



**MINNESOTA
JUDICIAL BRANCH**

Psych Examiner Services Judicial Workgroup Report

January 23, 2020

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Executive Summary

For more than five years, the Minnesota Judicial Branch (Judicial Branch) has experienced a dramatic increase in the volume and cost of Mandated Services psychological and psychiatric (psych) exams. Between 2016 and 2018, Judicial Branch data shows a 40% increase in the number of examinations ordered under Minn. R. Crim. P. Rule 20 and a 49% increase in mandated services psych exams costs for this same time period. To understand the underlying factors for the increases, the Judicial Branch’s Judicial Council convened a group of judges, attorneys, psych examiners, directors, social services, court staff, and other public stakeholders to review and analyze the current processes for responding to situations involving people living with mental illnesses in the criminal justice system. The Workgroup was charged with providing recommendations to more effectively address these cases and make better use of the limited financial resources allocated for mandated psych exams.

The 2016 Office of Legislative Auditor Report on Mental Health Services in County Jails identifies a gap in services for individuals with mental illness in Minnesota. A 2018 University of Minnesota, Robina Institute of Criminal Law and Criminal Justice report, Closing the “Gap” Between Competency and Commitment in Minnesota: Ideas from National Standards and Practices in Other States, also identifies service gaps. The study states that Minnesota’s unique standards between a finding of incompetency and a higher standard for ordering a commitment, results in a gap in treatment for chronically ill people. The Workgroup identified three “gap” scenarios for analysis:

1. A person is found incompetent, but does not meet the standards for commitment,
2. A person is found incompetent and meets the standards for commitment, but is released from commitment when the individual is psychiatrically stable rather than restored to competency, and
3. An individual is deemed unable to be restored to competency and does not meet the standards for commitment or to be held in jail.

While conducting its analysis, the workgroup found that the number of adult criminal cases with an order for a competency evaluation (Rule 20.01 exam) increased by 73% from 2014 through 2018. During the same time period, the percent of cases with an order for a Rule 20.01 evaluation that had a subsequent finding of incompetency, ranged from 41% to 44%. Additional findings showed 4,052 Rule 20.02 exams were ordered between 2016 and 2018, and only 129 defendants (3%) were acquitted due to mental illness or cognitive impairment. The Workgroup also noticed that judges and justice partners often possess limited education and training about how to respond to legal issues with people living with mental illnesses. This often also meant that they were not always able to make the best use of forensic examiner reports. Meanwhile, defendant and respondent health can quickly deteriorate or intensify by prolonged court proceedings.

The Workgroup identified two sets of recommendations, Judicial Branch recommendations and Preventative Strategies as an Alternative to the Rule 20 process. Recommendations the Judicial Branch may independently implement include:

1. Provide cross-disciplinary training for judges, forensic examiners, court staff, and justice partners on mental health matters and resources.
2. Establish better communication processes between the Judicial Branch and DHS to improve coordination and collaboration on treatments and services.
3. Revise the language in the Minn. R. Crim. P. Rule 20.02 to encourage the reduction of unnecessary exam orders.
4. Support the use of electronic records and remote communication technologies to ensure efficient and timely communication of proceedings that include parties with mental illnesses.
5. Establish required elements for examiner reports to ensure the Court and its justice partners receive the necessary psychological and psychiatric information to improve effective and efficient responses to cases impacted by people with mental illnesses.
6. Establish a mental health advisory group to assist the Court in effectively responding to people afflicted by mental illnesses.

The Workgroup recognized that the court system is not designed to handle many of the factors contributing to the increase in legal proceedings involving people with mental illnesses. The Judicial Branch should acknowledge and support the following policy solutions as preventative strategies to reduce the number of people in the court system affected by mental illnesses or cognitive impairments.

1. A funded continuum of community-based services and treatment including housing.
2. Mental health assessments and the administration of treatment in jail settings.
3. Community and public services that support the reduction of people with mental illnesses in the criminal justice system such as specially trained judges and attorneys able to appear in both criminal and commitment matters as well as funding for programs that divert people with mental illnesses from the criminal justice system.
4. Training for 911 dispatchers on how to divert emergencies resulting from people with mental illnesses to mobile response teams and encourage sheriffs to support diversion to mobile response teams.

Introduction & Overview

The Minnesota Judicial Council convened a workgroup of judges, attorneys, examiners, directors, county and state human services representatives, public stakeholders, and Minnesota Judicial Branch (Branch) staff to examine how the courts respond to cases that involve parties with mental illness. This action was taken as a response to the continuous and significant increases in mandated services psychological and psychiatric exams since 2013. The group was charged with providing recommendations to address the issues, such as new judicial education efforts, methods for working with psych examiners, and efforts to mitigate the increasing financial impact on the Judicial Branch. The Psych Services Judicial Workgroup (Workgroup) met from January 18, 2019 to November 12, 2019.

The Workgroup determined that many of the contributing factors to the increase in court proceedings involving people living with mental illnesses are beyond the sole control of the

Judicial Branch. This report provides a current state analysis of the impact of untreated people living with mental illnesses in criminal proceedings. It provides an overview of the research other organizations have conducted locally and nationally on related topics, and offers findings and recommendations for the Judicial Branch and public policy stakeholders working to address the issues experienced by the Judicial Branch due to the increase in cases and related expenses.

Workgroup Process

From February to July of 2019, the Workgroup engaged in a visioning process aimed at understanding the current state of mental health issues affecting the Judicial Branch, with a goal to formulate recommendations to address the identified issues. The process was both systematic and creative, and explored opportunities for changing the Judicial Branch's response to people with mental illnesses in court proceedings. The Workgroup documented and reviewed all of the information acquired through each step of the process. The visioning process stages, as detailed below, included data and documentation review, establishing principles to guide the work, assessing current state and future trends, conducting a stakeholder assessment, and analyzing short and long-term solution opportunities.

I. Data and Documentation Review

In this stage the Workgroup reviewed current policies and practices, court data, existing research, and past documentation of Judicial Branch issues, needs, and options for change.

II. Principles to Guide Work Process

In the second stage, the Workgroup established principles to guide its assessment process and recommendation decisions. The Workgroup viewed its role as, "A catalyst to move to a real, effective solution" owned by all stakeholders, rather than documenting a "hodgepodge of resources and services". The guiding principles were:

1. To assume a moral imperative to address people with mental illnesses within the Judicial system,
2. To collaborate with stakeholders to drive implementation of recommendations,
3. To promote shared resources and establish stable funding, and
4. To offer data-supported recommendations.

III. Current State and Future Trends Assessment

During the third stage, the Workgroup identified the current status of court proceedings with parties with mental illness, and looked at future trends in mental health treatment and awareness as it impacts court proceedings. The group identified four consistent drivers of change: governance, demographics, resources, and technology. The Workgroup explored the following questions for each driver:

- **Governance:** What is happening internally and externally related to the structures, priorities, policies, and rules of governing bodies that may have an impact on how the court respond to people with mental illnesses in the future?
- **Demographics:** What is happening internally and externally related to the diversity, volume, distribution, issues, and interests of the population that may have an impact on how the courts respond to people with mental illnesses in the future?
- **Resources:** What is happening internally, and externally, related to the type, availability, competition for, and priority of resources (financial, time and people) that may have an impact on the how the courts respond to people with mental illnesses in the future?
- **Technology:** What is happening internally, and externally, related to the development, functionality, integration, and user and customer expectations that may have an impact on how the courts respond to people with mental illnesses in the future?

The Workgroup prioritized for additional exploration the most critical issues identified in the current state and future trends assessment. See Appendix B.

IV. Stakeholder Assessment

The Workgroup sought input from Judicial Branch stakeholders that have an interest in how the court responds to people with mental illnesses. The Workgroup recorded and discussed the requirements from thirteen key customer or stakeholder groups that were identified in the assessment. Critical requirements for each stakeholder group were identified, clarified, and agreed upon through a discussion of the following questions:

1. For whom are we solving this problem?
2. What would a good result look and feel like?

The resulting critical requirements are the issues that must be included in order to provide a satisfactory solution for the specific stakeholder. See Table B-1.

V. Opportunities for Identification and Assessment

In the fifth stage of the process, the Workgroup created an Opportunity Impact Assessment that evaluated past, current, and future trending issues related to people living with mental illnesses in the criminal justice system and categorized the findings into four themes based on the opportunity for development. The four themes were:

- Maximizing client health,
- Maximizing examiner skills and resources,
- Maximizing delivery of justice, and
- Maximizing financial resources.

Across each theme, the Workgroup applied these additional categories to identify opportunities for improvement:

- Orders for examination,
- Examinations,
- Hearings,
- Incarcerations or holds, and
- Community services.

In order to develop balanced recommendations, the Workgroup also categorized the opportunities based on the additional criteria of structural or procedural impact, impact on people, impact on governance, impact on political culture, and impact that demonstrates value or symbolic change.

Finally, all identified opportunities were evaluated for high, medium, or low impact to resolving the numbers of people living with mental illnesses in the criminal justice system, level of effort, value of impact, and whether the opportunity was a short or long-term solution. See Table C-1.

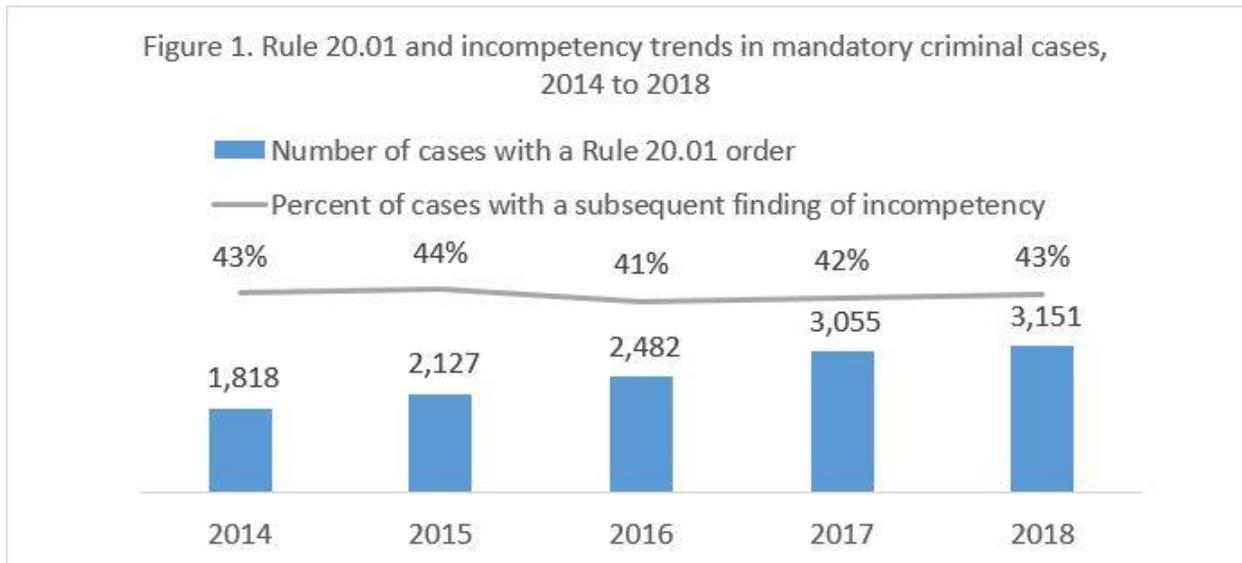
VI. Identify Highest Ranked and Best Combination of Short and Long Term Opportunities

The final stage of the Workgroup's visioning process made use of an Opportunity, Effort, Value, and Long-Term Short-Term Assessment. Using the highest ranked opportunities from each of the four identified themes, the opportunities were grouped into five action strategies including pre-trial intervention services, training, technology, evaluation services, and public policy. The Workgroup also evaluated the timeframe of each opportunity and determined whether they were long or short-term recommendations. See Table D-1.

