements of the disabled person to the officials before whom the proceeding is taking place.

Subd. 2. **Oath.** Every qualified interpreter appointed pursuant to the provisions of sections 611.30 to 611.34, before entering upon duties as such, shall take an oath, to make to the best of the interpreter's skill and judgment a true interpretation to the disabled person being examined of all the proceedings, in a language which said person understands, and to repeat the statements, in the English language, of said person to the court or other officials before whom the proceeding is taking place.

Subd. 3. **Fees and expenses.** The fees and expenses of a qualified interpreter shall be fixed and ordered paid by the presiding official before whom the proceeding is taking place. The fees and expenses must be paid by the state courts. Payment for any activities requiring interpreter services on behalf of law enforcement, the Board of Public Defense, prosecutors, or corrections agents other than court appearances is the responsibility of the agency that requested the services.

Subd. 4. **Privileged communication.** An interpreter pursuant to sections 611.30 to 611.34 shall not, without the consent of the person disabled in communication, be allowed to disclose any privileged communication made by the person or any privileged information gathered from the person which was communicated or gathered during the time of service as an interpreter.

History: *1969 c 955 s 4; 1971 c 25 s 94; 1981 c 131 s 6; 1986 c 444; 1999 c 216 art 7 s 41; 2005 c 56 s 1*

611.34 APPLICABILITY TO ALL COURTS.

The provisions of sections 611.30 to 611.34 shall apply to all courts in this state and political subdivisions thereof.

History: *1969 c 955 s 5*

REIMBURSEMENT

611.35 REIMBURSEMENT OF APPOINTED COUNSEL.

Subdivision 1. **Reimbursement; civil obligation.** Any person who is represented by appointed counsel shall, if financially able to pay, reimburse the governmental unit chargeable with the compensation of appointed counsel for the actual costs to the governmental unit in providing the services of the appointed counsel. The court in hearing such matter shall ascertain the amount of such costs to be charged to the defendant and shall direct reimbursement over a period of not to exceed six months, unless the court for good cause shown shall extend the period of reimbursement. If a term of probation is imposed as a part of a sentence, reimbursement of costs as required by this chapter must not be made a condition of probation. Reimbursement of costs as required by this chapter is a civil obligation and must not be made a condition of a criminal sentence.

Subd. 2. **Civil action.** The county attorney may commence a civil action to recover such cost remaining unpaid at the expiration of six months unless the court has extended the reimbursement period and shall, if it appears that such recipient of appointed counsel services is about to leave the jurisdiction of the court or sell or otherwise dispose of assets out of which reimbursement may be obtained, commence such action forthwith. The county attorney may compromise and settle any claim for reimbursement with the approval of the court which heard the matter. No determination or action shall be taken later than two years after the termination of the duties of the appointed counsel.

History: *1969 c 1002 s 1,2; 1986 c 444; 1995 c 226 art 2 s 30; 2007 c 61 s 16*

IMPRISONMENT AND EXONERATION REMEDIES

611.362 CLAIM FOR COMPENSATION BASED ON EXONERATION.

Subdivision 1. **General.** A person who receives an order under section 590.11 determining that the person is entitled to compensation based on exoneration may bring a claim for an award under sections 611.362 to 611.368.

Subd. 2. **Respondent; filing requirement.** The state must be named as the respondent. A claimant shall serve the claim and all documents on the state through the commissioner of management and budget and file the claim with the supreme court. The claim must include a copy of the order from the district court under section 590.11, subdivision 7. The state shall respond to the claim within 60 days after service. In all matters under sections 611.362 to 611.368, legal representation for the state shall be provided by either the attorney general or legal counsel for the Department of Management and Budget.

Subd. 3. **Agent for claimant.** If the person entitled to file a claim is incapacitated and incapable of filing the claim or is a minor or nonresident of the state, the claim may be filed on behalf of the claimant by a court-appointed guardian, the parent or guardian of a minor, or an authorized agent.

Subd. 4. **Statute of limitations.** A claimant must commence a claim under this section within 60 days after the date the order was issued under section 590.11, subdivision 7, provided that if the person did not receive the notice required under section 590.11, subdivision 7, the person may commence a claim within three years of that date. An action by the state challenging or appealing the order under section 590.11 tolls the time in which a claim must be commenced.

