

# COMPETENCY RESTORATION IN MINNESOTA

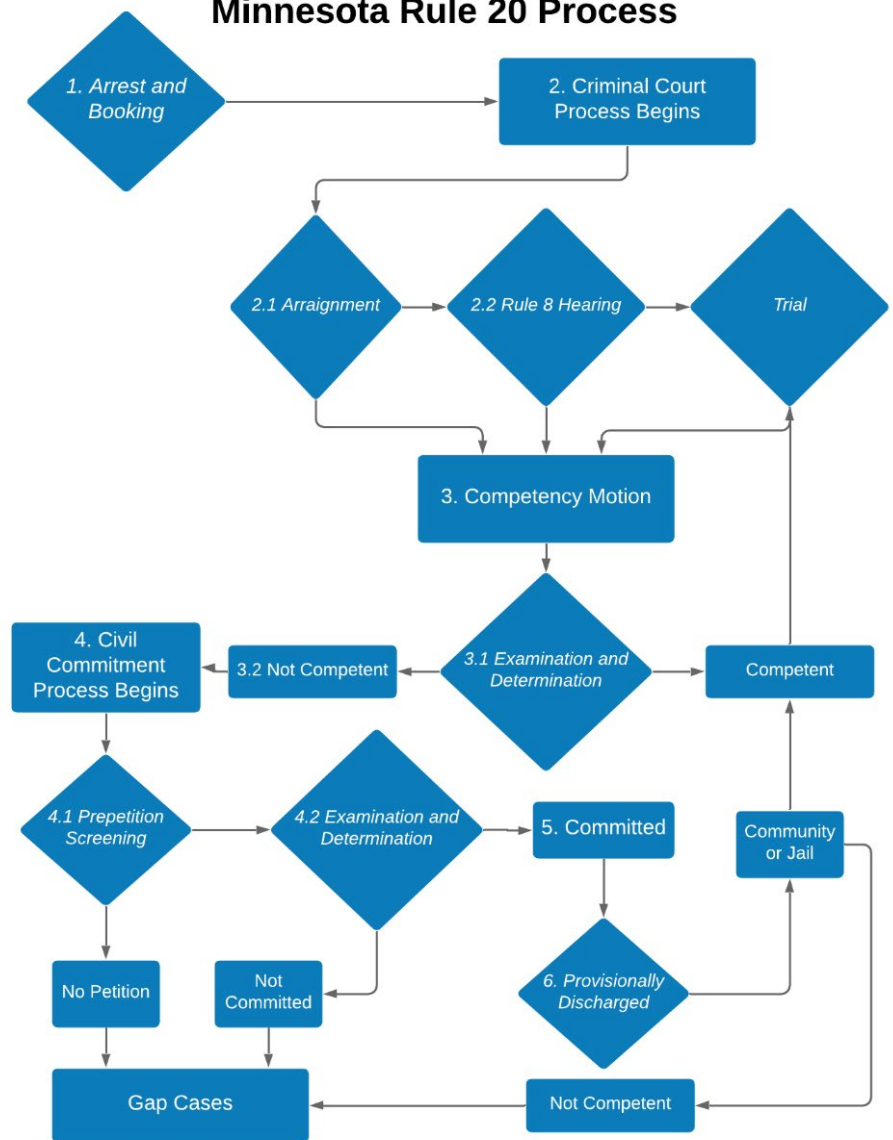
Minnesota court rules require individuals who are charged with a crime to be competent to stand trial.

Competency Restoration is the process of providing services for an individual that is found incompetent to stand trial to help them understand the court system and regain competency. The services are aimed at ensuring a defendant is able to consult with a defense attorney and can understand the charges against him or her and how the court process works.

For years, the state of Minnesota provided competency restoration programming for individuals that were found incompetent to stand trial and then ultimately civilly committed. The services were offered through a Competency Restoration Program operated by the Department of Human Services Direct Care and Treatment Division. In December 2018, the Department of Human Services ended the services for individuals in state operated facilities who no longer met medical criteria in order to focus on treating mental health needs.

Statute does not charge any state agency with competency restoration programming. There is no infrastructure across the state that exists to support the needs for these services. Individuals are provisionally discharged to jails or communities and may not have access to any competency restoration programming. Counties have a significant stake in the future of competency restoration. Competency restoration intersects with the mental health system, public safety, and public health. Responding to the needs and identifying a more comprehensive community-based response and resources requires stakeholders from multiple disciplines.

## Minnesota Rule 20 Process



Source: Community Competency Restoration Task Force Interim Report 2020

## Criminal Competency Determinations

In Minnesota's criminal court, a duty is placed on the judge, the prosecutor, and the defense attorney to file a motion if they suspect that a criminal defendant is not competent to proceed in the criminal case.

