

STATE OF MINNESOTA
IN SUPREME COURT
ADM10-8049



**ORDER PROMULGATING AMENDMENTS
TO THE MINNESOTA RULES OF CRIMINAL PROCEDURE**

In 2022, the Minnesota Legislature enacted a new statutory scheme that governs the proceedings related to a defendant’s mental competency to proceed in a criminal case. Act of June 2, 2022, ch. 99, art. 1, §§ 25–42, 2022 Minn. Laws 992, 1019–1042 (codified at Minn. Stat. § 611.40–.59 (2022)). At our request and in response to the new statutory scheme, the Supreme Court Advisory Committee on the Minnesota Rules of Criminal Procedure recommended amendments to Rule 20 of the Minnesota Rules of Criminal Procedure, its Comment, and the Criminal Forms Appendix. Report and Proposed Amendments to the Minnesota Rules of Criminal Procedure, No. ADM10-8049 (filed Dec. 15, 2023). We established a period for the public to submit written comments in response to the report filed by the Advisory Committee. During the public comment period, comments were submitted by representatives of three organizations: the Minnesota County Attorney Association, the Office of the Hennepin County Public Defender, and the Second Judicial District and its Behavioral Health Unit. We held a public hearing on June 13, 2024, and heard remarks from the chair of the Advisory Committee and representatives of the Second Judicial District and its Behavioral Health Unit.

Having carefully considered the Advisory Committee's recommendations and the public comments, we agree with the proposed amendments as modified.

Based on all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the attached amendments to Rule 20 of the Minnesota Rules of Criminal Procedure, its Comment, and the Criminal Forms Appendix are prescribed and promulgated as shown below. The amendments are effective as of November 1, 2024.

Dated: September 20, 2024

BY THE COURT:

A handwritten signature in black ink, appearing to read "Natalie E. Hudson". The signature is written in a cursive, flowing style.

Natalie E. Hudson
Chief Justice

Amendments to Minnesota Rules of Criminal Procedure

[Note: In the following amendments, deletions are indicated by a line drawn through the words, and additions are indicated by a line drawn under the words]

* * *

RULE 20. MENTALLY ILL OR COGNITIVELY IMPAIRED DEFENDANTS.

Rule 20.01. Competency Proceedings

Subd. 1 Repealed September 20, 2024, eff. November 1, 2024 ~~Waiver of Counsel in Competency Proceedings.~~ A defendant must not be allowed to waive counsel if the defendant lacks ability to:

- (a) knowingly, voluntarily, and intelligently waive the right to counsel;
- (b) appreciate the consequences of proceeding without counsel;
- (c) comprehend the nature of the charge;
- (d) comprehend the nature of the proceedings;
- (e) comprehend the possible punishment; or
- (f) comprehend any other matters essential to understanding the case.

The court must not proceed under this rule before a lawyer consults with the defendant and has an opportunity to be heard.

Subd. 2 Repealed September 20, 2024, eff. November 1, 2024 ~~Competency to Participate in the Proceedings.~~ A defendant is incompetent and must not plead, be tried, or be sentenced if the defendant due to mental illness or cognitive impairment lacks ability to:

- (a) rationally consult with counsel; or
- (b) understand the proceedings or participate in the defense.

Subd. 3. Competency-Issue Raised Motion.

(a) If the prosecutor, defense counsel, or the court, at any time before or after conviction, doubts the defendant's competency to proceed, the prosecutor or defense counsel must make a competency motion under Minn. Stat. § 611.42 ~~challenging competency~~, or the court on its initiative must raise the issue. The defendant's consent is not required. If the defendant is without counsel, the court must appoint counsel for the defendant. The motion must provide supporting facts, but must not include communications between the defendant and defense counsel if disclosure would violate the attorney-client

~~privilege. By bringing the motion, defense counsel does not waive the attorney-client privilege.~~

~~(b) If the court determines that there is a reasonable basis exists to doubt the defendant's competency, and there is probable cause for the charge(s), the court must suspend the criminal proceedings and proceed as follows, provided in Minn. Stat. ch. 611 governing Competency Proceedings.~~

~~(c) While the proceedings are suspended, the court must cease all hearings and decisions regarding the merits of the criminal charges but retains authority over other matters, including but not limited to establishing or modifying bail, conditions of release, probation conditions, and no contact orders, and appointing counsel in accordance with the relevant rules of criminal procedure, including Minn. R. Crim. P. 6.02.~~