History: *2014 c 269 s 3*

611.363 COMPENSATION PANEL.

Subdivision 1. **Appointment.** Within 30 business days after the claim is filed with the supreme court, the chief justice of the supreme court shall appoint a compensation panel of three attorneys or judges who are responsible for determining the amount of damages to be awarded. Members of the panel must have experience in legal issues involving the settlement of tort claims and the determination of damages.

Subd. 2. **Compensation of panel members.** (a) Members of the panel are entitled to the compensation authorized for members of boards under section 15.0575, subdivision 3.

(b) Consistent with sections 611.362 to 611.368, the panel may establish procedures, rules, and forms for considering claims and awarding damages.

Subd. 3. **Payment of expenses.** The state court administrator shall forward documentation of expenses and administrative costs of the panel to the commissioner of management and budget for payment of those amounts from appropriations available for this purpose.

History: *2014 c 269 s 4*

611.364 PREHEARING SETTLEMENTS AND HEARING.

Subdivision 1. **Prehearing settlements.** The panel may set a prehearing settlement conference date. At this conference, the parties must make a good faith attempt to reach a settlement in the case. If the parties agree, they may present the panel with a joint motion for summary disposition and no further hearings are required. If a settlement document is approved by the panel, it has the same effect as an award under section 611.365, for all purposes of that section.

Subd. 2. **Hearing.** (a) If the parties are unable to reach a settlement, the panel must hold an evidentiary hearing to determine the amount of damages to be awarded to the claimant. The panel may consider any evidence and argument submitted by the parties, including affidavits, documentation, and oral and written arguments. The panel is bound by any fact or damage amount established by the stipulation of the parties.

(b) Hearings and records relating to the hearing are open to the public, except where, in the interest of justice, the panel orders a hearing closed or a record sealed.

History: *2014 c 269 s 5*

611.365 DAMAGES.

Subdivision 1. **General.** A claimant is entitled to the damages provided for in this section.

Subd. 2. **Reimbursement; monetary damages; attorney fees.** (a) The claimant is entitled to reimbursement for all restitution, assessments, fees, court costs, and other sums paid by the claimant as required by the judgment and sentence. In addition, the claimant is entitled to monetary damages of not less than $50,000 for each year of incarceration, and not less than $25,000 for each year served on supervised release or as a registered predatory offender, to be prorated for partial years served. In calculating additional monetary damages, the panel shall consider:

(1) economic damages, including reasonable attorney fees, lost wages, reimbursement for costs associated with the claimant's criminal defense;

(2) reimbursement for medical and dental expenses that the claimant already incurred and future unpaid expenses expected to be incurred as a result of the claimant's incarceration;

(3) noneconomic damages for personal physical injuries or sickness and any nonphysical injuries or sickness incurred as a result of incarceration;

(4) reimbursement for any tuition and fees paid for each semester successfully completed by the claimant in an educational program or for employment skills and development training, up to the equivalent value of a four-year degree at a public university, and reasonable payment for future unpaid costs for education and training, not to exceed the anticipated cost of a four-year degree at a public university;

(5) reimbursement for paid or unpaid child support payments owed by the claimant that became due, and interest on child support arrearages that accrued, during the time served in prison provided that there shall be no reimbursement for any child support payments already owed before the claimant's incarceration; and

(6) reimbursement for reasonable costs of paid or unpaid reintegrative expenses for immediate services secured by the claimant upon exoneration and release, including housing, transportation and subsistence, reintegrative services, and medical and dental health care costs.

(b) The panel shall award the claimant reasonable attorney fees incurred in bringing a claim under sections 611.362 to 611.368 and in obtaining an order of eligibility for compensation based on exoneration under chapter 590.

Subd. 3. **Limits on damages.** There is no limit on the aggregate amount of damages that may be awarded under this section. Damages that may be awarded under subdivision 2, paragraph (a), clauses (1) and (4) to (6), are limited to $100,000 per year of incarceration and $50,000 per year served on supervised release or as a registered predatory offender.