When a defendant shows up at the first hearing, they often have initial contact with a public defender or private defense attorney. The attorney has their first impressions of the mental state of the client. If they notice any red flags, the attorney may ask the court for an evaluation of the defendant's mental state. To get an evaluation, the attorney must file a Rule 20 motion.

Rule 20 of the Minnesota Rules of Criminal Procedure governs competency proceedings in criminal court. Under Minnesota Rules of Criminal Procedure 20.01, a defendant is not competent if they cannot rationally consult with counsel, or understand the proceedings, or participate in their own defense. This can be due to mental illness, cognitive impairment, or even severe ongoing substance use.

If the judge grants the motion and orders a Rule 20 evaluation, a court-appointed psychological or psychiatric examiner must evaluate the ability of the client to understand the proceedings and work with their attorney. Even if the defendant is unwilling to cooperate with the evaluation, the evaluator must state an opinion, if possible, as to whether the unwillingness to cooperate resulted from mental illness or cognitive impairment.

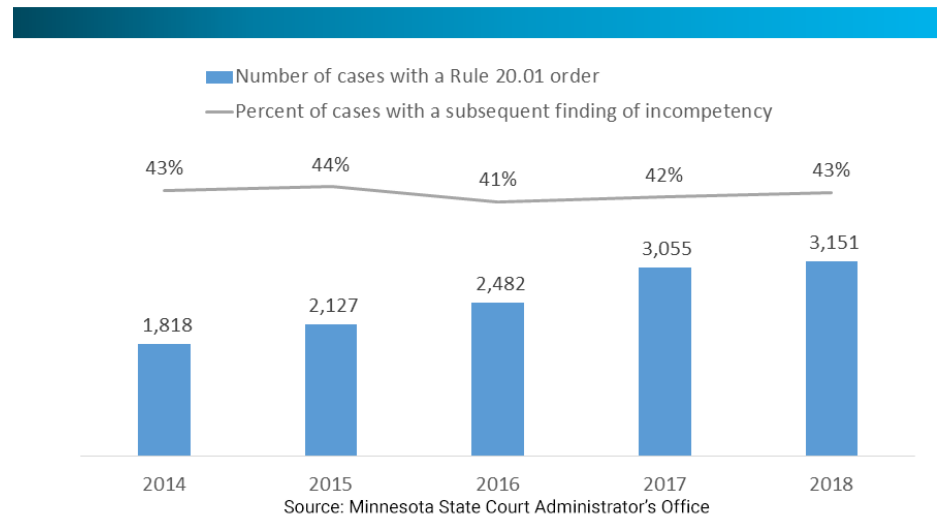
The evaluation must take place within 60 days of the order. During the evaluation period, the client is either released or detained based on the seriousness of the offense, the public safety risks of the defendant being in the community, and the likelihood of the defendant coming to court. Once the evaluation is complete, it is submitted to the court and the judge holds a hearing on the competency of the client within 10 days during which either attorney has an opportunity to object to the results of the evaluation.

If the defendant is found competent, the criminal proceedings resume. If the defendant is found to be incompetent, the next step depends on the charge.

Misdemeanors are dismissed upon a finding of incompetency. If the charge is a gross misdemeanor or felony, the case is suspended, and the court must issue an order directing county social services to start a prepetition screening to determine whether the defendant should be civilly committed.

If the defendant is civilly committed, the institution or facility where the defendant is in treatment must periodically report to the court on the defendant's mental condition and provide an opinion on the defendant's ability to return to court. These reports are typically done at least once every six months. At any time, the court can conduct a hearing on the defendant's competency. There is no limit on the number of these hearings.<sup>1</sup>

### Rule 20.01 and incompetency trends in criminal mandatory cases, 2014-2018



<sup>1</sup> <https://namimn.org/wp-content/uploads/sites/188/2018/03/civilcommitmentbookletfinal-2016.pdf>

## Civil Commitment Proceedings

There are six types of civil commitment proceedings:

- Mentally Ill persons (MI) – Persons who are mentally ill and as a result pose a danger to themselves or others;
- Developmentally Disabled persons (DD) - Persons who are developmentally disabled and as a result pose a danger to themselves or others;
- Chemically Dependent persons (CD) - Persons who are chemically dependent, unable to manage personal affairs, and as a result, pose a danger to themselves or others;
- Persons Mentally Ill and Dangerous to the Public (MI&D) – Persons who are mentally ill and as a result, have caused or intended to cause serious physical harm to another and are likely to take such action in the future;
- Sexual Psychopathic Personalities (SPP) – Persons who have an utter lack of power to control their sexual impulses as the result of a mental disorder and therefore pose a danger to the public; and
- Sexually Dangerous Persons (SDP) – Persons who have a mental disorder who have engaged in and are likely to continue to engage in harmful sexual conduct.<sup>2</sup>