~~(d) If there is a reasonable basis to doubt the defendant's competency, the most serious charge is a misdemeanor other than a targeted misdemeanor, and the court determines that ordering an examination of the defendant is not in the public interest, the court must dismiss the case.~~

~~(e) If the court finds by a preponderance of the evidence that a defendant is presently incompetent in proceedings occurring after conviction, including but not limited to probation violation proceedings, the court must suspend the proceedings and proceed under the provisions of Minn. Stat. ch. 611 governing Competency Proceedings, except that the conviction is not required to be vacated and the case is not required to be dismissed based on the finding of present incompetency.~~

~~(a) In misdemeanor cases, the court must:~~

- ~~(1) proceed under this rule as in felony or gross misdemeanor cases;~~
- ~~(2) begin civil commitment proceedings under Rule 20.01, subdivision 6; or~~
- ~~(3) dismiss the case, unless dismissal would be contrary to the public interest.~~

~~(b) In felony or gross misdemeanor cases, the court must, on motion, determine probable cause. If probable cause exists, the court must order an examination of the defendant's mental condition and set a Rule 20 hearing to occur no later than 60 days from the date of the court's order. If no probable cause exists, the charges must be dismissed.~~

~~(c) While suspended, the court retains authority over the criminal case, including, but not limited to, bail and conditions of release.~~

Subd. 4. Examination and Report.

~~(a) Competency Medical Examination. The court must appoint at least one examiner as defined in Minn. Stat. ch. 253B, or successor statute, to examine the defendant and report to the court on the defendant's mental condition.~~

~~If the defendant is entitled to release, and the examination can be done on an outpatient basis, the court cannot order the defendant to be confined for the examination. The court may make appearance for the examination a condition of release.~~

~~(1) If the defendant is not entitled to release or the a competency examination cannot be done on an outpatient basis, the court may order the defendant confined in a state hospital or other suitable facility for up to 60 days to complete the examination.~~

~~(2) If the prosecutor or defense counsel has retained a qualified examiner, the court, on request, must allow ~~that~~ the qualified examiner to observe the examination and examine the defendant.~~

~~(3) Upon appointment of an examiner and without need of a court order, the court must provide the examiner ~~may obtain and review the~~ a copy of the filed report of any prior competency, Rule 20.02, or civil commitment examination of the defendant. The court shall order known providers of care to the defendant to release records to the examiner via the method used in the providers' jurisdiction for records sharing. Examiners may request additional records as needed to complete the examination ~~under this rule.~~~~

~~(4) If a defendant is entitled to release, the court must order the defendant to appear for an examination. If the defendant fails to appear for an examination, the court may amend the conditions of release and bail in accordance with Minn. R. Crim. P. 6.02 to require the defendant to appear for an examination, or order the defendant held for purposes of conducting the examination in accordance with the standard applied under Minn. Stat. § 253B.07, subd. 2b(a)(2).~~

~~(5) The court may order that a defendant participate in a jail-based competency attainment program only after considering~~

the requirements set forth in Minn. Stat. § 611.46, subds. 1 and 4.

~~The court must order that if any examiner appointed to examine the defendant concludes 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 prosecutor, defense counsel, and the court.~~

(b) Report of Examination.

(1) If an examiner is unable to complete the written report by the due date, the examiner must file a written request for an extension. The court must provide a copy of the request to the parties.

~~The court appointed examiner must forward a written report to the court within 60 days from the order for examination, or earlier if directed by the court. The court must promptly provide a copy of the report to the prosecutor and defense counsel. The report must not be otherwise disclosed until the competency hearing. The report must include:~~

- ~~(1) A diagnosis of the defendant's mental condition.~~
- ~~(2) If the defendant is mentally ill or cognitively impaired, an opinion as to:
 - ~~(a) the defendant's capacity to understand the proceedings or participate in the defense;~~
 - ~~(b) whether the defendant presents an imminent risk of serious danger to another, is imminently suicidal, or otherwise needs emergency intervention;~~
 - ~~(c) any treatment required for the defendant to attain or maintain competence and an explanation of appropriate treatment alternatives by order of preference, including the extent to which the defendant can be treated without commitment to an institution and the reasons for rejecting such treatment if institutionalization is recommended;~~
 - ~~(d) whether a substantial probability exists that the defendant will ever attain competency to proceed;~~
 - ~~(e) the estimated time required to attain competency to proceed; and~~~~

~~(f) the availability of acceptable treatment programs in the geographic area including the provider and type of treatment.~~

~~(3)~~(2) The report must include the criteria found in Minn. Stat. § 611.43, subd. 2, and must state the factual basis for the diagnosis and opinions.