Data Review

At the first meeting, the Workgroup received an overview of the State Court Administrator's Psychological/Psychiatric Examiner Services Program (Psych Services Program) and mandated services exam and cost data for the past five years as captured by the Psych Services Program See Appendix E. The data showed that between fiscal years 2014 to 2018 there was a 40% increase in exams under Minn. R. Crim. P. Rule 20, a 4% increase in exams for civil commitment proceedings under Minn. Stat. §253B, and a 49% increase in mandated services exam costs. The Workgroup requested and reviewed district court exam and case related data. The results of the data examination is summarized below, and the details can be reviewed in Appendix ##.

Figure 1 shows a steady increase over the last five years in adult criminal cases with an order for a competency evaluation (Rule 20.01 order).



The data revealed that felony-level cases include an order for a competency evaluation (3.3%) at higher rates than low-level cases. However, more low-level cases have an order for a competency evaluation.



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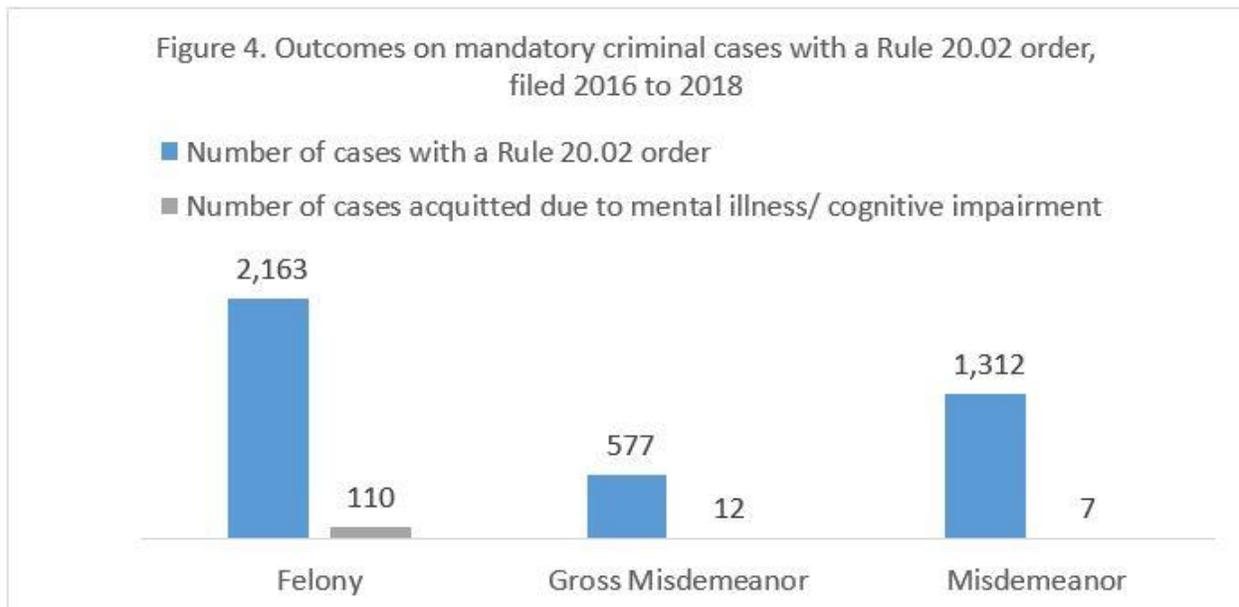
Statewide, one in five cases with an order for a competency evaluation will likely have a subsequent order for a competency evaluation as well. The percentage of subsequent orders varies by district, from a low of 13% in the Fifth Judicial District to 26% in the “Sixth Judicial District.

Table 1. Mandatory criminal cases with multiple Rule 20.01 orders, filed 2016 to 2018			
	Number of cases with at least one Rule 20.01 order	Number of cases with multiple Rule 20.01 orders	Percent of cases with multiple Rule 20.01 orders
1st District	601	124	21%
2nd District	908	189	21%
3rd District	578	112	19%
4th District	2,054	435	21%
5th District	297	38	13%
6th District	401	104	26%
7th District	616	96	16%
8th District	139	25	18%
9th District	600	144	24%
10th District	782	126	16%
Statewide	6,976	1,393	20%

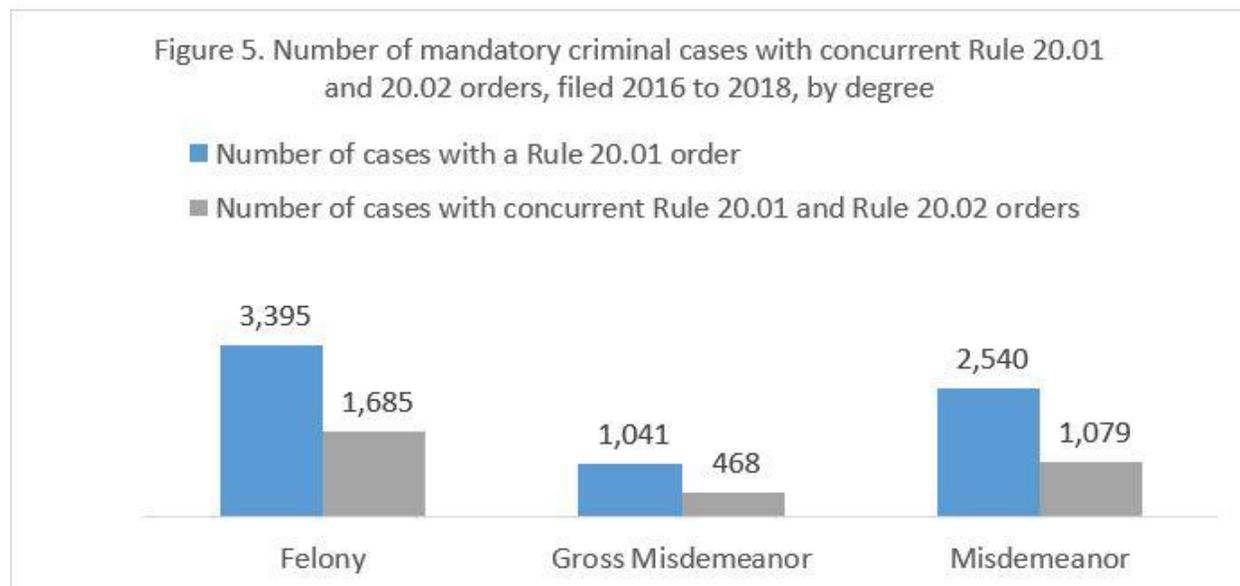
The data also showed that felony-level cases have a higher volume of including an order for an evaluation of people with mental illnesses or cognitive impairment (Rule 20.02 order) than lower-level cases.



A Rule 20.02 evaluation is used to determine whether the defendant is not guilty by reason of mental illness or cognitive impairment. Figure 4 shows how rarely this outcome occurs.



Almost half of all cases with a Rule 20.01 order also have a Rule 20.02 order entered within 30 days (concurrently).



In over half of felony cases where the defendant is found incompetent, that defendant does not appear on a subsequent civil commitment case with an order for commitment. The rate of commitment is higher for felony-level cases.

Table 2. 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 which lead to a commitment order	Percent of cases with an incompetency finding where defendant was ultimately committed
Felony	1,471	865	672	46%
Gross Misdemeanor	487	264	184	38%
Misdemeanor	1,256	700	449	36%

Related Research

The Workgroup also reviewed information from additional sources to make sure it had a thorough understanding of other stakeholder perspectives. This information was considered as the Workgroup developed the recommendations in this report.¹

Mental Health Services in County Jails, Office of the Legislative Auditor, March 2016

In 2015, the Minnesota Office of the Legislative Auditor (OLA) evaluated the mental health services received by people taken into custody in Minnesota. Notably, the report states there is “limited availability of community and state-operated mental-health services affects persons taken into custody.” In addition, the OLA report found that in most cases where a defendant was found incompetent, no commitment petition was filed or the court did not commit the person, often resulting in the person being released from custody without a remedy for their mental health issues. Additional review by the Workgroup confirmed that the OLA finding holds true when analyzing more recent data. See Table 2.

Closing the “Gap” Between Competency and Commitment in Minnesota: Ideas from National Standards and Practices in Other States, Robina Institute of Criminal Law and Criminal Justice, 2018

In Minnesota, a finding of incompetency is not a sufficient legal basis for civil commitment, and yet civil commitment is the only way for the defendant to receive competency restoration treatment. The Robina Institute report found Minnesota to be unique among states in allowing this “gap” between competency and commitment and holds the rights of mentally ill defendants in “high regard”; a contributing factor to the “gap” problem.

¹ In addition to the related research discussed in the report, the Workgroup discussed the implications of *Jackson v. Indiana*, 406 U.S. 715 (1972) held that the indefinite commitment of a criminal defendant solely because of his lack of capacity to stand trial violates due process. A defendant can only be held for the reasonable period of time necessary to determine whether there is a substantial probability that he will be restored to competency in the foreseeable future. If it is determined that he will not, the State must either institute civil commitment proceedings applicable to those not charged with a crime, or release the defendant.

A review of practices in other states indicated that a finding of incompetency could trigger a number of restoration to competency options, including civil commitment, court-ordered inpatient or outpatient treatment, or pre-trial release that requires treatment as a condition of release. The report noted that while other states may have these other options in place, there might not be adequate funding and/or enough facilities to properly treat the volume of defendants in need of the services. The Robina Institute report offered the following solutions to address Minnesota's "competency gap",

1. Reconsider the commitment standard to more easily allow for other pathways to restoration to competency treatment,
4. Explore community-based treatment for low risk defendants,
5. Ensure high-quality treatment that provides competency programming to meet the needs of the defendant, and
6. Improve the state's mental health resources to prevent mental illness related crimes and provide adequate treatment services after the crime occurs.