Subd. 4. **Notice and acceptance of award.** A claimant who is awarded damages under this section must be provided with a written notice of the award, which must include an itemization of the total damage award calculation. A claimant's acceptance of an award, compromise, or settlement must be in writing and is final and conclusive on the claimant.

Subd. 5. **Subsequent damage awards.** Any future damages awarded to the claimant resulting from an action by the claimant against the state or a political subdivision of this state based on the same subject must be offset by the damage award received under this section.

Subd. 6. **No offsets.** The damage award must not be offset by:

(1) any expenses incurred by the state or any political subdivision of the state, including expenses incurred to secure the claimant's custody or to feed, clothe, or provide medical services for the claimant; or

(2) the value of any services or reduction in fees for services, or the value of services to be provided to the claimant that may be awarded to the claimant under this section.

Subd. 7. **Survival of claim.** A pending order issued under section 590.11, subdivision 7, or claim under sections 611.362 to 611.368, survives the death of the petitioner or claimant and the personal representative of the person may be substituted as the claimant or bring a claim.

History: *2014 c 269 s 6; 1Sp2019 c 5 art 2 s 22,23*

611.366 JUDICIAL REVIEW.

A party aggrieved by an award of damages under section 611.365 is entitled to judicial review of the decision as provided in sections 14.63 to 14.69; however, proceedings on a complaint filed under this section are not a contested case within the meaning of chapter 14 and are not otherwise governed by chapter 14.

History: *2014 c 269 s 7*

611.367 COMPENSATING EXONERATED PERSONS; APPROPRIATIONS PROCESS.

The compensation panel established in section 611.363 shall forward an award of damages under section 611.365 to the commissioner of management and budget. The commissioner shall submit the amount of the award to the legislature for consideration as an appropriation.

History: *2014 c 269 s 8; 2016 c 148 art 1 s 1; 1Sp2019 c 5 art 2 s 24*

611.368 SHORT TITLE.

Sections 611.362 to 611.368 shall be cited as the "Incarceration and Exoneration Remedies Act."

History: *2014 c 269 s 9; 1Sp2019 c 5 art 2 s 25*

COMPETENCY PROCEEDINGS

611.40 APPLICABILITY.

Notwithstanding Rules of Criminal Procedure, rule 20.01, sections 611.40 to 611.59 shall govern the proceedings for adults when competency to stand trial is at issue. This section does not apply to juvenile

courts. A competency examination ordered under Rules of Criminal Procedure, rule 20.04, must follow the procedure in section 611.43.

History: *2022 c 99 art 1 s 26*

NOTE: This section, as added by Laws 2022, chapter 99, article 1, section 26, is effective July 1, 2023, and applies to competency determinations initiated on or after that date. Laws 2022, chapter 99, article 1, section 50.

611.41 DEFINITIONS.

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

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

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

Subd. 4. **Community-based treatment program.** "Community-based treatment program" means treatment and services provided at the community level, including but not limited to community support services programs as defined in section 245.462, subdivision 6; day treatment services as defined in section 245.462, subdivision 8; mental health crisis services as defined in section 245.462, subdivision 14c; outpatient services as defined in section 245.462, subdivision 21; residential treatment services as defined in section 245.462, subdivision 23; assertive community treatment services provided under section 256B.0622; adult rehabilitation mental health services provided under section 256B.0623; home and community-based waivers; and supportive housing. Community-based treatment program does not include services provided by a state-operated treatment program.

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

Subd. 5. **Competency attainment program.** "Competency 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.

Subd. 6. **Competency attainment services.** "Competency attainment services" means education 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. Competency 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.

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.

Subd. 8. **Forensic navigator.** "Forensic navigator" means a person hired or contracted to facilitate competency attainment services, supervise certain defendants found to be incompetent, prepare bridge plans, and provide the other services under section 611.55, subdivision 3.

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

Subd. 10. **Jail-based program.** "Jail-based program" means a competency 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.

Subd. 11. **Locked treatment facility.** "Locked treatment facility" means a community-based treatment program, treatment facility, or state-operated treatment program that is locked and is licensed by the Department of Health or Department of Human Services.

