

FILED

June 28, 2018

**OFFICE OF
APPELLATE COURTS**

**STATE OF MINNESOTA
IN SUPREME COURT**

**ADM10-8046
ADM10-8049**

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

By order filed November 17, 2016, we appointed a joint workgroup from among the members of the Advisory Committee for the Rules of Criminal Procedure and the Advisory Committee for the Rules Governing Proceedings Under the Minnesota Commitment and Treatment Act. We directed the joint workgroup to review the use of mental-health evaluations in criminal proceedings, *see* Minn. R. Crim. P. 20, and consider whether amendments are needed to the Rules of Criminal Procedure or the Civil Commitment Rules with respect to the procedures for those evaluations.

The joint workgroup met six times in 2017, and considered input provided by government agencies and treatment providers, mental-health advocacy organizations, and community mental-health programs. On December 28, 2017, the joint workgroup filed a report recommending amendments, primarily to Rule 20 of the Rules of Criminal Procedure, along with other clarifying amendments to those rules. We invited public comments. No objections to the recommended amendments or other comments were received.

After careful consideration of the joint workgroup's report and recommendations, we adopt the recommended amendments to the Rules of Criminal Procedure. We agree

with the workgroup that the amendments, primarily to Minn. R. Crim. P. 20.01–.02, will provide useful clarity and guidance to defendants, attorneys, and the district courts in addressing competency issues that may arise in criminal proceedings and that may lead to civil-commitment proceedings.

We acknowledge the substantial and thorough work of the joint workgroup in evaluating the complex and varied policy, public safety, and structural issues that surround competency matters, and appreciate the well-balanced recommendations for rule amendments.

IT IS HEREBY ORDERED that the attached amendments to the Rules of Criminal Procedure be, and the same are, prescribed and promulgated to be effective as of September 1, 2018. The rules as promulgated will be effective in cases filed on or after the effective date.

Dated: June 28, 2018

BY THE COURT:



Lorie S. Gildea
Chief Justice

THISSEN, J., not having been a member at the time of submission, took no part in the consideration or decision of this matter.

AMENDMENTS TO THE 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 9.02. Defendant's Disclosure in Felony and Gross Misdemeanor Cases

Subd. 1. Information Subject to Discovery Without Court Order. The defendant must, at the prosecutor's request and before the Rule 11 Omnibus Hearing, make the following disclosures and permit the prosecutor to inspect and reproduce them:

* * *

- (5) Notice of defense. The defense must inform the prosecutor in writing of any defense, other than not guilty, that the defendant intends to assert, including but not limited to:
- (a) self-defense;
 - (b) entrapment;
 - (c) mental illness or ~~deficiency~~cognitive impairment;
 - (d) duress;
 - (e) alibi;
 - (f) double jeopardy;
 - (g) statute of limitations;
 - (h) collateral estoppel;
 - (i) defense under Minn. Stat. § 609.035;
 - (j) intoxication.

A defendant who gives notice of intent to assert the defense of mental illness or ~~mental deficiency~~cognitive impairment must also notify the prosecutor of any intent to also assert the defense of not guilty.

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Rule 14.01. Pleas Permitted

A defendant may plead:

- (a) Guilty.
- (b) Not guilty.
- (c) Not guilty by reason of mental illness or ~~mental deficiency~~cognitive impairment.
- (d) Double jeopardy or prosecution barred by Minn. Stat. § 609.035. Either may be plead with or without the plea of not guilty.

RULE 20. MENTALLY ILL OR ~~MENTALLY DEFICIENT~~ COGNITIVELY IMPAIRED DEFENDANTS.

Rule 20.01. Competency Proceedings

* * *

Subd. 2. 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 ~~due to mental illness or deficiency.~~

Subd. 3. Competency Motion. If the prosecutor, defense counsel, or the court, at any time, doubts the defendant's competency, the prosecutor or defense counsel must make a motion challenging competency, or the court on its initiative must raise the issue. The defendant's consent is not required. 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. If the court determines that reason exists to doubt the defendant's competency, the court must suspend the criminal proceedings and proceed as follows.

- (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) **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. If the defendant is not entitled to release or the 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.

If the prosecutor or defense counsel has a qualified examiner, the court, on request, must allow the examiner to observe the examination and examine the defendant. Any examiner may obtain and review the report of any prior examination under this rule.

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.** 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 deficient 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) The factual basis for the diagnosis and opinions.
 - (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 deficiency cognitive impairment.

Subd. 5. Competency Determination.