[Decriminalization of Mental Illness: Fixing a Broken System, National Center for State Courts \(NCSC\), 2016-2017 Policy Paper](#)

In 2017, the Conference of State Court Administrators published the policy paper, "Decriminalization of Mental Illness: Fixing a Broken System" (Policy Paper). The Policy Paper noted that jails and prisons have replaced state institutions as the primary facilities for housing people living with mental illnesses. In addition, it was noted that "rigid legal standards for involuntary treatment" and poorly funded community-based mental health systems have contributed to a "public safety crisis".

The Policy Paper prompts state courts to encourage policy makers to modify mental health laws to consider a patient's capacity to commit a crime and not solely past conduct when ordering involuntary mental health treatment. This modification would bring consistency to court ordered treatment practices for all illnesses. The NCSC supports the use of the Sequential Intercept Model as a collaborative intervention strategy between the criminal justice system

and state mental health resources communities. They also support an “Intercept 0” model that provides intervention prior to entry into the criminal justice system. In addition, NCSC advocates for the use of Assisted Outpatient Treatment (AOT), court-supervised, community-based treatment programming, individualized to the defendant and provides case management, personal therapy, medication, and other services. The NCSC notes this plan converts mental health policy from “inpatient” based models to “outpatient” based models, allowing defendants to recover, realize self-determination, and avoid the criminal justice system.

Recommendations of Minnesota Supreme Court Joint Workgroup, December 28, 2017

A joint workgroup met in 2017 to address concerns about a lack of judicial options for defendants found incompetent, along with a variety of other issues relating to competency proceedings under Minn. R. Crim. P. 20. The Joint Workgroup acknowledged Minnesota’s dilemma with “gap” cases and found that many defendants who are deemed incompetent in low-level crimes, cycle through the criminal justice system and do not often receive the treatment they need. The report noted, “The joint workgroup agreed that defendants should not be held or medicated without due process standards in place, and for this reason, the joint workgroup quickly dismissed any expansion on civil commitment standards.”

In their report, the Joint Workgroup acknowledged their interest in finding solutions to Minnesota’s “gap” problem; however, the Joint Workgroup noted the limited resources available in the state to offer competency restoration services and provided their recommendations accordingly. The Joint Workgroup recommended the following clarifications:

- In Rule 20.01, subd. 3, set a designated period of time in which a Rule 20 hearing must occur and provide clarification that when the criminal proceedings are suspended, the criminal court retains jurisdiction over bail and conditions of release; and
- In 20.01, subd. 6(b)(1), remove the court’s responsibility to file a commitment case after an incompetency finding and require the court to order the pre-petition screening

team to commence this action and set timeframes for the completion of an assessment and review hearing.

The Joint Workgroup recognized the state's community-based Competency Restoration Program is available to individuals who are found incompetent, civilly committed, and willing to enter treatment voluntarily. Many defendants, however, were not willing to enter the program and did not receive the treatment they needed. The workgroup's recommendations stopped short of suggesting the promulgation of a court rule, stating the court could order a defendant into competency restoration programming because of concerns about program resources and funding availability to accommodate the increase in need. See Supreme Court Order, Order Promulgating Amendments to the Minnesota Rules of Criminal Procedure, ADM10-806, ADM10-8049, filed June 28, 2018.

Community Based Projects

A number of community-based projects exist in Minnesota to provide services to individuals with mental illness or cognitive impairments. The Workgroup collected information about these different programs to gain a more thorough understanding of currently available services and programs.

Sixth Judicial District Rule 20 Pilot

In 2018, the Sixth Judicial District conducted a pilot in collaboration with the Public Defender's Office to screen defendants who exhibited signs of mental illnesses before conducting a full Rule 20 evaluation. In 2017, of the 115 orders issued by the Sixth District for Rule 20.01 evaluation, 37% resulted in findings of incompetency. During the pilot period, the court ordered 82 Rule 20.01 evaluations of which more than 50% resulted in findings of incompetency. The percentage of findings of incompetency increased each quarter of the pilot. The pilot, though limited in scale does offer some evidence in support of the benefit of a pre-screening process prior to a full Rule 20 evaluation. The Workgroup believes this is at least in part due to the cooperation between the court and the public defender's office.

Fourth Judicial District Rule 20 Screening Pilot Program

From January 2018 through January 2019, the Fourth Judicial District conducted the Psychological Services Rule 20 Pilot Program (Pilot Program) to attempt to reduce the time it took Regional Psychological Services examiners to complete a Rule 20 evaluation. An on-call examiner was assigned to conduct Rule 20 assessments the same day a Rule 20 evaluation was ordered for defendants charged with misdemeanor crimes. The pilot compared the 106 individuals who participated in the pilot to individuals who had a Rule 20 evaluation ordered, but did not participate in the pilot. Below is a summary of results from the Pilot Program:

- Exams conducted as part of the Pilot Program took, on average 13 fewer days, than the non-pilot evaluation process,
- Pilot Program evaluations, on average, were completed in an average of 10 days compared to an average of 28 days to complete a full evaluation for non-pilot evaluations,
- Costs for Pilot Program evaluations (on average \$316.39) were significantly less than non-pilot evaluations (on average \$792.88), and
- Criminal court cases associated with the Pilot Program, on average, reached disposition more quickly than non-pilot evaluations.

Stearns and Benton County Community Action Team

The Stearns and Benton County Community Action Team (CAT) is a collaboration of county social workers, CentraCare healthcare providers, local law enforcement, and Central Minnesota Mental Health Center providers. Collectively, they work to reduce the number of people who are frequently in chemical dependency detox centers, jail, or emergency rooms because of a mental health crisis. The team provides participants with chemical dependency treatment, medication, housing, or legal assistance in an effort to divert participants from reentering jail or emergency rooms.

Yellow Line Project

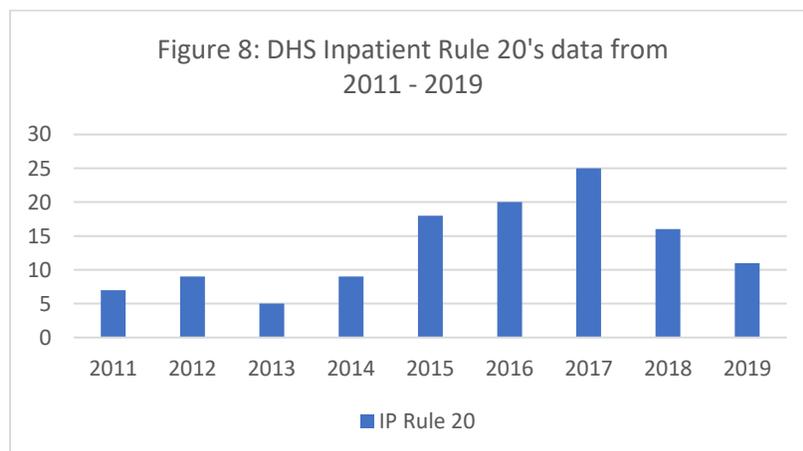
The Yellow Line Project (Project) is a pre-booking diversion program in Blue Earth County. The Project's website states:

“The Yellow Line Project is designed to provide an early response to individuals with acute or chronic mental or chemical health problems who have become involved with law enforcement and are not a risk to the community. ... The underlying system goal is to streamline the decision-making between Law Enforcement, Human Services, and Community-Based Care Providers so the most cost-effective services are provided and less incarcerations are needed.” (yellowlineproject.com).

Workgroup members noted the well-regarded programming and reputation of the Yellow Line Project in its discussions of diversion programs.

Department of Human Services, Forensic Evaluation Department, Inpatient Rule 20.01 & 20.02 Pilot Project

In 2017, the Department of Human Services (DHS) Forensic Evaluation Department conducted a pilot program in collaboration with the Second Judicial District in an attempt to reduce a growing number of inpatient Rule 20 evaluations. The goal of the pilot project was to preserve inpatient beds for civilly committed individuals needing treatment. The method used to achieve this goal was to send DHS forensic examiners to jails within days of the order for Rule 20 evaluation to complete an outpatient evaluation if appropriate. This close collaboration between DHS and the Second Judicial District resulted in 29 inpatient admissions diverted to outpatient evaluations since November 2017.



Department of Human Services, Forensic Evaluation Department, Gap Cases Non-Restorable Pilot Project

In response to a growing number of forensic examinations for people deemed non-restorable to competency due to cognitive impairment, the DHS Forensic Evaluation Department conducted a pilot in 2018 in which the medical director submitted a letter to the court, in lieu of a full Rule 20 examination report, with an update on the defendant. One goal of the person-centered pilot was to avoid duplicative interviews with the defendant, generating additional and unnecessary competency restoration examinations. Another objective was to minimize disruption, confusion, or agitation on the part of the defendant, while also preserving examiner resources. The letters from the medical director summarized the individual's condition and the prognosis for changes in the defendant's condition, such as dementia or Traumatic Brain Injury. The letters also recounted the numerous examinations already conducted and the examiner opinions, noting whether the status of the individual had changed. The process leaves open the opportunity to conduct another full examination at the court's request. Since the start of the pilot, 21 cases have been reviewed and of these, 17 provided a letter in lieu of the full report to the court. This pilot has saved significant examiner resources and undue stress to the individual being examined.

Workgroup Findings

Findings from the Workgroups discussions confirm that Minnesota continues to struggle when encountering people with mental illness and cognitive impairment in court proceedings. The Workgroup confirmed similar findings from the research outlined above, and called out circumstances unique to Minnesota.

Finding 1: The number of adult criminal cases with an order for a competency evaluation (Rule 20.01 exam) increased by 73% from 2014 through 2018. During the same time period, the percent of cases with an order for a Rule 20.01 evaluation that had a subsequent finding of incompetency, ranged from 41% to 44%.

Finding 2: Between 2016 and 2018, the number of mandatory criminal cases with a finding of incompetency was 3,214. Only 41% of these cases directly resulted in a commitment or a stay of commitment.

Finding 3: Minnesota continues to struggle to find a resolution to “gap” cases throughout the state. The Workgroup identified three scenarios that exist in Minnesota where people with mental illnesses, who have entered into the criminal justice system, fall into a treatment or care “gap”. The scenarios include when a person,

- is found incompetent, but does not meet the standards for commitment,
- is found incompetent and meets the standards for commitment, but is released from commitment when psychiatrically stable rather than restored to competency, and/or
- is deemed unable to be restored to competency and does not meet the standards for commitment or to remain in jail.

When these scenarios occur, often there is no continuum of care for the person living with mental illness or cognitive impairment, often leading to a repeated cycle through the criminal justice system.

Finding 4: Examiners report that defendants have been ordered to participate in Rule 20.02 exams without their knowledge and/or consent of the implied affirmative defense. Court data shows that in cases with at least one Rule 20.01 order almost half of those cases had a concurrent 20.02 exam ordered (within 30 days of the 20.01 order). Out of 4,052 Rule 20.02 exams ordered between 2016 and 2018, only 129 defendants (3%) were acquitted due to mental illness or cognitive impairment.