Subd. 12. **Mental illness.** "Mental illness" means an organic disorder of the brain or a clinically significant disorder of thought, mood, perception, orientation, or memory, that grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, that is manifested by instances of grossly disturbed behavior or faulty perceptions. Mental illness does not include disorders defined as cognitive impairments in subdivision 3; epilepsy; antisocial personality disorder; brief periods of intoxication caused by alcohol, drugs, or other mind-altering substances; or repetitive or problematic patterns of using any alcohol, drugs, or other mind-altering substances.

Subd. 13. **State-operated treatment program.** "State-operated treatment program" means any community behavioral health hospital, crisis center, residential facility, outpatient service, or other 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.

Subd. 14. **Suspend the criminal proceedings.** "Suspend the criminal proceedings" means to cease all hearings and decisions regarding the merits of criminal charges but not terminate the jurisdiction of the court 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.

Subd. 15. **Targeted misdemeanor.** "Targeted misdemeanor" has the meaning given in section 299C.10, subdivision 1, paragraph (e).

Subd. 16. **Treatment facility.** "Treatment facility" means a 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.

History: *2022 c 98 art 4 s 51; 2022 c 99 art 1 s 27; 2023 c 14 s 1-11*

NOTE: This section, as added by Laws 2022, chapter 99, article 1, section 27, is effective April 1, 2024, and applies to competency determinations initiated on or after that date. Laws 2022, chapter 99, article 1, section 50, as amended by Laws 2023, chapter 52, article 1, section 14.

611.42 COMPETENCY MOTION PROCEDURES.

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

(1) rationally consult with counsel;

(2) understand the proceedings; or

(3) participate in the defense.

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 section before a lawyer consults with the defendant and has an opportunity to be heard.

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 services described in section 611.55, including development of a 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 competency and there is probable cause for the charge, the court must suspend the criminal proceedings and order an examination of the defendant.

(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 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.

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 a defendant's 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 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.

History: *2022 c 99 art 1 s 28; 2023 c 14 s 12-14*

NOTE: This section, as added by Laws 2022, chapter 99, article 1, section 28, is effective April 1, 2024, and applies to competency determinations initiated on or after that date. Laws 2022, chapter 99, article 1, section 50, as amended by Laws 2023, chapter 52, article 1, section 14.

611.43 COMPETENCY EXAMINATION AND REPORT.

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.

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

Subd. 2. **Report of examination.** (a) The court examiner's written report shall be filed with the court and 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 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 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, 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.

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 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.

Subd. 4. **Admissibility of defendant's statements.** When a defendant is examined under this section, any statement made by the defendant for the purpose of the examination and any evidence derived from the examination is admissible in the competency proceedings, but not in the criminal proceedings.

History: *2022 c 99 art 1 s 29; 2023 c 14 s 15-17*

NOTE: This section, as added by Laws 2022, chapter 99, article 1, section 29, is effective April 1, 2024, and applies to competency determinations initiated on or after that date. Laws 2022, chapter 99, article 1, section 50, as amended by Laws 2023, chapter 52, article 1, section 14.

611.44 CONTESTED HEARING PROCEDURES.

Subdivision 1. **Request for hearing.** (a) The prosecutor or defense counsel may request a hearing on the 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.

Subd. 2. **Competency hearing.** (a) The court may admit all relevant and reliable evidence at the competency hearing. The 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 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.

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

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

History: *2022 c 99 art 1 s 30; 2023 c 14 s 18,19*

NOTE: This section, as added by Laws 2022, chapter 99, article 1, section 30, is effective April 1, 2024, and applies to competency determinations initiated on or after that date. Laws 2022, chapter 99, article 1, section 50, as amended by Laws 2023, chapter 52, article 1, section 14.

611.45 COMPETENCY FINDINGS.

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

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

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

Subd. 2. **Appeal.** Appeals under this chapter are governed by Minnesota Rules of Criminal Procedure, rule 28. A verbatim record shall be made in all competency proceedings.

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 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 incompetency. If a notice has been filed and the charge is a gross misdemeanor, charges must be dismissed within two years after the finding of incompetency.