(3) The court must promptly provide a copy of the report to the forensic navigator, prosecutor, and defense counsel. The court may order release of the report to other persons to assist in the defendant's treatment including but not limited to the defendant's mental health case managers, treatment providers, and supervising probation agents. The report must not be otherwise disclosed until the competency hearing. Once a competency finding is made, upon the request of a prosecutor or defense counsel, or on the court's own initiative, the court may order release of the competency report to jurisdictions where the defendant has criminal competency cases pending.

~~(4) If the examination could not be conducted because of the defendant's unwillingness to participate, an opinion, if possible, as to whether the unwillingness resulted from mental illness or cognitive impairment.~~

Subd. 5. Competency Hearing Procedures ~~Competency Determination.~~

~~(a) Competency Hearing Procedures.~~

~~(1) The court must hold a contested hearing if a party files written objections to the competency report within ten (10) days after receipt.~~

(a) Access to records. If competency is contested, upon the request of either party, the court may order the examiner to furnish to the parties all records reviewed by the examiner(s).

(b)(2) Hearing order. ~~Hearing Process.~~—The party that requested the competency hearing must present evidence first. ~~If the court requested the competency report, the prosecutor must present evidence first unless the court otherwise orders.~~

(c) Burden of Proof. The burden of proving competency by a preponderance of the evidence is on the party asserting that the defendant is competent.

(d) Examiner testimony. Examiners may testify by remote means unless the court determines in-person testimony is necessary based on the facts and circumstances of the particular case.

~~(3) Evidence.~~ Evidence of the defendant's mental condition may be admitted, including the court-appointed examiner's report. The court-appointed examiner or any person designated by the examiner as a source of information for preparation of the report other than the defendant or defense counsel, is considered the court's witness and may be called and cross-examined by any party.

~~(4) Defense Counsel as Witness.~~ Defense counsel may testify, subject to the prosecutor's cross-examination, but must not violate the 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 must not require counsel to divulge communications protected by the attorney-client privilege, and the prosecutor cannot cross-examine defense counsel concerning responses to the court's inquiry.

~~(b) Determination Without Hearing.~~ If no party timely filed objections and the court did not hold a competency hearing, the court may determine the defendant's competency on the examiner's report.

~~(c) Burden of Proof and Decision.~~ If the court finds by the greater weight of the evidence that the defendant is competent, it must enter an order finding the defendant competent. Otherwise, the court must enter an order finding the defendant incompetent.

Subd. 6. Procedure After a Finding of IncompetencyCompetency Proceedings.

~~(a) Finding of Competency.~~ If the court finds the defendant competent, the criminal proceedings must resume.

~~(b) Finding of Incompetency.~~ If the court finds the defendant incompetent, and the charge is a misdemeanor, the charge must be dismissed. If the court finds the defendant incompetent, and the charge is a felony or gross misdemeanor, the proceedings must be suspended except as provided in Rule 20.01, subd. 8.

If the defendant is found incompetent by a preponderance of the evidence, the court should comply with the procedures set forth in Minn. Stat. § 611.46. If the defendant is not under civil commitment, the court must~~may~~ issue an order directing the designated agency in the county where the criminal case is filed to conduct prepetition screening pursuant to the Minnesota Commitment and Treatment Act to make a recommendation on whether the defendant should be civilly committed under the Act. The prepetition screening team must prepare and send a written report to the county attorney and social services agency for that county within five days. The county attorney must determine whether a commitment petition should be filed and may file the petition in the district court on behalf of the county attorney, the designated agency, or another interested person. By agreement between county attorneys, the prepetition screening and county attorney's functions described in this paragraph may be handled in the county of financial responsibility or the county where the defendant is present. ~~The court must set timely review hearings and supervise the commitment as provided in Rule 20.01, subd. 7.~~

~~Subd. 7. Continuing Supervision. The head of the institution to which the defendant is committed, or if the defendant is not committed to an institution, the person charged with the defendant's supervision, must report to the court periodically, not less than once every six months, on the defendant's mental condition with an opinion as to competency to proceed. The court may order a different period. Reports must be furnished to the prosecutor and defense counsel.~~

~~The prosecutor, defense counsel, the defendant, or the person charged with the defendant's supervision may apply to the court for a hearing to review the defendant's competency. All parties are entitled to notice before the hearing. If the court finds the defendant competent to proceed, the criminal proceedings must resume. The court and the prosecutor must be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the civil commitment. The prosecutor has the right to participate as a party in any proceedings concerning proposed changes in the defendant's civil commitment or status.~~