Finding 5: Courts and their justice partners are not always well-served by the forensic examination reports provided in legal proceedings under Minn. R. Crim. P. Rule 20. Civil commitment proceedings under Minn. Stat. § 253B may also run inefficiently due to the poor quality of the reports, lack of clarity in the information available, or limited access to necessary court and/or medical records.

Finding 6: Limited education and training on mental health issues is a challenge for the Judicial Branch and its justice partners, yet is a critical element to responding effectively and appropriately in cases where parties are affected by mental illness. This can also lead to case delays, particularly when attorneys transition from criminal to commitment proceedings.

Finding 7: Defendant and respondent health is a continued concern during court proceedings. A patient's condition may deteriorate with by prolonged court proceedings or stays in jail.

Workgroup Recommendations

The following recommendations are broken into two sections. The first section outlines recommendations the Judicial Branch can implement to respond effectively to the large volume of cases that include parties with mental illness. The second section lists preventative strategies necessary to reduce the number of mentally ill defendants in criminal proceedings.

I. Judicial Branch Recommendations

As the number of cases requiring mandated examination services continues to increase each year, the Judicial Branch can continue to educate itself and others on responding to people with mental illnesses in court proceedings. Additional recommendations are provided on court rule language, policies, and organizational practices that can help the Judicial Branch respond as effectively as possible to the challenges noted in this report.

Recommendation 1: The Judicial Branch should initiate a cross-disciplinary, education plan to inform judges, forensic examiners, court staff, and justice partners on mental health topics and resources. Topics should include:

1. How to identify signs of danger to self or others,
2. Details about mental illnesses and co-occurring disorders including substance abuse issues,
3. An explanation of cognitive impairment and non-restorable to competency conditions,
4. An overview of the science and practice of forensic psychology and psychiatry, and expectations for working with forensic experts and the justice system,

5. Shared experiences of suffering from mental illnesses as told by people who have a mental illness, including simulations of mental illness symptoms used to educate mental health professionals (such as existing DHS and NAMI Minnesota training practices that ask people living with mental illnesses to share their stories or use technology to simulate psychosis), and
6. Information about how to respond to people living with severe episodes of mental illnesses, and options for accelerating criminal justice processes such as working with examiners to expedite examination and report processes.

Recommendation 2: Establish communication processes between DHS and the Judicial Branch to coordinate and collaborate on ongoing mental health services and needs.

1. Consider a requirement that judges tour available treatment facilities, community resources, inpatient facilities, and/or crisis services and teams in their community.
2. Provide training and reference materials to Judges and court staff on mental health services and programming available through DHS and community-based programming, such as the DHS Licensing Lookup tool.
3. Conduct a review of notification timelines between the Court and DHS to ensure the timing of review hearings and reports are scheduled in the best interest of defendants' and respondents' health.
4. Require the use of statewide orders for appointing examiners in Minn. C. Proc. R. Rule 20 and Commitment proceedings to ensure consistent communication of timelines and reporting requirements to justice partners, examiners, case managers, and other stakeholders.

Recommendation 3: Change language in Minn. R. Crim. P. 20.02.

The Workgroup supports revisions to Rule 20.02 that would require judges to list specific criteria in their orders that set the foundation for the Rule 20.02 examination. The goal of the

revisions is to reduce the abundance of Rule 20.02 exams as well as avoid situations where defendants are unaware or not informed of their participation in the affirmative defense.

Recommendation 4: Amend language in Minn. Stat. § 253B.07, subd. 1(f).

The purpose of this amendment proposal is to provide the same information, as in a supported petition, to all parties, the court, and the examiners. The current version of the statute reads, “253B.07 JUDICIAL COMMITMENT; PRELIMINARY PROCEDURES.

Subdivision 1. Prepetition screening. ...

(f) If the interested person wishes to proceed with a petition contrary to the recommendation of the prepetition screening team, application may be made directly to the county attorney, who shall determine whether or not to proceed with the petition. Notice of the county attorney’s determination shall be provided to the interested party.”

The Workgroup suggests this amendment,

“(f) If a county attorney proceeds with a petition pursuant to this section, the prepetition investigation report shall be completed within seven days after the filing of the petition.”

Recommendation 5: The Judicial Branch should support the use of electronic records and remote communication technologies to ensure efficient and timely communication of proceedings impacted by people with mental illnesses.

1. The Judicial Branch should grant access to court-appointed examiners to past Rule 20 and civil commitment examiner reports in existing court applications. Independent, non-employee examiners do not have access to MNCIS case information and are therefore unlikely to have access to past Rule 20 and commitment examiner reports for defendants or respondents. Additional consideration should be given to expand the use of the existing eMedical Records application to more efficiently distribute court and medical records. This could reduce the amount of time examiners spend gathering

records and reduce the amount of time the court may wait for the completion of an examiner's report.

2. The Judicial Branch should adopt policies for the use of remote technology (ITV) in the matters where:
 - a. the defendant/patient should not be transported because of severe illness and transportation would exacerbate the defendant/patient's condition;
 - b. for exam interviews where the defendant/patient was recently seen by the examiner; and
 - c. it would require examiner's less time to testify remotely using technology than to drive to the courthouse.

Recommendation 6: Revise the Requirements For Examiner Reports.

The State Court Administrator should establish a policy that requires all mandated services examiner reports to use a pre-determined examiner report template or form. The report template should incorporate the following elements for consistency:

- standard formatting and headers,
- use common language and terminology,
- a list of examiner questions as specified in the appropriate court rule, and
- options for flexibility so the examiner to provide additional information as necessary.

Recommendation 7: The Judicial Branch should establish a mental health advisory group, similar to the Children's Justice Initiative Advisory Committee, to assist the court in effectively responding to people with mental illnesses in court proceedings. The role and scope of the advisory group should include:

1. Monitoring Judicial Branch case data to track how mental health issues are influencing the state's legal proceedings, i.e., trends in adult Rule 20 proceedings and commitment cases.

2. Monitoring state and national trends for best practices in responding to mental health matters in legal proceedings.
3. Advising the Judicial Branch on working with external partners, such as forensic examiners and state agencies, (e.g., Department of Human Services and Department of Corrections) on matters that affect people with mental illness and their treatment in the criminal justice system.
4. Advising on judicial training and education efforts related to working effectively with people who have mental illness and cognitive impairment, forensic examinations, and treatment resources for judges and justice partners.

The Workgroup recommends that representatives from the following groups act as members of the proposed Advisory Group: District Court Judge, Tribal Court Representative, Metro Representative, District Court Judge, Non-metro Representative, SCAO Staff, County Attorneys, Mental Health and Criminal Divisions, DHS, County Social Services, Law Enforcement, Public Defender, Court Appointed Counsel for Mental Health Matters, Forensic Examiner, Department of Corrections, Community Mental Health Providers, Local Healthcare Facilities, and Mental Health Advocate.

II. Preventative and Policy Strategies as an Alternative to Rule 20

The recommendations above set forth ways that the Judicial Branch can address the issues observed and reported on by the Workgroup. This section includes recommendations that would require public policy action and collaboration with other government entities, state policy makers, and justice partners. The Workgroup acknowledges that the court system is not designed to handle many of the factors contributing to the increase in legal proceedings that include parties with mental illness but that it is critical for state policymakers to address these urgent needs.

Preventative strategies and community-based outpatient services, as an alternative to court-ordered Rule 20 proceedings, is a critical policy strategy in effectively responding to people with mental illnesses in the court system. The Minnesota OLA report, the Robina Institute report, the

National Center for State Courts Policy Paper, and the Minnesota Supreme Court's Joint Workgroup all found that the lack of community-based treatment and competency restoration services are contributing factors to the increase in court proceedings with people with untreated mental illness in Minnesota. Without community-based and competency restoration treatment services available throughout the state, courts lack restoration and effective treatment options for mentally ill defendants. The result is often that courts see defendants cycle through the criminal justice system without receiving adequate treatment. In addition, the research shows that intervening and connecting people to mental health treatment and other supportive services before they enter the criminal justice system can decrease the prospect of exacerbating a person's illness.

The Judicial Branch should acknowledge and support these policy solutions as preventative strategies aimed at reducing the number of people with mental illnesses or cognitive impairment in the court system.

Recommendation 1: Competency Restoration and Community Based Treatment Services.

The Judicial Branch should support a fully funded continuum of community-based services and treatment including housing.

Recommendation 2: Assessments and Treatment in Jail Settings.

1. Access to crisis care screenings as alternative to Rule 20 examinations.
2. Improve access to appropriate medications in jail, including upon discharge, and the administration of Jarvis orders in jails.
3. More comprehensive mental health assessment for inmates who do not have bail and remain in jail.

Recommendation 3: Community and Public Services that Support Reduction of People with Mental Illness in the Criminal Justice system.

1. Establish rosters of judicial officers and court-appointed counsel with specialized training to work with people who have mental illness in both criminal and commitment proceedings.
2. Fund programs that divert people out of the criminal justice system at every juncture of the intercept model. This includes permanent funding streams for case management, outreach, system navigation, and justice system diversion services for people in the system or at risk of system involvement. This also includes funding streams to support programs and services for mental health treatment and law enforcement and jail response to people with mental illness.
3. Training for 911 dispatchers to redirect emergencies involving people in a mental health crisis to mobile response teams. Encourage sheriffs to support diversion to mobile response teams.

Conclusion

The Psych Services Judicial Workgroup recognized the court system is not designed to handle many of the factors contributing to the increase in legal proceedings involving people living with mental illnesses. Supporting the proposed Judicial Branch and policy solutions recommended in the report can better prepare judges and justice partners in responding to people living with mental illnesses once these matters reach the criminal justice system. Furthermore, acknowledging and supporting preventative strategies as alternative to court-ordered Rule 20 proceedings, is a critical strategy in effectively responding to people living with mental illnesses before, during, and after they enter the court system.