(a) ~~Request for Competency Hearing Procedures.~~

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

(b2) ~~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.

(e3) ~~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.

(d4) ~~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.

(eb) ~~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.

(fc) ~~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 Competency 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.

- (1) ~~Finding of Mental Illness. If the court finds the defendant mentally ill so as to be incapable of understanding the criminal proceedings or participating in the defense, and the defendant is under civil commitment as mentally ill, the court must order the commitment to continue. If the defendant is not under civil commitment, the court must 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—commence a civil commitment proceeding. 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.~~
- (2) ~~Finding of Mental Deficiency. If the court finds the defendant mentally deficient so as to be incapable of understanding the criminal proceedings or participating in the defense, and the defendant is under commitment as mentally deficient to the guardianship of the commissioner of public welfare, the court must order the defendant remanded to the care and custody of the commissioner. If the defendant is not under commitment, the court must cause civil commitment proceedings to be instituted against the defendant. The court must supervise the commitment as provided in Rule 20.01, subd. 7.~~
- (3) ~~Appeal. Any party may appeal a civil commitment determination to the Court of Appeals. The appeal must be under Rule 28 and on the record made in the court. A verbatim record must be made in all civil commitment proceedings instituted under this rule.~~

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Rule 20.02. Defense of Mental Illness or ~~Deficiency~~Cognitive Impairment—Mental Examination

Subd. 1. Authority to Order Examination. The trial court may order the defendant’s mental examination if:

- (a) the defense notifies the prosecutor of its intent to assert a mental illness or deficiency/cognitive impairment defense pursuant to Rule 9.02, subd. 1(5);

- (b) the defendant in a misdemeanor case pleads not guilty by reason of mental illness or ~~deficiency~~cognitive impairment; or
- (c) the defendant offers evidence of mental illness or ~~deficiency~~cognitive impairment at trial.

* * *

Subd. 4. Report of Examination. The examiner must forward a written examination report to the court. The court must provide copies of the report to the prosecutor and defense. The contents of the report must not otherwise be disclosed except as provided in this rule. The report must contain:

- (a) A diagnosis of the defendant's mental condition as requested by the court;
- (b) If directed by the court, an opinion as to whether, because of mental illness or ~~deficiency~~cognitive impairment, the defendant, at the time of committing the alleged criminal act, was laboring under such a defect of reason as not to know the nature of the act or that it was wrong;
- (c) Any opinion requested by the court that is based on the examiner's diagnosis;
- (d) A statement of the factual basis on which the diagnosis and any opinion are based; and
- (e) If the examination could not be conducted because of the defendant's unwillingness to participate, an opinion, if possible, as to whether the defendant's unwillingness resulted from mental illness or ~~deficiency~~cognitive impairment.

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Subd. 6. Admissibility of Defendant's Statements. When a defendant is examined under Rule 20.01, Rule 20.02, or both, the admissibility at trial of any statements the defendant made for the purpose of the examination and any evidence derived from the statements must be determined by the following rules.

- (1) **Sole Defense of Mental Condition.** If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of intent to rely solely on the defense of mental illness or ~~deficiency~~cognitive impairment, or if the defendant in a misdemeanor case relies solely on the plea of not guilty by reason of mental illness or ~~deficiency~~cognitive impairment under Rule 14.01(c), statements the defendant made for the purpose of the mental examination and evidence derived from the statements are admissible at the trial on the issue of the defendant's mental condition.
- (2) **Multiple Defenses.** If a defendant relies on the defense of mental illness or ~~deficiency~~cognitive impairment together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or ~~deficiency~~cognitive impairment, the statements the defendant

made for the purpose of the mental examination and any evidence derived from the statements are admissible against the defendant only at the mental illness or deficiency cognitive impairment stage of the trial.

Subd. 7. Trial Procedure for Multiple Defenses.

- (a) **Order of Proof.** If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of intent to rely on the defense of mental illness or deficiency cognitive impairment together with a defense of not guilty, or if the defendant in a misdemeanor case pleads both not guilty and not guilty by reason of mental illness or deficiency cognitive impairment, the court must separate the two defenses. The defense of not guilty must be heard and determined first. The defense of mental illness or deficiency cognitive impairment must be heard and determined second.
- (b) **Jury Instructions.** The jury must be informed at the start of the trial that:
- (1) the defendant has offered two defenses;
 - (2) the defense of not guilty will be tried first and the defense of mental illness or deficiency cognitive impairment will be tried second;
 - (3) if the jury finds that the elements of the offense have not been proved, the defendant will be acquitted;
 - (4) if the jury finds the elements of the offense have been proved then the defense of mental illness or deficiency cognitive impairment will be tried and determined by the jury.
- (c) **Proof of Elements—Effect.** The court or jury must determine whether the elements of the offense have been proved beyond a reasonable doubt. If the elements of the offense have not been proved, a judgment of acquittal must be entered.