~~Subd. 8. Dismissal of Criminal Charge~~

~~(1) Felonies. Except when the defendant is charged with murder, the criminal charges must be dismissed three years after the date of finding the defendant incompetent to proceed unless the prosecutor, before the expiration of the three year period, files a written notice of~~

~~intent to prosecute when the defendant regains competency.~~

~~(2) Gross Misdemeanors. The criminal charges must be dismissed 30 days after the date of finding the defendant incompetent to proceed unless before that date the prosecutor files a written notice of intent to prosecute when the defendant regains competency. If a notice has been filed, the charges must be dismissed when the defendant would be entitled under these rules to custody credit of at least one year if convicted.~~

~~Subd. 9. Issues Not Requiring Defendant's Participation. The defendant's incompetence does not preclude defense counsel from making an objection or defense before trial that can be fairly determined without the defendant's participation.~~

~~Subd. 10. Admissibility of Defendant's Statements. When a defendant is examined under this rule, any statement made by the defendant for the purpose of the examination and any evidence derived from the examination is admissible at the competency proceeding.~~

~~Subd. 11. Credit for Confinement. If the defendant is convicted, any time spent confined to a hospital or other facility for a mental examination under this rule must be credited as time served.~~

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Rule 20.04. Simultaneous Examinations.

(a) The court may not order that a competency examination and an examination under Rule 20.02 be done simultaneously, unless one of the specific grounds for ordering an examination under Rule 20.02, subdivision 1, exists, and ordering simultaneous examinations is warranted based on the facts and circumstances of the specific case. If a simultaneous competency and Rule 20.02 examination is ordered, the examiner must not proceed with the Rule 20.02 examination if, based on the competency examination, the examiner's opinion and recommendation is that the defendant be found incompetent.

(b) The court in a criminal case must not order a civil commitment examination under Minn. Stat. ch. 253B, or successor statute, a competency examination under Rule 20.01, and an examination under Rule 20.02 to all be conducted simultaneously.

Comment—Rule 20

Competency proceedings are governed by Minn. Stat. §§ 611.40–.59 as supplemented by these rules.

As required by Minn. Stat. § 253B.24, the court must electronically transmit any finding of incompetency to the National Instant Criminal Background Check System.

Rule 20.01, subd. 4(a)(3), provides that the examiners may obtain and review any reports of prior examinations conducted under the rule. This includes prior reports conducted under both Rules 20.01 and 20.02. This express authorization, which was adopted in 2005, is intended merely to clarify the rule and not to change it. The provision was modified in 2024 to include reports of prior civil commitment examinations.

No limitation exists for the time or number of hearings that may be held under Rule 20.01 to determine the defendant's competency.

The definitions of mental illness and ~~cognitive impairment~~ mental deficiency contained in Minn. Stat. § 611.026 and its judicial interpretations are not affected by these rules.

Rule 20.02, subd. 2, providing for the examination on a defense of mental illness or deficiency, is the same as Rule 20.01, subd. 4(a), governing the examination for competency to proceed.

Rule 20.02, subd. 8, addresses the constitutional requirements of equal protection and due process. No continuing supervision by the trial court exists in misdemeanor cases.

The prosecutor has the right to participate as a party in any civil proceedings being conducted under Minn. Stat. ch. 253B. The prosecutor could question and present witnesses and argue for the continued commitment of the defendant in the civil proceedings.

If the court orders simultaneous examinations under Rule 20.04, the examiner appointed must be qualified to provide a report for all necessary purposes.

The following forms are deleted from the Criminal Forms Appendix:

Form 27. Findings of Fact and Order Including Petition for Judicial Commitment, for Misdemeanor Case, Pursuant to Rule 20.01;

Form 28. Felony or Gross Misdemeanor Findings of Fact; Order Including Petition for Judicial Commitment; Order for Mental Examination to Determine: (1) Defendant's Competency to Proceed with Criminal Case (2) Mental Illness or Deficiency at Time of Commission of the Offense;

Form 29. Felony or Gross Misdemeanor Findings of Fact; Order Including Petition for Judicial Commitment of a Defendant Found Incompetent to Proceed to Trial, Pursuant to Rule 20.01, Subds. 4 and 5; and

Form 30. Findings of Fact and Order for Judicial Commitment of Defendant Found Incompetent to Proceed with Felony or Gross Misdemeanor Case, Pursuant to Rule 20.01.