APPENDIX A – Workgroup Members

Judicial Branch Members	External Members
Chief Judge Kathryn Messerich , 1 st Judicial District – Workgroup Chair	Sue Abderholden , Executive Director, NAMI Minnesota
Judge Leonardo Castro , 2 nd Judicial District	Elliot Butay , Criminal Justice Director, NAMI Minnesota
Katheryn Cranbrook , Psy.D., Chief Forensic Examiner, 4 th Judicial District	Tim Carey , Asst. County Attorney, Ramsey County
Judge Annie Huseby , 9 th Judicial District	Sarah Cory , Ramsey County
Judge Sally Tarnowski , 6 th Judicial District	Dr. Chinmoy Gulrajani , Director, Forensic Psychiatry Fellowship, University of Minnesota
Judge Heather Wynn , 10 th Judicial District	James Gabriel , Dakota County Sheriff’s Department
Ellen Bendewald , SCAO, Research and Evaluation	Lisa Jones , Asst. County Attorney, Anoka County
Jessie Carlson , SCAO, Court Services Division	Steve Kufus , Civil Commitment Defense Panel Attorney
Deanna Dohrmann , SCAO, Legal Counsel Division	Sharon Mahowald-Horner , Psy.D., LP, Forensic Evaluation Director, Department of Human Services
Connie Gackstetter , SCAO, Strategic Planning Division	Megan Larison , Legal Counsel, Department of Human Services
Karen Jaszewski , SCAO, Legal Counsel Division	Rick Mattox , Attorney
Lisa Jore , SCAO, Court Services Division	Emily Schug , Dakota County Social Services
Paul Patterson , District Administrator, 10 th Judicial District	Jim Scovil , Dakota County Community Corrections
Lindy Scanlon , Civil Commitment Administrator, 2 nd Judicial District	Rex Tucker , Public Defender, Stearns County
	Bill Ward , State Public Defender

APPENDIX B – Current State and Future Assessment

The following drivers of change were assessed to determine the current state and future trends impacting the court’s response to mental illness in the courts. The questions explored for each driver were:

- **Governance:** What is happening internally and externally related to the structures, priorities, policies and rules of governing bodies that may have an impact on how the Court responds to mental illness in court proceedings in the future?
- **Demographics:** What is happening internally and externally related to the diversity, volume, distribution, issues and interests of the population that may have an impact on how the Court responds to mental illness in court proceedings in the future?
- **Resources:** What is happening internally, and externally, related to the type, availability, competition for, and priority of resources (financial, time and people) that may have an impact on the how the Court responds to mental illness in court proceedings in the future?
- **Technology:** What is happening internally, and externally, related to the development, functionality, integration, and user and customer expectations that may have an impact on how the Court responds to mental illness in court proceedings in the future?

Table B-1 identifies the trends for each driver considered to have the greatest impact on the courts’ response to mental health issues in the court.

Table B-1: Key Drivers of Change with the Greatest Future Impact	
Type of Driver	Identified Force
Governance	Identifying specific mental health problems early
Governance	Institute standard elements for exams and reports
Governance	Pre-screen ordered at bail hearing similar to process in Anoka County to achieve results in week, then the defendant goes to same judge week later to address the charges
Technology & Governance	Need for improved and faster Examiner access to records

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Technology & Governance	Ability to increase examiner quality & consistency
Technology & Governance	Separate Rule 20.01 and 20.02 hearings (these hearings are often combined)
Resources	Appropriate placement facilities to address differing needs
Resources	Cost Shifts: from facilities to specialized care
Demographics	Differentiate mental health diagnoses & match them to court responses
Demographics	Access to diversion / early intervention for those presenting mental illness
Demographics	Turnover in Examiners and a progressive loss of expertise

The full list of factors affecting the current state and drivers of future trends affecting the courts' response to mental health issues in the court are documented in Table B-2.

Table B-2: Four Forces of Change, Current State and Future Trends	
DEMOGRAPHICS <i>current state</i>	RESOURCES <i>current state</i>
<ol style="list-style-type: none"> 1. There are not many providers in part of the state. 2. Huge increases across the country in Rule 20 and civil commitment cases; it's not just due to the closing of hospitals; increases are being experienced even in those states with well-developed Mental Health systems. 3. Increase in complex cases. 4. An increase in civil commitment—mentally ill and dangerous---cases after a verdict of not guilty by reason mental illness in a criminal case. 5. Rise in clients with permanent brain damage (meth amphetamine use) reducing client/s ability to recite past history, which is important for representation. 	<ol style="list-style-type: none"> 1. Cost shift for counties when defendants are provisionally discharged from the hospital due to DHS recently ending its Capacity Restoration Program. 2. In smaller counties, travel costs are huge in part because there are not regular calendars because the numbers do not support that. 3. Geographic impact of travel costs for respondents, examiners and attorneys. 4. The average time to complete Rule 20.01 and 20.02 exams (20.01---12 hours and 20.02---14 hours). Up to 80 hours could be required if a particularly complex case. 5. In Civil Commitment cases, there is an expedited process so the average exam time in only 2.5 hours.
DEMOGRAPHICS <i>future trends</i>	RESOURCES <i>future trends</i>
<ol style="list-style-type: none"> 1. Aging population; Elderly Waivers (refers to Medicaid Waivers). 	<ol style="list-style-type: none"> 1. Time variation to complete Rule 20.01/ 20.02 exams based on complexity makes

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<ol style="list-style-type: none"> 2. Prevalence in children; complex; born of trauma. 3. Increase in clients with permanent brain damage. 4. Prevalence in veterans. 5. Rural areas are declining in population: creates an opportunity to share county resources across county lines; reduced local funding. 6. Concentration of foster/group homes in lower economic areas. 7. Permanent wage gap (reduction in resources). 8. Lethality up now; how to get it down. 9. Greater awareness and acceptance. 10. Increase in civil commitment for mentally ill and dangerous. 11. Dual Diagnosis getting worse; a big contributor to preventing defendants/patients from living in the community. 12. Access to diversion/early intervention. 13. Divide between private/public dollars options for access. 14. Access to specialized services. 15. Diminishing workforce. 16. Qualified line staff for assisted living/housing. 17. Diverse services—Cultural competence and barriers. 18. Treatment court format. 	<p>resources management difficult.</p> <p><i>Cost Shift: facilities and specialized care for management for dangerous cases; competency restoration program for patients in limbo (not in a hospital setting—discharged to the streets; too volatile local hospitals cannot handle them.) Want an MI & D under commitment, but not committed.</i></p> <ol style="list-style-type: none"> 2. Adequate case management services, especially in non-metro areas, will help with provisional discharge issues. 3. Expanding options and number of providers; reduction of providers in rural parts of the state. 4. Counties have to develop appropriate care facilities for MI population that are specific to the defendant’s needs. 5. Access to adequately paid and qualified examiners and defense attorneys and care facilities for defendants. 6. Attorney “teams” that straddle criminal Rule 20 and Civil Commitment (Must overcome the funding for that). 7. Resources on training about the structural change so that charging decisions are more flexible. 8. <i>Jarvis</i> orders carried out in jails. 9. Elderly Waivers (refers to Medicaid Waivers). 10. Diverse services—cultural competence and barriers. 11. Eliminate or reduce transport time for defendants: use technology? Centralize services? 12. Future multi-county calendars? 13. Treatment court format?
<p>GOVERNANCE <i>current state</i></p>	<p>TECHNOLOGY <i>current state</i></p>
<ol style="list-style-type: none"> 1. Examiner qualifications are imposed by state statute. 	<ol style="list-style-type: none"> 1. Record review is the most important part of the evaluation. 2. Some unwillingness of the Bench to use technology to help reduce costs.

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<p>2. The Judicial Branch has no policy (or requirements?) to ensure process and report quality.</p>	<p>3. Non-employee Examiners do not have access to MNCIS to conduct court records checks.</p>
<p style="text-align: center;">GOVERNANCE <i>future trends</i></p>	<p style="text-align: center;">TECHNOLOGY <i>future trend</i></p>
<ol style="list-style-type: none"> 1. Higher standards and licensure for Examiners. 2. Standards on necessary elements for 20.01 and 20.02 evaluation report (we will be clear on what the Court needs to know for competency and/or defense of mental illness). 3. Will more examiners be state/MJB employees? 4. Include in the report structure a place for what has happened in the past with this patient beyond just criminal charges. 5. There will be a standard report form for examiners to use and it will be required (as it is now with a PSI). 6. Timing of report distribution based on client, e.g., when need to be expedited. 7. We will have a competency restoration program or some way of serving mentally ill persons, not in jail, but in an appropriate health care setting. 8. Same attorney in criminal court will represent the defendant/respondent in Civil Commitment court. Attorneys will take a great role in getting historical patient information to the court. 9. We will identify mental health problems earlier <i>before</i> the person is in criminal court, e.g., a “crisis” response team (law enforcement, social workers, doctor, etc.) that belongs to human services agency, approach. 10. Early intervention teams will stay in place and be consistent despite changes in Law Enforcement leadership. 	<ol style="list-style-type: none"> 1. Outdated laws about technology. 2. Amend court rules to allow tailored services for the mentally ill, e.g., ITV or other technology. 3. Remote technology: increase in rural parts of the state; best for examiner testimony at initial hearings or Jarvis hearings; could expand to examinations, as appropriate. 4. Telemedicine in jails. 5. Agency systems that communicate so that everyone—examiners, attorneys, etc. will easily have access to the information they need. 6. BCA notification to law enforcement re: Civil Commitment statutes. 7. Expedited record access for review by Examiners. 8. Quicker access to the record. 9. Restrictions about what courts (judges) can know about court participants. 10. Tension between due process vs. information that is available. 11. Increase in use of technology to reduce costs. 12. Court record/jail records and privacy designations. 13. Data practices—who can raise the issue and how from a technical standpoint? 14. Ability to know that other 20.01 and 20.01 exams in other court cases.

APPENDIX C – Customer and Stakeholder Needs and Requirements

The items in bold under Critical Requirements were identified as having the highest level of critical need.

Table C-1: Customer and Stakeholder Needs and Requirements		
Customer/Stakeholder	Comments on Requirements	Critical Requirements
Respondent and Defendant	Due process; least restrictive requirement; access to treatment; least intrusive possible; appropriate medical stabilization; personal safety, not to be marginalized; receipt of justice	<ul style="list-style-type: none"> • Due process; <u>Understanding of the process for themselves and by experts</u> • Medical stabilization; Safety; Alleviate suffering; Respect
Respondent’s Attorney and County Attorney	Structured long term placement; address concerns of the most ill and violent	<ul style="list-style-type: none"> • Long term placement for the most ill, violent; • Community based programs available to help those released to the community • Access to community based, culturally informed programs
Public Defender	Available examiners, who are well qualified to do the examination; Cooperative Counsel; human focused approach; safety for the lawyer to do their job with the client	<ul style="list-style-type: none"> • Examiners who are qualified and available; • Cooperative council; • Human focused approach
Examiner	<ul style="list-style-type: none"> • Justice in court process • Efficacy of competency restoration – options and alternatives 	<ul style="list-style-type: none"> • Understanding of evaluation factors by the rest of the system • Knowledge of the underlying case (access to records in a timely manner)
Judge	Address “the Gap” interim stage between criminal and civil processes	<ul style="list-style-type: none"> • Fluidity between criminal and civil processes • Utilize best actions that serve the best interests of the