If the defendant has been convicted in the guilt phase, then the defense of mental illness or deficiency cognitive impairment must be tried. The jury must render a verdict or the court make a finding of:

- (1) not guilty by reason of mental illness;
- (2) not guilty by reason of ~~mental~~ deficiency cognitive impairment; or
- (3) guilty.

The defendant bears the burden of proving mental illness or deficiency cognitive impairment by a preponderance of the evidence.

Subd. 8. Effect of Not Guilty by Reason of Mental Illness or ~~Deficiency~~Cognitive Impairment.

- (1) *Mental Illness or Cognitive Impairment.* When a defendant is found not guilty by reason of mental illness or cognitive impairment, and the defendant is under civil commitment as mentally ill or developmentally disabled, the court must order the commitment to continue. If the defendant is not under commitment, a petition for commitment must be filed by the county attorney in the county in which the acquittal took place. ~~The court must commence a civil commitment proceeding and order the defendant to be detained in a state hospital or other facility pending completion of the proceedings. In felony and gross misdemeanor cases, the court must supervise the commitment as provided in Rule 20.02, subd. 8(4).~~
- ~~(2) *Mental Deficiency.* When a defendant is found not guilty by reason of mental deficiency and the defendant is under commitment to the guardianship of the commissioner of public welfare, the court must order the defendant remanded to the care and custody of the commissioner. If the defendant is not under such commitment, the court must commence a civil commitment proceeding. In felony and gross misdemeanor cases, the court must supervise the commitment as provided in Rule 20.02, subd. 8(4).~~
- ~~(3) *Appeal.* Any party may appeal a civil commitment determination to the Court of Appeals. The appeal must be under Rule 28 and on the record made in court. In all civil commitment proceedings instituted under this rule, a verbatim record of the proceedings must be made.~~
- (42) *Continuing Supervision.* In felony and gross misdemeanor cases, the court and the prosecutor must be notified of any proposed institutional transfer, partial hospitalization 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.

Rule 20.03. Disclosure of Reports and Records of Defendant's Mental Examinations

Subd. 1. Disclosure Order. If a defendant notifies the prosecutor under Rule 9.02, subd. 1(5), of an intent to rely on the defense of mental illness or ~~deficiency~~cognitive impairment, the court, on the prosecutor's motion with notice to defense counsel, may order the defendant to furnish to the court for in camera review or to the prosecutor copies of all medical reports and records previously or subsequently made concerning the defendant's mental condition that are relevant to the mental illness or ~~deficiency~~cognitive impairment defense. The court must inspect any reports and records furnished to it, and if the court finds them relevant, order them disclosed to the prosecutor. Otherwise, they must be returned to the defendant.

A subpoena duces tecum may be issued under Rule 22 if the defendant cannot comply with the court's disclosure order.

Subd. 2. Use of Reports and Records. Reports and records furnished to the prosecutor under Rule 20.03, subd. 1, and any evidence obtained from them, may be admitted in evidence only on the defense of mental illness or ~~deficiency~~cognitive impairment when it is the sole defense, or during the mental illness or ~~deficiency~~cognitive impairment phase when there are multiple defenses, as specified by Rule 20.02, subd. 7.

Rule 26.01. Trial by Jury or by the Court

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Subd. 2. Trial Without a Jury.

- (a) In a case tried without a jury, the court, within 7 days after the completion of the trial, must make a general finding of guilty; not guilty; or if the applicable pleas have been made, a general finding of not guilty by reason of mental illness or ~~deficiency~~cognitive impairment, double jeopardy, or that Minn. Stat. § 609.035 bars the prosecution.
- (b) The court, within 7 days after making its general finding in felony and gross misdemeanor cases, must in addition make findings in writing of the essential facts.
- (c) In misdemeanor and petty misdemeanor cases, findings must be made within 7 days after the defendant has filed a notice of appeal.
- (d) An opinion or memorandum of decision filed by the court satisfies the requirement to find the essential facts if they appear in the opinion or memorandum.
- (e) If the court omits a finding on any issue of fact essential to sustain the general finding, it must be deemed to have made a finding consistent with the general finding.