(c) In felony cases, except as provided in paragraph (d), the charges must be dismissed three years after the date of the finding of incompetency, unless the prosecutor, before the expiration of the three-year period, files a written notice of intent to prosecute when the defendant attains competency. If a notice has been filed, charges must be dismissed within five years after the finding of incompetency 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; or

(2) the defendant is charged with a violation of sections 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.

History: *2022 c 99 art 1 s 31; 2023 c 14 s 20*

NOTE: This section, as added by Laws 2022, chapter 99, article 1, section 31, is effective April 1, 2024, and applies to competency determinations initiated on or after that date. Laws 2022, chapter 99, article 1, section 50, as amended by Laws 2023, chapter 52, article 1, section 14.

611.46 INCOMPETENT TO STAND TRIAL AND CONTINUING SUPERVISION.

Subdivision 1. **Order to competency 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 program to assist the defendant in attaining competency. The court may order participation in a competency attainment program provided outside of a jail, a jail-based competency 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 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.

(c) The court may only order the defendant to participate in competency 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 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 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 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.

(d) If the defendant is confined in jail and has not received competency 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 attainment program that takes place outside of a jail;

(2) order a conditional release of the defendant with conditions that include but are not limited to a requirement that the defendant participate in a competency 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.

(e) The court may order any hospital, treatment facility, or correctional facility that has provided care or supervision to a defendant in the previous two years to provide copies of the defendant's medical records to the competency 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.

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

(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.

(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.

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, 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 and must consider the defendant's need for ongoing access to a competency 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.

Subd. 3. **Competency attainment programs; procedure.** (a) If the court orders a defendant to participate in a competency attainment program that takes place outside of a jail, or an alternative program that the court has determined is providing appropriate competency attainment services to the defendant, the court shall specify whether the program is 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 attainment programming to restore the defendant's competency in the least restrictive program appropriate.

Subd. 4. **Jail-based competency attainment programs; procedure.** (a) A defendant is eligible to participate in a jail-based competency 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 examiner has recommended jail-based competency 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 competency attainment program that takes place outside of a jail, a jail-based competency 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 competency attainment program that takes place outside of a jail.

(b) A defendant may not be ordered to participate in a jail-based competency 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 competency 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 competency 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 transferred to a competency 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.

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 competency attainment program outside of a jail is not available.

(b) As soon as the forensic navigator has reason to believe that no competency 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. 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 competency 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 competency attainment program, unless the court determines that the defendant is receiving appropriate competency attainment services in the alternative program. If appropriate and in the public interest, the court may order the defendant to participate in the competency 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 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 competency attainment program, the court must hold a review hearing pursuant to section 611.49.

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 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.

Subd. 7. **Contested hearings.** The prosecutor or defense counsel may request a hearing on the court examiner's competency opinion by filing written objections to the competency report no later than ten days after receiving the report. All parties are entitled to notice before the hearing. If the hearing is held, it shall conform with the procedures of section 611.44.

Subd. 8. **Competency determination.** (a) The court must determine whether the defendant is competent based on the updated report from the court examiner no more than 14 days after receiving the report.

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

(c) If the court finds the defendant incompetent, the court may order the defendant to continue participating in a program as provided in this section.

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

History: *2022 c 99 art 1 s 32; 2023 c 14 s 21-26*

NOTE: This section, as added by Laws 2022, chapter 99, article 1, section 32, is effective April 1, 2024, and applies to competency determinations initiated on or after that date. Laws 2022, chapter 99, article 1, section 50, as amended by Laws 2023, chapter 52, article 1, section 14.

611.47 ADMINISTRATION OF MEDICATION.

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

Subd. 2. **Reports.** (a) In making a determination under this section, the court shall consider the report of the court examiner completed pursuant to section 611.43 and any certification report filed by the treating

medical practitioner in support of a motion under this section. The court may request a certification report from the defendant's treating medical practitioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) any other relevant factors.

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

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

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

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

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

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

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

Subd. 7. **Procedure when patient defendant refuses medication.** If physical force is required to administer the neuroleptic medication, the facility or program may only use injectable medications. If physical force is needed to administer the medication, medication may only be administered in a setting where the

defendant's condition can be reassessed and medical personnel qualified to administer medication are available, including in the community or a correctional facility. The facility or program may not use a nasogastric tube to administer neuroleptic medication involuntarily.