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Table C-1: Customer and Stakeholder Needs and Requirements		
Customer/Stakeholder	Comments on Requirements	Critical Requirements
	Options after an incompetency or non-restorative finding	individual- balance between individual and public safety
Judicial Branch	Work collaboratively with partners to shore up rules and protocols; Internally collaborative across the courts (education, processes, resources); use of financial resources most effectively to meet critical needs- in the right way and places; report and examiner quality	<ul style="list-style-type: none"> • Partner collaboration and communication across rules and processes and issues • Effective use of resources to meet needs • Examiner quality • Effectively trained participants; ongoing expectations for competency
Sheriff and Law Enforcement	The court link to send psychologist reports and data from or to the Sheriff's departments from others often isn't accessible: the file size is too large to transmit	<ul style="list-style-type: none"> • Effective, efficient exchange of data and reports • Mental health and screening knowledge • Access to mental health resources in the field/ jail
Psychological Service Providers	Fast access to critical assessment and support	<ul style="list-style-type: none"> • Collaboration with Court system and parties • Provide time-sensitive and appropriate services • Differentiate mental health behaviors from criminal behaviors
Families	Individuals don't languish in jail	<ul style="list-style-type: none"> • Speedy provision of services • Minimize incarceration while case is pending • Supportive resources for families - continuum of care resources • Ability to share relevant, appropriate information • Pre-trial supervision by well trained staff to help connect to resources

Table C-1: Customer and Stakeholder Needs and Requirements		
Customer/Stakeholder	Comments on Requirements	Critical Requirements
Public	Real safety	<ul style="list-style-type: none"> • “Real” safety (appropriate remedies for hold/incarcerations/commitment) • “Real” justice (credible process and effective outcome)
DHS	<ul style="list-style-type: none"> • Better access to hospital beds; • Records; • Length of stay is appropriate • Community options, culturally appropriate; continuum of care 	<ul style="list-style-type: none"> • Collaboration with counties and courts (getting people in and out of the system) • Person-centered result
DOC and County Corrections	Diversion from the criminal justice system; preventative options; partnerships to address health and safety; credible risk assessment to make determination to hold those with mental illness	<ul style="list-style-type: none"> • Preventative options; • Credible risk assessments; • Pre-charge diversion • Partner to address health and safety

APPENDIX D – Opportunity Impact Assessment

Table D-1 illustrates the anticipated area of impact for each opportunity to improve the court’s response to mental illness in the courts by theme. The purpose of the assessment was to enable the committee to understand the overall value of the opportunity from various perspectives.

Table D-1: Opportunity Impact Assessment Results					
Issues	Structure and/or Process	People	Governance	Political	Value and/or Symbolic
Quality of Examiner Reports					
a. Examiner qualifications are dictated by statute; there is no quality assurance required by Judicial Branch policy.	X		X		
b. Reports without diagnosis	X	X			
c. The exam quality issue is huge. Forensic psychology has evolved and there is now certification. Some states have a forensic examiner test. Minnesota has no way of regulating this currently.	x		X		X
Consequence of No Mental Health Treatment					
d. “Gap” cases where a Rule 20.01 examination finds the defendant incompetent to proceed to trial, but is not civilly committed.	X		X		
e. Low-level crimes where people languish in jail due to a public safety concern and the county cannot bring a petition. MCAA proposed legislation to allow criminal court judge	X	X		X	X

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Table D-1: Opportunity Impact Assessment Results					
Issues	Structure and/or Process	People	Governance	Political	Value and/or Symbolic
to order the defendant into commitment court.					
f. Biggest issue for clients is getting them the services they need. They get much worse when remaining in jail.				X	
g. Gap cases where defendants languish in jail due to the risk to public safety and there are no services.		X		X	
h. The lack of a community based competency restoration program results in folks being in jail who should not be because they do not meet the requirements				X	
Reason for Exam Orders					
i. Ordering multiple exams impacts fairness of the process because the 20.02 information is provided to the parties unnecessarily.	X	X	X		X
j. Attorneys request Rule 20.01 for reasons other than competency.		X			
k. Judges order combined Rule 20.01 and 20.02 examinations at a bail hearing, a very short, 2-minute proceeding.	X	X			
Case Processing					
l. A lot of waiting in civil commitment court; it is harmful to take the	X				X

Table D-1: Opportunity Impact Assessment Results					
Issues	Structure and/or Process	People	Governance	Political	Value and/or Symbolic
respondent out of the therapeutic setting to attend a hearing.					
m. Change in attorneys from the Rule 20 criminal case to the civil commitment case adds to delays while the new attorney gets up to speed.	X	X			
n. Judges do not have a good way for handling orders when a respondent fails to appear for a hearing. "Apprehend and detain" orders with a referral to Human Services creates the problem of, "where does the respondent go"?	X			X	
o. "What is the end game for competency?" Some people return to court repeatedly and remain non-restorable to competency so why does the criminal case continue?	X		X		X
p. Additional approach-early intervention	X		X		
q. Mental health service technological assistance bill			X		

APPENDIX E – Opportunity Effort – Value and Long- Short-Term Assessment

Table E-1 illustrates the anticipated effort required to implement the opportunity and anticipated value of the opportunity to improve the court’s response to mental illness in the courts. Key opportunities were also assessed as to whether accomplishing it was anticipated to be a short-term (less than 2 years) or long-term (more than 2 years) endeavor. Solution sub-categories are considered the same effort-value and timeframe for implementation as the overall category unless noted. Bolded solutions are considered higher valued.

Table E-1: Opportunity Effort, Value, and Short- and Long-Term Assessment			
Suggested Solutions	Effort	Value	Short/Long-Term
A. Maximize delivery of justice			
1. Diversion	Medium	Low	Long-Term
a. Pre-charge			
b. All counties required to adopt pre-charging diversion			
c. Early screening commitment during pre-charging diversion			
d. Low level cases divert to diversion instead of charging			
e. Create new facilities where patients must participate			
f. Model treatment court- build judge expertise: mental health courts			
g. Alternative to Rule 20 - Screen individuals coming in for "crisis" -need for immediate psychiatric/medical treatment (mobile crisis response unit; jail diagnostic services			
h. Booking decision in Jails - officer will assess appropriateness for custody			
2. Access to forensic examiners	High	High	Short-Term
a. Quicker examinations to limit time sitting in jail			

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Table E-1: Opportunity Effort, Value, and Short- and Long-Term Assessment			
Suggested Solutions	Effort	Value	Short/Long-Term
b. Utilize technology to use qualified examiners across the state to deal with backlog			
c. Increase access to well qualified forensic examiners			
3. Rules changes	High	High	Long-Term
a. Streamline Rule 20 and 20.2 commitment timelines; Explore statewide court orders with standard timelines			
b. Amend Rule 20 and 20.2 to provide explicit guidance to judges and attorneys (pending legislation to bypass commitment court)			
c. Re-exam what is statutorily considered private data as it concerns prior Rule 20s and evaluations			
d. More comprehensive evaluation prior to appearance			
e. Rule requiring appearance before judge if returned to jail when released from facility			
f. Judge order a mental Health evaluation Rule 20.04- Consider use of 20.04; 253.B examination; issue: use screening first to determine if the individual is committable			
4. Expand use of remote technology	High	Medium	Long-Term
a. Expand use for rural Rule 20, 20.02 exams, civil exams and Jarvis exams			
b. Expand access to records. (MGA access for data and documentation)			
5. Consistent attorneys and judges	High	High	Long-Term
a. Consistent judges or judge teams that can specialize in mental health issues - Rule 20s			

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Table E-1: Opportunity Effort, Value, and Short- and Long-Term Assessment			
Suggested Solutions	Effort	Value	Short/Long-Term
and commitments. Consistent Court Admin teams.			
b. Enhance consistency through judicial assignment (Judge ordering rule 20, not same as review hearing; no consistency criminal-civil proceedings)			
c. Enhance communication throughout the individual's participation in the system			
d. Require higher legal qualifications: Court only appoints attorneys qualified (specialized attorneys)			
e. Specialized training for lawyers, judges, and examiners			
6. Restoration programming	High	High	Long-Term
a. Community Restorative Competency: with strategies in place to address the high rate of people that are lost track of when out in the community			
7. (Team) collaboration approach	Medium	High	Long-Term
a. Centralized system of preliminary hearings			
b. Focus on “gap” cases- out of custody placement for restoration			
c. Partner with local facilities; resources need to be statewide and allocated to centralized areas (build facilities)			
d. IRTS facilities- safe and provide transportation for court, community based services Allow greater information sharing about client’s needs			
e. Shared resources			
f. Provide initial care- let it be fine if it leads to competency			

Table E-1: Opportunity Effort, Value, and Short- and Long-Term Assessment			
Suggested Solutions	Effort	Value	Short/Long-Term
g. Establish a communication process between the Department of Human Services and the MN Judicial branch to coordinate and collaborate on ongoing mental health services and needs.			
8. Training	Low	Medium	Short-Term
a. Train all system participants to understand the dynamics and issues			
b. Include how and when to order alternative evaluations, such as 253B, 20.04			
c. Add training from issues II. a. and c.			
9. Pre-screening, with training to specify the type of exams, tests, etc.	Medium	High	Short-Term
10. Crisis Team Intervention, with training about their role and responsibilities	High	High	Long-Term
B. Maximize examiners			
1. Increased use of Technology: ITV, Skype, etc.	Medium	Medium	Short-Term
a. Reduce patient transportation and for use for exam interviews if appropriate and examiner testimony	Medium	High	
b. Amend ITV rules to allow for more flexibility; provide guidelines for use	Medium	High	
c. Use ITV for Establish central hubs for ITV use and first appearance	High	High	
d. Education and publicity on available technologies	Medium	High	
e. For exam interviews if appropriate and examiner testimony - interview cannot be determined examiner variability and where forensic field is going.			
2. Promote high quality of examiner reports	Medium	High	Short-Term

Table E-1: Opportunity Effort, Value, and Short- and Long-Term Assessment			
Suggested Solutions	Effort	Value	Short/Long-Term
a. Create minimum standards for training and qualification	Medium	High	
b. Provide training and required increased qualifications	Medium	High	
c. Centralize examiner resources	High	High	
d. Reports require documentation about what has been explored, found and done to meet an individual's care needs	Low	High	
3. Access to data by multiple agencies	Medium	High	Short-Term
a. Database the cross-checks multiple Rule 20 requests on same client	Low	High	
b. Allow for past history of evaluations to be entered into court database	High	High	
c. Integrated, multi-agency system	High	High	
d. Monitor Rule 20 reports for use in related cases (reduce duplicate reports)	Low	High	
4. Eliminate bail to prevent decompensation	High	High	Long-Term
a. Alternatives for judges and prosecutors than jail or hospital when an evaluation is pending	High	High	
b. Eliminate requirement for bail when patient is competent	High	High	
c. Education for judges about illnesses (MI/DD/CI)so they understand 'real' safety issues	Medium	High	
d. Develop pre-trial release program to help individuals access services including cross referrals for social services and housing	High	High	
5. Guidelines for Rule 20 findings on cognitive impairment	High	High	Long-Term