The court may order a person civilly committed if it finds there is a strong likelihood that the individual will physically harm themselves or others as demonstrated by one of the following: (1) failure to obtain food, clothing, shelter or medical care as a result of the illness (2) inability to obtain food, clothing, shelter or medical care (and not because they cannot afford it) and it is more probable than not that the individual will suffer harm, serious illness or significant psychiatric deterioration as a result of not receiving medical care (3) a recent attempt or threat to harm physically themselves or others (4) recent voluntary and purposeful conduct involving significant damage to substantial property. In addition to that finding, the court must also determine that there is no less restrictive way to get treatment for the person.<sup>3</sup>

The first step in civil commitment is a prepetition screening process. The county assigns a screening team to assess whether the person being screened meets the requirements for a civil commitment. If the county determines that the person meets those requirements, the county attorney will file a petition to the court for civil commitment. Other parties can file a petition such as treatment providers or family, but most often it is the county attorney. After the petition is filed, the court orders an evaluation, or uses the criminal court evaluation that may have been conducted under Minnesota Rule of Criminal Procedure 20.04.

The subject of the petition has the right to be represented by a court appointed or private attorney and to present evidence refuting the petition in a formal trial subject to due process procedures. If at the conclusion of the hearings/trial the court finds that the person meets the requirement for civil commitment, that person will be committed, generally to a community hospital or other community service.

Civil commitment is initially six months, with a report being filed and a hearing held at the end of the 6 months. People often stabilize before the six months has ended, so the court may authorize the provision of community-based services and a provisional discharge to transition the person from an institutional setting to the community. If treatment is needed beyond the six months, the court can order an additional 12 months of commitment after another formal hearing and can continue to extend the commitment if necessary.

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<sup>2</sup> <http://www.mncourts.gov/Help-Topics/Civil-Commitments.aspx>

<sup>3</sup> <https://namimn.org/wp-content/uploads/sites/188/2018/03/civilcommitmentbookletfinal-2016.pdf>

## Where is the Gap?

The biggest gap in services happens when a person's mental health stabilizes after the initial commitment, but that person is still not competent to stand trial. Because the competency standard is different from the civil commitment standard, a person may be able to care for themselves and not be a danger in the community, but yet will not be able to understand criminal proceedings and rationally consult with counsel. In that situation, a criminal case hangs in limbo until the person becomes competent, if they ever do become competent.

## Prevalence of gap cases, by degree

	Number of mandatory criminal cases with a finding of incompetency between 2016-2018	Number of those cases where the defendant appears on a civil commitment filing within 30 days of the incompetency finding	Number of those cases where the civil commitment filed within 30 days leads to a commitment order	Number of those cases where the civil commitment filed within 30 days leads to a continue for dismissal order	Percent of cases with an incompetency finding where defendant was ultimately committed
Felony	1,471	865	672	19	46%
Gross Misdemeanor	487	264	184	9	38%
Misdemeanor	1,256	700	449	32	36%

Source: Minnesota State Court Administrator's Office

Another place where there is a gap is when the person is found not competent in their criminal trial but is never civilly committed. There are currently little to no resources to restore a person to competency without the intensive services they receive while under civil commitment.

## Minnesota's Community Competency Restoration Task Force

A statewide task force was created to explore potential solutions to responding to the increased number of individuals who are referred for evaluation and competency restoration. The Community Competency Restoration Task Force is comprised of 25 members.

The task force has been charged with the following:

- (1) Identify current services and resources available for individuals in the criminal justice system who have been found incompetent to stand trial;
- (2) Analyze current trends of competency referrals by county and the impact of any diversion projects or stepping-up initiatives;
- (3) Analyze selected case reviews and other data to identify risk levels of those individuals, service usage, housing status, and health insurance status prior to being jailed;
- (4) Research how other states address this issue, including funding and structure of community competency restoration programs, and jail-based programs; and
- (5) Develop recommendations to address the growing number of individuals deemed incompetent to stand trial including increasing prevention and diversion efforts, providing a timely process for reducing the amount of time individuals remain in the criminal justice system, determining how to provide and fund competency restoration services in the community, and defining the role of the counties and state in providing competency restoration.

The Task Force has submitted the initial legislative report which was due to the Legislature on February 1, 2020 to report on progress and findings. The final recommendations of the Community Competency Restoration task force will be presented in the final report due on Feb. 1, 2021.

February 2020