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

NOTE: This section, as added by Laws 2022, chapter 99, article 1, section 33, is effective April 1, 2024, and applies to competency determinations initiated on or after that date. Laws 2022, chapter 99, article 1, section 50, as amended by Laws 2023, chapter 52, article 1, section 14.

611.48 REVIEW HEARINGS.

The prosecutor or defense counsel may apply to the court for a hearing to review the defendant's competency 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.

History: *2022 c 99 art 1 s 34; 2023 c 14 s 28*

NOTE: This section, as added by Laws 2022, chapter 99, article 1, section 34, is effective April 1, 2024, and applies to competency determinations initiated on or after that date. Laws 2022, chapter 99, article 1, section 50, as amended by Laws 2023, chapter 52, article 1, section 14.

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 attained competency after participating and cooperating with court-ordered competency attainment programming for at least one year; or

(2) the defendant has not received timely competency 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 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 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 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 609.2112 (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.

(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 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 assist the defendant 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 (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).

(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 609.2112 (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.

(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.

(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.

History: *2022 c 99 art 1 s 35; 2023 c 14 s 29*

NOTE: This section, as added by Laws 2022, chapter 99, article 1, section 35, is effective April 1, 2024, and applies to competency determinations initiated on or after that date. Laws 2022, chapter 99, article 1, section 50, as amended by Laws 2023, chapter 52, article 1, section 14.

611.50 DEFENDANT'S PARTICIPATION AND CONDUCT OF HEARINGS.

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

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

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

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

History: *2022 c 99 art 1 s 36*

611.51 CREDIT FOR CONFINEMENT.

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

History: *2022 c 99 art 1 s 37; 2023 c 14 s 30*

611.55 FORENSIC NAVIGATOR SERVICES.

Subdivision 1. **Definition.** As used in this section, "board" means the State Competency 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.

(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 attainment programs;

(4) providing competency 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 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.

(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) A forensic navigator must prepare a bridge plan with the defendant and submit 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. 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.

History: *2022 c 99 art 1 s 38; 2023 c 14 s 31*

611.56 STATE COMPETENCY ATTAINMENT BOARD.

Subdivision 1. **Establishment; membership.** (a) The State Competency 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 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 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 attainment system that certifies competency 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 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 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 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 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.

History: *2022 c 99 art 1 s 39; 2023 c 14 s 32*

611.57 CERTIFICATION ADVISORY COMMITTEE.

Subdivision 1. **Establishment.** The Certification Advisory Committee is established to provide the State Competency Attainment Board with advice and expertise related to the certification of competency 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 attainment services, or both, appointed by the governor;

(3) a board-certified forensic psychologist with experience in competency evaluations, providing competency 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 Attainment Board regarding competency attainment curriculum, certification requirements for competency attainment programs including jail-based programs, and certification of individuals to provide competency attainment services; and provide information and recommendations on other issues relevant to competency attainment as requested by the board.

History: *2022 c 99 art 1 s 40; 2023 c 14 s 33*

611.58 COMPETENCY ATTAINMENT CURRICULUM AND CERTIFICATION.

Subdivision 1. **Curriculum.** (a) By October 1, 2023, the board must recommend a competency 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 October 1, 2023, the board must develop a process for certifying individuals to deliver the competency attainment curriculum and make the curriculum available to every competency attainment program and forensic navigator in the state. Each competency attainment program in the state must use the competency attainment curriculum under this section as the foundation for delivering competency attainment education and must not substantially alter the content.

History: *2022 c 99 art 1 s 41; 2023 c 14 s 34; 2023 c 52 art 1 s 13*

611.59 COMPETENCY ATTAINMENT PROGRAMS.

Subdivision 1. **Availability and certification.** The board must provide or contract for enough competency 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 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 attainment programs. The board shall maintain a list of programs it has certified on the board's website and shall update the list of competency attainment programs at least once every year.

Subd. 2. **Competency attainment provider standards.** Except for jail-based programs, a competency 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 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 attainment standards.** Jail-based competency 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 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 attainment.

History: *2022 c 99 art 1 s 42; 2023 c 14 s 35*