Table E-1: Opportunity Effort, Value, and Short- and Long-Term Assessment			
Suggested Solutions	Effort	Value	Short/Long-Term
a. Create guidelines that if a previously found 20.01 due to cognitive impairment, it can be used prior to 20.01.	High	High	
b. If traumatic brain injury or cognitive impairment and no likelihood of competency, say that the client would not need a further Rule 20.02			
c. Judicial Training on cognitive impairment			
6. Common access to reports and information (Comm. Sub division 7) with or without medical records	Medium	High	Short-Term
7. Create efficiencies by completing 20.04 opinion if defendant found incompetent when appropriate. Will also need appropriate training for participants.	Medium	High	Short-Term
8. Collect and access information from defendants or other sources that will help locate individuals or "no shows" to maximize examiner information.	High	Medium	Short-Term
C. Maximize client health			
1. Promote Examiner performance and expertise.	Medium	Medium	Short-Term
a. Policy established by the court for examiner qualification; Identify examiners core competencies	Low	High	
b. Subject matter training and higher examiner standards	Medium	High	
c. Appoint examiners specifically trained to address respondent/defendant needs	High	High	
d. Uniform report format	Low	Medium	
e. Develop screening tool for competence (of the defendant)	High	Low	

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Table E-1: Opportunity Effort, Value, and Short- and Long-Term Assessment			
Suggested Solutions	Effort	Value	Short/Long-Term
f. More comprehensive evaluations for inmates who do not have bail and remain in jail	Medium	High	
2. Reinforce Court system engagement and oversight.	High	High	Long-Term
a. Address criminal prosecutor tendency to ignore mental health issues; training	Low	High	
b. Change the law to allow the court to override prosecutorial discretion	High	Low	
c. Statutory requirement for mental health diversion	High	Medium	
d. Mental health courts	High	Medium	Short-Term
3. Promote supportive services in the field	High	High	Long-Term
a. More mental health resources available to law enforcement so there are alternatives to jail	High	High	
b. Care facilities and teams for patients that don't meet commit statute; provisionally discharged into the community	High	High	
c. Early intervention and access to care without barriers	High	High	
d. Care teams; community support; community based services	High	High	
e. Continuity of care for restoration - should have active services: full continuity of care.	High	High	
f. Those discharged to facilities that do not arrive and disappear	High	Medium	
4. Promote effective practices in custody	High	High	Long-Term
a. Mental health professionals on staff to the jail	Medium	High	

Table E-1: Opportunity Effort, Value, and Short- and Long-Term Assessment			
Suggested Solutions	Effort	Value	Short/Long-Term
b. 72-hour crisis beds available	Medium	High	
c. Adequate access to treatment	High	High	
d. Jarvis orders carried out in the jail (access to neuroleptic medication or administration of medication?)	High	High	
e. Explore how we broaden the availability of acute care beds so that the hospital's assessment is aligned with the individual's ability to be well outside of the hospital	High	High	
5. Timelines	Low	High	Short-Term
a. Shorter timelines for reports; violations mean no future appointments as an examiner	Medium	Medium	
b. Court administration role to ensure report is received when courts require it; develop a tickler system	Low	Medium	
6. Continuity of care for restoration. If it structured appropriately.	High	High	Long-Term
a. Lack of resources/programs for people that are provisionally discharged.			Long-Term
b. More training			Long-Term
D. Maximize financial resources			
1. The Judicial Branch adopts standard use of a template report for examiners that specifies what the Judge will need for a Rule 20 decision. Template has minimal requirements but allows for "other" by doctors.	Low	High	Short-Term
2. Judicial Branch supports combined legislative funding to establish <u>teams</u> of judges, public defenders, and Asst. County Attorneys who appear on both criminal (Rule 20) and commitment proceedings... via <u>actual</u> funding source, not a user fee.	High	High	Long-Term

Table E-1: Opportunity Effort, Value, and Short- and Long-Term Assessment			
Suggested Solutions	Effort	Value	Short/Long-Term
3. Use scheduling blocks for Examiners	Low	Medium	Short-Term
4. Early intervention via mental health workers collaborating with law enforcement to prevent initial incarceration or charging, streamlining access to services and support.	Medium	High	Long-Term
5. Develop a process for screening, first to determine if the individual is committable, and then order evaluations. (Is conducting 253B as the same time as a 20.04 more efficient?)	Low	High	Short-Term
6. Training on data access systems use	Low	Medium	Short-Term
7. Explore existing facilities that are not in use or underutilized to expand acute psychiatric care or supportive residential services for people with mental illness and substance abuse issues.	High	High	Long-Term
8. Central repository for medical and court records, examiner reports, etc.	Medium	High	Short-Term

APPENDIX F

Figure F-1: Psych Exam Trend Data for Fiscal Years 2014 through 2019

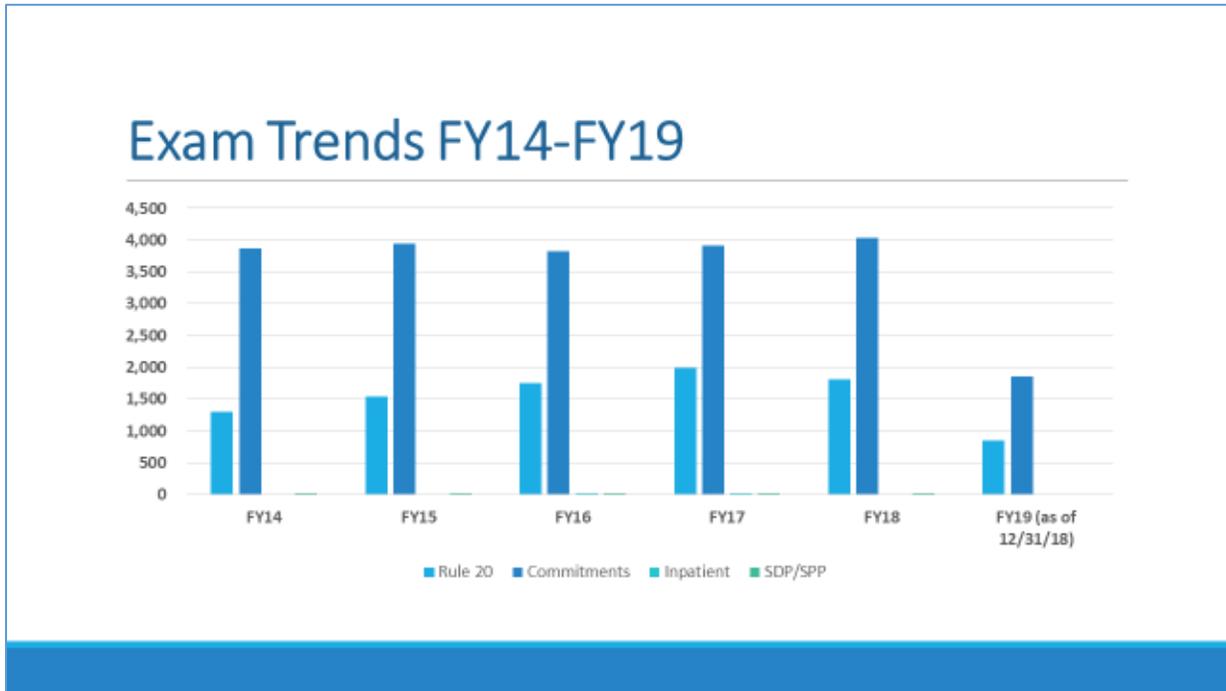
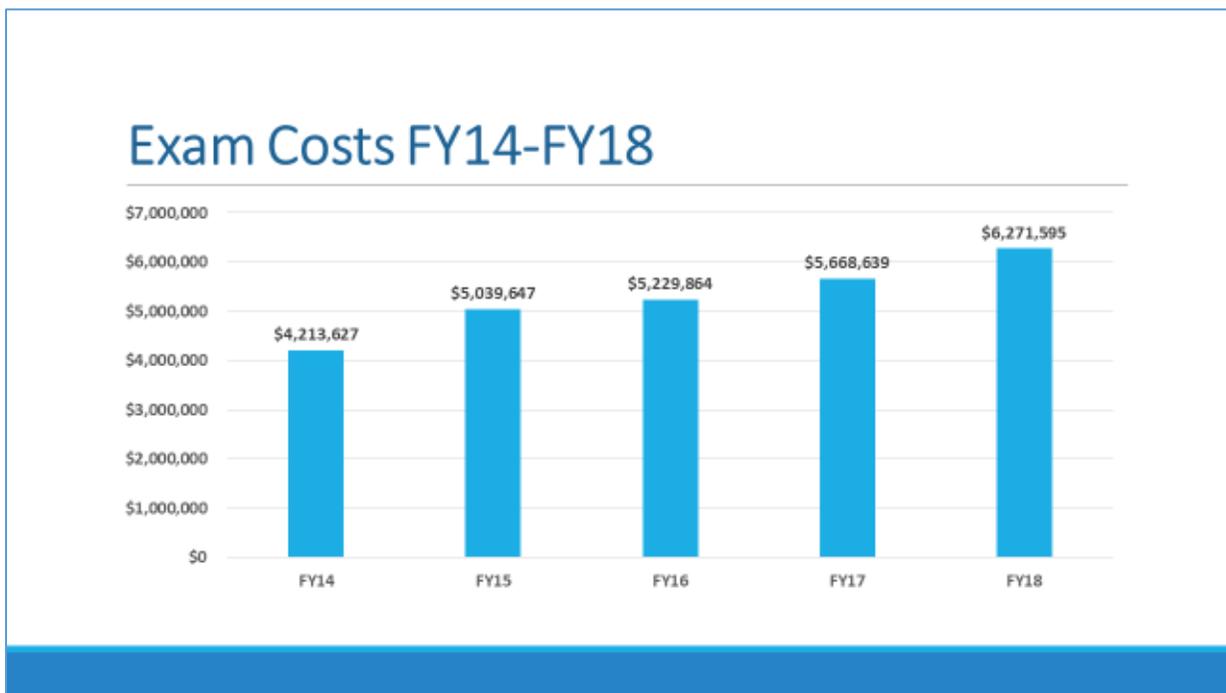
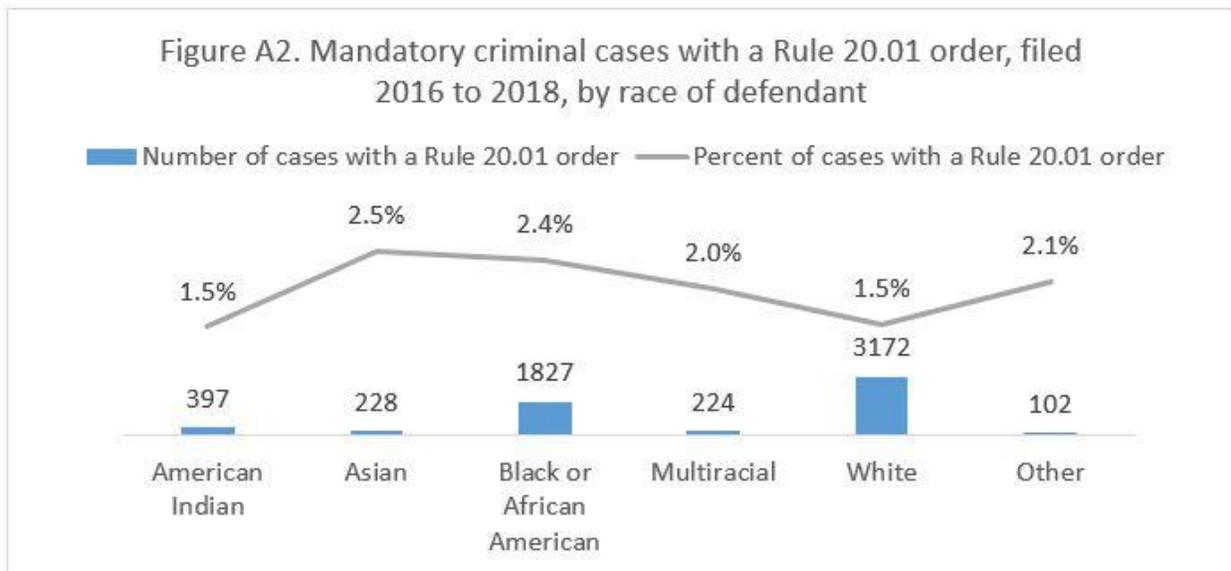
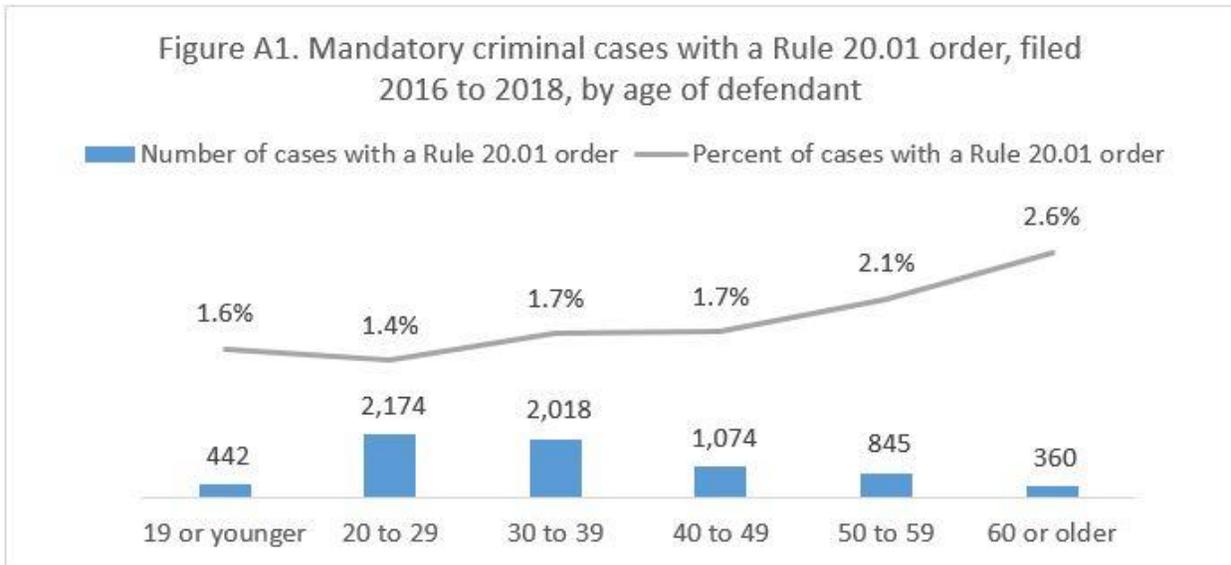


Figure F-2: Psych Exam Costs for Fiscal Years 2014 through 2018



APPENDIX G

The number and percent of mandatory criminal cases with a Rule 20.01 order varies by the age and race of defendant (Figures A1 and A2).



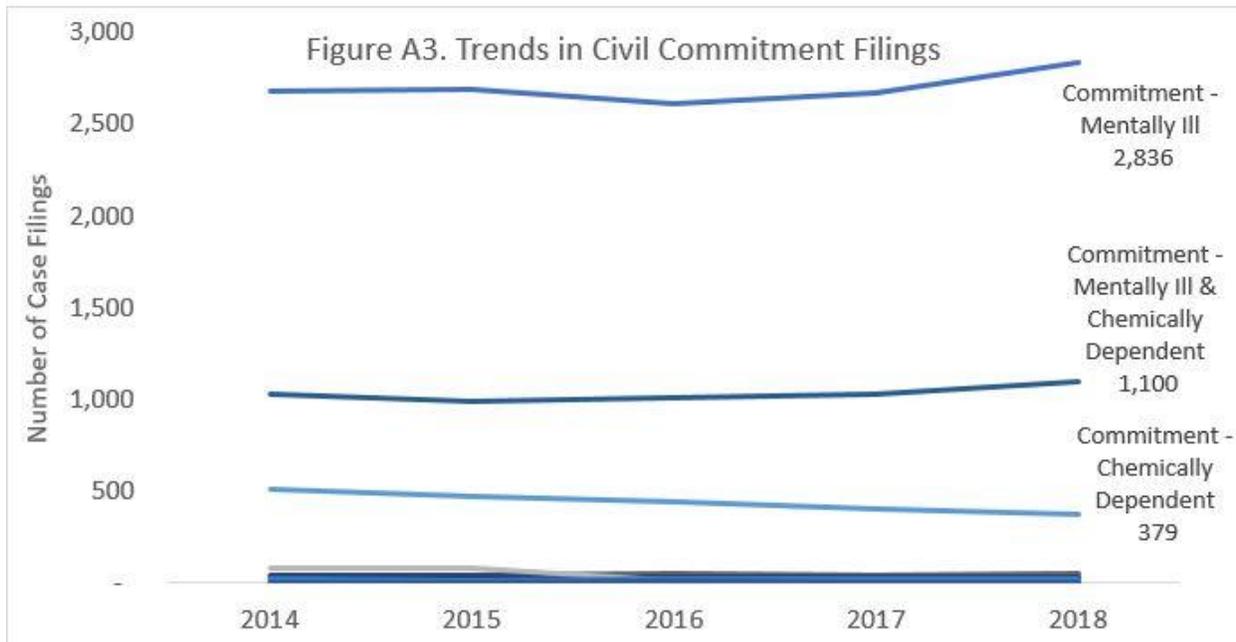
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The frequency of concurrent Rule 20.01 and Rule 20.02 orders varies by judicial district. (Table also included on page ##)

Table 1. Mandatory criminal cases with multiple Rule 20.01 orders, filed 2016 to 2018			
	Number of cases with at least one Rule 20.01 order	Number of cases with multiple Rule 20.01 orders	Percent of cases with multiple Rule 20.01 orders
1st District	601	124	21%
2nd District	908	189	21%
3rd District	578	112	19%
4th District	2,054	435	21%
5th District	297	38	13%
6th District	401	104	26%
7th District	616	96	16%
8th District	139	25	18%
9th District	600	144	24%
10th District	782	126	16%
Statewide	6,976	1,393	20%

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Despite the rise in cases with a Rule 20.01 order (see Table 1, page ##), statewide civil commitment filings have remained stable from 2014 to 2018. See Figure A3.

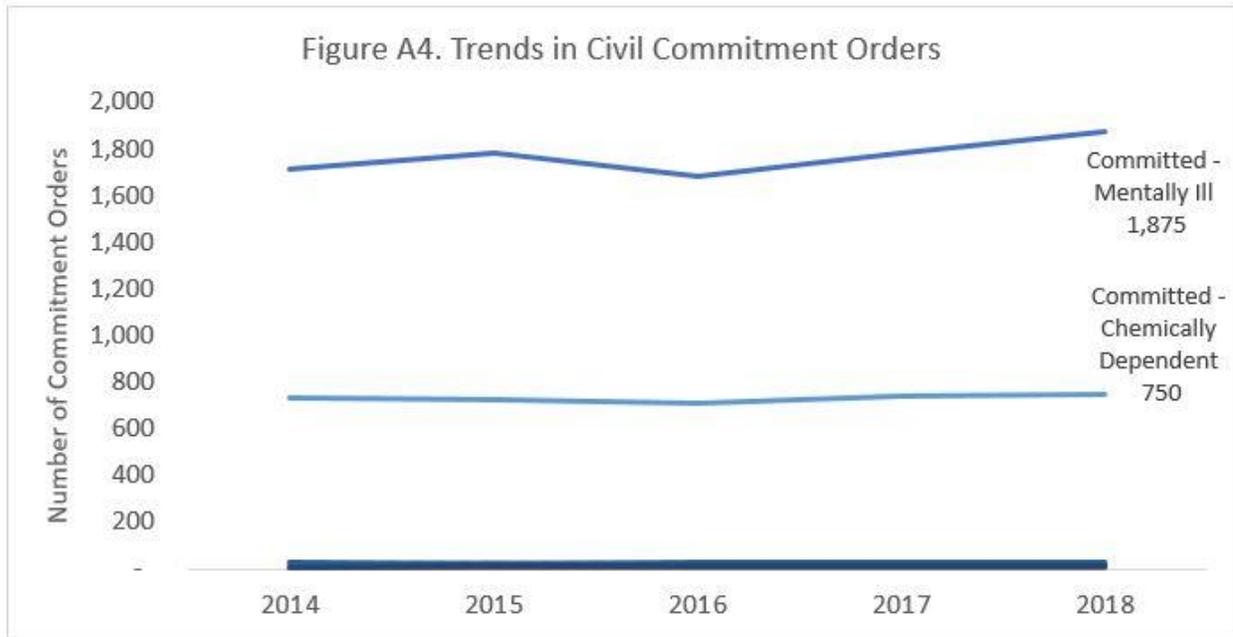


Lines not labeled due to small numbers include:

- Commitment - Developmentally Disabled
- Commitment - Mentally Ill and Dangerous
- Commitment - Mentally Ill and Developmentally Disabled
- Commitment - Mentally Ill, Dev Disabled & Chem Dependent
- Commitment - Mentally Ill, Dev Disabled and Dangerous
- Commitment - Multiple Types
- Commitment - Sexual Dangerous & Psychopathic Personality
- Commitment - Sexual Psychopathic Personality
- Commitment - Sexually Dangerous Person

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Similarly, the number of commitment orders has remained stable from 2014 to 2018. See Figure A4. Note that cases can have multiple commitment orders of multiple types, so a direct comparison to filings is not appropriate.



Lines not labeled due to small numbers include:

- Committed - Developmentally Disabled
- Committed - Mentally Ill and Dangerous
- Committed - Sexual Psychopathic Personality
- Committed - Sexually Dangerous Person